General Incorporated Association
Asia-Pacific Association of
Jehovah's Witnesses

The European Association of
Jehovah's Witnesses

12 September 2022

In behalf of

The Asia-Pacific Association of Jehovah's Witnesses
and
The European Association of Jehovah's Witnesses

Joint Submission to the United Nations Human Rights Committee

Subsequent to the Adoption of the List of Issues

136th session (10 October–4 November 2022)

Japan

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ABOUT THE SUBMITTING ORGANIZATIONS

The **Asia-Pacific Association of Jehovah's Witnesses (APAJW)** is a general incorporated association registered in Japan with membership in Australia, Fiji, Guam, Hong Kong, India, Indonesia, Japan, Kazakhstan, Kyrgyzstan, Malaysia, Myanmar, New Caledonia, Papua New Guinea, Philippines, Republic of Korea, Solomon Islands, Sri Lanka, Tahiti, Taiwan and Thailand.

The European Association of Jehovah's Witnesses (EAJW) is a charity registered in the United Kingdom (No. 1085157) with membership throughout the member States of the Council of Europe.

These associations work together to promote the protection of human rights and fundamental freedoms in various parts of the world, particularly when Jehovah's Witnesses face violations of such rights. This submission is prepared and submitted jointly.

SUMMARY OF THE SUBMISSION

This submission to the Human Rights Committee (CCPR) on Japan highlights violations of the provisions of the International Covenant on Civil and Political Rights subsequent to the adoption of the list of issues to be taken up in connection with the consideration of the 136th report of Japan.

Jehovah's Witnesses in Japan and as a worldwide organization respectfully request the Government of Japan to:

(1) Meet with representatives of Jehovah's Witnesses for realistic discussion of how religious discrimination in the provision of medical treatment may be eliminated;

(2) Ensure that such discussion results in prompt and effective actions to eliminate this form of discrimination;

(3) Ensure that clinicians respect patient autonomy and that they are free to provide health care using evidence-based therapeutic strategies for pre-empting blood transfusion for all patients who decline allogeneic blood, including Jehovah's Witnesses;

(4) Abide by its commitment to uphold the fundamental freedoms guaranteed by the Covenant and the Constitution of Japan for all citizens, including Jehovah's Witnesses.

I. INTRODUCTION

1. Jehovah's Witnesses have been present in Japan for almost 100 years. Their first national office opened in Kobe in 1927. In 2021, there were some 213,000 active adherents in Japan with more than 320,000 attending meetings for worship. Between March 2020 and April 2022, all worship events were conducted online by videoconferencing owing to the COVID-19 pandemic.

2. Jehovah's Witnesses cherish life and value good health. For this reason, they do not smoke tobacco or abuse drugs or alcohol, and avoid activities that endanger life. When necessary, they seek high-quality medical care, and they appreciate the work of clinicians and other health-care providers.

3. For approximately two decades, a significant number of medical institutions throughout Japan have systemically refused to treat Jehovah's Witnesses and other patients who decline allogeneic blood transfusion therapy. This is contrary to the principle of respect for patient autonomy, which includes a patient's right to choose among viable treatment options.

4. The Royal College of Surgeons of England has summarized the Witnesses' position as follows: "Although not opposed to surgery or medicine, Jehovah's Witnesses decline allogenic blood

transfusion for reasons of religious faith. This is a deeply held core value and any non-consensual transfusion is regarded as a gross physical violation."[1]

5. The European Court of Human Rights has stated: "The freedom to accept or refuse specific medical treatment, or to select an alternative form of treatment, is vital to the principles of self-determination and personal autonomy. A competent adult patient is free to decide, for instance, whether or not to undergo surgery or treatment or, by the same token, to have a blood transfusion."[2]

6. This freedom to choose medical treatment compatible with religious beliefs is guaranteed by articles 17 and 18 of the Covenant, which Japan signed on 30 May 1978, and ratified on 21 June 1979, as well as by the Constitution of Japan and specific statutory provisions.

7. The list of issues prior to submission of the seventh periodic report of Japan adopted on 11 December 2017, paragraph 23, referred to the previous concluding observations, paragraph 22. It expressed concern at the "vague and open-ended concept of 'public welfare'". In particular, the State party was asked to ensure that this concept "does not lead to restrictions on the rights to freedom of thought, conscience and religion or freedom of expression beyond the narrow restrictions permitted in paragraph 3 of articles 18 and 19 of the Covenant".[3]

8. Refusal to provide medical care to patients who refuse blood transfusions (for example, patients who are Jehovah's Witnesses) constitutes a clear restriction on the rights to freedom of thought, conscience and religion.

II. VIOLATIONS OF THE PROVISIONS OF THE COVENANT (articles 18 and 26)

A. Freedom of thought, conscience and religion (article 18)

9. In Japan, hundreds of Jehovah's Witnesses are refused necessary medical treatment each year, even in public hospitals, solely because of their religious faith. There were 835 documented cases in 2021—one for every 255 adherents of the faith—which is an increase from 713 in 2020, 765 in 2019 and 538 in 2018, revealing a consistent escalation in this trend. In 2022, the number of documented cases has reached 461 in the six months from January to June.

Year	Documented Refusals of Medical Treatment
2018	**538**
2019	**765**
2020	**713**
2021	**835**
2022	**461 (January–June)**

[1] The Royal College of Surgeons of England, *Caring for patients who refuse blood – a guide to good practice for the surgical management of Jehovah's Witnesses and other patients who decline transfusion* (London, 2016), para. C1.
[2] European Court of Human Rights, *Jehovah's Witnesses of Moscow and Others v. Russia,* Application No. 302/02, para. 136, 10 June 2010.
[3] CCPR/C/JPN/QPR/7, CCPR/C/JPN/CO/6.

10. Hospitals that refuse treatment to Jehovah's Witnesses adopt what is termed a "Relative Bloodless" policy. Refusal to consent to allogeneic blood transfusion in any circumstances, the international norm for Jehovah's Witnesses ("Absolute Bloodless"), results in automatic denial of treatment.

11. At least 463 hospitals in Japan disclose such policies on their website. For example, the Tokyo Saiseikai Central Hospital's website states:

> "For patients who refuse a blood transfusion based on their religious beliefs and faith: According to the basic policy to "provide the best medical services under any situation," the hospital decided in 2008 to forgo providing treatment that may require a blood transfusion (including all surgeries and childbirths) for patients who refuse it based on their religious beliefs and faith. … The above policy will apply to all patients regardless of their age (child or adult) or state of consciousness."

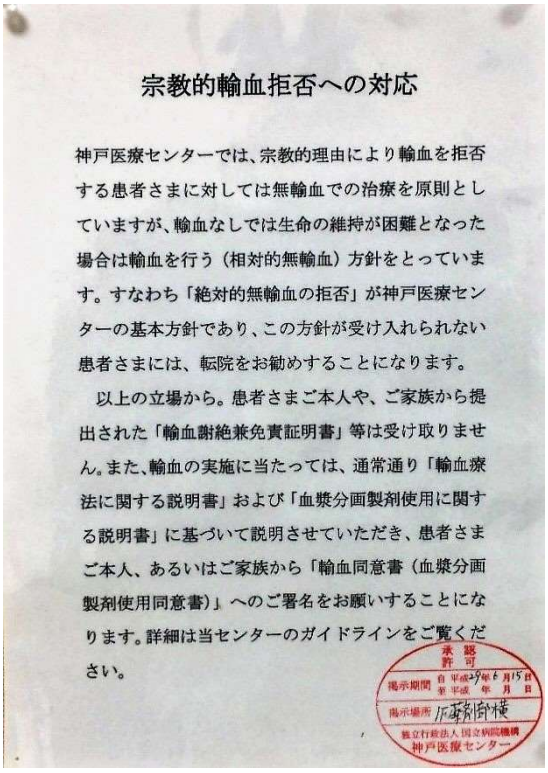
12. Such policies are prevalent in Japanese hospitals for three principal reasons:

i. Many university hospitals have adopted this policy. Since university hospitals serve as teaching hospitals and are well-regarded, affiliated hospitals consider themselves obliged to defer to their practice and adopt similar policies.

ii. The Japan Society of Transfusion Medicine and Cell Therapy, the Japan Society of Obstetrics and Gynaecology, the Japan Surgical Society, the Japan Society of Anaesthesiologists and the Japan Paediatric Society have jointly created guidelines for patients who refuse allogeneic blood transfusions on religious grounds. These guidelines allow for treatment of such adults but also permit refusal of treatment without justification.

iii. Consistent, deliberate and malign misapplication of a decision by the Supreme Court of Japan in 2000. The Court ruled unanimously in favour of a Jehovah's Witness patient, following a non-consensual allogeneic blood transfusion, finding tortious liability against doctors who were aware of her refusal of this specific treatment modality.[4] The decision is interpreted as turning solely on the clinicians' failure to provide adequate information to the patient. Many doctors and lawyers have concluded that they can avoid litigation by explaining the perceived necessity for a blood transfusion and giving the patient a choice either to accept it or to be denied any form of treatment.

[4] Tokyo High Court, *Takeda v. Japan,* Case No. 1997 (NE) 1343, February 9, 1998.



宗教的輸血拒否への対応

神戸医療センターでは、宗教的理由により輸血を拒否する患者さまに対しては無輸血での治療を原則としていますが、輸血なしでは生命の維持が困難となった場合は輸血を行う（相対的無輸血）方針をとっています。すなわち「絶対的無輸血の拒否」が神戸医療センターの基本方針であり、この方針が受け入れられない患者さまには、転院をお勧めすることになります。

以上の立場から。患者さまご本人や、ご家族から提出された「輸血謝絶兼免責証明書」等は受け取りません。また、輸血の実施に当たっては、通常通り「輸血療法に関する説明書」および「血漿分画製剤使用に関する説明書」に基づいて説明させていただき、患者さまご本人、あるいはご家族から「輸血同意書（血漿分画製剤使用同意書）」へのご署名をお願いすることになります。詳細は当センターのガイドラインをご覧ください。

承認
許可
掲示期間 自 平成 年 月 日
至 平成 年 月 日
掲示場所
独立行政法人 国立病院機構
神戸医療センター

Notice displayed in the National Hospital Organization Kobe Medical Centre, 3-1-1 Nishiochiai, Suma-ku, Kobe City, Hyogo Prefecture, Japan

On the Handling of Refusals to Blood Transfusions Based on Religious Reasons

At Kobe Medical Centre, our principle is to treat patients who refuse blood transfusions for religious and other reasons without blood. However, should life support be difficult without blood transfusion, we will perform blood transfusions (Relative Bloodless Surgery). This **"refusal of absolute bloodless surgery" is the basic policy of Kobe Medical Centre**, and we suggest that patients who cannot accept these terms transfer to a different hospital.

From this standpoint, **we will not accept any documents regarding "Refusal of blood transfusions and release of liability"**, either from the patient or from the family. Also, when performing blood transfusions, we will explain the procedure based on the "manual for blood transfusion treatment" and "manual for using blood plasma fraction derivatives" and obtain a signature to the "agreement to blood transfusions (agreement to using blood plasma fraction derivatives)" either from the patient or from the family. For more details, please see our hospital guidelines. (Emphasis ours.)

13. From the nearly 3,000 documented cases in the four-year period from 2018–2021, we have selected 10 representative examples of unjustified discriminatory treatment refusal owing solely to the religious beliefs of the patient. Several of these relate to minor procedures, universally performed without recourse to allogeneic blood transfusion, highlighting the unreasonable religious discrimination suffered by Jehovah's Witnesses. Initials are used to protect the privacy of the individuals concerned, who have agreed to this information being shared publicly.[5]

14. **Gunma**: On 23 November 2021, HS (78, F) attended the Geriatrics Research Institute and Hospital with a left femoral neck fracture. She was diagnosed as requiring surgery, but the hospital refused any form of treatment because she did not accept allogeneic blood transfusions. The hospital did not consider referral to another centre and discharged HS even though she was unable to move by herself.

15. **Chiba**: On 19 October 2021, HH (69, F) attended Tokyo Dental College Ichikawa General Hospital Orthopaedics Department owing to a fracture of the right little finger. The treating doctor initially agreed to provide care but subsequently refused treatment, because even if there were only a 1 per cent chance of transfusion, they could not proceed without her consent to

[5] Those mentioned in the representative examples have agreed for their names and personal details to be provided to a third-party organization. Further details can be provided, if necessary.

transfusion. By the time that HH located a hospital willing to treat her, it was too late for surgery and she has lost movement in the finger. This seriously impacts on her daily life and employment.

16. **Shizuoka**: TY (33, M) was diagnosed with a large epidermoid cyst. On 17 September 2021, he attended the Plastic Surgery Department at the Japanese Red Cross Shizuoka Hospital. TY was told that there was 99 per cent probability that surgery would not require blood transfusion but if, in the clinicians' opinion, allogeneic blood was indicated, they would administer it. Therefore, he was not able receive treatment. Later, TY obtained successful resection surgery in a different hospital for the lesion of which the final diagnosis was skin cancer.

17. **Kanagawa**: On 14 May 2021, SS (62, F) attended Kawasaki Municipal Ida Hospital Breast Surgery Department for cancer treatment. The doctor told her that they had performed more than 2,000 surgeries and never transfused allogeneic blood for this type of surgery, but nevertheless she was required to sign a transfusion consent form. She refused, and the hospital refused treatment.

18. **Fukui**: HK (50, M) was referred to University of Fukui Hospital Cardiology Department for treatment of paroxysmal atrial fibrillation. The doctor in charge had prior experience of treating Jehovah's Witnesses and agreed to catheter treatment without using allogeneic blood. On 4 March 2021, 10 minutes before the planned procedure, treatment was refused unless HK signed a document agreeing to blood transfusion. This was required according to the hospital's policy.

19. **Gunma**: On 8 August 2020, YT (62, F) attended Maebashi Red Cross Hospital for a third molar extraction. The hospital refused treatment because she would not sign the allogeneic blood transfusion consent form. They said there was a near 100 per cent possibility that transfusion would not be clinically indicated, but such consent was the prerequisite for surgery at this hospital.

20. **Tokyo**: On 18 March 2020, RI (68, F) attended Kyorin University Hospital Plastic Surgery Department for treatment of ingrown nails. The hospital refused treatment, stating that they could not perform surgery without consent to allogeneic blood.

21. **Hokkaido**: In February 2020, five hospitals (Sapporo Mirai Clinic, Fukuzumi Obstetrics and Gynaecology Hospital, Misono Obstetrics and Gynaecology Hospital, Sapporo Tokushukai Hospital, Sapporo Shiroishi Obstetrics and Gynaecology Hospital) refused to accept NH (32, F) as an obstetric patient to give birth at their institution because of her advance refusal of allogeneic blood transfusion.

22. **Tokyo**: RA (69, F) attended JCHO Tokyo Shinjuku Medical Centre Otolaryngology Department as an outpatient for nasal allergy and had booked surgery for an inferior turbinate incision. On 12 June 2019, the attending clinician apologized to her for having to cancel the surgery. The doctor stated that he had conducted more than 100 of these surgeries and had never had a bleeding patient, but the hospital refused admission.

23. **Tokyo**: MS (30, F) went to Toho Women's Clinic as an antenatal patient and was diagnosed with a minor uterine fibroid. The clinic said this did not constitute a high-risk pregnancy and would not affect childbirth. MS was referred to the Japanese Red Cross Tokyo Katsushika Perinatal Centre (formerly Katsushika Red Cross Maternity Hospital) and attended the

Obstetrics and Gynaecology Department on 2 March 2019. The doctor informed her that they had a policy to refuse Jehovah's Witnesses unless they accept allogeneic blood transfusions. The hospital president told her that if she had said she was one of Jehovah's Witnesses when she called, they would have been able to reject her there and then.

24. Worldwide, virtually all medical and surgical procedures have been performed without allogeneic blood transfusion by respected clinicians at renowned institutions.[6] When implemented in a timely fashion, use of clinical management strategies that avoid transfusion results in equal or superior clinical outcomes and reduced costs to hospitals and the health-care system compared to traditional care using allogeneic blood transfusion.[7]

25. In 2021, the World Health Organization (WHO) recommended that doctors use medical "alternatives to blood transfusion" where possible "because blood products carry inherent biological hazards, and process-related hazards can also lead to serious or fatal consequences … Many elective operations rarely require blood transfusion."[8] This WHO publication complements a 2001 document regarding the clinical use of blood transfusion, which states that "[m]ost elective surgery does not result in sufficient blood loss to require a blood transfusion."[9]

26. In 2021, WHO also published a policy brief regarding the use of medical and surgical treatment strategies that make optimal use of patients' own blood.[10] The document emphasizes that the systematic use of medical treatment strategies to avoid allogeneic blood transfusion is associated with excellent clinical outcomes (for example, lower mortality, shorter hospital stays), improved quality of health care (for example, anaemia management, reduced surgical blood loss, reduced iatrogenic blood loss), better patient safety (decreased post-operative infection rates, avoidance of transfusion-transmitted disease, avoidance of transfusion complications), equivalent or lower costs and respect for patient rights.

27. While the refusal of blood transfusion by Jehovah's Witnesses is primarily based on religious grounds, many non-Witness patients and doctors prefer to be treated without the use of allogeneic blood transfusion owing to mounting medical evidence of the hazards and complications that may result from its use and the superior outcomes achievable by avoiding allogeneic blood transfusion. Professor James P. Isbister (Emeritus Consultant in Haematology and Transfusion Medicine and Clinical Professor of Medicine, University of Sydney Medical School) states: "It really is a sobering thought, when one considers that allogenic blood

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[6] See https://www.jw.org/en/medical-library/.
[7] Leahy MF and others, "Improved outcomes and reduced costs associated with a health-system-wide patient blood management program: a retrospective observational study in four major adult tertiary-care hospitals," *Transfusion,* vol. 57, No. 6 (June 2017), pp. 1347–58. Available at: https://pubmed.ncbi.nlm.nih.gov/28150313/ (accessed 12 July 2022).
[8] World Health Organization, *Educational modules on clinical use of blood* (Geneva, WHO, 2021), pp. x, 67. [ISBN 978-92-4-003374-0 (print version)] Available at: https://apps.who.int/iris/handle/10665/350246 (accessed 27 July 2022).
[9] World Health Organization, *The Clinical use of blood in medicine, obstetrics, paediatrics, surgery and anaesthesia, trauma and burns* (Geneva, WHO, 2001), pp. 7, 10, 18, 72–73, 126–128, 139–141, 146, 255–258, 262, 264–265 and 272. Available at: https://www.who.int/publications/i/item/WHO-BTS-99.2 (accessed 11 July 2022).
[10] World Health Organization, *The urgent need to implement patient blood management: policy brief* (Geneva, WHO, 2021). Available at: https://apps.who.int/iris/handle/10665/346655.

transfusion has the potential for a wider range of adverse clinical outcomes than probably any other medical intervention."[11]

28. Similarly, Professor Donat R. Spahn (Professor of Medicine, University of Zurich Medical School, and Chairman of the Institute of Anaesthesiology, University Hospital, Zurich, Switzerland) states: "After considering all available evidence on transfusion and outcome, we are left with the conclusion that transfusion is a major multiplier of morbidity and mortality. Maintaining the status quo as we see in transfusion practice today would just not be accepted or tolerated in any other field of medicine in the context of current safety and quality standards."[12]

29. In March 2017, the European Commission issued a guide for national health authorities on patient blood management throughout the European Union. The European Commission observed that "a large body of clinical evidence shows that in many clinical scenarios both anaemia and blood loss can be effectively treated with a series of evidence-based measures to better manage and preserve a patient's own blood, rather than resorting to a donor's blood."[13]

B. Equal before the law and equal protection of the law (article 26)

30. The Constitution of Japan[14] provides:

i. Article 13: All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

ii. Article 14.1: All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

iii. Article 25.1. All people shall have the right to maintain the minimum standards of wholesome and cultured living.

iv. Article 25.2. In all spheres of life, the State shall use its endeavours for the promotion and extension of social welfare and security, and of public health.

31. The Medical Practitioners' Act[15] provides at Article 19.1: "No medical practitioner who engages in medical practice may refuse any request for medical examination or treatment without legitimate grounds."

32. The Medical Care Act[16] provides:

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[11] National Blood Authority (Australia), *What is the Evidence Telling Us?*, video. Available at: https://www.blood.gov.au/health-professionals (accessed July 11, 2022).
[12] Ibid.
[13] European Commission, *Building national programmes of Patient Blood Management (PBM) in the EU – A Guide for Health Authorities* (Brussels, EU, 2017), pp. 9 and 14. Available at: https://op.europa.eu/en/publication-detail/-/publication/5ec54745-1a8c-11e7-808e-01aa75ed71a1/language-en (accessed 11 July 2022).
[14] https://www.japaneselawtranslation.go.jp/ja/laws/view/174.
[15] https://www.japaneselawtranslation.go.jp/ja/laws/view/3992.
[16] https://www.japaneselawtranslation.go.jp/ja/laws/view/4006.

i. Article 1-2.1 Medical care is to be provided in accordance with the physical and mental state of the medical care recipient, based on a relationship of trust between the physician, dentist, pharmacist, nurse, or other medical care professional and the medical care recipient, in a way which respects life and ensures the dignity of the individual.

ii. Article 1-2.2. Medical care must be provided as a basis for efforts to ensure and improve the health of the nation, fully respecting the wishes of the medical care recipients.

33. The Local Autonomy Act,[17] which applies to public hospitals in Japan, provides:

i. Article 244.2. No inhabitant shall be refused use of public facilities of the ordinary local public body without due reason.

ii. Article 244.3. The ordinary local public body shall make no unreasonable discrimination of inhabitants using its public facilities.

34. As stipulated in article 26 of the Covenant, the Constitution of Japan and specific statutory provisions stipulate that all patients are equal, and discrimination shall not be made on the basis of creed. Domestic laws are intended to ensure that patients are not refused medical examination or treatment on questionable grounds. Furthermore, medical care must be provided while fully respecting the wishes of the patient.

35. Despite this, Jehovah's Witnesses continue to suffer egregious discrimination with respect to medical treatment that is otherwise available to the general population. Such discrimination is solely because of their sincere personal religious beliefs. This is contrary to the State's mandate to provide equal protection to patients requesting medical treatment in accordance with religious beliefs.

III. CONCLUSION AND RECOMMENDATIONS

36. Jehovah's Witnesses in Japan and as a worldwide organization express concern for the overt and explicit discrimination suffered by law-abiding adherents of their faith. They respectfully request the Government of Japan to take corrective steps as follows:

(1) Meet with representatives of Jehovah's Witnesses for realistic discussion of how religious discrimination in the provision of medical treatment may be eliminated;

(2) Ensure that such discussion results in prompt and effective actions to eliminate this form of discrimination;

(3) Ensure that clinicians respect patient autonomy and that they are free to provide health care using evidence-based therapeutic strategies for pre-empting blood transfusion for all patients who decline allogeneic blood, including Jehovah's Witnesses;

(4) Abide by its commitment to uphold the fundamental freedoms guaranteed by the Covenant and the Constitution of Japan for all citizens, including Jehovah's Witnesses.

[17] http://nippon.zaidan.info/seikabutsu/1999/00168/contents/094.htm (English translation of the1999 version of the law); https://elaws.e-gov.go.jp/document?lawid=322AC0000000067 (latest version in Japanese).

MEDICAL CARE

Jehovah's Witnesses view life as a precious gift to be cherished and cared for. They do everything within their power to improve and conserve their health. For this reason, Jehovah's Witnesses do not smoke tobacco or abuse drugs or alcohol; nor do they practice abortion. They avoid high-risk behavior in sports and recreation. (Psalm 36:9) However, like everyone else, Jehovah's Witnesses get sick, suffer injuries, and deal with infirmities. Thus, when necessary, they seek the best medical treatment and care available for themselves and their children, and they appreciate good cooperation from doctors and health-care providers. (Mark 2:17) They do not teach their members to refuse medical treatment. As a survey in France confirmed, 97 percent of Jehovah's Witnesses in that country have a family doctor and do not hesitate to go to the hospital for treatment of serious health problems.[1]

Out of the vast array of interventions offered by modern medical science, Jehovah's Witnesses decline only allogeneic blood transfusions, and that for religious reasons. The basis for the Witnesses' stand is found in the Bible book of Acts, where first-century Christians were exhorted to "keep abstaining . . . from blood." (Acts 15:29; 21:25) This Scriptural directive echoes the commands given to all humans after the Flood of Noah's day and later to the nation of Israel under the Law covenant. (Genesis 9:4; Leviticus 17:14) As the Royal College of Surgeons of England has recognized, the Witnesses' abstaining from blood is "a deeply-held core value."[2]

Although Jehovah's Witnesses abstain from blood transfusions, they do not eschew medical care. Rather, they actively seek nonblood management of their health-care needs. In recent years, Jehovah's Witnesses' choice of nonblood management has been hailed as avant-garde. Professor Bernard Hœrni, former president of the French National Order of Physicians (Conseil national de l'Ordre des médecins), said that the position of Jehovah's Witnesses ". . . has incited doctors . . . to adapt treatment protocols in order to take these personal factors into consideration, just as for each patient other personal, organic, or psychological factors are taken into consideration." He continued: "The decision to accept or reject a treatment is, however, always the right of the patient when he is conscious and lucid and free of exterior coercion. . . . I met with individuals with firm and respectable convictions who also understand and respect the position and behavior of doctors, who sometimes find themselves in emergency situations. I have never known of circumstances during which these people have constituted a threat to public order."[3]

Over the past several decades, health-care providers have acquired unique experience in the field of nonblood medicine, and Jehovah's Witnesses have been involved in the formulation of scientific, ethical, and legal documentation and research in the field of bloodless surgery and medicine. At leading medical centers throughout Europe, all manner of successful, cost-effective medical and surgical care is being provided to Jehovah's Witnesses without the use of transfused blood. The benefits and cost savings of nonblood management—and the avoidance of the hazards and complications of blood transfusions—are being recognized by a growing number of medical professionals, and nonblood management is being extended to the non-Witness patient population as the optimum standard of care. Thus, medical treatments that do not entail the use of blood are now available for the treatment of nearly all illnesses and virtually all types of surgery.

Article 8 of the European Convention on Human Rights gives everyone "the right to respect for his private . . . life." In *Jehovah's Witnesses of Moscow v. Russia,* the European Court of Human Rights (ECHR) stated that "the imposition of medical treat-

Legal Authority

European Convention on Human Rights, Article 8: "Everyone has the right to respect for his private . . . life."

European Court of Human Rights, *Jehovah's Witnesses of Moscow v. Russia,* no. 302/02, § 136, 10 June 2010: "A competent adult patient is free to decide, for instance, whether or not to undergo surgery or treatment or, by the same token, to have a blood transfusion."

ment without the consent of a mentally competent adult patient would interfere with his or her right to physical integrity and impinge on the rights protected under Article 8."[4]

In the same case, the Court went on to explain: "The freedom to accept or refuse specific medical treatment, or to select an alternative form of treatment, is vital to the principles of self-determination and personal autonomy. A competent adult patient is free to decide, for instance, whether or not to undergo surgery or treatment or, by the same token, to have a blood transfusion. However, for this freedom to be meaningful, patients must have the right to make choices that accord with their own views and values."[4]

And in *Hoffmann v. Austria,* the Court stated that the Witness parent's choice of medical treatment without the use of blood transfusions should not in any way have impaired her right to receive custody of her children.[5]

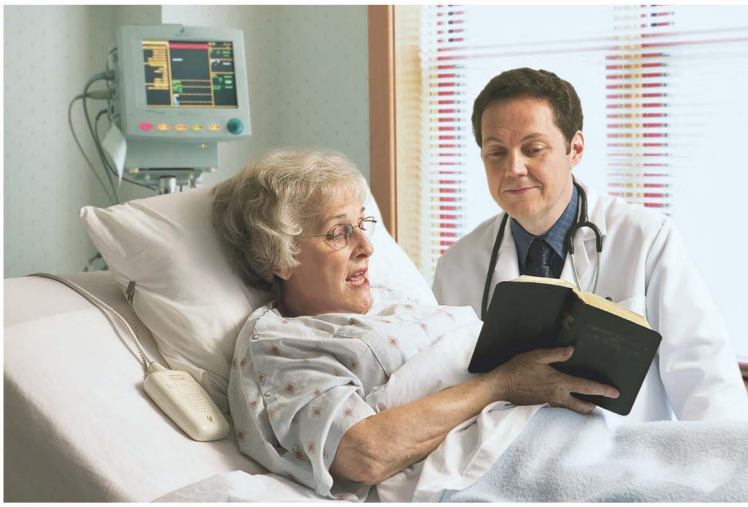
Many courts throughout Europe have recognized not only the right of patients to control what is done to their bodies but also the availability and efficacy of bloodless care. The French Council of State, in a 2002 case involving a Witness patient's refusal of blood transfusions, stated that "the right of an adult patient to give his consent to a medical treatment, when in a position to express himself, is a fundamental freedom."[6]

Similarly, in a case involving a Witness who was given a blood transfusion, the Constitutional Court of Spain stated that "coercive medical treatment" against the express wish of the patient "would constitute a violation of a fundamental right" to religious freedom.[7]

The Court of Appeal (England and Wales) explained that a patient "has an absolute right to choose whether to consent to medical treatment, to refuse it or to choose one rather than another of the treatments being offered." It continued: "This right of choice is not limited to decisions which others might regard as sensible. It exists notwithstanding that the reasons for making the choice are rational, irrational, unknown or even nonexistent."[8]

The Juvenile Court in Liège, Belgium, stated that Jehovah's Witnesses are "well aware of substitutive medical techniques to blood transfusions and seem to be able to apply to competent medical services in case of need."[9]

The Italian Council of State has observed that "the individual's right to free choice of medical treatment, in the absence of legal provisions that make certain medical treatment obligatory, is guaranteed at constitutional . . . and legislative . . . levels, and therefore any refusal to accept a blood transfusion is lawful."[10]



The benefits and cost savings of nonblood management —and the avoidance of the hazards and complications of blood transfusions—are being recognized by a growing number of medical professionals

Facts and Quotes About Jehovah's Witnesses and Medical Care

Professor Anatoly P. Zilber, Chairman of the Department of Intensive Care and Anesthesia, Petrozavodsk University and Republican Hospital of Karelia, Russia, commends Jehovah's Witnesses, saying: "They do not abuse alcohol, they do not smoke, they are not money hungry, they do not break their promises, nor give false witness . . . They are not a mysterious sect but are law-abiding citizens." He adds: "[They] are respectable, happy people, interested in history, literature, art, and life in all its aspects." Then, after listing the positive changes that the Witnesses have brought about in bloodless surgery, the professor says: "To alter Voltaire's words, we could say that if Jehovah's Witnesses did not exist, we would do well to invent them."[11]

Dr. J. M. Revuelta, Chief of the Cardiovascular Surgery Section of the Marqués de Valdecilla University Hospital of Santander, Spain, states: "This successful surgery program has been made possible thanks to [Jehovah's Witnesses], who with much effort and determination have finally convinced us that transfusing blood is not always the best alternative. Thank you on our behalf and on behalf of all those patients whom you have indirectly benefited."[12]

"The dangers of blood transfusion make it desirable to consider alternative measures whenever possible." —The Royal College of Surgeons of England.[2]

"Bloodless surgery has come to represent good practice, and in the future, it may well be the accepted standard of care."—*American Journal of Otolaryngology—Head and Neck Medicine and Surgery.*[13]

Professor Dr. h.c. Karel Dobbelaere, a member of the Belgian Royal Academy, in a document notarized on 12 November 1996, by the Apostille of the Belgium Minister of Foreign Affairs, acknowledged the following in a social survey: "Jehovah's Witnesses cooperate closely with the medical staff and . . . they love their children. If a blood transfusion is prescribed, they request an alternative treatment out of respect for their convictions. In many large hospitals, effective techniques have been developed to accommodate them."[14] In Europe, 50 hospitals have established programs that specialize in nonblood care and surgery.

"A series of studies suggest [that blood transfusion] may increase the risk of death in all but the most serious cases of anaemia and people suffering a catastrophic loss of blood. It appears that this damage is done not by infectious agents in the transfused blood but by the blood itself."—*New Scientist.*[15]

A large-scale study of 145 intensive care units throughout Europe confirmed that the length of hospital stay was longer and the incidence of organic dysfunctions and mortality was significantly higher among the patients who received blood transfusions than among those who chose nonblood management. The study, which also showed that transfusions were associated with immunosuppressive problems, allergic reactions, and infectious transmissions, encouraged the use of bloodless medical and surgical techniques.[16]

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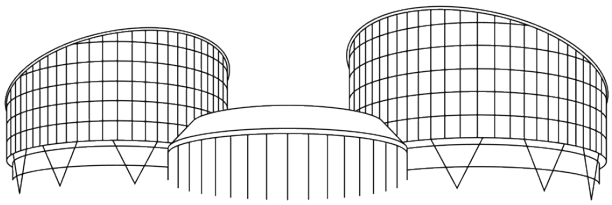

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF JEHOVAH'S WITNESSES OF MOSCOW AND OTHERS v. RUSSIA

(Application no. 302/02)

JUDGMENT

This version was rectified on 18 August 2010
under Rule 81 of the Rules of Court

STRASBOURG

10 June 2010

FINAL

22/11/2010

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

In the case of Jehovah's Witnesses of Moscow v. Russia,

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 302/02) 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 the religious community of Jehovah's Witnesses of Moscow and four Russian nationals listed below ("the applicants") on 26 October 2001.

2. The applicants were represented by Mr R. Daniel, barrister of the Bar of England and Wales, Ms G. Krylova and Mr A. Leontyev, Russian lawyers practising in Moscow and St Petersburg respectively, and Mr J. Burns, a member of the Canadian Bar. The Russian Government ("the Government") were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, a violation of their rights to freedom of religion and association, the right to a hearing within a reasonable time and a breach of the prohibition on discrimination.

4. On 5 June 2003 the Court decided to give notice of the application to the Government. The parties submitted their observations.

5. On 6 January 2005 the Court put additional questions to the parties. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

6. The Court decided, after consulting the parties, that no hearing in the case was required.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicants

7. The first applicant is the religious community of Jehovah's Witnesses of Moscow ("the applicant community") established in 1992. The other applicants are members of that community. All of them live in Moscow.

8. The second applicant, Mr Ivan Stepanovich Chaykovskiy, was born in 1955. He has been with the Jehovah's Witnesses since 1977 and is a community elder.

9. The third applicant, Mr Igor Vasilievich Denisov, was born in 1961. He has been a member of the applicant community since 1993.

10. The fourth applicant, Mr Stepan Vasilievich Levitskiy, was born in 1925. He was twice convicted in Soviet times – in 1957 and 1980 – for disseminating Jehovah's Witnesses' religious literature and officially rehabilitated in 1992 as a victim of religious persecution.

11. The fifth applicant, Mr Oleg Nikolaevich Marchenko, was born in 1965. He is a third-generation Jehovah's Witness whose grandparents were exiled to Siberia in 1951 under an order deporting Jehovah's Witnesses.

B. Jehovah's Witnesses in Russia

12. Jehovah's Witnesses have been present in Russia since 1891. They were banned soon after the Russian Revolution in 1917 and persecuted in the Soviet Union.

13. After the USSR Law on Freedom of Conscience and Religious Organisations was enacted in 1990, on 27 March 1991 the RSFSR Ministry of Justice registered the charter of the Administrative Centre of The Religious Organisation of Jehovah's Witnesses in the USSR.

14. On 11 December 1992 the Ministry of Justice of the Russian Federation registered the charter of the Administrative Centre of the Regional Religious Organisation of Jehovah's Witnesses.

15. The applicant community, which is the Moscow branch of the Jehovah's Witnesses, obtained legal-entity status on 30 December 1993 from the Moscow City Justice Department. According to its charter, the purpose of the applicant community was "joint profession and dissemination of [their] faith and carrying on religious activity to proclaim the name of God the Jehovah".

C. Criminal investigations into the Jehovah's Witnesses' activity

16. In 1995 the Committee for the Salvation of Youth from Totalitarian Cults ("the Salvation Committee"), a non-governmental organisation aligned with the Russian Orthodox Church, filed a complaint against the members of the applicant community's management with the Savyolovskiy district prosecutor's office in Moscow. It alleged in particular that Jehovah's Witnesses burdened their followers with exorbitant membership dues that put their families in a financially precarious situation and that they incited hatred toward "traditional" religions.

17. On 11 August 1995 the prosecutor's office refused to institute a criminal investigation, finding no breaches of the community's registered charter, the Constitution or other laws. It was also noted that no complaints from private persons or legal entities concerning the activity of the applicant community had been filed.

18. In 1996 the Salvation Committee complained again and the inquiry into the same allegations was reopened. On 21 April 1997 the prosecutor of the Northern District of Moscow discontinued the investigation. Having heard several Jehovah's Witnesses and completed a study of their literature, the prosecutor found that the applicant community did not cause any harm to the health of citizens or their rights and did not incite citizens to refuse to fulfil their civil duties or commit disorderly acts.

19. Following a third complaint by the Salvation Committee, the prosecutor in charge of supervising compliance with laws on inter-ethnic relations in the General Prosecutor's Office ordered the case to be reopened. On 15 September 1997 an investigator with the prosecutor's office of the Northern District of Moscow again discontinued the investigation. She scrutinised in detail the Salvation Committee's allegations concerning the death of a Jehovah's Witness who had refused a blood transfusion and accusations about alienation of family members resulting from their involvement in the religious activity of the applicant community. The investigator established that no harm allegedly caused by the management of the applicant community to other persons could be proven.

20. Following a fourth complaint lodged by the Salvation Committee, the investigation was reopened on 28 November 1997. The complaint was based on the same allegations as the previous ones. On 28 December 1997 the same investigator discontinued the proceedings for the same reasons as those set out in her earlier decision. In particular, she pointed out that "the Committee for the Salvation of Youth's statements are based upon their active hostility towards this particular religious organisation, whose members they [the Committee] deny the mere possibility of exercising their constitutional rights because of their religious beliefs".

21. The Salvation Committee requested a new investigation for the fifth time. The Moscow City prosecutor's office reopened the case and assigned it to another investigator on 20 March 1998.

22. On 13 April 1998 the new investigator, in charge of particularly important cases in the Northern District of Moscow, terminated the criminal proceedings. Her findings in respect of substantially the same allegations were different, however. She found that Jehovah's Witnesses alienated their followers from their families, intimidated believers and controlled their mind, as well as inciting them to civil disobedience and religious discord. The investigator pointed out that the community acted in breach of Russian and international laws, but that no criminal offence could be established. Accordingly, she discontinued the criminal case but recommended that the prosecutor of the Northern District of Moscow lodge a civil action for the applicant community to be dissolved and its activity banned.

D. First set of civil dissolution proceedings against the applicant community

23. On 20 April 1998[1] the prosecutor of the Northern Administrative District of Moscow filed a civil action for the applicant community to be dissolved and its activity banned. The prosecutor's charges against the applicant community were: (i) incitement to religious discord; (ii) coercion into destroying the family; (iii) encouragement of suicide or refusal on religious grounds of medical assistance to persons in life- or health-threatening conditions; (iv) infringement of rights and freedoms of citizens; and (v) luring teenagers and minors into the religious organisation.

24. On 29 September 1998 hearings before the Golovinskiy District Court of Moscow began. The presiding judge admitted several new witnesses for the prosecution and allowed the Salvation Committee to take part in the proceedings as a third party on the ground that it "defends the rights of citizens", overruling an objection by the defence.

25. On 18 November 1998 the hearing was adjourned to February 1999 because the prosecutor was not ready.

26. On 15 January 1999 the prosecutor filed a supplementary action based on the same allegations and corroborated by references to quotations from the religious literature of Jehovah's Witnesses.

27. On 9 February 1999 the proceedings resumed. The judge reversed her previous decision and, on a request by the defence, removed the Salvation Committee as third party in the case. The court proceeded to hear witnesses and experts.

28. On 12 March 1999 the court stayed the proceedings. The judge found that contradictions between the expert opinions submitted by the

[1] Rectified on 18 August 2010: the date was "23 April 1998".

parties could not be resolved and ordered a new expert study of the applicant community's religious beliefs. The court appointed five experts – two in religious studies, two in linguistics and one in psychology – and asked them whether the literature or materials of Jehovah's Witnesses contained indications of incitement to religious discord, coercion into destroying the family or infringements of the rights and freedoms of others. The source material for the study included two volumes of evidence in the civil case, literature and documents of Jehovah's Witnesses, and the Synodal translation of the Bible.

29. On 4 October 2000 the five-expert composite study was completed. On 9 February 2001 the proceedings resumed and on 23 February 2001[1] the District Court gave judgment.

30. The Golovinskiy District Court heard over forty witnesses and experts and examined religious literature and documents. It scrutinised the experts' report and took their oral testimony. A fifteen-page report by four experts endorsed the prosecutor's allegations, while the fifth expert dissented in a refutation of 139 pages. The court noted that he was the only expert who had ever observed "how Jehovah's Witnesses carry out their preaching work in different countries", while the four other experts "confirmed that they did not examine anyone belonging to the indicated group [Jehovah's Witnesses or potential members of Jehovah's Witnesses]". As to the four experts' conclusions, the court also stated:

> "However, not one of the experts, including ... [the] psychologist, could explain to the court on the basis of what objective information or research they came to this conclusion regarding the influence of the literature of Jehovah's Witnesses on people's perceptions.
>
> It is simply the experts' appraisal of this particular religious organisation and is not supported by any actual facts showing incitement to religious discord, infringements of the personality and rights and freedoms of citizens, etc."

31. The District Court also referred to the conclusions of an expert examination of 15 April 1999 performed by the Expert Council for State Expert Examinations in Religious Studies at the Ministry of Justice. The examination, which was carried out at the request of the Ministry of Justice for the purpose of granting re-registration to the Administrative Centre of the Jehovah's Witnesses in Russia, found, with certain minor reservations concerning blood transfusion, that Jehovah's Witnesses' teachings inflicted no harm on citizens. The District Court also had regard to the fact that in 1998-2000 over 350 religious entities of Jehovah's Witnesses had obtained State registration in other Russian regions.

32. The District Court assessed the allegations advanced by the prosecutor and found that none of them had been based on any objectively verifiable facts. The court's examination of testimony by the prosecutor's

[1] Rectified on 18 August 2010: the date was "15 July 2001".

witnesses who spoke in support of the allegation of coercion into destroying the family established that "the testimonies simply show the stand relatives take when a member of their family becomes a Jehovah's Witness and when it is unacceptable from the relatives' standpoint".

33. The District Court determined that the other allegations were likewise unfounded:

> "Facts indicating deliberate incitement to religious discord, discrimination, hostility or violence, coercion into destroying the family, infringements of the personality and rights and freedoms of citizens ... were not adduced by the prosecutor or established by the court...
>
> ...[T]he court came to the conclusion that there is no basis for the dissolution and banning of the activity of the religious community of Jehovah's Witnesses in Moscow, since it has not been established that this community in Moscow violates the Russian Constitution or Russian laws, incites religious discord, coerces members into destroying the family, infringes the personality or rights or freedoms of citizens, encourages [others] to commit suicide or to refuse medical care for individuals who are in a life- or health-threatening condition for religious reasons."

34. On an appeal by the prosecutor, on 30 May 2001 the Moscow City Court quashed the judgment of 23 February 2001[1] and remitted the claim for a fresh examination by a different bench. The City Court held that the District Court had not properly assessed the circumstances of the case and that it should have ordered a new expert study in order to elucidate differences between the existing expert opinions.

E. Attempts to obtain re-registration of the applicant community

35. On 1 October 1997 a new Law on Freedom of Conscience and Religious Associations ("the Religions Act") entered into force. It required all religious associations that had previously been granted legal-entity status to bring their articles of association into conformity with the Act and obtain re-registration from the competent Justice Department.

36. On 29 April 1999 the Ministry of Justice of the Russian Federation re-registered the Administrative Centre of the Religious Organisation of Jehovah's Witnesses in Russia as a centralised religious organisation.

37. On 20 October 1999 the first application for re-registration of the applicant community was lodged with the Moscow Justice Department. On 17 November 1999 the Moscow Justice Department refused to examine the application on the ground that some documents were missing, without specifying which documents these were.

38. On 7 December 1999 and 29 May 2000 a second and third application for re-registration were filed, both of which were rejected by the Moscow Justice Department on the same ground.

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[1] Rectified on 18 August 2010: the date was "15 July 2001".

39. On 16 October 2000 the second applicant, Mr Chaykovskiy, sent a written enquiry to the Moscow Justice Department asking which documents were missing. On the same day he brought an action against the Moscow Justice Department before the Presnenskiy District Court of Moscow, seeking a court order to oblige the Moscow Justice Department to consider the third application. The court set a hearing date for 22 November 2000 and requested the Moscow Justice Department to provide a response by 23 October 2000.

40. On 23 October 2000 the deputy head of the Moscow Justice Department informed the applicant community that it had failed to submit the original charter and registration certificate of 1993. He also informed the applicants that he was under no legal obligation to specify the missing documents.

41. On 25 October 2000 the applicants filed a fourth application, which included the original charter and registration certificate. On 24 November 2000 the Moscow Justice Department issued the first formal refusal of re-registration. It referred to two allegedly incorrect wordings in the submitted documents: the Moscow community had "adopted", rather than "approved" its charter and the organisation had indicated its "legal address" only, but no "location".

42. On 12 December 2000 the fifth application was filed, in which the two required wordings were used. This was the last application because on 31 December 2000 the time-limit for submitting applications for re-registration expired.

43. On 12 January 2001 the Moscow Justice Department issued the second formal refusal of re-registration, in respect of the fifth application. It based its decision on the fact that the proceedings to have the applicant community dissolved and its activity banned were pending before the Golovinskiy District Court of Moscow.

44. On 11 January 2001 the fifth applicant, Mr Marchenko, as an individual and founding member of the Moscow community, filed a complaint with the Kuzminskiy District Court of Moscow against the Moscow Justice Department's first refusal of 24 November 2000. The court stayed the proceedings pending a decision of the Presnenskiy District Court.

45. On 11 April 2001 the third applicant, Mr Denisov, filed a complaint with the Butyrskiy District Court of Moscow against the Moscow Justice Department's second refusal of 12 January 2001. The court asked for official information from the Golovinskiy District Court about the proceedings to dissolve the applicant community.

46. On 14 September 2001 the Kuzminskiy District Court of Moscow dismissed the fifth applicant's complaints, finding that the refusal of re-registration restricted only the rights of the Moscow community, and not those of the fifth applicant himself. On 10 December 2001 the Moscow City Court upheld the judgment on appeal.

47. On 12 October 2001 the Butyrskiy District Court of Moscow dismissed the third applicant's claim. The court held that, pursuant to section 27 § 3 of the Religions Act, re-registration could not be granted to organisations that might be liquidated or banned pursuant to section 14 of the Religions Act. The court added that the third applicant's religious rights were not restricted by the refusal, which had only entailed legal consequences for the Moscow community as a legal entity. On 20 February 2002 the Moscow City Court upheld the judgment on appeal.

48. On 16 August 2002 the Presnenskiy District Court of Moscow allowed the action in part. The court found that the Moscow Justice Department had wrongly requested the original documents, copies of which had been available on file. It held that the Moscow Justice Department's reference to ongoing proceedings before the Golovinskiy District Court was inadmissible because it had first invoked this argument before the court and had never referred to it as a ground for its earlier refusals. The court declared the Moscow Justice Department's refusals unlawful but did not order re-registration of the applicant community on the ground that new application forms for religious organisations had been introduced and that the applicant community had to submit a fresh application for registration.

49. On an appeal by the applicant community, on 2 December 2002 the Moscow City Court upheld the decision of 16 August 2002. It decided that the application for registration could not be processed, not only because of the newly introduced application forms, but also with regard to the ongoing proceedings in the Golovinskiy District Court.

F. The second set of dissolution proceedings against the applicant community

50. On 30 October 2001 a new round of proceedings began in the Golovinskiy District Court under a new presiding judge. On 9 November 2001 the hearing was adjourned.

51. Following the adjournment, the community of Jehovah's Witnesses in Moscow collected 10,015 signatures on a petition to protest against the prosecutor's claim that she was protecting the rights of the community members. Copies of the petition were sent to the District Court, the President, and the Prosecutor General of the Russian Federation.

52. On an unspecified date in 2001 the District Court ordered a new composite psycho-linguistic expert study of the applicant community's literature and teachings. The proceedings were stayed pending its completion.

53. On 22 January 2004 the composite study was completed and its findings made available to the court.

54. Following several oral hearings, on 26 March 2004 the Golovinskiy District Court of Moscow decided to uphold the prosecution's claim, to

dissolve the applicant community and to impose a permanent ban on its activities.

55. The District Court found the applicant community responsible for luring minors into religious associations against their will and without the consent of their parents (section 3 § 5 of the Religions Act) and for coercing persons into destroying the family, infringing the personality, rights and freedoms of citizens; inflicting harm on the health of citizens; encouraging suicide or refusing on religious grounds medical assistance to persons in life- or health-threatening conditions; and inciting citizens to refuse to fulfil their civil duties (section 14 § 2). However, the court found the applicant community not liable for extremist activity in the form of inciting religious discord with calls for violent acts (section 14 § 2). Likewise, it found unproven the allegation that the applicant community had collected contributions from its members for its benefit.

56. Regarding the allegation of "coercion into destroying the family," the District Court relied on the statements by seven family members of Jehovah's Witnesses – five of which were members of the Salvation Committee – who had been unhappy about their relatives' abidance by the religious norms, their active involvement in the applicant community and their estrangement from non-religious family members. Thus, one husband had blamed the applicant community for the collapse of his family life, claiming that since "his wife [had] joined the Jehovah's Witnesses, she fulfil[led] all their orders, [he] c[ould] not discuss anything with her, or even watch TV with her because of her comments on everybody, including the leadership of the country and the Orthodox Church". Other witnesses complained that their adult children or, in one case, the daughter-in-law had spent less time caring for elderly relatives because they had been constantly busy within the community. The District Court further relied on the majority opinion of the expert study of 4 October 2000 which determined that "the texts of Jehovah's Witnesses do not contain direct coercion into destroying the family but apply and propose for application direct psychological pressure which risks causing the destruction of families". Assessing the opinion by the dissenting expert and the findings of the new study of 22 January 2004, which found no coercion into destroying the family, the District Court considered that these experts had limited the scope of their inquiry to publicly available literature of Jehovah's Witnesses and had not analysed the "actual activity of the Moscow community" or implementation of the religious commandments and recommendations "in real life" and their influence on family relations. The District Court rejected statements by the witnesses for the defence who had Jehovah's Witnesses in their families and the conclusions of a sociological study of 995 community members, randomly selected, conducted by the Department of Family Sociology at the Moscow State University on the ground that it had been based on the lists of respondents supplied by the community itself and failed

to "report a single instance of an internal family confrontation which objectively existed".

57. As to the charge of infringement of the personality, rights and freedoms of citizens, the District Court firstly found a violation of the right to privacy in that the applicant community determined the place and nature of work of its members, recommended that they engage in part-time employment so as to have time for preaching, prohibited them from celebrating holidays or birthdays, and required them to preach door to door, thus also invading other people's privacy. As evidence of attempts to interfere with other people's private life, the District Court referred to the criminal conviction of a Mr K. for beating a female community member who had offered religious literature to his wife at their home. Moreover, in the District Court's view, the applicant community violated its members' right to a free choice of occupation as it recommended that they engage in part-time employment and provided applications for voluntary service at Bethel, the community centre near St Petersburg, where they only received a monthly living allowance and no salary.

58. The District Court found a violation of the constitutional guarantee of equality between parents in relation to the upbringing and education of children (Article 38 of the Constitution) because some parents involved their children in the religious activity of the applicant community without the permission of the other parent, a non-member of the community. It relied on the fact that there were pending custody disputes between parents in Moscow courts where religious education had been in issue. It noted that where a Witness parent had been represented in the custody dispute by a community-retained lawyer, this amounted to "a manifestation of interest in the outcome of the cases of the community itself and an interference with the family and private affairs of its members". The District Court also relied on the opinions of three psychiatrist witnesses for the prosecution who stated that "the literal following of the Bible principles, as practised by Jehovah's Witnesses, restricted the person's independent thinking ... and arrested psychological development". In their view, a child who did not celebrate holidays would become "a social outcast" and the community's teachings "hindered the development of patriotic feelings and love for the Motherland".

59. The District Court found that the applicant community violated the right to freedom to choose one's religion by resorting to active proselytising and "mind control". According to the prosecution experts, Jehovah's Witnesses were set apart from traditional religions because of the "theocratic hierarchy of the community", "their striving to integrate families into the life of a totalitarian non-secular collective" and "military-like discipline in domestic life". The District Court accepted the opinions of the prosecution experts and rejected the contrary conclusion in the expert study that the defence expert psychiatrist had conducted of 113 community

members on the grounds that "participants had been selected from lists supplied by the organisations" and that the study "only concerned the community members whereas their relatives had not been examined". The District Court also considered that the petitions signed by the community members in its support had been "evidence of the pressure that the community exercised on its members".

60. Ruling on the charge of "encouragement of suicide or the refusal of medical assistance on religious grounds", the District Court found that under the influence of the applicant community its members had refused transfusions of blood and/or blood components even in difficult or life-threatening circumstances. That finding was based on the following evidence: the prohibition on blood transfusion contained in the literature of the applicant community, the "No Blood" card distributed within the community for the benefit of its members, testimonies by community members who confirmed carrying such cards, the existence of the Hospital Liaison Committee with the applicant community, and stories of patients who had refused a blood transfusion on religious grounds and whose refusal had been noted in their medical records. The District Court also had regard to a letter from the Moscow Health Protection Department that listed a number of instances in which patients had refused blood transfusions for themselves and, in one case, in respect of a newborn child. Even though the medical outcome of those cases was not specified, the District Court held that the proven fact of damage to the health of at least one individual was a sufficient ground for terminating the activities of the Moscow community. It further noted the opinions of medical experts who clarified that bloodless surgery was a prospective trend in medicine but that in case of certain diseases the transfusion of blood or its components was still indispensable. Finally, in the District Court's view, the "No Blood" card contravened the patient's right to take medical decisions for himself by delegating that right – in the eventuality of his being unconscious – to his fellow believers.

61. As to harming the health of citizens, the District Court found that, in addition to the prohibition on blood transfusion, the activities of the applicant community had had a "negative influence on the mental state and mental health of the followers". This assessment rested on opinions of non-Witness family members who testified that they had seen "sudden and negatives changes of personality" in their relatives who had joined the applicant community and that many participants at religious meetings of Jehovah's Witnesses had "cried" and had complained thereafter "about colossal emotional exhaustion".

62. As to luring minors into the religious association, the District Court found, on the basis of statements by two non-Witness parents, that where a Witness parent involved the child in the activities of the applicant community, there was an encroachment on the child's freedom of

conscience and the joint right of parents to participate in the child's upbringing.

63. Finally, the District Court found that the applicant community's literature incited citizens to "refuse to fulfil their civil duties." This included refusal to serve in the army and to perform alternative service and promotion of "a disrespectful attitude towards State emblems – the flag and the national anthem", as well as a prohibition on celebrating State holidays.

64. The District Court held that the interference with the applicant community's rights was justified, prescribed by law and pursued a legitimate aim because the applicant community had "violated rights and freedoms of citizens, and its activity led to the destruction of families, encroachments on the fundamental rights and freedoms of citizens and calls to refuse to perform duties to society... Taking into account that the [applicant] community violated constitutional rights and freedoms of citizens, the contemplated restriction on its rights and termination of its activity is justified and proportionate to the constitutionally significant aims".

65. The applicant community was ordered to bear the costs of the expert studies of 4 October 2000 and 22 January 2004 and to pay costs of 102,000 Russian roubles to the State.

66. The applicant community appealed, claiming, in particular, that the interference with its right to freedom of religion was not justified from the standpoint of Articles 9 and 11 of the Convention. It also invoked Articles 6, 10, 14 and 17 of the Convention.

67. On 16 June 2004 the Moscow City Court dismissed the applicants' appeal in a summary fashion and upheld the judgment of the Golovinskiy District Court, endorsing its reasons.

G. "No Blood" card

68. The "No Blood" card referred to in the proceedings is a pre-printed foldable card that bears the words "No Blood" in capital letters on the front page and empty fields to be filled out concerning the person(s) to be contacted in case of emergency and the holder's allergies, diseases and medicine(s). The text inside the card reads as follows:

> "MEDICAL DIRECTIVE / RELEASE FROM LIABILITY
>
> I, [name], have filled out this directive as an official statement of my will. The instructions contained therein reflect my firm and conscious decision.
>
> I direct that under no circumstances – even if doctors consider it necessary to save my life or health – shall any blood transfusion be performed on me ... I consent to the use of blood substitutes, hemodiluting solutions... or bloodless methods of treatment.

> By this legal directive I exercise my right to consent to medical treatment or refuse it in accordance with my principles and convictions. I am a Jehovah's Witness and issue this directive in pursuance of the Biblical precepts...
>
> I release doctors, anaesthetists, hospital and medical personnel from liability for any consequences of my refusal of blood provided that I have been given full alternative qualified medical assistance.
>
> Should I be unconscious, the person listed on the reverse side of the card [emergency contacts] may represent me before others, acting in accordance with this directive.
>
> [Date, signature, address, phone number, and signatures of two witnesses]."

II. RELEVANT LAW AND PRACTICE

A. Constitution of the Russian Federation

69. Article 28[1] guarantees freedom of religion, including the right to profess either alone or in community with others any religion or to profess no religion at all, to freely choose, have and share religious and other beliefs and manifest them in practice.

70. Article 30 provides that everyone shall have the right to freedom of association.

71. Article 38 establishes that maternity, childhood and the family shall be protected by the State. The parents have equal rights and obligations with regard to providing care for children and their upbringing.

B. The Religions Act

72. On 1 October 1997 the Federal Law on the Freedom of Conscience and Religious Associations (no. 125-FZ of 26 September 1997 – "the Religions Act") entered into force.

73. The Religions Act prohibits the involvement of minors in religious associations, as well as the religious education of minors against their will and without the consent of their parents or guardians (section 3 § 5).

74. The founding documents of religious organisations that had been established before the Religions Act were to be amended to conform to the Act and submitted for re-registration. Until so amended, the founding documents remained operative in the part which did not contradict the terms of the Act (section 27 § 3). Re-registration of religious organisations was to

[1] Rectified on 18 August 2010: the text was "Article 29".

be completed by 31 December 2000 (section 27 § 4, with subsequent amendments).

75. The list of documents required for (re-)registration was set out in section 11 § 5 and read as follows:

> "— application for registration;
>
> — list of founders of the religious organisation indicating their nationality, place of residence and dates of birth;
>
> — charter (articles of association) of the religious organisation;
>
> — minutes of the constituent assembly;
>
> ...
>
> — information on the address (location) of the permanent governing body of the religious organisation at which contact with the religious organisation is to be maintained..."

76. Section 12 § 1 stated that (re-)registration of a religious organisation could be refused if:

> "— the aims and activities of a religious organisation contradict the Russian Constitution or Russian laws – with reference to specific legal provisions;
>
> — the organisation has not been recognised as a religious one;
>
> — the articles of association or other submitted materials do not comply with Russian legislation or contain inaccurate information;
>
> — another religious organisation has already been registered under the same name;
>
> — the founder(s) has (have) no capacity to act."

77. Section 14 § 2 (as amended on 29 June 2004) provides for the following grounds for dissolving a religious organisation by judicial decision and banning its activity:

> "— breach of public security and public order;
>
> — actions aimed at engaging in extremist activities;
>
> — coercion into destroying the family unit;
>
> — infringement of the personality, rights and freedoms of citizens;
>
> — infliction of harm, established in accordance with the law, on the morals or health of citizens, including by means of narcotic or psychoactive substances, hypnosis, or committing depraved and other disorderly acts in connection with religious activities;

— encouragement of suicide or the refusal on religious grounds of medical assistance to persons in life- or health-threatening conditions;

— hindrance to receiving compulsory education;

— coercion of members and followers of a religious association and other persons into alienating their property for the benefit of the religious association;

— hindering a citizen from leaving a religious association by threatening harm to life, health, property, if the threat can actually be carried out, or by application of force or commission of other disorderly acts;

— inciting citizens to refuse to fulfil their civil duties established by law or to commit other disorderly acts."

78. Section 27 § 3 establishes that an application for re-registration must be refused if there are grounds for dissolving the religious organisation and banning its activity as set out in section 14 § 2.

79. Under the Religions Act, the following rights may be exercised solely by registered religious organisations:

- the right to establish and maintain religious buildings and other places of worship or pilgrimage (section 16 § 1);
- the right to manufacture, acquire, export, import and distribute religious literature, printed, audio and video material and other religious articles (section 17 § 1);
- the right to create cross-cultural organisations, educational institutions and mass media (section 18 § 2);
- the right to establish and maintain international links and contacts for pilgrimages, conferences and so on, including the right to invite foreign nationals to the Russian Federation (section 20 § 1);
- the right to own buildings, plots of land, other property, financial assets and religious artefacts, including the right to have municipal and State property transferred to them free of charge for religious purposes and the immunity of such property from legal charge (section 21 §§ 1 to 5);
- the right to hire employees (section 24).

80. In addition, the following rights are explicitly reserved to registered religious organisations, to the exclusion of other non-religious legal entities:

- the right to found companies publishing religious literature or producing articles for religious services (section 17 § 2);
- the right to establish licensed educational institutions for the professional training of clergy and auxiliary religious staff (section 19 § 1); and
- the right to invite into the Russian Federation foreign nationals planning to engage in professional religious activities, including preaching (section 20 § 2).

C. Fundamentals of Russian Legislation on Health Protection of Citizens (no. 5487-I of 22 July 1993)

81. A citizen or his or her legal representative may refuse medical assistance or require that it be terminated, save in the circumstances listed in Article 34. In that case the possible consequences of such refusal should be presented in an accessible form to the citizen or his or her legal representative. The refusal must be noted in the medical record and countersigned by the citizen and a medical specialist (Article 33 §§ 1-2).

82. If the parents or guardians of a child below fifteen years of age refuse medical assistance which is necessary for saving the child's life, the medical institution may apply to a court for the protection of the child's interests (Article 33 § 3).

83. Medical assistance shall be provided without the consent of the individuals concerned if they suffer from highly contagious diseases, grave mental disorders or if they have committed a criminal offence and been ordered to follow medical treatment by a judicial decision (Article 34).

D. Relevant case-law

1. Russia

84. On 14 November 2000 the Supreme Court of the Tatarstan Republic upheld at final instance a judgment of the lower court by which the prosecutor's request to liquidate the local organisation of Jehovah's Witnesses had been refused. One of the grounds advanced by the prosecutor in support of the liquidation claim was that a Witness mother had refused a blood transfusion for her child. The Supreme Court noted that the mother had refused a blood transfusion but had been in favour of blood substitutes which had been successfully used during surgery. It also pointed out that the teachings of Jehovah's Witnesses did not require believers to refuse blood but let everyone make an independent decision on that issue.

2. Other jurisdictions

85. In 1990 the Ontario Supreme Court in Canada upheld a decision of the lower court to hold a medical doctor liable for administering blood transfusions to an unconscious patient carrying a card stating that she was a Jehovah's Witness and, as a matter of religious belief, rejected blood transfusions under any circumstances (*Malette v. Shulman* 72 O.R. 417). It held, in particular, as follows:

> "25... The principles of self-determination and individual autonomy compel the conclusion that the patient may reject blood transfusions even if harmful consequences may result and even if the decision is generally regarded as foolhardy... To transfuse a Jehovah's Witness, in the face of her explicit instructions to the

contrary, would, in my opinion, violate her right to control her own body and show disrespect for the religious values by which she has chosen to live her life...

34 The state undoubtedly has a strong interest in protecting and preserving the lives and health of its citizens. There clearly are circumstances where this interest may override the individual's right to self-determination. For example, the state may, in certain cases, require that citizens submit to medical procedures in order to eliminate a health threat to the community...

35 The state's interest in preserving the life or health of a competent patient must generally give way to the patient's stronger interest in directing the course of her own life. As indicated earlier, there is no law prohibiting a patient from declining necessary treatment... Recognition of the right to reject medical treatment cannot, in my opinion, be said to depreciate the interest of the state in life or in the sanctity of life. Individual free choice and self-determination are themselves fundamental constituents of life. To deny individuals freedom of choice, with respect to their health care, can only lessen and not enhance the value of life..."

86. A 1992 landmark case from the United Kingdom involved an adult daughter of a Jehovah's Witness who had been prevailed upon by her mother to refuse blood transfusions for religious reasons (*In re T. (Adult: Refusal of Treatment)* 3 Weekly Law Reports 782 (Court of Appeal)). Lord Donaldson gave the following summary of his opinion:

"1. Prima facie every adult has the right and capacity to decide whether or not he will accept medical treatment, even if a refusal may risk permanent injury to his health or even lead to premature death. Furthermore, it matters not whether the reasons for the refusal were rational or irrational, unknown or even non-existent. This is so notwithstanding the very strong public interest in preserving the life and health of all citizens. However, the presumption of capacity to decide, which stems from the fact that the patient is an adult, is rebuttable...

5. In some cases doctors will not only have to consider the capacity of the patient to refuse treatment, but also whether the refusal has been vitiated because it resulted not from the patient's will, but from the will of others. It matters not that those others sought, however strongly, to persuade the patient to refuse, so long as in the end the refusal represented the patient's independent decision. If, however, his will was overborne, the refusal will not have represented a true decision. In this context the relationship of the persuader to the patient – for example, spouse, parents or religious adviser – will be important, because some relationships more readily lend themselves to overbearing the patient's independent will than do others..."

87. In United States law, the doctrine of informed consent required for any kind of medical treatment has been firmly entrenched since 1914 when Justice Cardozo, on the Court of Appeals of New York, described this doctrine as follows: "Every human being of adult years and sound mind has a right to determine what shall be done with his own body, and a surgeon who performs an operation without his patient's consent commits an assault" (*Schloendorff v. Society of New York Hospital*, 211 N.Y. 125, 105 N.E. 92). The logical corollary of the doctrine of informed consent is that the patient generally possesses the right not to consent, that is, to refuse

treatment (*Cruzan v. Director, MDH*, 497 U.S. 261 (1990)). The following summary of the relevant case-law can be found in the case of *Fosmire v. Nicoleau* (75 N.Y.2d 218, 551 N.E.2d 77, 551 N.Y.S.2d 876 (1990):

> "The State has a well-recognized interest in protecting and preserving the lives of its citizens. ... [A] distinction should be drawn between the State's interest in protecting the lives of its citizens from injuries by third parties, and injuries resulting from the individual's own actions (see, e.g., *Public Health Trust v. Wons*, 541 So.2d 96, 98 [Fla.1989, Ehrlich, Ch. J., concurring]). When the individual's conduct threatens injury to others, the State's interest is manifest and the State can generally be expected to intervene. But the State rarely acts to protect individuals from themselves, indicating that the State's interest is less substantial when there is little or no risk of direct injury to the public. This is consistent with the primary function of the State to preserve and promote liberty and the personal autonomy of the individual (*Rivers v. Katz*, supra). ... The State will intervene to prevent suicide ... but merely declining medical care, even essential treatment, is not considered a suicidal act or indication of incompetence (*Matter of Storar*, supra, 52 N.Y.2d at 377-378, n. 6, 438 N.Y.S.2d 266, 420 N.E.2d 64)."

88. The right of an individual to refuse blood transfusions on religious grounds and to be compensated in damages if such transfusion has been carried out against the patient's wishes has also been upheld by courts in other jurisdictions (see, for example, *Phillips v. Klerk*, Case No. 19676/82; Supreme Court of South Africa [1983]; *Bahamondez, Marcelo v. Medida Cautelar*, Corte Suprema de Justicia de la Nación (Argentina, 6 April 1993); Sentence No. 166/1996 *in case of Mr Miguel Angel*, Constitutional Court of Spain, 28 October 1996; *Ms A. and her heirs v. Dr B. and Institute of Medical Science*, Case No. 1998 (O) Nos. 1081, 1082, 29 February 2000, Supreme Court of Japan).

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

89. The relevant part of the Report by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee, doc. 9396, 26 March 2002) on the honouring of obligations and commitments by the Russian Federation stated:

> "95. The Russian Constitution safeguards freedom of conscience and of religion (article 28); the equality of religious associations before the law and the separation of church and state (article 14), and offers protection against discrimination based on religion (article 19). The law on freedom of religion of December 1990 has led to a considerable renewal of religious activities in Russia. According to religious organisations met in Moscow, this law has opened a new era, and led to a revitalisation of churches. It was replaced on 26 September 1997 by a new federal law on freedom of conscience and religious associations. This legislation has been criticised both at home and abroad on the grounds that it disregards the principle of equality of religions.

96. ...In February 2001, the Ombudsman on Human Rights, Oleg Mironov, also acknowledged that many articles of the 1997 law "On Freedom of Conscience and Religious Associations" do not meet Russia's international obligations on human rights. According to him, some of its clauses have led to discrimination against different religious faiths and should therefore be amended. ...

98. According to the regulations by the Ministry of Justice, - responsible for the implementation of the law on freedom of conscience and religious associations -, religious organisations established before the law came into force (26 September 1997) had to re-register before 31 December 2000.

99. The registration process was finally completed on 1 January 2001 as the State Duma decided to extend the deadline twice. About 12 000 religious organisations and groups have been registered, and only 200 were refused their registration, most of them because they failed to produce a complete file. Many others have, for a variety of reasons, failed to register. The Minister of Justice, Mr Chaika strongly rejected allegations that the Orthodox Church had exerted pressure on the Ministry to prevent some religious organisations from obtaining their registration. Mr Chaika also indicated that experts of the Ministry had "closely examined" the status of the Salvation Army and the Jehovah's Witnesses, and had come to the conclusion that nothing prevented the latter's' registration at the federal level. ...

101. Indeed, there have been cases where, even if a religious organisation had re-registered nationally, local authorities created obstacles. This has especially been the case with the Jehovah's Witnesses, whose Moscow congregation has long been the target of civil and criminal proceedings designed to prevent its activities.

102. The Jehovah's Witnesses were registered at federal level in 1999, and its 360 communities have also been registered throughout Russia. Nevertheless, the community in Moscow was forced completely underground and prevented from possessing properties and places of worship. The Moscow civil trial against Jehovah's Witnesses (since 1995) has been considered by many as an important test case. The co-rapporteurs thought then that the Moscow case has come to an end with a judgment issued on 23 February 2001, dismissing the charges against Jehovah's Witnesses. However, on 30 May 2001, the Moscow City Court set aside this ruling and ordered the Golovinskiy District Court to hear the case once again. The retrial started on 30 October 2001. Until a definitive ruling is reached, Jehovah's Witnesses in Moscow will be without registration and unable to profess their faith without hindrance. The co-rapporteurs regard the length of the judicial examination in this case as an example of harassment against a religious minority and believe that after six years of criminal and legal proceedings the trial should finally be halted."

90. Resolution 1277 (2002) on the honouring of obligations and commitments by the Russian Federation adopted by the Parliamentary Assembly of the Council of Europe on 23 April 2002, noted as follows:

"8. However, the Assembly is concerned about a number of obligations and major commitments with which progress remains insufficient, and the honouring of which requires further action by the Russian authorities: ...

xiv. the Assembly regrets the problems of the Salvation Army and Jehovah's Witnesses in Moscow, but welcomes the decision of the Russian authorities to ensure

that the problem of local discrimination and harassment of these religious communities be brought to an end; ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 9 AND 11 OF THE CONVENTION ON ACCOUNT OF DISSOLUTION OF THE APPLICANT COMMUNITY

91. The applicants complained that the Russian courts' judgments dissolving the applicant community and banning its activities had violated their rights to freedom of religion, expression and association. Article 9 provides 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."

Article 11 provides as follows:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others..."

A. Submissions by the parties

1. The applicants

92. The applicants submitted that there had been no credible or reliable evidence supporting the adverse findings made by the Russian courts against the applicant community. All of the findings had been based solely on an assessment of Jehovah's Witnesses' literature and there had been no indication that any community members had been forced or prevailed upon

to act in a specific way. The literature all emanated from the same general headquarters of Jehovah's Witnesses and was distributed worldwide to over 200 countries – including forty-five Council of Europe member States – in 150 local languages, while maintaining the same content. However, there had not been any conviction based on that literature in Russia or in any jurisdiction with similar law. No specific "actions" of the applicant community had been discussed during the trial; on the other hand, no less than fourteen complete court days had been devoted exclusively to discussion of the Holy Scriptures and the court-ordered psycho-linguistic study contained references to no fewer than 205 scriptural questions, many of which had been read and discussed while evidence was being heard.

93. The applicants claimed that the dissolution of the applicant community had not been "prescribed by law" because the relevant provisions of the Religions Act had been imprecise and unforeseeable in their application. It had not pursued a legitimate aim or met a pressing social need, but rather fulfilled the interests of the Russian Orthodox Church and its Salvation Committee. Furthermore, the total ban and dissolution of a group of Christians holding and practising their beliefs in Moscow had been disproportionate to any alleged risk inherent in their literature, unsupported as it had been by any "actions" or "activities" of the applicants.

94. Finally, the applicants pointed out that the banning of the applicant community had had numerous adverse consequences for its members. They had been assaulted and beaten in the course of their Christian ministry without any redress from the authorities; they had stood in the street in the rain after being locked out of premises which they had rented to hold a Christian assembly; and they had resorted to meeting in the forest because the use of the assembly hall had no longer been possible. Since the Moscow community had been stripped of its legal-entity status, it had been prevented from constructing or renting places of worship and from acquiring, importing or disseminating religious literature, etc.

2. The Government

95. The Government submitted that the Russian courts had reached the justified conclusion that the applicant community had breached the fundamental rights and freedoms of Russian citizens, and that its activity had led to the disintegration of families and had been connected with calls for refusal to fulfil civic duties, such as military or alternative civilian service. They had also established that the applicant community had negatively influenced the mental health of individuals, recommended that they engage in part-time employment and prohibited them from celebrating State holidays and birthdays. Minors and teenagers had been involved in preaching without the consent of the other, non-Jehovah's Witness parent and without regard for their own views and opinions. The refusal of blood transfusion on religious grounds had led to grave consequences, such as the

deterioration of health and the impossibility for doctors to render medical assistance. Finally, the literature disseminated by the applicant community had contained views and ideas that undermined respect for other religions.

96. In the Government's submission, what set Jehovah's Witnesses apart from "traditional religions" was the "salient theocratic hierarchy" of the community, "mindless submission" of individual members, aspiration to integrating families into the life of a "totalitarian non-secular collective" and "paramilitary discipline". However, the Government maintained that in the framework of the dissolution proceedings the courts had not assessed the creed or views of Jehovah's Witnesses but merely examined whether or not the applicant community as a legal entity had acted in compliance with Russian laws and with respect for the rights and freedoms of others.

97. The Government claimed that the interference in the form of dissolution of the applicant community had been justified, prescribed by law and had also pursued a legitimate aim. They referred to the Court's position to the effect that the State was "entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities which are harmful to the population" (*Manoussakis and Others v. Greece*, 26 September 1996, § 40, *Reports* 1996-IV) and also "may legitimately consider it necessary to take measures aimed at repressing certain forms of conduct... judged incompatible with respect for the freedom of thought, conscience and religion of others" (*Otto-Preminger-Institut v. Austria*, 20 September 1994, § 47, Series A no. 295-A).

B. Admissibility

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

C. Merits

1. General principles

99. The Court refers to its settled case-law to the effect 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. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it (see *Metropolitan*

Church of Bessarabia and Others v. Moldova, no. 45701/99, § 114, ECHR 2001-XII). While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to "manifest [one's] religion" alone and in private or in community with others, in public and within the circle of those whose faith one shares. Since religious communities traditionally exist in the form of organised structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference. Seen in that perspective, the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. The State's duty of neutrality and impartiality, as defined in the Court's case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs (see *Metropolitan Church of Bessarabia*, cited above, §§ 118 and 123, and *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 62, ECHR 2000-XI).

100. The Court further reiterates that the right to form an association is an inherent part of the right set forth in Article 11. That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions (see *Sidiropoulos and Others v. Greece*, judgment of 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, § 40). The State's power to protect its institutions and citizens from associations that might jeopardise them must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. Any interference must correspond to a "pressing social need"; thus, the notion "necessary" does not have the flexibility of such expressions as "useful" or "desirable" (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, §§ 94 95, 17 February 2004, with further references).

2. Existence of an interference

101. The Court refers to its constant case-law to the effect that a refusal by the domestic authorities to grant legal-entity status to an association of

individuals, religious or otherwise, amounts to an interference with the exercise of the right to freedom of association (see *Gorzelik and Others*, cited above, § 52 *et passim*, ECHR 2004-I, and *Sidiropoulos and Others*, cited above, § 31 *et passim*). The authorities' refusal to register a group or their decision to dissolve it have been found by the Court to affect directly both the group itself and also its presidents, founders or individual members (see *Association of Citizens Radko and Paunkovski v. "the former Yugoslav Republic of Macedonia"*, no. 74651/01, § 53, ECHR 2009-... (extracts); *The United Macedonian Organisation Ilinden and Others v. Bulgaria*, no. 59491/00, § 53, 19 January 2006; *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99, § 27, 3 February 2005; and *APEH Üldözötteinek Szövetsége and Others v. Hungary* (dec.), no. 32367/96, 31 August 1999). Where the organisation of a religious community was at issue, a refusal to recognise it as a legal entity has also been found to constitute an interference with the right to freedom of religion under Article 9 of the Convention, as exercised by both the community itself and its individual members (see *Religionsgemeinschaft der Zeugen Jehovas and Others*, §§ 79-80, and *Metropolitan Church of Bessarabia and Others*, § 105, both cited above). The same approach was applicable in the situation where a previously existing association has been dissolved by a decision of the domestic authorities (see *Association of Citizens Radko and Paunkovski*, cited above, and *Tüm Haber Sen and Çınar v. Turkey*, no. 28602/95, §§ 30-32, ECHR 2006-II, and *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 50, ECHR 2003-II).

102. The decision by the Russian courts to dissolve the applicant community and to ban its activities had the effect of stripping it of legal personality and prohibiting it from exercising the rights associated with legal-entity status, such as the rights to own or rent property, to maintain bank accounts, to hire employees, and to ensure judicial protection of the community, its members and its assets (see paragraph 79 above), which, as the Court has consistently held, are essential for exercising the right to manifest one's religion (see *Religionsgemeinschaft der Zeugen Jehovas and Others*, § 66 *in fine*, and *Metropolitan Church of Bessarabia and Others*, § 118, both cited above, and also *Koretskyy and Others v. Ukraine*, no. 40269/02, § 40, 3 April 2008, and *Canea Catholic Church v. Greece*, 16 December 1997, §§ 30 and 40-41, *Reports* 1997-VIII). Moreover, in addition to the above-mentioned rights normally associated with legal-entity status, the Russian Religions Act reserved a panoply of rights to registered religious organisations and explicitly excluded the possibility of such rights being exercised by either non-registered religious groups or non-religious legal entities (see paragraphs 79 and 80 above). The exclusive rights of religious organisations included, in particular, such fundamental aspects of religious practice as the right to establish places of worship, the right to hold

religious services in places accessible to the public, the right to produce, obtain and distribute religious literature, the right to create educational institutions, and the right to maintain contacts for international exchanges and conferences.

103. It follows that, as a result of the Russian courts' decisions, the applicant community ceased to exist as a registered religious organisation and that the individual applicants, being its members, were divested of the right to manifest their religion in community with others and to carry on the activities which are indispensable elements of their religious practice. The Court finds that this amounted to an interference with the applicants' rights under Article 9 of the Convention interpreted in the light of Article 11.

3. Justification for the interference

104. Such an interference will constitute a breach of Articles 9 and 11 unless it was "prescribed by law", pursued one or more of the legitimate aims set out in paragraph 2 of that provision and was "necessary in a democratic society" for the achievement of those aims (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 51, ECHR 2003-II).

(a) Whether the interference was "prescribed by law"

105. The interference with the applicants' rights, which resulted from the dissolution of the applicant community and banning of its activities, was based on the provisions of section 14 of the Religions Act and effected through judicial decisions given by the Russian courts. Accordingly, the Court is prepared to accept that it was prescribed by law.

(b) Whether the interference pursued a legitimate aim

106. According to the judgments of the Russian courts, the dissolution of the applicant community and banning of its activities was necessary to prevent it from breaching the rights of others, inflicting harm on its members, damaging their health and impinging on the well-being of children.

107. The Court reiterates that States are entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities which are harmful to the population or to public safety (see *Metropolitan Church of Bessarabia and Others*, cited above, § 113, and *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 84, ECHR 2001-IX). Having regard to the findings of the domestic courts, the Court considers that the interference pursued the legitimate aim of the protection of health and the rights of others which is listed in the second paragraph of Articles 9 and 11.

(c) Whether the interference was "necessary in a democratic society"

108. The Court reiterates that the exceptions to the rights of freedom of religion and association are to be construed strictly and that only convincing and compelling reasons can justify restrictions on these rights. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in the Convention and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 47, *Reports* 1998-I, and *Partidul Comunistilor (Nepeceristi) and Ungureanu*, cited above, § 49).

(i) On coercion into destroying the family

109. The first ground for banning the applicant community was the charge that it had forced the families of its members to break up. Witnesses for the prosecution had attributed to the applicant community a deterioration of their relationships with their relatives who had become community members, lived by the tenets of the Witnesses' faith, abstained from celebrating public and private holidays, and spent much of their free time within the community and with fellow believers. An extensive study of almost a thousand Witnesses families prepared by the defence had been rejected by the District Court on the ground that it had not reported any rifts in the Witnesses families which, in the District Court's view, must have "objectively existed".

110. The Court observes at the outset that the term "coercion" in its ordinary meaning implies an action directed at making an individual do something against his or her will by using force or intimidation to achieve compliance. The domestic courts did not give examples of any forceful or threatening action on the part of the applicant community calculated to break the families of its members apart. There was nothing to indicate that the applicant community had made any demands on its members as a condition for continuing their family relationship or, vice versa, that it had imposed any kind of condition or made any demands on non-Witness members of the families of its followers under threat of breaking up their family relationship. In fact, the prosecution experts acknowledged that the texts of Jehovah's Witnesses did not contain "direct coercion into destroying

the family". Although they opined that "direct psychological pressure" applied by the community carried with it the risk of family break-ups, they were unable to identify any victims of the alleged psychological pressure.

111. It further appears from the testimonies by witnesses that what was taken by the Russian courts to constitute "coercion into destroying the family" was the frustration that non-Witness family members experienced as a consequence of disagreements over the manner in which their Witness relatives decided to organise their lives in accordance with the religious precepts, and their increasing isolation resulting from having been left outside the life of the community to which their Witness relatives adhered. It is a known fact that a religious way of life requires from its followers both abidance by religious rules and self-dedication to religious work that can take up a significant portion of the believer's time and sometimes assume such extreme forms as monasticism, which is common to many Christian denominations and, to a lesser extent, also to Buddhism and Hinduism. Nevertheless, as long as self-dedication to religious matters is the product of the believer's independent and free decision and however unhappy his or her family members may be about that decision, the ensuing estrangement cannot be taken to mean that the religion caused the break-up in the family. Quite often, the opposite is true: it is the resistance and unwillingness of non-religious family members to accept and to respect their religious relative's freedom to manifest and practise his or her religion that is the source of conflict. It is true that friction often exists in marriages where the spouses belong to different religious denominations or one of the spouses is a non-believer. However, this situation is common to all mixed-belief marriages and Jehovah's Witnesses are no exception.

112. The Court is not satisfied that the findings of the domestic courts were substantiated. The District Court was able to identify only six instances of family conflicts in the families of seven witnesses, five of whom were members of the Salvation Committee, an interested party in the case. However, given that the Moscow community was some ten thousand members strong, their personal stories could not furnish a reasonable basis for the finding that the Witnesses teachings had been the cause of an increased number of conflicts in Witnesses families. Such a finding could be reasonably grounded, for example, on a statistical comparison between the number of broken families of non-religious people, the number of broken families of traditional – for example, Orthodox Christian – believers, and the number of broken Jehovah's Witnesses families. Only if the latter was significantly higher than the former ones would this prove a causal link between Jehovah's Witnesses' teachings and family break-ups. The domestic courts did not attempt to carry out such a comparison.

113. Finally, the study prepared by the defence of the family life of almost a thousand community members was rejected for reasons that do not appear relevant or sufficient to the Court. Firstly, since the study was

intended to cover families in which at least one person was a member of the applicant community, making the selection of respondents from the list of the community members was the only way to proceed. The risk of bias was eliminated by means of random selection of study participants. Secondly, the absence of reported family conflicts could not, in itself, vitiate the quality of the study or make it unreliable. However, the rejection of the study on that ground attested to the District Court's preconceived idea that such conflicts were inevitable in Jehovah's Witnesses families and revealed a bias in its assessment of the evidence.

114. In the light of the above considerations, the Court finds that the charge that Jehovah's Witnesses forced family break-ups was not borne out and that the findings of the domestic courts were not grounded on an acceptable assessment of relevant facts.

(ii) Infringement of the personality, rights and freedoms of citizens

115. According to the findings of the Russian courts, the applicant community committed multiple breaches of various rights and freedoms of Russian citizens, including the constitutional rights to privacy and to choice of religion, the right of parents to educate their children, children's right to rest, leisure and participation in recreational activities, the right to choose one's occupation, etc. The Court will now examine each group of alleged violations in turn.

(α) Alleged infringement of the right of community members to respect for their private life and their right to free choice of occupation

116. Firstly, the domestic courts considered that the following aspects of the applicant community's life violated the constitutional right of its members to inviolability of their private life and the right to choice of occupation:

- determination of the place and nature of employment;
- preference for part-time work that allows time to preach;
- unpaid work at the Bethel community centre in St Petersburg;
- regulation of leisure activities;
- ban on celebrating holidays and birthdays;
- mandatory missionary activity and "door-to-door" preaching.

117. The Court reiterates that "private life" is a broad term encompassing the sphere of personal autonomy within which everyone can freely pursue the development and fulfilment of his or her personality and to establish and develop relationships with other persons and the outside world. It also extends further, comprising activities of a professional or business nature since it is, after all, in the course of their working lives that the majority of people have a significant, if not the greatest, opportunity of developing relationships with the outside world (see *Evans v. the United Kingdom* [GC], no. 6339/05, § 71, ECHR 2007-IV; *Sidabras and Džiautas*

v. Lithuania, nos. 55480/00 and 59330/00, §§ 42-50, ECHR 2004-VIII; and *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B). In the light of these principles, the decisions of Jehovah's Witnesses whether to take full-time or part-time, paid or unpaid employment, whether and how to celebrate events significant to them, including religious and personal events such as wedding anniversaries, births, housewarmings, university admissions, were matters that fell within the sphere of "private life" of community members.

118. The Court emphasises that it is a common feature of many religions that they determine doctrinal standards of behaviour by which their followers must abide in their private lives. Religious precepts that govern the conduct of adherents in private life include, for instance, regular attendance at church services, performance of certain rituals such as communion or confession, observance of religious holidays or abstention from work on specific days of the week (see *Casimiro and Ferreira v. Luxembourg* (dec.), no. 44888/98, 27 April 1999, and *Konttinen v. Finland*, no. 24949/94, Commission decision of 3 December 1996), wearing specific clothes (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 78, ECHR 2005-XI, and *Phull v. France* (dec.), no. 35753/03, 11 January 2005), dietary restrictions (see *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, § 73, ECHR 2000-VII), and many others. Jehovah's Witnesses' regulations on allowing sufficient time for religious activities and abstaining from celebrating non-Witnesses or secular events were in that sense not fundamentally different from similar limitations that other religions impose on their followers' private lives. By obeying these precepts in their daily lives, believers manifested their desire to comply strictly with the religious beliefs they professed and their liberty to do so was guaranteed by Article 9 of the Convention in the form of the freedom to manifest religion, alone and in private.

119. The Court further reiterates that the State's duty of neutrality and impartiality prohibits it from assessing the legitimacy of religious beliefs or the ways in which those beliefs are expressed or manifested (see *Leyla Şahin*, cited above, § 107, and *Hasan and Chaush*, cited above, § 78). Accordingly, the State has a narrow margin of appreciation and must advance serious and compelling reasons for an interference with the choices that people may make in pursuance of the religious standard of behaviour within the sphere of their personal autonomy. An interference may be justified in the light of paragraph 2 of Article 9 if their choices are incompatible with the key principles underlying the Convention, such as, for example, polygamous or underage marriage (see *Khan v. the United Kingdom*, no. 11579/85, Commission decision of 7 July 1986) or a flagrant breach of gender equality (see *Leyla Şahin*, cited above, § 115), or if they are imposed on the believers by force or coercion, against their will.

120. In the present case the domestic judgments did not cite any evidence showing that members of the applicant community had been forced or prevailed upon to prefer a specific profession, place of work or working hours. On the contrary, community members testified in the proceedings that they followed the doctrines and practices of Jehovah's Witnesses of their own free will and personally determined for themselves their place of employment, the balance between work and free time, and the amount of time devoted to preaching or other religious activities. Jehovah's Witnesses who carried out religious service at the Bethel community centre were not employees of the centre but unpaid volunteers. For that reason, the provisions of labour law relating to standard working hours, paid holidays and professional orientation were not applicable to them, as they did not work there for material gain. It is also noteworthy that the Bethel community centre was located in the vicinity of St Petersburg and managed by the Administrative Centre of Jehovah's Witnesses, a federal religious organisation, but the domestic judgments did not give any reasons for the finding that the applicant community in Moscow should be responsible for the functioning of a centre outside its territorial and legal control.

121. It follows that what was taken by the Russian courts to constitute an infringement by the applicant community of the right of its members to respect for their private life was in fact a manifestation of their beliefs in their private lives in the sense protected by Article 9. Voluntary work or part-time employment or missionary activities are not contrary to the Convention principles and the Court is unable to discern any pressing social need that could have justified the interference.

(β) Alleged infringement of the right of others to respect for private life

122. The Russian courts also found that the Witnesses' practice of door-to-door preaching had invaded the privacy of others. The only evidence produced to support this finding was the criminal conviction of Mr K. for attacking a Jehovah's Witness who had come to talk to his wife in their home. In the Court's view, this conviction is capable of proving that a member of the applicant community had been a victim of a violent criminal offence but not that she had committed any offence herself. As the Court observed in the *Kokkinakis* case, "bearing Christian witness... [is] an essential mission and a responsibility of every Christian and every Church" which has to be distinguished from improper proselytism that takes the form of offering material or social advantages with a view to gaining new members for a church, exerting improper pressure on people in distress or in need or even using violence or brainwashing (see *Kokkinakis*, cited above, § 48). Furthermore, Russian law does not provide for the offence of proselytism and no evidence of improper methods of proselytising by members of the applicant community was produced or examined in the dissolution proceedings.

(γ) Alleged infringement of the parental rights of non-Witness parents

123. The Russian courts held the applicant community responsible for the situation obtaining in some mixed-belief marriages where a Jehovah's Witness parent involved the child in the activities of the community despite the objections of the non-Witness parent. In the courts' view, that situation amounted to an encroachment on the child's freedom of conscience and on the other parent's right to take part in the child's education.

124. The Court observes that the Russian Religions Act prohibits minors from being involved in religious associations or being taught religion against their will or without the consent of their parents or guardians (see paragraph 73 above). This provision prohibits those who are not parents or substitute parents from coercing a child into participation in religious practices or education. In holding the applicant community responsible, the Russian courts did not point to any evidence showing that the community itself or any non-parent members of the community had resorted to improper methods for involving minors in its activities, whether against their own will or that of their parents. On the contrary, the involvement of children in the community's religious life appears to have been approved and encouraged by one of the parents who had been a Jehovah's Witness himself or herself. Thus, the situation which had been imputed to the applicant community had not actually been related to the community's actions, but to the actions of its individual members who were parents of those children.

125. The Court reiterates that Article 2 of Protocol No. 1 requires the State to respect the rights of parents to ensure education and teaching in conformity with their own religious convictions and that Article 5 of Protocol No. 7 establishes that spouses enjoy equality of rights in their relations with their children. The Russian Religions Act does not make religious education of children conditional on the existence of an agreement between the parents. Both parents, even in a situation where they adhere to differing doctrines or beliefs, have the same right to raise their children in accordance with their religious or non-religious convictions and any disagreements between them in relation to the necessity and extent of the children's participation in religious practices and education are private disputes that are to be resolved according to the procedure established in domestic family law.

126. The Russian courts also held that the applicant community had interfered with the parental rights of non-Witness parents because Witness parents had chosen to be represented by attorneys who had represented other Jehovah's Witnesses. The Court points out that the right to defend one's interests through legal assistance of one's own choosing implies the possibility to choose from among qualified lawyers who would be best prepared to represent the party in a given case. This right acquires particular importance in a custody dispute where parental rights are at stake. It is

understandable that Witness parents have often chosen to be represented by attorneys who have considerable relevant experience in similar cases and are also knowledgeable about the teachings of Jehovah's Witnesses. There is no evidence that those representatives have exercised undue influence or exerted pressure on the courts hearing the custody dispute, on the parties or on witnesses. Moreover, it was not found that the attorneys at issue were employees of or counsel for the applicant community. It is therefore unclear on what legal grounds the applicant community could bear responsibility for their activity.

127. Finally, the Court observes that the findings of the Golovinskiy District Court that the rights of Jehovah's Witness children had been violated on the ground that Biblical texts restrained their independent thinking, hindered the development of patriotic feelings and made them social outcasts had been made by reference to testimonies of prosecution experts and relatives who had been openly hostile to the religion of Jehovah's Witnesses. It does not appear, however, that the District Court took care to cross-examine the children themselves, their teachers, social workers or other relatives. In the absence of any first-hand evidence in support of these findings, they cannot be said to have been based on an acceptable assessment of the relevant facts.

(δ) Allegations of proselytising, "mind control" and totalitarian discipline

128. The Russian courts also held that the applicant community breached the right of citizens to freedom of conscience by subjecting them to psychological pressure, "mind control" techniques and totalitarian discipline.

129. Leaving aside the fact that there is no generally accepted and scientific definition of what constitutes "mind control" and that no definition of that term was given in the domestic judgments, the Court finds it remarkable that the courts did not cite the name of a single individual whose right to freedom of conscience had allegedly been violated by means of those techniques. Nor is it apparent that the prosecution experts had interviewed anyone who had been coerced in that way into joining the community. On the contrary, the individual applicants and other members of the applicant community testified before the court that they had made a voluntary and conscious choice of their religion and, having accepted the faith of Jehovah's Witnesses, followed its doctrines of their own free will.

130. Furthermore, the petition of several thousand Jehovah's Witnesses to the District Court, the President and the Prosecutor General contained the request not to deny them their democratic rights and freedoms, including the freedom of conscience (see paragraph 51 above). The District Court considered that all the signatories to the petition had signed it as a result of having been subjected to psychological pressure. However, it was unable to refer to any evidence of such pressure or give an example of anyone who

had signed the petition against his or her will. Accordingly, the findings of the Russian courts on this point were based on conjecture uncorroborated by fact.

(iii) Encouragement of suicide or the refusal of medical assistance

131. A further ground for banning the applicant community was the charge that it had encouraged its members to commit suicide and/or to refuse medical assistance in life-threatening situations.

132. The Court observes at the outset that the Russian courts did not elaborate on the allegations of encouragement of suicide or give examples of such incitement in the doctrine or practices of the applicant community or name any community member who had terminated his or her life or sought to do so. In so far as the domestic judgments can be understood to consider that the refusal of a blood transfusion is tantamount to suicide, in the Court's view, this analogy does not hold, for the situation of a patient seeking a hastening of death through discontinuation of treatment is different from that of patients who – like Jehovah's Witnesses – just make a choice of medical procedures but still wish to get well and do not exclude treatment altogether. As the charge of encouragement to suicide did not have any basis in fact, the Court's task will be confined to reviewing the second allegation, namely, that, at the instigation of the community, its members declined medical assistance by refusing the transfusion of blood or its components.

133. It is generally known that Jehovah's Witnesses believe that the Bible prohibits ingesting blood, which is sacred to God, and that this prohibition extends to transfusion of any blood or blood components that are not the patient's own. The religious prohibition permits of no exceptions and is applicable even in cases where a blood transfusion is deemed to be necessary in the best clinical judgment to avoid irreparable damage to the patient's health or even to save his or her life. Some Jehovah's Witnesses, including members of the applicant community, carry an advance medical directive – known in Russia as a "No Blood" card (see paragraph 68 above) – stating that they refuse blood transfusions under any circumstances as a matter of religious belief. A few members of the applicant community who had been admitted to hospitals had firmly refused a blood transfusion against the advice of medical specialists who strongly recommended it. These elements had been correctly established by the domestic courts and were not contested by the applicants.

134. The Court recognises that the refusal of potentially life-saving medical treatment on religious grounds is a problem of considerable legal complexity, involving as it does a conflict between the State's interest in protecting the lives and health of its citizens and the individual's right to personal autonomy in the sphere of physical integrity and religious beliefs (see, *mutatis mutandis*, *Pretty v. the United Kingdom*, no. 2346/02, § 62 et

seq., ECHR 2002-III). The impugned provision of the Russian Religious Act was apparently designed to protect individuals from religious influence which could lead them to make choices that are considered irrational or unwise as a matter of public policy, such as the decision to refuse medical treatment that is generally regarded as beneficial. It was based on the assumption that the State's power to protect people from the harmful consequences of their chosen lifestyle ought to override the rights of believers to respect for their private life and to freedom to manifest their religion in practice and observance. That assumption made it unnecessary for the Russian courts to carry out a balancing exercise which would have allowed them to weigh considerations of public health and safety against the countervailing principle of personal autonomy and religious freedom (compare *Pretty*, cited above, § 74). Accordingly, it falls to the Court to verify whether or not the balance has been upset.

135. The very essence of the Convention is respect for human dignity and human freedom and the notions of self-determination and personal autonomy are important principles underlying the interpretation of its guarantees (see *Pretty*, cited above, §§ 61 and 65). The ability to conduct one's life in a manner of one's own choosing includes the opportunity to pursue activities perceived to be of a physically harmful or dangerous nature for the individual concerned. In the sphere of medical assistance, even where the refusal to accept a particular treatment might lead to a fatal outcome, the imposition of medical treatment without the consent of a mentally competent adult patient would interfere with his or her right to physical integrity and impinge on the rights protected under Article 8 of the Convention (see *Pretty*, cited above, §§ 62 and 63, and *Acmanne and Others v. Belgium*, no. 10435/83, Commission decision of 10 December 1984).

136. The freedom to accept or refuse specific medical treatment, or to select an alternative form of treatment, is vital to the principles of self-determination and personal autonomy. A competent adult patient is free to decide, for instance, whether or not to undergo surgery or treatment or, by the same token, to have a blood transfusion. However, for this freedom to be meaningful, patients must have the right to make choices that accord with their own views and values, regardless of how irrational, unwise or imprudent such choices may appear to others. Many established jurisdictions have examined the cases of Jehovah's Witnesses who had refused a blood transfusion and found that, although the public interest in preserving the life or health of a patient was undoubtedly legitimate and very strong, it had to yield to the patient's stronger interest in directing the course of his or her own life (see the judgments cited in paragraphs 85 to 88 above). It was emphasised that free choice and self-determination were themselves fundamental constituents of life and that, absent any indication of the need to protect third parties – for example, mandatory vaccination during an epidemic, the State must abstain from interfering with the

individual freedom of choice in the sphere of health care, for such interference can only lessen and not enhance the value of life (see the *Malette v. Shulman* and *Fosmire v. Nicoleau* judgments, cited in paragraphs 85 and 87 above).

137. This position is echoed in the Russian law which safeguards the patients' freedom of choice. The Fundamentals of Russian Legislation on Health Protection explicitly provide for the patient's right to refuse medical treatment or to request its discontinuation on condition that they have received full and accessible information about the possible consequences of that decision. Patients are not required to give reasons for the refusal. The refusal may only be overridden in three specific situations: prevention of spreading of contagious diseases, treatment of grave mental disorders and mandatory treatment of offenders (see paragraphs 81 and 83 above). Additionally, the parents' decision to refuse treatment of a child may be reversed by means of judicial intervention (see paragraph 82 above). It follows that Russian law protects the individual's freedom of choice in respect to their health care decisions as long as the patient is a competent adult and there is no danger to innocent third parties. These provisions had been repeatedly invoked by the applicants in the first-instance and appeal proceedings but were not mentioned or analysed in the domestic judgments. The Court notes, however, that they were prima facie applicable in the instant case because all the refusals of blood transfusions which had been described in the domestic judgments had been formulated by adult Jehovah's Witnesses having capacity to make medical decisions for themselves. In the only case involving a minor, the hospital did not apply for judicial authorisation of a blood transfusion, although such a possibility was explicitly provided for in law (see paragraph 82 above), which indicates that authorisation was considered unnecessary for medical or other reasons.

138. Furthermore, even though the Jehovah's Witnesses whose opposition to blood transfusions was cited in evidence were adults having legal capacity to refuse that form of treatment, the findings of the Russian courts can be understood to mean that their refusals had not been an expression of their true will but rather the product of pressure exerted on them by the applicant community. The Court accepts that, given that health and possibly life itself are at stake in such situations, the authenticity of the patient's refusal of medical treatment is a legitimate concern. In the landmark case *In re T. (Adult: Refusal of Treatment)*, Donaldson L.J., on the Court of Appeal of England and Wales, indicated that the refusal may have been vitiated because it resulted not from the patient's will, but from the will of others. If the patient's will was overborne, the refusal will not have represented a true decision (see the judgment, § 5, paragraph 86 above). Staughton L.J. added that "for an apparent refusal or consent to be less than a true consent or refusal, there must be such a degree of external influence

as to persuade the patient to depart from her own wishes, to an extent that the law regards it as undue".

139. The Court reiterates that, although the arguments based on religious beliefs may be extremely persuasive and compelling, the right "to try to convince one's neighbour" is an essential element of religious freedom (see *Kokkinakis*, cited above, § 31, and *Larissis and Others v. Greece*, 24 February 1998, § 45, *Reports of Judgments and Decisions* 1998-I). In the *Larissis* case the Court drew a distinction between the position of servicemen who found it difficult to withdraw from religious conversations initiated by the applicants, who had been their superiors, and that of civilians who were not subject to pressures and constraints of the same kind as military personnel. The former could be viewed as a form of harassment or the application of improper pressure, whereas the latter would be seen as an innocuous exchange of ideas (see *Larissis*, §§ 51, 54, and 59). Turning to the instant case, the Court finds nothing in the domestic judgments to suggest that any form of improper pressure or undue influence was applied. On the contrary, it appears that many Jehovah's Witnesses have made a deliberate choice to refuse blood transfusions in advance, free from time constraints of an emergency situation, which is borne out by the fact that they had prepared for emergencies by filling out "No Blood" cards and carrying them in their purses. There is no evidence that they wavered in their refusal of a blood transfusion upon admission to hospital. Accordingly, there is no factual basis supporting the finding that their will was overborne or that the refusal of a blood transfer did not represent their true decision.

140. The District Court's finding that the "No Blood" card permitted the patient's fellow believers to take medical decisions in his or her stead was also at variance with the actual contents of the card (as reproduced in paragraph 68 above). Designed as an advance medical directive, the card merely certified the choice that the patient had already made for himself or herself, namely, to refuse any transfusion of blood or its components. It did not delegate the right to make any other medical decision to anyone else, but designated the patient's legal representative who could ensure, in case of the patient's unconsciousness or inability to communicate, that his or her choice of medical treatment be known to, and respected by, the medical personnel. Representation of the patient in medical matters was provided for in Article 33 of the Fundamentals on Health Protection (see paragraph 81 above). The identity of the representative was of no legal significance, as the law did not vest any special rights in the next-of-kin. The patient was free to choose as his representative another fellow believer or a member of the Hospital Liaison Committee in the applicant community who would have the added benefit of detailed knowledge of the Jehovah's Witnesses doctrine on the issue of blood transfusion and could advise the medical personnel on compatibility of the contemplated procedure with the patient's religious beliefs.

141. Finally, the Court observes that the impugned provision of the Religions Act, as interpreted by the domestic courts, did not require proof of actual damage to life or limb. The fact that the applicant community had preached the doctrinal importance of abstaining from blood transfusions in its religious literature and distributed blank "No Blood" cards among its members was in itself sufficient to trigger the banning of its activities. This finding had the effect of making the part of the Jehovah's Witnesses teachings concerning the refusal of medical treatment unlawful and amounted to a declaration that their religious beliefs relating to the sacred nature of blood were illegitimate. However, the Court reiterates that the State does not have the right under the Convention to decide what beliefs may or may not be taught because the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate (see *Manoussakis and Others*, cited above, § 47).

142. In the light of the above considerations, the Court finds that the domestic courts did not convincingly show any "pressing social need" or the existence of "relevant and sufficient reasons" capable of justifying a restriction on the applicants' right to personal autonomy in the sphere of religious beliefs and physical integrity.

(iv) Damage to citizens' health

143. The Russian courts decided that participation in the activities of the applicant community had been damaging for the health of its followers because they had refused blood transfusions and also experienced strong emotions and personality changes.

144. The Court observes, on a general note, that the rites and rituals of many religions may harm believers' well-being, such as, for example, the practice of fasting, which is particularly long and strict in Orthodox Christianity, or circumcision practised on Jewish or Muslim male babies. It does not appear that the teachings of Jehovah's Witnesses include any such contentious practices. What is more important, by contrast with the provision that penalised the mere act of encouraging the refusal of medical assistance, the accusation of causing damage to the health of citizens required proof of actual harm to health as defined by law. However, the domestic judgments did not identify any member of the applicant community whose health had been harmed or cite any forensic study assessing the extent of the harm and establishing a causal link between that harm and the activities of the applicant community. The medical outcomes in the reported cases of refusals of blood transfusions were not specified and those reports were not accompanied by medical studies capable of demonstrating that a blood transfusion would have actually benefited the patient. Furthermore, as the Court has found above, the refusal of blood transfusion was an expression of the free will of the individual community

members who exercised their right to personal autonomy in the sphere of health care protected both under the Convention and in Russian law.

145. The testimony by non-Witness family members about "sudden and negative changes of personality" of their Witness relatives reflected their subjective assessment of the situation, strongly coloured by their frustration and estrangement from relatives. In general, personality changes are part and parcel of human development and are not in themselves indicative of any medical problems. Moreover, it is commonly known that religious experiences are a powerful source of emotions and crying may come from the joy of being united with the divine. It has not been shown in the domestic proceedings, to any acceptable standard of proof, that the emotional exhaustion or tears experienced by members of the applicant community had any appreciable negative effect on their well-being or mental state.

146. Accordingly, the Court finds that the charge of causing damage to the health of citizens lacked a factual basis.

(v) Luring minors into the organisation

147. The applicant community was also accused of luring minors into the organisation, which was understood by the domestic courts as the involvement of minors in the religious activities despite the objections of the parent who was not a Jehovah's Witness.

148. The Court has already examined this claim above in minute detail and found that it was not substantiated by evidence (see paragraphs 124 et seq. above). In particular, the Court was unable to find any indication that minors had been "lured" against their will, by deception, trickery or any other inappropriate means.

(vi) Incitement of citizens to refuse civic duties

149. The Russian courts found that the literature distributed by the applicant community incited citizens to refuse military and alternative civilian service, promoted a "disrespectful attitude" to the State flag and anthem, and also prohibited them from celebrating State holidays.

150. It is a well-known fact that Jehovah's Witnesses are a religious group committed to pacifism and that their doctrine prevents individual members from performing military service, wearing uniform or taking up weapons (see, for example, *Thlimmenos v. Greece* [GC], no. 34369/97, § 42, ECHR 2000-IV). On the other hand, Jehovah's Witnesses agree to carry out alternative civilian service on the condition it is not connected with military organisations (see *Faizov v. Russia* (dec.), no. 19820/04, 15 January 2009). The Russian Constitution (Article 59 § 3) and the Russian Religions Act (section 3 § 4) explicitly acknowledge the right of Russian nationals to conscientious objection to military service, in which case it has to be substituted with alternative civilian service. The right to alternative

civilian service has been consistently upheld by the Russian courts, including in cases where it was exercised by a Jehovah's Witness (see *Faizov*, cited above). Thus, the religious admonishment to refuse military service was in full compliance with Russian laws and no instances of any applicant community's members unlawfully refusing alternative civilian service were put forward in the community trial.

151. The courts did not cite any domestic legal provision that would require Jehovah's Witnesses to pay respect to State symbols. Neither the State Anthem Act, nor the State Flag Act, nor the State Emblem Act of the Russian Federation contain regulations on the civil duty of honouring such symbols. The Russian Criminal Code penalises the act of desecrating the State flag or the State emblem, which may happen by way of, for example, ripping or soiling them or making marks on them that distort the meaning of the State symbols (Article 329). However, not one conviction of the offence of desecration or specific instance of "disrespectful attitude" on the part of anyone from the applicant community was cited by the Russian courts in the dissolution proceedings.

152. Finally, "participation in celebrations during State holidays" is not a civil duty as defined by law. In fact, there is no law compelling celebration of any holidays, whether they are secular or religious, and such compulsory participation in celebrations, had it been elevated to the rank of a legal obligation, could arguably have raised an issue under Articles 9 and 10 of the Convention (compare *Efstratiou* and *Valsamis v. Greece*, 18 December 1996, § 32, *Reports* 1996-VI, concerning the participation of Jehovah's Witness children in a school parade).

153. In the light of the above considerations, the Court finds that it has not been persuasively shown that the applicant community or its individual members incited, or were incited, to refuse to carry out any lawfully established civil duties.

(d) Severity of the sanction

154. Finally, the Court will review the domestic decisions dissolving the applicant community and banning its activities from the standpoint of the gravity of the sanction applied by the Russian courts. It reiterates that the nature and severity of the sanction are factors to be taken into account when assessing the proportionality of the interference (see *Refah Partisi*, cited above, § 133).

155. The Court observes at the outset that a blanket ban on the activities of a religious community belonging to a known Christian denomination is an extraordinary occurrence. Since their inception in the late nineteenth century Jehovah's Witnesses have established an active presence in many countries world-wide, including all European States which are currently members of the Council of Europe. In those countries they have been allowed to practise their religion in community with others, although they

may have experienced delays and difficulties in obtaining formal recognition (see, for example, *Tsirlis and Kouloumpas v. Greece*, 29 May 1997, § 44, *Reports* 1997-III, and *Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above).

156. Following the demise of the USSR and Russia's transition to democracy, Jehovah's Witnesses were able to practise lawfully their religion and register religious organisations at federal and regional level (see paragraph 12 above). Their religious organisation registered at federal level has been in existence since 1992 and was approved for re-registration by the Ministry of Justice in 1999, following a detailed expert study. Almost four hundred regional organisations of Jehovah's Witnesses have been created and subsequently re-registered in other Russian regions (see paragraph 163 below). Even though some of those organisations have had to defend themselves against charges similar to those levelled in the proceedings against the applicant community before the Moscow courts (see, for example, the judgment of the Tatarstan Supreme Court relating to the refusal of a blood transfusion, cited in paragraph 84 above, or the failed criminal charge of "luring minors into the cult", described in *Kuznetsov and Others v. Russia*, no. 184/02, §§ 10-13, 11 January 2007), none of them has been dissolved or restricted in their religious activities.

157. The Court has already had occasion to examine the particular situation obtaining in Moscow in the period following the enactment of the 1997 Religions Act where the authorities have consistently denied re-registration to religious organisations which were described as "non-traditional religions", including The Salvation Army and the Church of Scientology. The Court found in both cases that "the Moscow authorities did not act in good faith and neglected their duty of neutrality and impartiality" (see *Church of Scientology Moscow v. Russia*, no. 18147/02, § 97, 5 April 2007, and *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 97, ECHR 2006-XI). This differential treatment, for which Jehovah's Witnesses also appear to have been singled out, has remained a matter of concern for the Parliamentary Assembly of the Council of Europe (see paragraphs 101-102 of the Report on the honouring of obligations and commitments by the Russian Federation, cited in paragraph 89 above, and Resolution 1278 on Russia's law on religion, cited in *Church of Scientology Moscow*, § 63).

158. Before the decision dissolving it was made, the applicant community of Jehovah's Witnesses had existed and legally operated in Moscow for more than twelve years, from 1992 to 2004. During the entire period of its lawful existence the applicant community, its elders and individual members had never been found responsible for any criminal or administrative offence or a civil wrong; no such evidence was produced in the domestic dissolution proceedings or before the Court. A number of criminal investigations into the activities of the applicant community

undertaken on the basis of complaints by the Salvation Committee did not produce evidence of any criminal offence either (see paragraphs 16-22 above).

159. Under section 14 of the Religions Act, forced dissolution and a ban on activities is the only sanction which courts can apply to religious organisations found to have breached the requirements of the Religions Act. The Act does not provide for the possibility of issuing a warning or imposing a fine. Accordingly, the sanction of dissolution is to be applied indiscriminately without regard to the gravity of the breach in question. The judgments of the Russian courts put an end to the existence of a religious community made up of approximately 10,000 believers and imposed an indefinite ban on its activities unlimited in time or scope. This was obviously the most severe form of interference, affecting, as it did, the rights of thousands of Moscow Jehovah's Witnesses who were, as a consequence, denied the possibility of joining with fellow believers in prayer and observance. Therefore, even if the Court were to accept that there were compelling reasons for the interference, it finds that the permanent dissolution of the applicant community, coupled with a ban on its activities, constituted a drastic measure disproportionate to the legitimate aim pursued. Greater flexibility in choosing a more proportionate sanction could be achieved by introducing into the domestic law less radical alternative sanctions, such as a warning, a fine or withdrawal of tax benefits (see *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, § 82, ECHR 2009-...).

(e) Overall conclusion

160. The Court finds that the interference with the applicants' right to freedom of religion and association was not justified. The domestic courts did not adduce "relevant and sufficient" reasons to show that the applicant community forced families to break up, that it infringed the rights and freedoms of its members or third parties, that it incited its followers to commit suicide or refuse medical care, that it impinged on the rights of non-Witness parents or their children, or that it encouraged members to refuse to fulfil any duties established by law. The sanction pronounced by the domestic courts was excessively severe in view of the lack of flexibility in the domestic law and disproportionate to whatever legitimate aim was pursued. There has accordingly been a violation of Article 9 of the Convention, read in the light of Article 11.

II. ALLEGED VIOLATION OF ARTICLES 9 AND 11 OF THE CONVENTION ON ACCOUNT OF REFUSAL TO RE-REGISTER THE APPLICANT COMMUNITY

161. The applicants complained that the unjustified refusal of Russian authorities to grant the applicant community re-registration as a religious organisation violated their rights under Articles 9 and 11 of the Convention. The Court reiterates that complaints about the refusal of registration fall to be examined from the standpoint of Article 11 of the Convention read in the light of Article 9 (see *The Moscow Branch of the Salvation Army*, cited above, §§ 74 and 75, with further references). As the religious nature of the applicant community was not disputed at the national level and it had been officially recognised as a regional religious organisation, the Court considers that this approach must be followed in the instant case.

A. Submissions by the parties

1. The applicants

162. The applicants submitted that the denial of re-registration amounted to an interference with their rights to freedom of religion and association. As a matter of domestic law, it had the effect of depriving the applicant community of the right to seek the exemption of clergy from military service, the right to establish educational institutions, to invite foreign preachers, to manufacture, purchase, import and distribute religious literature, and many other rights. Moreover, the denial of re-registration curtailed the right to amend the applicant community's own articles of association, including their bank details and the list of authorised signatories. The entering of the applicant community on the Unified State Register of Legal Entities had been made in accordance with internal administrative reforms and did not constitute re-registration for the purposes of the Religions Act.

163. The applicants claimed that the interference had not been prescribed by law or necessary in a democratic society. It had been established by the Presnenskiy District Court on 16 August 2002 that the Moscow Justice Department had not invoked the dissolution proceedings before the Golovinskiy District Court as a ground for refusing re-registration. Furthermore, the four criminal investigations between June 1996 and April 1998 had found no criminal activity on the part of the applicant community. In April 1999, after a detailed expert study, the Ministry of Justice had granted re-registration to the federal organisation of Jehovah's Witnesses, of which the applicant community had been a member. Likewise, 398 communities of Jehovah's Witnesses in other

Russian regions had been granted registration or re-registration during the same period.

164. The applicants alleged that the Russian authorities had acted in bad faith in that they had resorted to repeated denials of re-registration, persistent delays and technical obstruction, even though there was no evidence that the applicant community had posed any threat to the State or public order.

2. The Government

165. The Government considered that there was no interference with the applicants' right to freedom of association because the applicant community had not been liquidated and retained the full capacity of a legal entity. On 9 September 2002 it had been entered on the Unified State Register of Legal Entities and continued its religious activities.

166. The Government further submitted that there was no violation of the applicants' right to freedom of religion or any restriction on that right. The penalty imposed on the applicant community "was not harsh and was not motivated by religious factors, but by a failure to observe the law and a violation of the administrative procedure". Members of the applicant community continued to profess their faith, hold services of worship and ceremonies, and guide their followers. Thus, from 5 to 7 July 2002 the applicant community had held a regional congress of Jehovah's Witnesses which had been attended by up to 24,000 believers.

167. Finally, the Government claimed that the applicant community was not precluded from lodging a new application for re-registration.

B. Admissibility

168. The Court has already found in a similar case concerning a denial of re-registration under the Russian Religions Act that, as long as the applicant community has retained legal capacity to lodge an application with this Court, individual applicants could not themselves claim to be victims of a violation resulting from the domestic authorities' refusal of re-registration, which affected only the applicant community as such (see *Church of Scientology Moscow and Others v. Russia* (dec.), no. 18147/02, 28 October 2004, and also *The Holy Monasteries v. Greece*, nos. 13092/87 and 13984/88, Commission decision of 5 June 1990). It follows that, in so far as this complaint was introduced by the individual applicants, it is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

169. The Court further considers that the complaint by the applicant community is not manifestly ill-founded within the meaning of Article 35

§ 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

170. In the light of the general principles outlined above, the ability to establish a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of freedom of association, without which that right would be deprived of any meaning. The Court has expressed the view that a refusal by the domestic authorities to grant legal-entity status to an association of individuals may amount to an interference with the applicants' exercise of their right to freedom of association (see *Gorzelik*, cited above, § 52 *et passim*, and *Sidiropoulos*, cited above, § 31 *et passim*). Where the organisation of the religious community is at issue, a refusal to recognise it also constitutes an interference with the applicants' right to freedom of religion under Article 9 of the Convention (see *Metropolitan Church of Bessarabia*, cited above, § 105). The believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention (see *Hasan and Chaush v. Bulgaria*, cited above, § 62).

171. The Court observes that the applicant community had lawfully existed and operated in Russia since 1992. In 1997 the respondent State enacted a new Religions Act which required all religious organisations that had been previously granted legal-entity status to amend their founding documents in conformity with the new Act and to have them "re-registered" within a specific time-period. Several applications for re-registration filed by the applicant community before the established time-limit were rejected, which had the effect of barring the possibility of filing further applications for re-registration.

172. The Court has already found in two similar cases that, contrary to the Government's submission, the entering of information concerning the religious association into the Unified State Register of Legal Entities did not constitute "re-registration" required under the Religious Act, as it was solely linked to the establishment of that register and to the transfer of registration competence from one authority to another following enactment of a new procedure for registration of legal entities (see *The Moscow Branch of The Salvation Army*, § 67, and *Church of Scientology Moscow*, § 78, both cited above). Furthermore, the Court found in those same cases that the refusal of re-registration disclosed an interference with the religious organisation's right to freedom of association and also with its right to freedom of religion in so far as the Religions Act restricted the ability of a religious association without legal-entity status to exercise the full range of religious activities and also to introduce amendments to its own articles of association (see *The Moscow Branch of The Salvation Army*, § 74, and *Church of Scientology*

Moscow, § 83, both cited above). These findings are applicable in the present case as well.

173. Accordingly, the Court considers that there has been an interference with the applicant community's rights under Article 11 of the Convention read in the light of Article 9 of the Convention. It must therefore determine whether the interference satisfied the requirements of paragraph 2 of those provisions, that is, whether it was "prescribed by law", pursued one or more legitimate aims and was "necessary in a democratic society" (see, among many authorities, *Metropolitan Church of Bessarabia*, cited above, § 106).

174. The Court observes that the grounds for refusing re-registration of the applicant community were not consistent throughout the period during which it attempted to secure re-registration. The first, second and third applications were not processed for an alleged failure to submit a complete set of documents (see paragraphs 37, 38 and 40 above), and subsequently the applicant community was requested to submit the original charter and registration certificate. However, the Presnenskiy District Court found that there had been no legal basis for such request (see paragraph 48 above). The fourth application was rejected because of textual discrepancies between the charter and the Religions Act (see paragraph 41 above). The fifth and final application was rejected with reference to the proceedings for dissolution of the applicant community pending before the Golovinskiy District Court (see paragraph 43 above). This ground was endorsed by the Buryrskiy District and Moscow City Courts (see paragraphs 47 and 49 above). Finally, the Presnenskiy District and Moscow City Courts dismissed the complaint brought by the second applicant, Mr Chaykovskiy, on the basis of a new ground, namely, the introduction of new registration forms in 2002 (see paragraphs 48 and 49 above).

175. As regards the applicant community's alleged failure to submit a complete set of documents, the Court notes that the Moscow Justice Department consistently omitted to specify why it deemed the applications incomplete (see paragraphs 37, 38 and 40 above). Responding to a written inquiry by the applicant community, the deputy head of the Department claimed that it was under no legal obligation to list the missing documents (see paragraph 40 above). The Court has already found, in a similar case involving the Moscow Justice Department, that not only did such an approach deprive the applicant of an opportunity to remedy the supposed defects of the applications and re-submit them, but it also ran counter to the express requirement of the domestic law that any refusal must be reasoned (see *Church of Scientology Moscow*, cited above, § 91). By not stating clear reasons for rejecting the applications for re-registration submitted by the applicant community, the Moscow Justice Department acted in an arbitrary manner. Consequently, the Court considers that that ground for refusal was not "in accordance with the law".

176. The request by the Moscow Justice Department for the original charter and registration certificate was found – already in the domestic proceedings – to lack a legal basis (see paragraph 48 above). Moreover, this Court has already found in a similar case that the requirement to submit the original documents did not flow from the text of the Religions Act or any other regulatory documents and that it was also excessively burdensome on the applicant as it could have the effect of making the resubmission of rectified applications for re-registration impossible (see *Church of Scientology Moscow*, cited above, § 92).

177. The Court does not consider it necessary to examine the alleged discrepancies between the charter of the applicant community and the text of the Religions Act because the fifth and final application for re-registration were submitted in corrected form and because these discrepancies were not endorsed as independent grounds for refusal in the domestic judicial proceedings.

178. It is likewise unnecessary to consider the issue whether the reference to on-going dissolution proceedings could have been a valid ground justifying the refusal of re-registration because, as the Court has found above, the charges levelled against the applicant community were not based on a solid evidentiary basis and could not be held to constitute "relevant and sufficient" reasons for the interference.

179. Finally, as regards the domestic courts' finding that the applicant community had to resubmit its application for re-registration using new forms introduced in 2002, the Court notes that the Religions Act did not make re-registration conditional on the use of specific forms. In any event, neither the domestic authorities, nor the Government in their observations, were able to specify by operation of which legal provisions the applicant community could still resubmit an application for re-registration after such application had obviously become belated following the expiry of the extended time-limit on 31 December 2000 (compare *Church of Scientology Moscow*, cited above, § 79).

180. It follows that the grounds invoked by the domestic authorities for refusing re-registration of the applicant community had no lawful basis. A further consideration relevant for the Court's assessment of the justification for the interference is that by the time the re-registration requirement was introduced, the applicant had lawfully existed and operated in Moscow as an independent religious community for many years. At the relevant time there existed no judicial or administrative decision by which the applicant community as a whole or its individual members had been found to have breached any domestic law or regulation governing associative life and religious activities. In these circumstances, the Court considers that the reasons for refusing re-registration should have been particularly weighty and compelling (see *Church of Scientology Moscow*, and *The Moscow*

Branch of The Salvation Army, both cited above, § 96). In the present case no such reasons have been put forward by the domestic authorities.

181. In view of the finding above that the reasons invoked by the Moscow Justice Department and endorsed by the Moscow courts for refusing re-registration of the applicant community had no legal basis, the Court concludes, as it has already done in two similar cases, that, in denying re-registration to the Jehovah's Witnesses of Moscow, the Moscow authorities did not act in good faith and neglected their duty of neutrality and impartiality *vis-à-vis* the applicant community (see *Church of Scientology Moscow*, and *The Moscow Branch of The Salvation Army*, both cited above, § 97).

182. In the light of the foregoing, the Court considers that the interference with the applicant community's right to freedom of religion and association was not justified. There has therefore been a violation of Article 11 of the Convention read in the light of Article 9 on account of the refusal of re-registration of the applicant community.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, READ IN CONJUNCTION WITH ARTICLES 9, 10 AND 11

183. The applicants further complained under Article 14 of the Convention, read in conjunction with Articles 9, 10 and 11, that they had been discriminated against on account of their position as a religious minority in Russia. Article 14 reads as follows:

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

A. Submissions by the parties

1. The applicants

184. The applicants submitted that the prosecution of the applicant community and the dissolution proceedings had been solely based on a discriminatory attack on the religious beliefs of Jehovah's Witnesses. The domestic courts had consistently refused to carry out a comparative analysis of publications of other religious organisations, in particular, the Russian Orthodox Church.

2. The Government

185. The Government denied that the refusal or re-registration or the dissolution of the applicant community and banning of its activities had

discriminated against the applicant community or the individual applicants. They pointed out that there was no evidence of any prosecution of community members.

B. Admissibility

186. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other ground. It must therefore be declared admissible.

C. Merits

187. It is reiterated that Article 14 has no independent existence, but plays an important role by complementing the other provisions of the Convention and the Protocols, since it protects individuals placed in similar situations from any discrimination in the enjoyment of the rights set forth in those other provisions. Where a substantive Article of the Convention or its Protocols has been invoked both on its own and together with Article 14 and a separate breach has been found of the substantive Article, it is not generally necessary for the Court to consider the case under Article 14 also, though the position is otherwise if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 89, ECHR 1999-III, and *Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A no. 45, § 67).

188. In the circumstances of the present case the Court considers that the inequality of treatment of which the applicants claimed to be victims has been sufficiently taken into account in the above assessment leading to the finding of a violation of substantive Convention provisions. It follows that there is no cause for a separate examination of the same facts from the standpoint of Article 14 of the Convention (see *Metropolitan Church of Bessarabia*, § 134, and *Sidiropoulos*, § 52, both cited above).

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE ALLEGEDLY EXCESSIVE LENGTH OF THE DISSOLUTION PROCEEDINGS

189. The applicants complained of a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings concerning the dissolution of the applicant community. The relevant part of Article 6 § 1 read as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Submissions by the parties

1. The applicants

190. The applicants claimed that the proceedings in the case had been unreasonably long. They submitted a detailed breakdown of delays attributable to various actors in the proceedings, from which it appeared that a major delay of three years and forty-one days had been due to expert studies, a further delay of two years, one month and twenty-five days had been caused by the courts, and five months and three days by the prosecutors. The applicants accepted that they had been responsible for a two-month delay in the proceedings.

2. The Government

191. The Government submitted that the length of proceedings in the case was accounted for by its complexity and also by the fact that three composite forensic studies involving specialists in religious studies, linguistics and psychology had been ordered. Moreover, the proceedings had been postponed more than once at the request of the applicant community.

B. Admissibility

192. The Court observes that only the applicant community, and not the individual applicants, was party to the civil proceedings. It follows that, in so far as this complaint was introduced by the individual applicants, it is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

193. The Court further reiterates that Article 6, under its civil limb, is applicable to proceedings concerning the legal existence of an association (see *Religionsgemeinschaft der Zeugen Jehovas*, §§ 106-08, and *APEH Üldözötteinek Szövetsége and Others*, §§ 30-36, both cited above). As this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds, it must therefore be declared admissible.

C. Merits

1. The period under consideration

194. The Court observes that the prosecutor introduced an application for dissolution of the applicant community on 20 April 1998[1]. However, the

period to be taken into consideration for the purposes of the present case began only on 5 May 1998, when the Convention entered into force in respect of Russia. The period in question ended on 16 June 2004 with the final decision of the City[1] Court. It lasted, accordingly, a total of six years and almost two months at two levels of jurisdiction, of which six years, one month and thirteen days fall within the Court's jurisdiction.

2. Reasonableness of the length of proceedings

195. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

196. The Court observes that the proceedings concerned the dissolution of a religious community and the banning of its activities. The issues involved were admittedly complex. However, the complexity of the case alone cannot explain the overall duration of the proceedings, which was over six years at two levels of jurisdiction.

197. In so far as the conduct of the applicant community is concerned, the Court notes that several hearings were adjourned at the applicant community's request, which caused an aggregate delay of approximately six months.

198. As to the conduct of the authorities, the Court finds that the overall period, less the period attributable to the applicant community's conduct, leaves the authorities accountable for approximately five and a half years. Certain delays in that period were attributable to the courts, for instance, a four-month delay between the quashing of the first judgment by the Moscow City Court on 30 May 2001 and the opening of a new trial on 25 September 2001 or a three-month adjournment of the trial between 13 February and 14 May 2003. However, the majority of the delays were caused by the proceedings being stayed pending the completion of expert studies, of which the first study took more than twenty months (from March 1999 to December 2000) to be completed. In total, the experts' delays amounted to more than three years. The Court is not called upon to determine the reasons for the delay in preparation of the expert reports because, as it has found on many occasions, Article 6 § 1 of the Convention imposes on Contracting States the duty to organise their judicial system in such a way that their courts can meet the obligation to decide cases within a reasonable time and because the responsibility for a delay caused by expert examinations ultimately rests with the State (see *Rolgezer and Others*

[1] Rectified on 18 August 2010: the date was "23 April 1998".
[1] Rectified on 18 August 2010: the text was "Regional".

v. Russia, no. 9941/03, § 30, 29 April 2008; *Salamatina v. Russia*, no. 38015/03, § 28, 1 March 2007; *Kesyan v. Russia*, no. 36496/02, § 57, 19 October 2006; and *Capuano v. Italy*, 25 June 1987, § 32, Series A no. 119). It follows that the authorities were responsible for a significant part of the delays in the proceedings.

199. Having examined all the material submitted to it, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1 on that account.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

200. Lastly, the applicants complained under Article 4 of Protocol No. 7 that the proceedings for dissolution of the applicant community represented a retrial for the offences of which they had been finally acquitted following the criminal investigation in 1998. They also complained, under Article 6 § 1, that at the appeal hearing on 30 May 2001, one member of the bench had held a subjective bias against Jehovah's Witnesses, that the appeal court had acted in excess of its jurisdiction and that the protracted prosecution of Jehovah's Witnesses amounted to an abuse of prosecutorial discretion.

201. The Court notes that the proceedings for dissolution of the applicant community were civil in nature. Accordingly, Article 4 of Protocol No. 7 finds no application and this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 § 4. Furthermore, following the appeal judgment of 30 May 2001, the case was examined *de novo* by courts at two levels of jurisdiction. The complaint concerning the alleged defects of the appeal hearing is therefore manifestly ill-founded and must also be rejected.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

202. Article 41 of the Convention provides:

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

A. Damage

203. The applicants submitted that the main pecuniary damage resulting from the dissolution proceedings had been the legal costs and disbursements, which they would claim under a separate head below. As to the non-pecuniary damage, they asked the Court to determine the exact

amount of compensation. They cited as reference amounts the awards of 20,000 euros (EUR) in the case of *Metropolitan Church of Bessarabia and Others* (cited above, concerning the refusal of registration of the applicant church), EUR 75,000 in the case of *Sovtransavto Holding v. Ukraine* (just satisfaction, no. 48553/99, 2 October 2003, concerning the anxiety caused by long litigation) and EUR 200,000 in the case of *Dicle for the Democratic Party (DEP) of Turkey v. Turkey* (no. 25141/94, 10 December 2002, concerning frustration of members of the unjustly dissolved political party).

204. The Government submitted that they had already given examples showing that Jehovah's Witnesses had been able to exercise their religious rights and therefore a finding of a violation would constitute sufficient just satisfaction.

205. The Court considers that the refusal to allow the applicant community to be re-registered and the protracted domestic proceedings which culminated in its dissolution and the banning of its activities must undoubtedly have caused non-pecuniary damage to the applicant community, as well as feelings of distress, anxiety and injustice to the individual applicants, and also handicapped their religious life and disrupted the possibility of practicing the religion of Jehovah's Witnesses in community with others. Making a global assessment on the non-pecuniary damage on an equitable basis, the Court awards the applicants jointly EUR 20,000, plus any tax that may be chargeable.

206. It is further reiterated that, where the Court finds a violation, the respondent State has a legal obligation under Article 46 of the Convention not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. In general, it is primarily for the State concerned to choose the means to be used in its domestic legal order to discharge its legal obligation under Article 46 of the Convention. In the instant case the Court found a violation of Article 9 read in the light of Article 11 on account of the dissolution of the applicant community and the banning of its activities and also a violation of Article 11 read in the light of Article 9 on account of the refusal of re-registration of the applicant community within the meaning of the 1997 Religions Act. It is noted that, pursuant to the Russian Constitutional Court's judgment no. 4-P of 26 February 2010, the Court's judgments are binding on Russia and a finding of a violation of the Convention or its Protocols by the Court is a ground for reopening civil proceedings under Article 392 of the Code of Civil Procedure and review of the domestic judgments in the light of the Convention principles established by the Court. The Court considers that such a review would be the most appropriate means of remedying the violations it has identified in the judgment. However, the respondent State

remains free, subject to monitoring by the Committee of Ministers, to choose any other additional means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249).

B. Costs and expenses

207. The applicants explained that in the domestic dissolution proceedings they had retained three experienced lawyers to defend the community of some 10,000 Moscow Jehovah's Witnesses against the claims of the Ministry of Justice and Russian prosecutors. Mr J. Burns, a member of the Canadian Bar, had been fully versed in the religious beliefs, practices and literature of the applicants and had conducted many cases for Jehovah's Witnesses in various jurisdictions world-wide. Mr A. Leontyev had acted as general counsel for the Administrative Centre of Jehovah's Witnesses in Russia. Ms G. Krylova, a senior member of the Moscow Bar, had been a leading lawyer in Russia in matters of religious freedom. In addition, Mr R. Daniel, a member of the English Bar, had been retained for the purposes of preparing the application to the Court.

208. The applicants pointed out that the domestic dissolution proceedings had lasted for an exceptionally long period of time – 116 court days – and that their defence had needed to secure the appearance of many experts and witnesses and be properly represented. The total costs of the Russian attorney, Mr Leontyev[1], at the hourly rate of EUR 40, travel expenses, printing and copying costs at EUR 0.15 per page, and transcription expenses at EUR 3.50 per page, amounted to EUR 65,519.75, according to the following break-down:

- EUR 800 for the defence in the criminal proceedings;
- EUR 19,329.45 for the first round of proceedings before the Golovinskiy District Court (37 days; 1,952 pages of transcript);
- EUR 1,078.10 for the defence against the prosecutor's appeal to the Moscow City Court;
- EUR 35,142.20 for the second round of proceedings before the Golovinskiy District Court (66 days; 3,257 pages of transcript);
- EUR 1,070 for the appeal proceedings before the Moscow City Court;
- EUR 8,100 for the application to the Court.

209. In addition, counsel's fees and disbursements amounted to EUR 42,400 for Ms Krylova, EUR 219,571 for Mr Burns and EUR 36,258 for Mr Daniel, that is EUR 298,229 in total. The applicants submitted copies of legal-services agreements and other supporting documents.

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[1] Rectified on 18 August 2010: the text was "Leonyev".

210. The Government submitted that the costs had been manifestly excessive and unreasonable because they largely exceeded the amounts which the Court normally paid by way of legal aid to the applicants and because they "did not correspond to the living conditions in Russia". Moreover, excepting Ms Krylova's fees, the applicants had not submitted proof that counsel's fees had actually been paid. Even assuming that the fees had been paid, the Government claimed that the amount awarded should not exceed EUR 3,000.

211. The Court observes that the dissolution proceedings had been instituted by the Russian authorities for the purpose of banning the activities of the entire applicant community. The applicants were thus compelled to deploy substantial resources for defending the interests of the community and their fellow believers in Moscow. The dissolution proceedings had undoubtedly been complex and lasted for a formidable 116 court days, which led the Court to find a separate violation of the reasonable-time guarantee under Article 6 of the Convention. In these circumstances, the Court accepts that these proceedings generated a substantial amount of legal costs and expenses. Nevertheless, it considers that the amount of counsel's fees excessive. Making a global assessment of costs and expenses, the Court awards the applicants jointly EUR 50,000, plus any tax that may be chargeable to them on that amount.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the applicants' complaint concerning the dissolution of the applicant community and the banning of its activity, the complaint by the applicant community concerning the refusal of its re-registration, the complaint about discrimination on religious grounds, and the complaint by the applicant community concerning the excessive length of the dissolution proceedings, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 9 of the Convention read in the light of Article 11 on account of the dissolution of the applicant community and the banning of its activity;

3. *Holds* that there has been a violation of Article 11 of the Convention read in the light of Article 9 on account of the refusal to allow re-registration of the applicant community;

4. *Holds* that it is not necessary to examine whether the refusal of re-registration and/or the decision on dissolution of the applicant community also disclosed a violation of Article 14 of the Convention;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the dissolution proceedings;

6. *Holds*
(a) that the respondent State is to pay to the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
(i) EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable; and
(ii) EUR 50,000 (fifty thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicants;
(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;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

Royal College of Surgeons
ADVANCING SURGICAL CARE

CARING FOR PATIENTS WHO REFUSE BLOOD

Royal College of Surgeons
ADVANCING SURGICAL CARE

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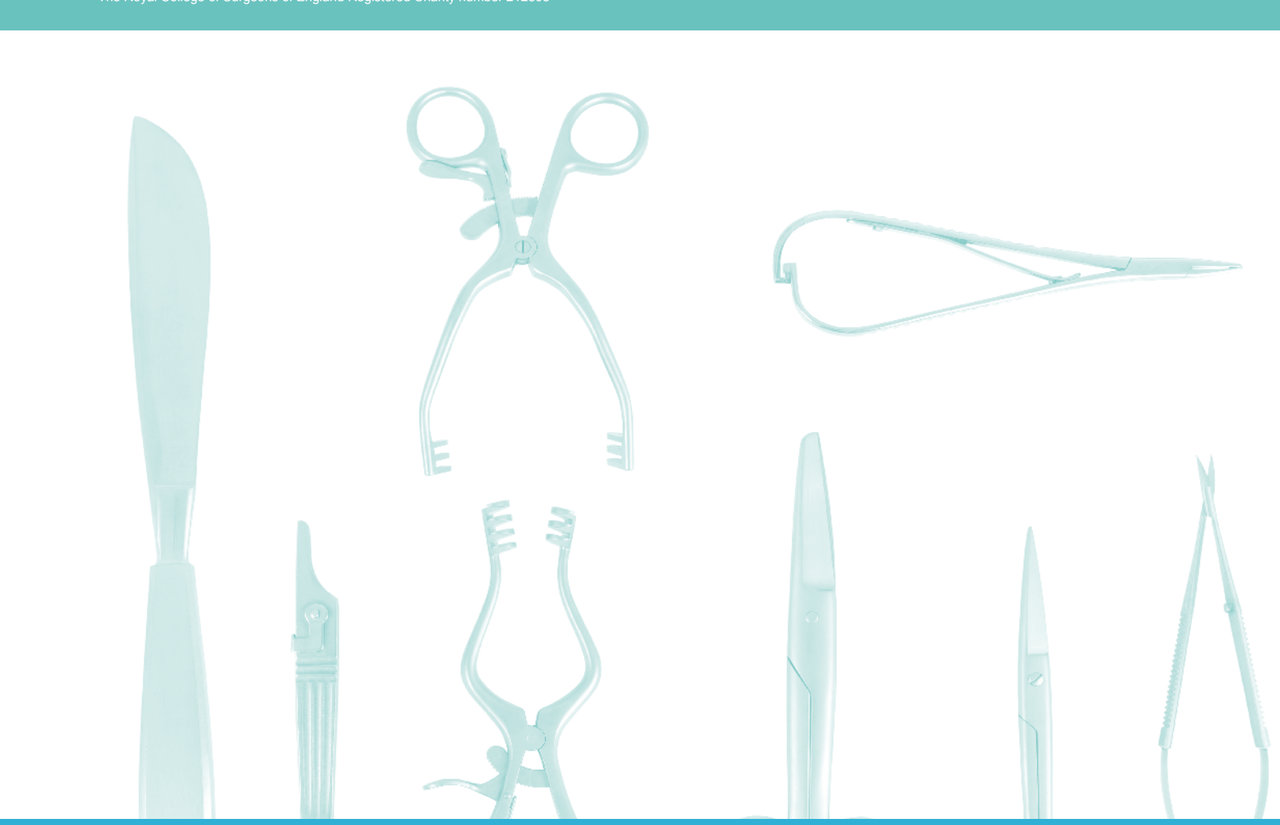
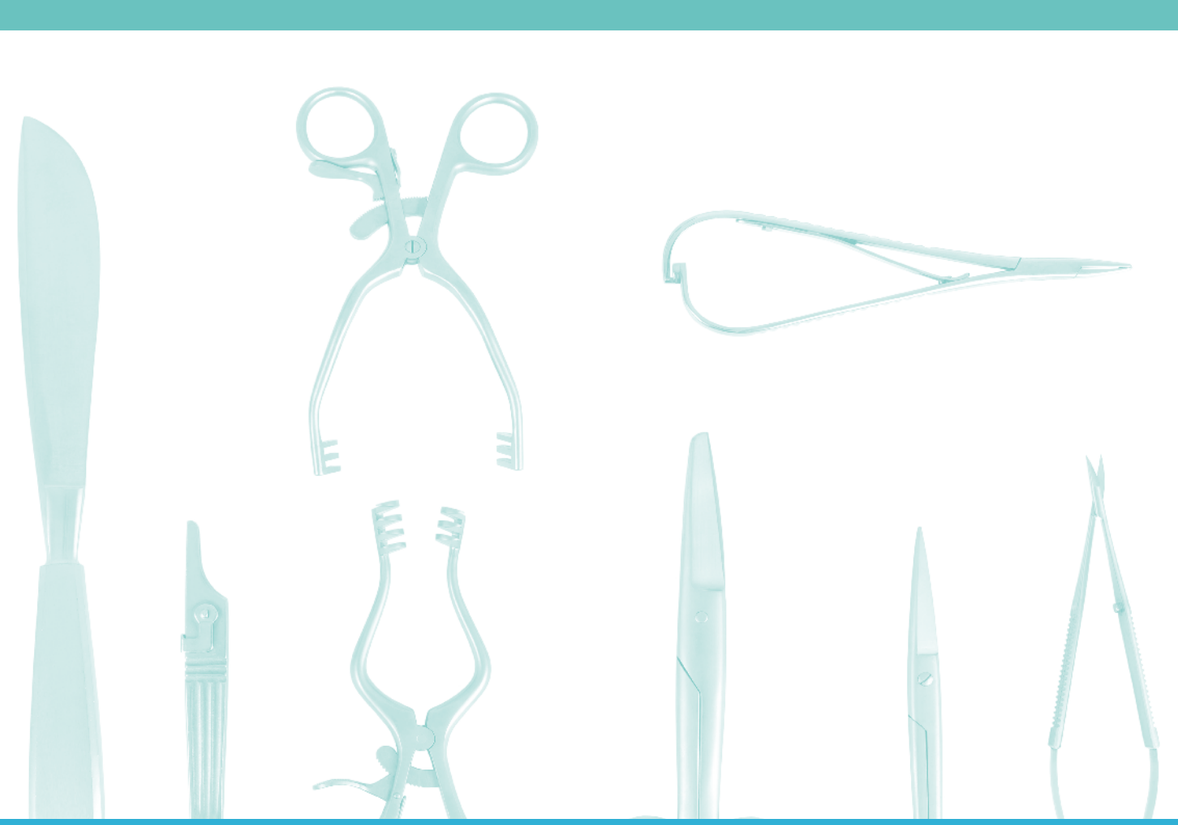


CARING FOR PATIENTS WHO REFUSE BLOOD

A guide to good practice for the surgical management of Jehovah's Witnesses and other patients who decline transfusion



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This document has been developed in consultation with the Jehovah's Witness Hospital Information Services, whom the Royal College of Surgeons would like to thank for their support and assistance.

RCS Professional and Clinical Standards

November 2018

Contents

A. Introduction

It is estimated that there are approximately 8 million Jehovah's Witnesses worldwide, with 140,000 currently resident in the UK. Jehovah's Witnesses have refused allogenic blood transfusion and primary components (red cells, white cells, platelets and plasma) on religious grounds since 1945 and this has presented challenges for surgeons and related healthcare staff in providing care to this group.

Further to Jehovah's Witnesses, a growing number of patients are choosing to decline blood transfusions, many of whom do so for reasons other than religious faith. Fears about the safety of blood transfusion as well as the scarcity of donors and changing patient expectations are leading some patients to withhold consent for blood transfusion when requesting surgery.

This refusal can bring into conflict clinicians' ethical duties to preserve both the life and the wellbeing of patients, as well as respect their right to make autonomous decisions about what happens to their body.

B. What can I learn from this guide?

This document provides guidance on the surgical management of Jehovah's Witnesses and other patients who withhold consent to blood transfusion. It takes into account and expands on the principles set out in *Good Surgical Practice* (RCS, 2014), *Consent: Supported Decision-Making – A Guide to Good Practice* (RCS, 2016) as well as guidance from the GMC and NICE, to enable surgeons and their teams to provide high-quality care to Jehovah's Witness and other patients who refuse blood transfusion while respecting their right to make autonomous decisions about treatment.

It offers information on the current requirements for patient communication and supported decision-making and practical advice to support surgeons in complying with their legal, ethical and regulatory obligations.

Although this guide has been developed primarily for surgeons, most of its recommendations are applicable to other medical specialties.

C. The position of Jehovah's Witnesses on blood transfusion

Jehovah's Witnesses appreciate high-quality surgical and medical care. They value life and want to do whatever is reasonable and compatible with their beliefs to prolong it. Patients who are Jehovah's Witnesses are typically well informed both doctrinally and regarding their right to determine their own treatment.

C.1. REFUSAL OF BLOOD TRANSFUSION

Although not opposed to surgery or medicine, Jehovah's Witnesses decline allogenic blood transfusion for reasons of religious faith. This is a deeply held core value and any non-consensual transfusion is regarded as a gross physical violation.

Jehovah's Witnesses resolutely decline the transfusion of whole blood and primary blood components (red cells, white cells, plasma and platelets) and the use of any sample of their blood for cross-matching.

Autologous pre-donation (pre-deposit) is not acceptable to patients who are Jehovah's Witnesses.

C.2. TREATMENTS THAT ARE AREAS OF PERSONAL DECISION FOR EACH PATIENT

Although the refusal of allogenic blood transfusion is a fundamental tenet of the religious beliefs of Jehovah's Witnesses, a number of related treatments are matters of personal decision for them as individual patients. In view of the range of individual decision-making it is essential to discuss with each patient:

- Which, if any, derivatives of the primary blood components are acceptable to the individual patient.

  These derivatives include:
  - Albumin
  - Coagulation factors
  - Globulins, including immunoglobulins
  - Haemoglobin
  - Interferons
  - Interleukins
  - Wound healing factors (eg von Willebrand factor)
- Whether or not they would accept any procedures involving their own blood and, if so, which methods for handling this blood would be acceptable to the patient. Such procedures include:
  - all forms of intraoperative blood salvage (cell saver)
  - acute normovolaemic haemodilution
  - postoperative blood salvage (eg wound drains)
  - haemodialysis
  - cardiopulmonary bypass.
- The patient's position regarding organ transplantation including: solid organs, bone, tissue, and stem cell transplantation.

C.3. JEHOVAH'S WITNESS HOSPITAL LIAISON COMMITTEES (HLCS)

Jehovah's Witnesses maintain a network of Hospital Liaison Committees that are available at any time to assist with the management of patients, either at the request of the patient or (with patient consent) on behalf of the treating team (Hospital Information Services: 020 8906 2211; hid.gb@jw.org). These maintain lists of clinicians with considerable experience and these can be shared on request on a case-by-case basis.

D. Ethical considerations and consent

D.1. DOCTORS' RIGHT TO REFUSE TO TREAT PATIENTS WHO DECLINE BLOOD TRANSFUSION

The limits placed on surgeons' ability to care for patients who refuse blood can cause dilemmas for surgeons. Surgeons are used to acting under a duty to promote the physical wellbeing of patients; however, this can come into conflict with patients' rights to make decisions regarding their healthcare.

Surgeons are duty-bound to respect patients' religious freedoms and can feel uncomfortable refusing to treat patients because of restrictions stemming from a religious belief for fear of accusation of discrimination. The emotional impact on surgeons from this type of restriction on their practice must also be recognised, as the loss of a patient who they had the means and ability to save can be very distressing.

Surgeons have the right to choose not to treat patients if they feel that the restrictions placed on them by the refusal of blood products are contrary to their values as a doctor.

If a surgeon is not prepared to treat a patient who refuses blood they must refer them to a doctor who is suitably qualified and prepared to take on the patient knowing the circumstances of this refusal of blood.

This referral and its justification on medical grounds should be recorded in the patient's notes along with the referral letter to assuage accusations of discrimination on religious grounds.

For further information regarding doctors' right not to treat patients who refuse blood, see *Personal Beliefs and Medical Practice* (GMC, 2013).

D.2. PRINCIPLES OF CONSENT/SUPPORTED DECISION-MAKING

Consent refers to a patient's autonomous agreement for a health professional to provide care, and it must be confirmed in writing. For consent to be valid, it must be:

- Given by a person with the capacity to make the decision in question
- Given voluntarily
- Based on appropriate information (informed) and understood.

If one or more of these factors is missing, the patient is not considered to have given permission to proceed to treatment.

All patients in the UK with mental capacity have the absolute legal and ethical right to refuse treatment or any aspect of treatment. To administer blood against a patient's wishes may be unlawful and could lead to criminal and/or civil proceedings.

The right of an adult patient to withhold consent to treatment, even when doing so would be potentially fatal, has been established in legal precedent. It is also the case for pregnant women choosing to refuse treatment even if it might lead to harm for their unborn child.

Surgeons should listen to patients and respect their views about their health. The options for treatment should be discussed in relation to the patient's own values and wishes. Working in partnership with patients requires learning their views and expectations regarding their treatment and working together to inform patients of their options for achieving the best outcome for them as individuals.

Patients should be made aware of their right to refuse or to give consent to treatment at any time and assumptions must not be made about the patients' awareness of their right to make treatment decisions.

Patients should be asked explicitly whether any refusal of treatment extends to situations where loss of life or limb without these treatments is likely. The patient's decision should be recorded and placed in the patient's notes.

Each patient should be treated as an individual and the specific extent of a patient's refusal of blood should be identified, recorded (see Appendix D for a checklist to record the refusal of blood and blood products), and the risks of refusing each treatment should be explained clearly to the patient.

When supporting a patient to reach a decision about treatment, surgeons must be satisfied that the patient gave or withheld consent to treatment themselves, without coercion or unwelcome influence from other persons. Although patients may value the aid of a friend, family member or other supporter to provide comfort through their decision-making process, it is important to ensure that any decision represents the patient's own views and is not unduly influenced by the wishes of another person.

At the end of the consent discussion the surgeon should review with the patient the potential implications of any choices that could be contrary to their wellbeing. This should include any risks and benefits associated with such choices. This review should not, however, be intended to influence the patient to take a course of action that is not in keeping with their values and wishes (see *Consent: Supported Decision-Making – A Guide to Good Practice* (RCS, 2016) for further discussion and guidance on consent issues).

D.2.1. EMERGENCY PATIENTS

Patients in medical emergencies, such as patients who are admitted to hospital unconscious, will regularly require decisions about their care to be made urgently or immediate action to be taken to preserve life or limb. In these cases it will often be inappropriate to delay treatment or transfusion of blood where clinically indicated to try to facilitate the patient's autonomous decisions. In such cases healthcare staff should act in the patient's best interest and attempt to communicate with them to keep them informed wherever possible.

The majority of Jehovah's Witnesses carry on their person a signed and witnessed advance-decision card to express their wishes in emergencies. The card explicitly refuses blood and primary blood components (red cells, white cells, plasma [FFP] and platelets), as well as refusing autologous pre-donation of blood (Appendix B).

Surgeons and other healthcare staff must respect the wishes of patients expressed in an advance-decision document that is correctly signed and witnessed unless the doctor has good reason to believe that the patient has changed their wishes since signing the document.

If a patient is unable to give an informed, rational opinion, and when an applicable advance directive does not exist, the clinical judgement of a doctor should take precedence over the opinion of relatives or associates. Such relatives or associates may be invited to produce evidence of the patient's Jehovah's Witness status in the form of an applicable advance-decision document.

In the case of emergency patients identified as Jehovah's Witnesses but without documentation, every effort should be made to avoid the use of blood and blood products in the perioperative period. However, in serious or life-threatening situations the use of blood and blood products should be based on the judgement of the clinician responsible for the patient. GMC guidance on patients who refuse treatment affirms this stating that: 'In an emergency, you can provide treatment that is immediately necessary to save life or prevent deterioration in health without consent' (*Personal Beliefs and Medical Practice*, paragraph 27 [GMC, 2013]).

Any blood or blood product transfusion given in an emergency situation where the patient has not been able to give consent for this owing to temporary incapacity should be recorded in the patient notes along with the reason it was administered. All surgeons must observe their duty of candour and inform the patient of any use of blood or its derivatives following surgery. (For more information on disclosure of information, please refer to *Duty of Candour, Guidance for Surgeons and Employers* [RCS, 2016]).

D.2.2. CHILDREN

Children in need of blood transfusion who either individually or by proxy through a parent or guardian refuse the transfusion of blood products present particularly complex management issues and legal requirements.

Children aged 16 or 17 can give legally valid consent for medical treatment whereas children under this age can give consent if they are deemed to have a sufficient level of competency to understand the issues involved (frequently referred to as 'Gillick Competence' after a landmark legal case establishing this principle). However, the courts tend to be willing to overrule the refusal of specific procedures by children. This willingness to overrule has been the outcome of the majority of cases relating to the refusal of blood.

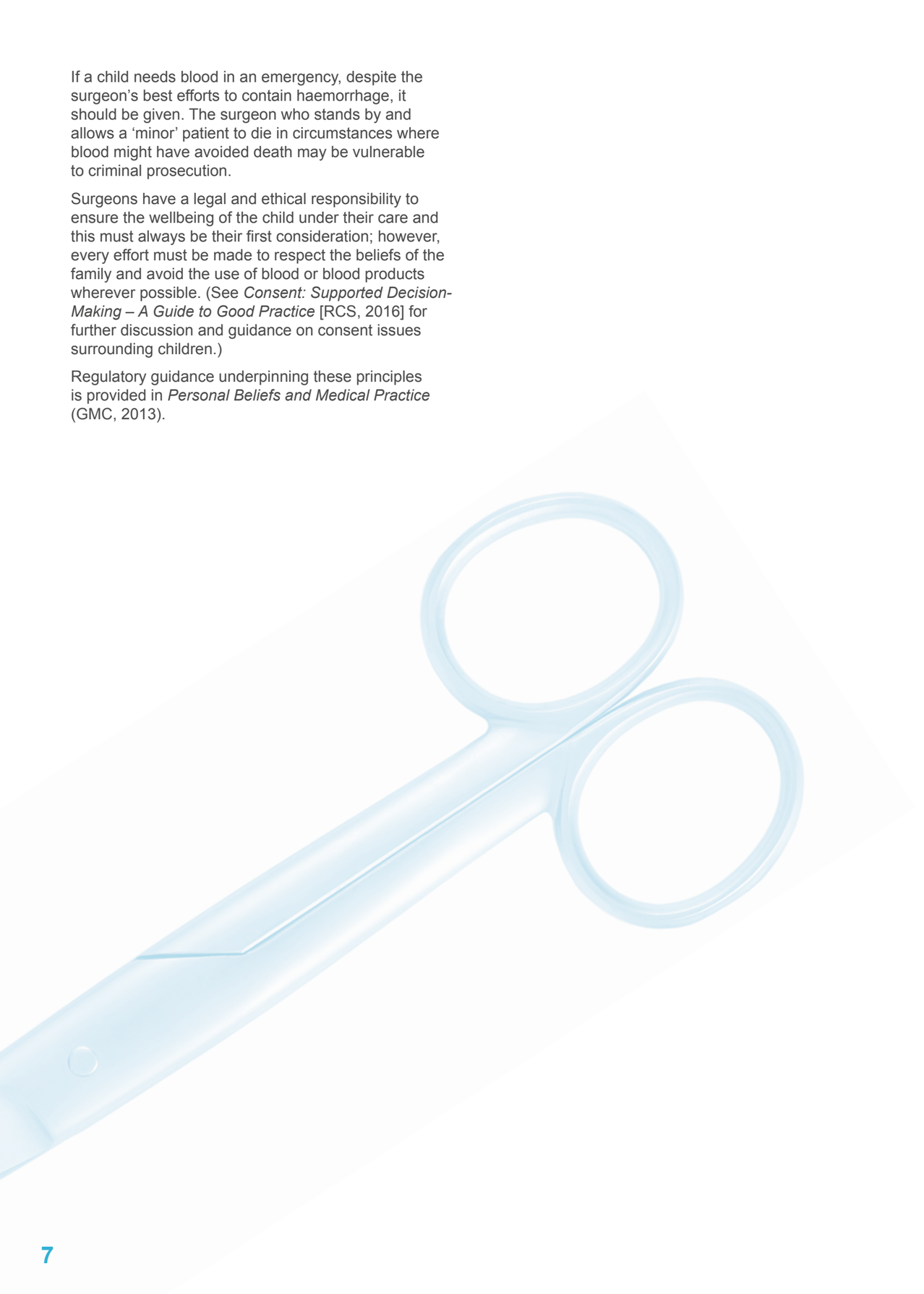
In England and Wales surgical teams can make a Specific Issue Order (SIO) under section 8 of the Children Act 1989 to provide legal sanction for a specific action, such as the administration of blood, without removing all parental authority. The order should be limited to the specific medical condition requiring treatment, and the parents must be kept informed at each stage of the application. Advice and assistance in obtaining this action should be sought from a medical social worker.

If there is insufficient time to obtain an SIO from a court owing to the clinical urgency of providing blood products to stop a child from deteriorating, blood should be given only where absolutely necessary to prevent severe detriment to the child's health. An SIO should be sought as soon as is possible.

If a child needs blood in an emergency, despite the surgeon's best efforts to contain haemorrhage, it should be given. The surgeon who stands by and allows a 'minor' patient to die in circumstances where blood might have avoided death may be vulnerable to criminal prosecution.

Surgeons have a legal and ethical responsibility to ensure the wellbeing of the child under their care and this must always be their first consideration; however, every effort must be made to respect the beliefs of the family and avoid the use of blood or blood products wherever possible. (See *Consent: Supported Decision-Making – A Guide to Good Practice* [RCS, 2016] for further discussion and guidance on consent issues surrounding children.)

Regulatory guidance underpinning these principles is provided in *Personal Beliefs and Medical Practice* (GMC, 2013).



E. Bloodless surgery: key clinical considerations

E1. PRE-ADMISSION/ PREOPERATIVE CONSIDERATIONS

E1.1. Pre-admission assessment and planning

During the pre-admission phase of treatment, surgeons should:

- Assess the patient for personal or family history of unexpected bleeding or clotting issues following medical or dental procedures.
- Avoid any medication that can increase blood loss, including NSAIDs, aspirin and vitamin K antagonists.
- Ensure that the consultant anaesthetist, haematologist and transfusion practitioner are included in the MDT when planning bloodless interventions.
- Recognise adjustment of risk between different procedures if done without recourse to blood or primary blood products and ensure that the adjusted risks are explained in consent discussions. Options for surgery may have their relative risks significantly altered when blood products are not available.
- Consider strategies for reducing blood loss during surgery and inform the surgical team of any strategies selected. Where necessary get advice from colleagues with relevant experience.
- Establish a plan for emergency management of haemorrhage and damage control strategies for reducing risk to life and limb of the patient. Inform all relevant team members and any external departments that may be required if emergency occurs.
- Establish and record which, if any, fractions of blood components are acceptable to the patient and the extent of any refusal, particularly in situations where the withholding of blood is likely to lead to loss of life or limb.

E1.2. Preoperative/pre-admission blood tests

Surgeons should minimise the number and size of blood samples drawn for preoperative testing, and use paediatric tubes for the collection of blood samples.

The following essential blood samples should be sent for analysis and the results should be recorded and attached to the patient's notes:

- Full blood count (FBC) and reticulocyte count
- B12 and folate
- Iron studies
- Clotting screen and fibrinogen
- Urea and electrolytes (U&Es), liver function tests (LFTs) and a bone profile
- Group and screen
- Other tests as clinically indicated.

E1.3. Pre-admission patient optimisation

Prior to undergoing surgery without blood transfusion, optimisation of patients' hemoglobin and general health can improve their prognosis. When preparing a patient for bloodless surgery, surgeons should:

- Consider pre-hospital optimisation of the patient prior to surgery where possible and indicated. This should include: cardiorespiratory optimisation, dietary supplementation, weight management, smoking and alcohol abstinence, and haemoglobin optimisation. Medical teams should be involved where relevant.
- Establish baseline haemoglobin (Hb) levels and consider use of recombinant erythropoietin (EPO) several weeks prior to surgery to increase oxygen-carrying capacity of patient's blood. Patients must have Hb <13g/dL (Hb ≤12g/dL for female patients) and be at risk of significant blood loss during their procedure to be eligible for its use. EPO has been shown to increase erythrocyte production in bone marrow by up to seven times the normal level.
- EPO is ineffective in patients with iron, B12 or folate deficiency. Patients with a ferritin level <100 ng/ml should be given IV iron.

- When initiating EPO, the first dose should be given three weeks before surgery and the last dose on the day of surgery. If a sufficient response is seen after the second or third dose then subsequent doses should be omitted.
- EPO should not be used for patients with a baseline Hb >13g/dL owing to increased risk of postoperative thrombotic events (eg deep vein thrombosis or pulmonary embolism). EPO must not be used/must be stopped if a patient's Hb >15g/dL.
- Caution is advised in using EPO in patients who are: pregnant or lactating, older patients (>70yrs) or are suffering from chronic liver failure, hypertension, raised platelets, epilepsy or malignancy.
- EPO is in general contraindicated in patients who are suffering from uncontrolled hypertension, arterial diseases, recent MI or CVA (within the past month), unstable angina or have a history of thrombosis.
- Ferritin levels are likely to fall in patients receiving EPO and, as such, levels should be closely monitored prior to during and following treatment and replacement used where deficiency occurs.

E.2. Intraoperative considerations – blood conservation strategies

When delivering surgery without access to blood products, it is essential that all available and reasonable steps are taken to minimise blood loss. As pre-hospital optimisation of Hb may not be feasible for emergency patients, emphasis on blood conservation is essential for this group.

During the intraoperative phase of treatment, surgeons should:

- Consider operative approaches or techniques that can minimise the loss of blood, such as laparoscopic rather than open surgery, interventional radiology, staged procedures for complex operations and the use of vasoconstrictors, tourniquet and clamps to stem blood flow where appropriate.
- Where appropriate, consider the use of deliberate controlled hypotension and/or deliberate controlled hypothermia.
- Where appropriate and acceptable to the patient consider the use of intraoperative autologous procedures such as cell salvage and acute normovolaemic haemodilution. Consider the use of coagulation stimulants such as tranexamic acid, recombinant clotting factors (eg VIIa, VIII, IX) and desmopressin where appropriate.
- Consider the use of haemostatic aids, diathermy, harmonic scalpels and radiofrequency ablation to reduce blood loss.
- Ensure minimum intraoperative blood samples are taken and use paediatric tubes for sample collection.
- Consider use of regional anaesthesia with the consultant anaesthetist.

E.3. Postoperative considerations

Careful postoperative monitoring of patients is essential following bloodless surgical interventions to reduce the risks associated with postoperative haemorrhage, sepsis and anaemia.

During the postoperative phase of treatment surgeons should:

- Carefully monitor and minimise blood loss postoperatively.
- Monitor and avoid sepsis.
- Ensure that the minimum number and volume of blood samples are taken. Ensure that nursing and medical staff are aware of the patient's refusal of blood to ensure that extra monitoring is recognised as essential.
- Consider postoperative EPO and/or Iron/B12 replacements.
- Where appropriate and acceptable to the patient, consider the use of postoperative blood salvage from drains (cell saver).

See section G below for list of further reading on the various aspects relating to the provision of bloodless surgery and the key regulatory, legal and guidance documents relating to patients who refuse blood transfusion.

F. List of abbreviations

MI	Myocardial infarction
CVA	Cerebrovascular accident
HB	Haemoglobin
ESA(s)	Erythropoiesis-stimulating agent(s)
EPO	Erythropoietin (recombinant)
HLS	Hospital Liaison Committee (Jehovah's Witness liaison group)
FBC	Full blood count
LFT(s)	Liver function test(s)
U&Es	Urea and electrolytes
MDT	Multi-disciplinary team
NSAID	Non-steroidal anti-inflammatory drug
SIO	Specific issue order

G. References and further reading

KEY GUIDANCE, LEGAL AND REGULATORY DOCUMENTS

Guidance

Good Surgical Practice (RCS, 2014)

Duty of Candour, Guidance for Surgeons and Employers (RCS, 2015)

Consent: Supported Decision-Making – A Guide to Good Practice (RCS, 2016)

Management of Anesthesia for Jehovah's Witnesses 2nd Edition (Association of Anesthetists of GB and Ireland, 2005)

Practice Guidelines for Perioperative Blood Management: An Updated Report by the American Society of Anesthesiologists Task Force on Perioperative Blood Management, Anesthesiology (American Society of Anesthesiologists, 2015)

Regulation

Good Medical Practice (GMC, 2013)

Consent: Patients and Doctors Making Decisions Together (GMC, 2008)

Personal Beliefs and Medical Practice (GMC, 2013)

0–18 years: Guidance for All Doctors (GMC, 2007)

Confidentiality (GMC, 2009)

Blood Transfusion [NG24] (NICE, 2015)

LEGISLATION

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Mental Capacity Act 2005

European Convention on Human Rights 1950

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Montgomery (Appellant) v Lanarkshire Health Board (Respondent) [2015] UKSC 11 On appeal from [2013] CSIH 3. (Material risk, disclosure of information)

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Dunseth C, Collins L, Reddy S, Schlueter AJ. Use of a simple, inexpensive device for collection of blood during acute normovolaemic haemodilution in a Jehovah's Witness patient. doi: 10.1111/vox12350.

General

Thomas D, Thompson J, Ridler B. All Blood Counts – A manual for blood conservation and patient blood management. tfm Publishing Ltd 2016 ISBN: 978-1-903378-95-3.

Habler O Focussed Update: Perioperative management of Jehovah's Witness patients in relation to their refusal of allogeneic blood transfusion www.nataonline.com

Gohel MS, Bulbulia RA, Poskitt KR, Whyman MR. Avoiding blood transfusion in surgical patients (including Jehovah's Witnesses). *Ann R Coll Engl* 2011; **93:** 429–431.

Milligan LJ, Bellamy MC. Anaesthesia and critical care of Jehovah's Witnesses. *Continuing Education in Anaesthesia Critical Care & Pain* 2004; **4:** 35–39.

WEBSITES AND RESOURCES

London Regional Transfusion Committee – Care pathways for the management of adult patients refusing blood (including Jehovah's Witnesses patients)
www.transfusionguidelines.org/document-library/documents/care-pathways-for-the-management-of-adult-patients-refusing-blood-including-jehovah-s-witness-patients/download-file/rtc-lo_2012_05_jw_policy.pdf

Better Blood Transfusion Toolkit – Pre-op Assessment for Jehovah's Witnesses – www.transfusionguidelines.org.uk/index.aspx?Publication=BBT&Section 22&page id=1352

Joint United Kingdom (UK) Blood Transfusion and Tissue Transplantation Services Professional Advisory Committee (JPAC), Jehovah's Witnesses and blood transfusion, www.transfusionguidelines.org/transfusion-handbook/12-management-of-patients-who-do-not-accept-transfusion/12-2-jehovah-s-witnesses-and-blood-transfusion accessed on (04 October 2016)

H. Appendices

List of Appendices

APPENDIX A

GENERAL CONSENT FORM EXCLUDING BLOOD TRANSFUSION

Trust or Authority _____ Patient's Surname _____

Hospital _____ Other Name (s) _____

Unit Number _____ Date of Birth _____ Male ☐ Female ☐

DOCTOR — Please See Overleaf (this part to be completed by Registered Medical Practitioner)

TYPE OF OPERATION INVESTIGATION OR TREATMENT

I confirm that I have explained the operation investigation or treatment, and such appropriate options as are available and the type of anaesthetic, if any (general/regional/sedation) proposed, to the patient in terms which in my judgement are suited to the understanding of the patient and/or to one of the parents or guardians of the patient. I further confirm that I have emphasised my clinical judgement of the potential risks to the patient and/or person who none-the-less understood and imposed the limitation of consent expressed below.

I acknowledge that this limited consent will not be over—ridden unless revoked or modified in writing.

Signature _____ Date _____

Name of Registered Medical Practitioner _____

PATIENT /PARENT /GUARDIAN — Please See Overleaf

I am	■ the patient / parent/ guardian (delete as necessary)
I agree (subject to the exclusions below)	■ to what is proposed, which has been explained to me by the doctor named on this form, ■ to the use of the type of anaesthetic that I have been told about. ■ to the use of non-blood volume expanders; pharmaceuticals that control haemorrhage and/or stimulate the production of red blood cells.
I have told the doctor	■ that I am one of Jehovah's Witnesses with firm religious convictions and that I have decided resolutely to obey the Bible command "keep abstaining from ... blood" (Acts 15:28, 29). With full realisation of the implications of this position, and exercising my own choice, free from any external influence, I expressly WITHHOLD MY CONCENT to the transfusion of ALLOGENIC BLOOD OR PRIMARY BLOOD COMPONENTS (RED CELLS, WHITE CELLS, PLASMA AND PLATELETS), and to the use of any sample of my blood for cross-matching. ■ that this limitation of consent shall remain in force and bind all those treating me unless and until I expressly revoke it in writing. ■ about any additional procedures I would NOT wish to be carried out straightaway without my having the opportunity to consider them first. ■ about the existence of an applicable Advance Decision document that remains fully representative of my wishes.
I understand	■ that the procedure might not be done by the doctor who has been treating me so far. ■ that my express refusal of allogeneic blood or primary blood components will be regarded as absolute and will NOT be over-ridden in ANY circumstance by a purported consent of a relative or other person or body. Such refusal will be regarded as remaining in force even though I may be unconscious and/or affected by medication, stroke, or other condition rendering me incapable of expressing my wishes and consent to treatment options, and the doctor(s) treating me consider that SUCH REFUSAL MAY BE LIFE THREATENING. ■ that any procedure in addition to the investigation or treatment described on this form, but with the exclusion of the transfusion of allogeneic blood or primary blood components, will only he carried out if it is necessary and in my best interests and can be justified for medical reasons. ■ that details of my treatment, and any consequences resulting, will not be disclosed to any source without my express consent or that of my instructed agent(s), unless required by law.

Signature _____ Date _____

1. Please read this form and the notes below very carefully.
2. If there is anything that you don't understand about the explanation, or if you want more information you should ask the doctor.
3. Please check that all the information on the form is correct. If it is, and you understand the explanation, then sign the form.

NOTES To:

Doctors

A patient has a legal right to grant or withhold consent prior to examination or treatment. Patients should he given sufficient information, in a way they can understand, about the proposed treatment and the possible alternatives. Patients must be allowed to decide whether they will agree to the treatment and they may refuse or withdraw consent at any time. A Jehovah's Witness patient's limited consent to treatment should he recorded on this form. Further guidance is given in HC(90)22 A Guide to Consent for Examination or Treatment.

Patients

- The doctor is here to help you. He or she will explain the proposed treatment and what the alternatives are. You can ask any questions and seek further information. You can refuse the treatment.
- You may ask for a relative, or friend, or Hospital Liaison Committee member, or a nurse to be present.
- Training health professionals is essential to the continuation of the health service and improving the quality of care. Your treatment may provide an important opportunity for such training, where necessary tinder the careful supervision of a senior doctor. You may refuse any involvement in a formal training programme without this adversely affecting your care and treatment.

APPENDIX B: SAMPLE ADVANCED DECISION (NO BLOOD) DOCUMENT

6. I consent to my relevant medical records and the details of my condition being shared with the Emergency Contact below and/or with member(s) of the Hospital Liaison Committee for Jehovah's Witnesses.

7. Signature _____ NHS No. _ _ _ _ _ _ _ _ _ _ Date _____

Address _____

8. **STATEMENT OF WITNESSES:** The person who signed this document did so in my presence. He or she appears to be of sound mind and free from duress, fraud, or undue influence. I am 18 years of age or older.

Signature of witness	Signature of witness
Name Occupation	Name Occupation
Address	Address
Telephone Mobile	Telephone Mobile

9. **EMERGENCY CONTACT:**

Name

Address

Telephone Mobile

10. **GENERAL PRACTITIONER CONTACT DETAILS:** A copy of this document is lodged with the Registered General Medical Practitioner whose details appear below.

Name

Address

Telephone Number(s)

NO BLOOD

(signed document inside)

Advance Decision to Refuse Specified Medical Treatment

Advance Decision to Refuse Specified Medical Treatment

(signed document inside)

NO BLOOD

Advance Decision to Refuse Specified Medical Treatment

1. I, _____ (print or type full name), born _____ (date) complete this document to set forth my treatment instructions in case of my incapacity. **The refusal of specified treatment(s) contained herein continues to apply to that/those treatment(s) even if those medically responsible for my welfare and/or any other persons believe that my life is at risk.**
2. I am one of Jehovah's Witnesses with firm religious convictions. With full realization of the implications of this position I direct that **NO TRANSFUSIONS OF BLOOD or primary blood components (red cells, white cells, plasma or platelets)** be administered to me in any circumstances. I also refuse to predonate my blood for later infusion.
3. No Lasting Power of Attorney nor any other document that may be in force should be taken as giving authority to disregard or override my instructions set forth herein. Family members, relatives, or friends may disagree with me, but any such disagreement does not diminish the strength or substance of my refusal of blood or other instructions.
4. Regarding end-of-life matters: [initial <u>one</u> of the two choices]

   (a) _____ I do not want my life to be prolonged if, to a reasonable degree of medical certainty, my situation is hopeless.

   (b) _____ I want my life to be prolonged as long as possible within the limits of generally accepted medical standards, even if this means that I might be kept alive on machines for years.
5. **Regarding other healthcare and welfare instructions** (such as current medications, allergies, medical problems or any other comments about my healthcare wishes):

_____

_____

_____

_____

_____

_____

_____

_____

APPENDIX C: CHECKLIST FOR SURGICAL PATIENTS REFUSING BLOOD

This checklist should be adapted for local use in line with local protocol. Hospitals should agree the content of the checklist with the Hospital Liaison Committee and the Clinical Risk Department before adapting it for use. The checklist must be completed in full by the treating surgical team.

The checklist should include the below statements to be signed by the patient indicating that:

- The patient has confirmed understanding and is in agreement with all the statements below.
- The patient has also confirmed understanding that this document will remain in force and binding to all those involved in his/her care until he/she personally revokes it either verbally or in writing.
- The patient is signing the relevant document of his/her own free will.

	I accept (where clinically indicated)				I accept (where clinically indicated)		
	Yes	No	Not discussed		Yes	No	Not discussed
Fresh frozen plasma				*Acute Normovolaemic Haemodilution			
Red blood cells				*Intraoperative cell salvage			
Platelets				*Postoperative cell salvage			
*Cryoprecipitate				*Fibrin glues and sealants			
*Albumin				Other (specify) ……..			
*Recombinant clotting factors				Other (specify) ……..			
*Prothrombin complex concentrate				Other (specify) ……..			
*Fibrinogen concentrate				Other (specify) ……..			
If required to save my life I accept (Circle desired response and initial)							
Fresh Frozen Plasma				Yes ……..….	No ……..……		
Red Cells				Yes ……..….	No ……..……		
Platelets				Yes ……..….	No …….…...		

Signed

Patient ……..……..... Consultant ……..……

Witness 1 ……..…… Witness 2 ……..……

* Treatments that are recognised as a matter of individual choice for patients who are Jehovah's Witnesses (Jehovah's Witness Hospital Information Services, October 2016).

APPENDIX D: PRELIMINARY PLAN FOR SURGICAL PATIENTS REFUSING BLOOD

This plan should be adapted for local use in line with local protocol. It should be used in conjunction with the referral form for surgical patients refusing blood available in Appendix E.

Surname:	**First name:**	
Consultant:	**Department:**	
MRN:	**Outpatient:**	**Yes/No**
DOB:	**In-patent:**	**Yes/No**
	Location:	

Blood Results			
Hb		**Ferritin**	
WCC		**B12**	
Platelets		**Serum folate**	
APTT		**Retics**	
PT			
INR			
Fibrinogen			

A. Does NOT require preoperative optimisation. Yes/No

B. Requires preoperative optimisation. Yes/No

Details:

C. Requires interview to discuss component therapy. Yes/No

D. Preoperative optimisation NOT feasible. Yes/No

Appointments made for haematology clinic?	**Yes/No**
Location:	**Date:**
Appointments made for surgical clinic?	**Yes/No**
Location:	**Date:**

APPENDIX E: REFERRAL FORM FOR SURGICAL PATIENTS REFUSING BLOOD

This form should be adapted for local use in line with local protocol. It should be used in conjunction with the preliminary plan for surgical patients refusing blood available in Appendix D.

Please send completed forms either by fax [insert fax number] or email [insert email] to the Haematology Department, [Hospital name]. All forms MUST be signed by referring clinician.

Poorly completed forms may result in delays.

Surname:	**First name:**	
Consultant:	**Department:**	
MRN:	**Outpatient:**	**Yes/No**
DOB:	**In-patent:**	**Yes/No**
	Location:	

All sections MUST be completed (tick boxes where appropriate)

Operation description					
Urgency	**Emergency/ Urgent**		**Elective**		
Operation date					
Estimated blood loss	**millilitres**				
Anticoagulant meds?	**Warfarin**		**Heparin**		**Aspirin**
	If yes, give reason:				

Circle appropriate response:

Advance-decision document available?	YES	NO

If available, ensure the document is scanned onto EPR and a copy is kept in the patient's medical records.

Checklist completed and signed?	YES	NO

The checklist is an essential part of the consent process and must be completed IN FULL.

The checklist MUST be faxed with Referral Form and a copy should be kept in patient's medical records.

Blood tests done?	YES	NO

If not done, when are they booked for? Ensure blood tests were sent – as set out in *Caring for Patients Who Refuse Blood* (RCS 2016). Blood results must not be older than two weeks from date of referral.

Completed by (PRINT): ……..……

Grade: ……..……

Signature: ……..……