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TRAINEREN VAN BUITENLANDSE RELIGIEUZE GENOOTSCHAPPEN IN RUSLAND: SCHENDING ARTIKEL 11 JUNCTO 9 EVRM

- **Europees Hof voor de Rechten van de Mens 5 oktober 2006**
  Moscow Branche of the Salvation Army t. Rusland (appl.no. 72881/01)
- **Europees Hof voor de Rechten van de Mens 5 april 2007**
  Church of Scientology Moscow t. Rusland (appl.no. 18147/02) *

Met noot van Jan-Peter Loof **

De Russische beschermdrift van de nationale orthodoxe kerk is met het uitvaardigen van een restrictieve wet op de godsdienstvrijheid in 1997 tot nieuwe hoogte gestegen. Hoewel de wet alle religies gelijk stelt, worden in de praktijk buitenlandse religieuze genootschappen op allerlei wijzen getraineerd door ambtenaren. Zo blijkt ook uit deze twee arresten van het EHRM waarin geklaagd wordt over een opeenvolging van ambtelijk en rechterlijk getreiter om te verhinderen dat twee religieuze genootschappen van niet-Russische origine als rechtspersoon geregistreerd worden. Het Hof ziet hierin een schending van de verenigingsvrijheid (artikel 11 EVRM) gelezen in het licht van de godsdienstvrijheid van artikel 9 EVRM.

INLEIDING EN FEITEN

In beide onderstaande arresten gaat het om ambtelijk en rechterlijk getreiter richting kerkgenootschappen van buitenlandse origine in Rusland. Op 1 oktober 1997 is in Rusland een nieuwe Wet op de godsdienstvrijheid en de religieuze genootschappen in werking getreden. Deze wet verplicht alle bestaande en reeds eerder als rechtspersoon erkende religieuze genootschappen om hun statuten in overeenstemming te brengen met de nieuwe wettelijke eisen en herregistratie aan te vragen voor 31 december 1999. Zowel de afdeling Moskou van het Leger des Heils als die van de Scientology kerk vragen deze herregistratie tijdig aan bij het lokale directoraat van het ministerie van Justitie.

De afdeling Moskou van het Leger des Heils wordt vervolgens twee maal de herregistratie geweigerd. Aanvankelijk omdat niet voldaan zou zijn aan allerhande financieel-administratieve vereisten, omdat de oprichters niet de Russische nationaliteit hebben en omdat de afdeling onderworpen zou zijn aan het gezag van het internationale Leger des Heils met een hoofdkantoor in Londen, zodat de afdeling geen zelfstandige organisatie zou vormen, maar een vertegenwoordiging van een buitenlands religieus genootschap. Als deze weigering wordt aangevochten bij de rechtbank voert Justitie nog een andere weigeringsgrond aan: het gebruik van het woord 'leger' in de naam van een religieus genootschap is niet toegestaan en het dragen van uniformen door de leden duidt erop dat sprake is van een verboden paramilitaire organisatie. De rechtbank oordeelt dat de Moskovische heilsafdeling inderdaad geen zelfstandige organisatie vormt en

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valt verder vooral over statutaire bepalingen waaruit blijkt dat de afdeling een organisatiestructuur kent met militaire rangen (de aangesloten heilssoldaten zijn onderworpen aan het commando van hun officieren) en dat de afdeling niet aansprakelijk is voor de daden van de leden. Dit zou een indicatie zijn dat de heilssoldaten in strijd zouden willen handelen met de Russische wet. In hoger beroep wordt de beslissing van de rechtbank gehandhaafd, vooral vanwege de buitenlandse banden van de afdeling. Nadat de termijn voor herregistratie verlopen is, start Justitie een procedure tot ontbinding van de heilsafdeling. Omdat inbeslagname van goederen en financiële tegoeden dreigt, worden alle rekeningen en (personeels)contracten in aller ijl op naam gezet van de landelijke afdeling van het Leger des Heils die op federaal niveau wel gewoon de herregistratie heeft verkregen. De activiteiten van het Leger des Heils in Moskou komen desalniettemin in de verdrukking en moeten soms gestaakt worden omdat door negatieve publiciteit de fondsenwerving minder goed gaat dan normaal en omdat diverse partners weigeren met de heilsafdeling zaken te doen. De rechtbank bevestigt aanvankelijk de ontbindingsbeslissing. Het Constitutionele Hof oordeelt in 2001 de ontbindingsbeslissing strijdig met de grondwet en wijst de zaak terug naar de rechtbank. Het presidium van de rechtbank vernietigt vervolgens het eerdere ontbindingsvonnis. Er volgt een nieuwe rechterlijke beoordeling van de ontbindingsbeslissing van Justitie en die wordt in februari 2003 vernietigd. Dit rechterlijk oordeel blijft in het door de Justitie aangespannen hoger beroep overeind.

Wat betreft de herregistratie van de Scientology kerk in Moskou ligt de weerzin van het Moskovische Justitie-directoraat er nog iets dikker bovenop. Tussen 11 augustus 1998 en 31 mei 2005 vraagt de Scientology kerk Moskou maar liefst elf maal de herregistratie aan, om telkens afgewezen te worden. Aanvankelijk gebeurt dit omdat er een strafrechtelijk onderzoek loopt tegen de oprichter van Scientology, maar bij de volgende aanvragen gaat het steeds om administratieve futiliteiten, wordt geen enkele reden gegeven of wordt de aanvraag gewoon niet in behandeling genomen. In december 2000 oordeelt de rechtbank dat de weigering tot herregistratie onrechtmatig is. De onmogelijkheid die daaruit voortvloeit om rechtshandelingen te verrichten, zoals het openen van een bankrekening en het sluiten van overeenkomsten, en samenkomsten te organiseren, komt volgens de rechtbank in strijd met internationale rechtsregels. Het vonnis van de rechtbank wordt door de justitiële autoriteiten echter niet uitgevoerd. Een klacht van Scientology daarover wordt door een hogere rechter toegewezen, maar de opdracht van deze rechter aan de justitiële autoriteiten om Scientology te herregistreren wordt in een door de justitiële autoriteiten aangevraagde procedure van 'judicial review' door het presidium van het gerecht weer vernietigd. In 2005 wordt een hernieuwd registratieverzoek opnieuw afgewezen omdat een document in de aanvraag zou ontbreken.

Beide religieuze genootschappen klagen in Straatsburg over schending van artikel 9 (godsdienstvrijheid), 11 (verenigingsvrijheid) en 14 (discriminatieverbod) EVRM.

HET ARREST OVER DE AFDELING MOSKOU VAN HET LEGER DES HEILS

Met betrekking tot de klachten van de Moskovische heilsafdeling overweegt het EHRM als volgt:

'THE LAW

I. ALLEGED VIOLATION OF ARTICLES 9 AND 11 OF THE CONVENTION (...)

A. Arguments by the parties (...)

B. The Court's assessment

1. General principles

57. 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).

58. 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).

59. 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).

60. As has been stated many times in the Court's judgments, not only is political democracy a fundamental feature of the European public order but the Convention was designed to promote and maintain the ideals and values of a democratic society. Democracy, the Court has stressed, is the only political model contemplated in the Convention and the only one compatible with it. By virtue of the wording of the second paragraph of Article 11, and likewise of Articles 8, 9 and 10 of the Convention, the only necessity

capable of justifying an interference with any of the rights enshrined in those Articles is one that may claim to spring from "democratic society" (see *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, §§ 43-45, and *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, §§ 86-89, ECHR 2003-II).
61. While in the context of Article 11 the Court has often referred to the essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes, including those proclaiming or teaching religion, are also important to the proper functioning of democracy. For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 92, 17 February 2004).
62. 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*, cited above, §§ 94-95, with further references).

2. The applicant branch's status as a "victim" of the alleged violations

63. In the Government's submission, so long as the applicant branch had not been dissolved and had retained its status as a legal entity, there had been no interference with its Convention rights and it could not therefore claim to be a "victim" of any violation.
64. The Court does not share the Government's view. According to the Convention organs' constant approach, the word "victim" denotes the person directly affected by the act or omission which is in issue (see *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, § 27, and *Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A no. 45, § 41). In the present case the applicant branch complained that it had been denied re-registration because of the allegedly arbitrary interpretation of the requirements of the Religions Act. It is undisputed that the refusal of re-registration directly affected its legal position.
65. The Government appear to consider that this refusal has not been detrimental to the applicant branch. The Court recalls in this connection that the existence of a violation is conceivable even in the absence of prejudice or damage; the question whether an applicant has actually been placed in an unfavourable position is not a matter for Article 34 of the Convention and the issue of damage becomes relevant only in the context of Article 41 (see, among many authorities, *Marckx*, loc. cit.; *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, § 66; and *Wassink v. the Netherlands*, judgment of 27 September 1990, Series A no. 185-A, § 38).
66. The Government further appear to claim that the inclusion of the applicant branch in the Unified Register of State Enterprises in October 2002 effaced the adverse consequences of the previous dissolution proceedings. The Court recalls that a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged the breach of the Convention, either expressly or in substance, and then afforded redress for that breach (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). In the instant case the domestic authorities have not acknowledged that the refusal of re-registration amounted to a violation of the applicant's Convention rights. In fact, the judicial decisions upholding the refusal have not been set aside and have remained in force to date. The rulings by the Constitutional Court and by the Taganskiy District Court, to which the Government referred, only concerned the proceedings for dissolution of the applicant branch and were of no consequence to its claim for re-registration.

67. It transpires from the registration record produced by the Government that the entries concerning the applicant branch had been made "in connection with entering information into the Unified State Register of Legal Entities" (line no. 263) and following "transfer of the registration file from another registration authority" (line no. 289). This means that the inclusion of information on the applicant branch was solely linked to the establishment of a new register (the Unified State Register of Legal Entities) and to the shifting of registration competence from one authority to another following enactment of a new procedure for the registration of legal entities (...). In their statement of appeal, the Moscow Justice Department – that is, the authority with responsibility for registering religious associations – expressly confirmed that the entering of such information could not constitute "re-registration" for the purposes of the Religions Act (...).
68. The Court also observes that the Government have not commented on the applicant's legal status before 1 October 2002. However, the facts, undisputed by the parties, reveal that applicant branch's status as a legal entity was legally discontinued at least from 6 December 2001, when the Moscow City Court ordered its dissolution for failure to comply with the re-registration requirement, to 1 August 2002, when that judgment was quashed by way of supervisory-review proceedings.
69. Finally, the Government's argument that the applicant is not a "victim" because it may still apply for re-registration is self-defeating, for it confirms that the applicant has been denied re-registration to date. In any event, the Government omitted to specify which legal provisions would currently entitle the applicant to apply for re-registration, which would obviously be belated following the expiry of the extended time-limit on 31 December 2000.
70. Having regard to the above considerations, the Court finds that the applicant may "claim" to be a "victim" of the violations complained of. In order to ascertain whether it has actually been a victim, the merits of its contentions have to be examined.

3. Existence of interference with the applicant's rights

71. 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 consistently held the view that a refusal by the domestic authorities to grant status as a legal entity to an association of individuals amounts 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 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* [GC], no. 30985/96, § 62, ECHR 2000-XI).
72. The Court observes that in 1997 the respondent State enacted a new Religions Act which required all the religious organisations that had been previously granted legal-entity status to amend their articles of association in conformity with the new Act and to have them "re-registered" within a specific time-period (...). The procedure for "re-registration" was the same as for the initial registration of a religious organisation and the same grounds for refusing a registration application applied (...). In addition, "re-registration" could be refused if grounds existed for dissolving a religious organisation or for banning its activities (...). A failure to obtain "re-registration" for whatever reason before the expiry of the time-limit exposed the religious organisation to a threat of dissolution by judicial decision (...).
73. The Court notes that, prior to the enactment of the new Religions Act, the applicant branch had lawfully operated in Russia since 1992. It was unable to obtain "re-registration" as required by the Religions Act and consequently became liable for dissolution by operation of law. After 6 December 2001, when it exhausted ordinary domestic remedies against the judicial decision ordering its dissolution, and until that decision was quashed by way of supervisory review on 1 August 2002, the applicant branch conti-

nuously ran the risk of having its accounts frozen and its assets seized (cf. *Christian Democratic People's Party v. Moldova* (dec.), no. 28793/02, 22 March 2005). The Court accepts that that situation had an appreciably detrimental effect on its functioning and religious activities (...). Even though the Constitutional Court's ruling later removed the immediate threat of dissolution from the applicant branch, it is apparent that its legal capacity is not identical to that of other religious organisations that obtained re-registration certificates. The Court observes that in other cases the absence of re-registration was invoked by the Russian authorities as a ground for refusing registration of amendments to the articles of association or for staying the registration of a religious newspaper (see *Church of Scientology Moscow and Others v. Russia* (dec.), no. 18147/02, 28 October 2004).

74. The Court considers that in the present circumstances, in which the religious organisation was obliged to amend its articles of association and where registration of such amendments was refused by the State authorities, with the result that it lost its legal-entity status, there has been an interference with the organisation's right to freedom of association. As the Religions Act restricts the ability of a religious association without legal-entity status to exercise the full range of religious activities (see *Kimlya, Sultanov and Church of Scientology of Nizhnekamsk v. Russia* (dec.), nos. 76836/01 and 32782/03, 9 June 2005), this situation must also be examined in the light of the organisation's right to freedom of religion.

75. Accordingly, as the Court has found that there has been an interference with the applicant's rights under Article 11 of the Convention read in the light of Article 9 of the Convention, it must determine whether such 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).

4. Justification for the interference

(a) General principles applicable to the analysis of justification

76. The Court reiterates that the list of exceptions to freedom of religion and assembly, as contained in Articles 9 and 11 of the Convention, is exhaustive. The 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. In determining whether a necessity within the meaning of paragraph 2 of these Convention provisions exists, the States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts (see *Gorzelik*, cited above, § 95; *Sidiropoulos*, cited above, § 40; and *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 84, ECHR 2001-IX).

77. 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*, cited above, § 47, and *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99, § 49, ECHR 2005-I (extracts)).

(b) Arguments put forward in justification of the interference

78. The Court observes that the grounds for refusing re-registration of the applicant branch were not consistent throughout the domestic proceedings. Although the Moscow Justice Department initially referred to an insufficient number of founding members and the absence of documents showing their lawful residence in Russia, these purported defects found no mention in the subsequent judicial decisions (...). The allegedly paramilitary nature of the applicant's structure did not form part of the initial decision refusing re-registration and the Department put that argument forward for the first time in its comments on the applicant's claim to a court (...). That reason was accepted by the District Court but the City Court did not consider that it required separate examination (...). Finally, the argument about inconsistent indication of the applicant's religious affiliation was not relied upon by the Justice Department and appeared for the first time in judicial decisions (...)

79. The Government did not specify the particular grounds for denying re-registration to the applicant branch. They did not advance any justification for the interference.
80. In these circumstances, the Court will examine in turn two groups of arguments that were put forward for refusing the applicant's re-registration: those relating to the applicant branch's "foreign origin" and those relating to its internal structure and religious activities.

(i) The applicant branch's "foreign origin"
81. The Russian authorities held that since the applicant's founders were foreign nationals, in that it was subordinate to the central office in London and had the word "branch" in its name, it must have been a representative office of a foreign religious organisation ineligible for "re-registration" as a religious organisation under Russian law.
82. The Court observes, firstly, that the Religions Act indeed prohibited foreign nationals from being founders of Russian religious organisations. It finds, however, no reasonable and objective justification for a difference in treatment of Russian and foreign nationals as regards their ability to exercise the right to freedom of religion through participation in the life of organised religious communities.
83. Secondly, it does not appear that the presence of The Salvation Army's headquarters abroad prevented registration of the applicant as a Russian religious organisation. Section 11 § 6 of the Religions Act concerned precisely the situation where a Russian religious organisation was subordinate to the central governing body located abroad (...). The only additional requirement in that case was the production of the certified articles of association of the foreign governing body; that circumstance was not a legal ground for refusing registration or re-registration.
84. Thirdly, under the Religions Act, the only instance in which a religious organisation's name could preclude its registration was where it was identical to the name of another registered organisation. It has not been claimed that this was the case of the applicant branch. By law, the mere presence of the word "branch" in its name was not a circumstance precluding its registration.
85. Finally, the Court notes that, by the time of the events, the applicant branch had existed for seven years as an independent legal entity exercising a broad range of religious rights. The Moscow Justice Department and domestic courts insisted that it should be registered as a representative office of a foreign religious organisation with the consequence that under Russian law it would not be entitled to status as a legal entity or to continue its religious activities (...). As noted above, that claim by the domestic authorities had no legal foundation. Accordingly, in the Court's assessment, it amounted to a refusal on the ground that its establishment was inexpedient, which had been expressly prohibited by section 12.2 of the Religions Act (...).
86. It follows that the arguments pertaining to the applicant's alleged "foreign origin" were neither "relevant and sufficient" for refusing its re-registration, nor "prescribed by law".

(ii) Religious structure of the applicant branch
87. The District and City Courts held that the applicant branch did not set out its religious affiliation and practices in a precise manner but confusingly referred to the Evangelical faith, the faith of The

Salvation Army and the Christian faith and omitted to describe all of its decisions, regulations and traditions.

88. The Court observes that the applicant's articles of association submitted for re-registration clearly designated the applicant branch as a religious organisation adhering to the tenets of the Christian faith. A schedule that formed an integral part of its articles of associations set out the premises on which the religious doctrine of The Salvation Army was founded.

89. The Religions Act did not lay down any guidelines as to the manner in which the religious affiliation or denomination of an organisation should be described in its founding documents. Section 10 § 2 of the Religions Act, to which the City Court referred, merely required the indication of the organisation's creed (*veroispovedanie*). There was no apparent legal basis for the requirement to describe all "decisions, regulations and traditions".

90. If the applicant's description of its religious affiliation was not deemed complete, it was the national courts' task to elucidate the applicable legal requirements and thus give the applicant clear notice how to prepare the documents in order to be able to obtain re-registration (see *Tsonev v. Bulgaria*, no. 45963/99, § 55, 13 April 2006). This had not, however, been done. Accordingly, the Court considers that this ground for refusing registration has not been substantiated.

91. Further, the Moscow Justice Department alleged that the applicant branch should be denied registration on the ground that it was a "paramilitary organisation", since its members wore uniform and performed service, and because the use of the word "army" in its name was not legitimate. The District Court endorsed that argument.

92. The Court points out that, according to its constant case-law, 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 *Hasan and Chaush*, cited above, § 78, and *Manoussakis and Others v. Greece*, judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 47). It is undisputable that for the members of the applicant branch, using ranks similar to those used in the military and wearing uniforms were particular ways of organising the internal life of their religious community and manifesting The Salvation Army's religious beliefs. It could not seriously be maintained that the applicant branch advocated a violent change in the State's constitutional foundations or thereby undermined the State's integrity or security. No evidence to that effect had been produced before the domestic authorities or by the Government in the Convention proceedings. It follows that the domestic findings on this point were devoid of factual basis.

93. The District Court also inferred from the applicant's articles of association that the members of the applicant branch would "inevitably break Russian law in the process of executing The Salvation Army's Orders and Regulations and the instructions of the Commanding Officer".

94. The Court reiterates that an association's programme may in certain cases conceal objectives and intentions different from the ones it proclaims. To verify that it does not, the content of the programme must be compared with the actions of the association's leaders and the positions they embrace (see *Refah Partisi*, § 101, and *Partidul Comunistilor*, § 56, both cited above).

95. There was no evidence before the domestic courts that in seven years of its existence the applicant branch, its members or founders had contravened any Russian law or pursued objectives other than those listed in its articles of associations, notably the advancement of the Christian faith and acts of charity. It follows that this finding by the District Court also lacked evidentiary basis and was therefore arbitrary.

(iii) Further considerations relevant for the Court's assessment

96. As noted above, by the time the re-registration requirement was introduced, the applicant branch had lawfully existed and operated in Russia as an independent religious community for more than seven years. It has not been submitted that the community as a whole or its individual members had been in breach of any domestic law or regulation governing their associative life and religious activities. In these circumstances, the Court considers that the reasons for refusing re-registration should have been particular-

ly weighty and compelling (see the case-law cited in paragraph 76 above). In the present case no such reasons have been put forward by the domestic authorities.
97. It is also relevant for the Court's assessment that, unlike the applicant branch, other religious associations professing the faith of The Salvation Army have successfully obtained re-registration in Russian regions and at federal level (see points 99 and 101-04 of the Report on Russia's Honouring of its Commitments, (...) and point 5 of the Parliamentary Assembly's Resolution on the Russian Religions Act, (...)). In view of the Court's finding above that the reasons invoked by the Moscow Justice Department and endorsed by the Moscow courts in order to deny re-registration of the applicant branch had no legal or factual basis, it can be inferred that, in denying registration to the Moscow branch of The Salvation Army, the Moscow authorities did not act in good faith and neglected their duty of neutrality and impartiality vis-à-vis the applicant's religious community (see *Metropolitan Church of Bessarabia*, § 123, *Hasan and Chaush*, § 62, both cited above).

(c) Conclusion

98. In the light of the foregoing, the Court considers that the interference with the applicant'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.

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

(...)
101. In the circumstances of the present case the Court considers that the inequality of treatment, of which the applicant claimed to be a victim, has been sufficiently taken into account in the above assessment that led to the finding of a violation of substantive Convention provisions (see, in particular, paragraphs 82 and 97 above). 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).
(...)

FOR THESE REASONS, THE COURT UNANIMOUSLY
1. *Holds* that the applicant may claim to be a "victim" for the purposes of Article 34 of the Convention;
2. *Holds* that there has been a violation of Article 11 of the Convention read in the light of Article 9; (...)'

HET ARREST OVER DE SCIENTOLOGY KERK MOSKOU

Het EHRM-arrest over de Scientology kerk volgt in grote lijnen de hierboven weergegeven uitspraak, waarnaar het Hof ook verwijst. De gebruikelijke uiteenzetting van de algemene beginselen uit de jurisprudentie van het Hof (§ 71-75) is, met weglating van één paragraaf, identiek aan § 57-62 van de bovenstaande uitspraak. Ook de overwegingen over de vraag of Scientology voldoet aan het slachtoffervereiste (§ 76-80) en over de vraag of sprake is van een inmenging in de godsdienstvrijheid van de klager (§ 81-85) zijn van gelijke strekking als in de voorgaande zaak. Zij zijn hieronder dan ook niet opgenomen. Datzelfde geldt voor de overwegingen met betrekking tot het ontbreken van een noodzaak om apart in te gaan op schending van artikel 14 EVRM (§ 99-101) en de overwegingen inzake de ex artikel 41 EVRM toe te kennen schadevergoeding.

'THE LAW

I. ALLEGED VIOLATION OF ARTICLES 9, 10 AND 11 OF THE CONVENTION

64. The applicant complained under Articles 9, 10 and 11 of the Convention that it had been arbitrarily stripped of its legal-entity status as a result of the refusal to re-register it as a religious organisation. The Court recalls that in a recent case it examined a substantially similar complaint about the refusal of re-registration of a religious organisation from the standpoint of Article 11 of the Convention read in the light of Article 9 (see *The Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, §§ 74 and 75, ECHR 2006-...). The Court observes that the religious nature of the applicant was not disputed at the national level and it had been officially recognised as a religious organisation since 1994. In the light of this, the Court finds that the applicant's complaints must be examined from the standpoint of Article 11 of the Convention read in the light of Article 9. (...)

B. The Court's assessment (...)

4. Justification for the interference

(a) General principles applicable to the analysis of justification
86. The Court reiterates that the restriction on the rights to freedom of religion and assembly, as contained in Articles 9 and 11 of the Convention, is exhaustive. The 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. In determining whether a necessity within the meaning of paragraph 2 of these Convention provisions exists, the States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts (see *Gorzelik*, cited above, § 95; *Sidiropoulos*, cited above, § 40; and *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 84, ECHR 2001-IX).
87. 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*, cited above, § 47, and *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99, § 49, ECHR 2005-I (extracts)).

(b) Arguments put forward in justification of the interference
88. The Court observes that the grounds for refusing re-registration of the applicant were not consistent throughout the time it attempted to secure re-registration. The first application was rejected by reference to on-going criminal proceedings against the church president and the second one for textual discrepancies between the charter and the Religions Act (...). The third to sixth applications were not processed for a failure to submit a complete set of documents and that ground was also endorsed by the District and City Courts (...). The expiry of the time-limit for re-registration was invoked as the ground for leaving the seventh to tenth applications unexamined. After the courts determined that the refusal to examine the amended charter had had no lawful basis, the Justice Department refused the eleventh application

on a new ground, notably the failure to produce a document showing the applicant's presence in Moscow for at least fifteen years (...).

89. The justification for the interference advanced by the Government focussed on the findings of the District Court, as upheld on appeal by the City Court, which determined that the applicant failed to submit certain documents and sufficient information on its religious creed.

90. Since the existence of concurrent criminal proceedings and textual discrepancies between the text of the Religions Act and the applicant's charter were not identified by the domestic courts as valid grounds for refusal of re-registration, the Court will first examine the arguments relating to the submission of the allegedly incomplete set of documents.

91. The Court observes that the Moscow Justice Department refused to process at least four applications for re-registration, referring to the applicant's alleged failure to submit a complete set of documents (...). However, it did not specify why it deemed the applications incomplete. Responding to a written inquiry by the applicant's president, the Moscow Justice Department explicitly declined to indicate what information or document was considered missing, claiming that it was not competent to do so (...). The Court notes the inconsistent approach of the Moscow Justice Department on the one hand accepting that it was competent to determine the application incomplete but on the other hand declining its competence to give any indication as to the nature of the allegedly missing elements. Not only did that approach deprive the applicant of an opportunity to remedy the supposed defects of the applications and re-submit them, but also it ran counter to the express requirement of the domestic law that any refusal must be reasoned. By not stating clear reasons for rejecting the applications for re-registration submitted by the applicant, 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".

92. Examining the applicant's complaint for a second time, the District Court advanced more specific reasons for the refusal, the first of them being a failure to produce the original charter, registration certificate and the document indicating the legal address (...). With regard to this ground the Court notes that the Religions Act contained an exhaustive list of documents that were to accompany an application for re-registration. That list did not require any specific form in which these documents were to be submitted, whether as originals or in copies (...). According to the Court's settled case-law, the expression "prescribed by law" requires that the impugned measure should have a basis in domestic law and also that the law be formulated with sufficient precision to enable the citizen to foresee the consequences which a given action may entail and to regulate his or her conduct accordingly (see, as a classic authority, *Sunday Times v. the United Kingdom (no. 1)*, judgment of 26 April 1979, Series A no. 30, § 49). The requirement to submit the original documents did not follow from the text of the Religions Act and no other regulatory documents which might have set out such a requirement were referred to in the domestic proceedings. It was not mentioned in the grounds for the refusal advanced by the Moscow Justice Department or in the Presidium's decision remitting the matter for a new examination, but appeared for the first time in the District Court's judgment. In these circumstances, the Court is unable to find that the domestic law was formulated with sufficient precision enabling the applicant to foresee the adverse consequences which the submission of copies would entail. Furthermore, the Court considers that the requirement to enclose originals with each application would have been excessively burdensome, or even impossible, to fulfil in the instant case. The Justice Department was under no legal obligation to return the documents enclosed with applications it had refused to process and it appears that it habitually kept them in the registration file. As there exists only a limited number of original documents, the requirement to submit originals with each application could have the effect of making impossible re-submission of rectified applications for re-registration because no more originals were available. This would have rendered the applicant's right to apply for re-registration as merely theoretical rather than practical and effective as required by the Convention (see *Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, § 33). It was pointed out by the applicant, and not contested by the Government, that the Moscow Justice Department had in its possession the original charter and registration certification, as well as the document evidencing its address, which had been included in the first application for re-registration in 1999 and never returned to the

applicant. In these circumstances, the District Court's finding that the applicant was responsible for the failure to produce these documents was devoid of both factual and legal basis.

93. The Nikulinskiy District Court also determined that the applicant had not produced information on the basic tenets of creed and practices of the religion. The Court has previously found that the refusal of registration for a failure to present information on the fundamental principles of a religion may be justified in the particular circumstances of the case by the necessity to determine whether the denomination seeking recognition presented any danger for a democratic society (see *Cârmuirea Spiritualã a Musulmanilor din Republica Moldova v. Moldova* (dec.), no. 12282/02, 14 June 2005). The situation obtaining in the present case was different. It was not disputed that the applicant had submitted a book detailing the theological premises and practices of Scientology. The District Court did not explain why the book was not deemed to contain sufficient information on the basic tenets and practices of the religion required by the Religions Act. The Court reiterates that, if the information contained in the book was not considered complete, it was the national courts' task to elucidate the applicable legal requirements and thus give the applicant clear notice how to prepare the documents (see *The Moscow Branch of The Salvation Army*, cited above, § 90, and *Tsonev v. Bulgaria*, no. 45963/99, § 55, 13 April 2006). This had not, however, been done. Accordingly, the Court considers that this ground for refusing re-registration has not been made out.

94. The Court does not consider it necessary to examine whether the refusals grounded on the expiry of the time-limit for re-registration were justified because in the subsequent proceedings the domestic courts acknowledged that the Moscow Justice Department's decision not to process an application for registration of the amended charter on that ground was unlawful (...). In any event, as the Court has found above, the applicant's failure to secure re-registration within the established time-limit was a direct consequence of arbitrary rejection of its earlier applications by the Moscow Justice Department.

95. Finally, as regards the rejection of the most recent, eleventh application on the ground that the document showing fifteen-year presence in Moscow had not been produced (...), the Court notes that this requirement had no lawful basis. The Constitutional Court had determined already in 2002 that no such document should be required from organisations which had existed before the entry into force of the Religions Act in 1997 (...). The applicant had been registered as a religious organisation since 1994 and fell into that category.

96. It follows that the grounds invoked by the domestic authorities for refusing re-registration of the applicant had no lawful basis. A further consideration relevant for the Court's assessment of the proportionality of 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 three years. It has not been submitted that the community as a whole or its individual members had been in breach of any domestic law or regulation governing their 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 *The Moscow Branch of The Salvation Army*, cited above, § 96, and the case-law cited in paragraph 86 above). In the present case no such reasons have been put forward by the domestic authorities.

97. In view of the Court's finding above that the reasons invoked by the Moscow Justice Department and endorsed by the Moscow courts to deny re-registration of the applicant branch had no legal basis, it can be inferred that, in denying registration to the Church of Scientology of Moscow, the Moscow authorities did not act in good faith and neglected their duty of neutrality and impartiality vis-à-vis the applicant's religious community (see *The Moscow Branch of The Salvation Army*, cited above, § 97).

98. In the light of the foregoing, the Court considers that the interference with the applicant'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. (...)

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that the applicant may claim to be a "victim" for the purposes of Article 34 of the Convention;
2. *Holds* that there has been a violation of Article 11 of the Convention read in the light of Article 9; (...)'

NOOT

1. Beide bovenstaande arresten hebben betrekking op de toepassing van de Russische wet op de godsdienstvrijheid en de religieuze genootschappen, die al ten tijde van de totstandkoming zeer omstreden was. De aanvankelijke wet werd in de tweede helft van de jaren '90 opgesteld door de Russische Doema en had als overduidelijke bedoeling de binnenkomst van buitenlandse religieuze groeperingen tegen te houden. Tegenstanders stelden indertijd dat de wet een voorkeurspositie gaf aan de Russisch-orthodoxe Kerk en religieuze groeperingen die met het regime collaboreerden beloonde.[1] De erkenning van andere religieuze genootschappen werd op deze manier bijna onmogelijk gemaakt. De wet stuitte indertijd niet alleen op felle kritiek uit het Vaticaan en de Verenigde Staten, maar ook op een veto van de toenmalige president Jeltsin. De wet werd uiteindelijk met een aantal wijzigingen en afzwakkingen toch aangenomen.[2] Met bovenstaande arresten in de hand kan worden vastgesteld dat de wet nog steeds niet voldoet aan de Europese mensenrechtenmaatstaven met betrekking tot de verenigings- en godsdienstvrijheid. Het EHRM overweegt in § 82 van het arrest over het Leger des Heils dat het feit dat Russische wet het onmogelijk maakt voor buitenlanders om een religieus genootschap op te richten ongerechtvaardigd onderscheid oplevert tussen personen met de Russische nationaliteit en personen met een andere nationaliteit, zodat sprake is van een arbitraire en ongerechtvaardigde inmenging in beide vrijheden.

2. Beide arresten zijn een voorbeeld van een beoordelingswijze door het EHRM waarin de beoordeling of sprake is van inmenging in een van de door het EVRM beschermde rechten en van slachtofferschap in elkaar geschoven worden. Hoewel het opmerkelijk gevonden kan worden dat het Hof eerst stilstaat bij de algemene interpretatie van artikel 9 en 11 EVRM om vervolgens pas te bezien of de klagende organisaties kunnen worden aangemerkt als slachtoffer in de zin van artikel 34 EVRM,[3] is dat in het licht van het feitencomplex in beide zaken niet onlogisch. Zeker in de zaak over het Leger des Heils is wel enige discussie mogelijk over de vraag of deze organisatie als slachtoffer van een inbreuk op de EVRM-rechten moet worden aangemerkt nu – weliswaar na diverse procedures – op nationaal niveau door de rechter is vastgesteld dat de weigering van herregistratie als rechtspersoon onrechtmatig was, de ontbindingsprocedure op last van de rechter is gestaakt en er ook op enig moment in het hele proces een inschrijving in het rechtspersonenregister heeft plaatsgevonden. Voor de Russische regering is dit reden om te betogen dat er geen nadeel meer is aan de zijde van de klager. Het EHRM overweegt in § 64-69 evenwel dat van slachtofferschap ook sprake kan zijn als er geen direct

1 Zie om de schriftelijke vragen in de Nederlandse Tweede Kamer hierover: *Handelingen II* 1996/97, aanhangsel 1608, *Handelingen II* 1997/98, aanhangsel 174 en *Handelingen II* 2000/01, aanhangsel 653.

2 Hoewel de wet uit 1997 op zich alle religies gelijkheid voor de wet toekent, stelt zij strikte eisen aan religieuze praktijken en riten. Verboden zijn onder meer: het gebruik van hypnose, oproepen tot het weigeren van burgerlijke plichten (denk aan gewetensbezwaren tegen militaire dienst, JPL) en weigering op godsdienstige gronden van medische behandeling in geval van een levens- of gezondheidsbedreigende situatie. Dit laatste was in 2004 één van de redenen om de Jehova's Getuigen in Rusland te verbieden. Zie voor meer informatie hierover het *International Religious Freedom Report 2006* over Rusland van het U.S. Department of State, te vinden op www.state.gov/g/drl/rls/irf/2006/71403.htm.

3 Zie daarover de noot van Heleen Janssen bij het *Leger des Heils*-arrest in *EHRC* 2006/141.

nadeel is ondervonden. Daarnaast: de inschrijving in het rechtspersonenregister heeft inmiddels weliswaar plaatsgevonden, maar dat is niet gebeurd omdat de eerdere weigering in strijd geweest zou zijn met EVRM, maar slechts vanwege een administratieve samenvoeging van diverse registers. Dus is er geen rechtsherstel geweest op nationaal niveau. Bovendien is herregistratie als kerkgenootschap nog steeds niet geschied (de regering geeft namelijk zelf aan dat die nu opnieuw aangevraagd zou kunnen worden).[4] Dit alles maakt volgens het Hof dat de rechtspositie van het Leger des Heils wel degelijk aangetast was en nog steeds is. Het Hof wijst er daarbij op dat het niet-hergeregistreerd zijn in andere Russische zaken over religieuze genootschappen die voor het Hof gespeeld hebben met zich bracht dat het betreffende kerkgenootschap niet alle religieuze activiteiten konden ontplooien die andere kerkgenootschappen wel mochten ontplooien (zie § 73-74). Ook wijst het Hof op het risico van ontbinding van de organisatie en inbeslagname van goederen en gelden die voortvloeide uit de weigering van herregistratie. De weigering tot herregistratie als rechtspersoon levert een inmenging op in de mogelijkheid om als collectief op te treden ter uitdraging van bepaalde religieuze opvattingen en betekent daarmee inmenging in de godsdienst- en verenigingsvrijheid.[5]

3. De verwijzing naar de eerdere Russische zaken waarin weigeringen tot herregistratie een rol speelden en de weergave in beide arresten van diverse resoluties van de Parlementaire Vergadering van de Raad van Europa over discriminatie en getreiter door lokale justitiële autoriteiten van buitenlandse religieuze genootschappen doen vermoeden dat het Hof deze beide zaken met enige nadruk in het perspectief van een bredere praktijk heeft willen plaatsen.[6] Het Hof doet het in deze arresten alleen nog niet zo expliciet als in het recente arrest *Ivanova t. Bulgarije* waarin het het ontslag van een zwembadmedewerkster van een school vanwege het feit dat zij lid was van een evangelische gemeenschap zonder meer kenschetst als een illustratie van de landelijke 'policy of intolerance' ten opzichte van dergelijke gemeenschappen.[7]

4. Als het gaat om de beoordeling van de gerechtvaardigdheid van de inmenging in de godsdienst en verenigingsvrijheid volgt het EHRM bekende lijnen uit zijn jurisprudentie. Het Hof benadrukt de waarde van een pluriforme samenleving en van diversiteit in maatschappelijke organisaties, ideeën en tradities en stipuleert vervolgens de grote terughoudendheid die de overheid dient te betrachten bij ingrijpen in de organisatievrijheid van maatschappelijke

4 In de *Scientology*-zaak is het verloop van de nationale procedures vrijwel identiek geweest, maar is het slachtofferschap in zoverre duidelijker dat er recent nog weer een keer een afwijzing van het (elfde) verzoek tot herregistratie heeft plaatsgevonden.

5 Dat aan een religieus genootschap als zodanig – als vertegenwoordiger van zijn individuele leden – een eigen beroep op de godsdienstvrijheid toekomt, dat mede bescherming van de organisatievorm omvat, werd reeds duidelijk in EHRM 26 oktober 2000, *Hasan en Chaush t. Bulgarije, Reports* 2000-IX.

6 In de hierboven niet opgenomen § 47-49 van het Leger des Heils-arrest en § 63 van het *Scientology*-arrest wordt verwezen naar het rapport van het 'monitoring committee' van de Parlementaire Vergadering over de wijze waarop Rusland voldoet aan de verplichtingen en afspraken aangegaan bij toetreding tot de Raad van Europa (Monitoring Committee, doc. 9396 van 26 maart 2002) en naar Resolutie 1277 (2002) en 1278 (2002). Daarin wordt ook stilgestaan bij het feit dat de lokale justitie-autoriteiten zich menigmaal niet aan de wettelijke regels rondom het registreren en bejegenen van 'vreemde' religieuze genootschappen houden en op dit punt niet door hogere autoriteiten gecorrigeerd worden.

7 EHRM 12 april 2007, *Ivanova t. Bulgarije*, appl. no. 52435/99, § 85.

organisaties als politieke partijen en kerkgenootschappen, omdat die zeer waardevol zijn voor de sociale cohesie. Overheidsingrijpen in deze sfeer staat onder strikt Straatsburgs toezicht en de verdragsstaten hebben slechts een zeer beperkte *margin of appreciation* (zie § 61 en 76-77 van het *Leger des Heils*-arrest). Dat is op zich een bekend Straatsburgs standpunt, maar ook gelet op geluiden die af en toe in de Nederlandse politiek opklinken als het gaat om optreden jegens organisaties van buitenlandse oorsprong (vooral Islamitische) vanwege opvattingen of gebruiken die bij ons niet *mainstream* zijn, kan het geen kwaad dat nog eens onder de aandacht te brengen.

5. De voornaamste reden voor het EHRM om in deze beide zaken te concluderen tot een schending van artikel 11 *juncto* 9 EVRM ligt in het willekeurig en niet-wetmatig handelen van de justitiële autoriteiten en rechterlijke instanties in Moskou, onder meer doordat zij de weigering tot herregistratie hebben gebaseerd op het niet-voldaan hebben aan eisen die helemaal niet zo precies in de Russische wet op de religieuze genootschappen te vinden zijn. Het Hof wijst erop dat de wet niet aangeeft dat de aanvraag van herregistratie vergezeld moet gaan van originelen van de door de wet vereiste documenten en dat deze reden voor weigering voor het eerst wordt aangevoerd door de rechtbank en niet bij de eerdere afwijzing door het Justitie-directoraat. Het voegt daar nog aan toe dat een eis van originele stukken ook onhaalbaar zou zijn omdat een genootschap slechts een beperkte hoeveelheid originelen heeft en er geen verplichting voor de overheid is om die te retourneren indien ze opgestuurd worden voor de aanvraag van herregistratie. Een dergelijke eis zou het systeem van herregistratie dus feitelijk onmogelijk maken.

6. Het Hof bouwt in de legaliteitseis ('in accordance with the law') uit de beperkingsclausules van de artikelen 9 en 11 EVRM als het ware enkele beginselen van behoorlijk bestuur in. De wetmatigheid van bestuur als het gaat om beperkingen van de godsdienst- en verenigingsvrijheid vergt volgens het Hof dat beslissingen en rechterlijke oordelen over de weigering tot herregistratie draagkrachtig en kenbaar worden gemotiveerd zodat duidelijk wordt gemaakt welke noodzakelijke documenten ontbraken in de aanvraag of op welke punten onvoldoende informatie is verstrekt en deze gebreken in een hernieuwde aanvraag eventueel kunnen worden hersteld (zie § 91-93 *Scientology*-arrest). Dit zijn beginselen die doen denken aan de artikelen 3:46, 3:47 en 4:5, eerste lid, van onze Algemene wet bestuursrecht.

7. Een klein verschil tussen beide arresten is gelegen in het feit dat het EHRM in § 93 van het *Scientology*-arrest expliciet opmerkt dat de staat onder omstandigheden inderdaad kan weigeren een religieus genootschap als zodanig te registreren indien geen of onvoldoende informatie verstrekt wordt over de geloofsartikelen en -praktijken van de betreffende religie. Zo'n weigering kan gerechtvaardigd worden door de noodzaak om te onderzoeken of het genootschap een bedreiging oplevert voor de democratische rechtsorde. Dat een dergelijke overweging in het *Scientology*-arrest wel voorkomt en in de *Leger des Heils*-zaak niet, zal allicht gelegen zijn in het omstreden karakter van de Scientology kerk in veel Raad van Europa-lidstaten. In landen als België, Duitsland, Frankrijk, Ierland. Italië, Luxemburg, Spanje en het Verenigd Koninkrijk wordt Scientology niet als religieus genootschap erkend. Er zijn legio verhalen over uiterst discutabele praktijken van Scientology en bijna evenveel gerechtelijke

procedures van Scientology jegens personen of overheden die haar in de weg staan.[8] In zijn arrest hoeft het EHRM geen oordeel uit te spreken over de vraag of Scientology inderdaad een religieus genootschap is nu Scientology in Rusland op nationaal niveau erkend is geweest als religieus genootschap en als zodanig heeft gefunctioneerd sinds 1994 (zie § 94).

8. Problemen rond de registratie van religieuze genootschappen zijn geenszins een exclusief Russisch probleem. Veel landen van de voormalige Sovjet-Unie kennen wetgeving die soms nog restrictiever is dan de Russische als het gaat om de toelating van buitenlandse kerkgenootschappen. In haar rapport over 2004 gaf de *Special Rapporteur on freedom of religion or belief* van de VN, mw. Asma Jahangir, aan dat 'registration appeared often to be used as a means to limit the right to freedom of religion or belief of members of certain religious communities'.[9] Als een duidelijk richtsnoer voor een goede praktijk op dit punt verwees zij naar de 'Guidelines for Review of Legislation Pertaining to Religion or Belief' opgesteld door het *Office of Democratic Institutions and Human Rights* van de OVSE in overleg met de *Venice Commission* van de Raad van Europa.[10] In deze richtlijnen wordt onder meer aangegeven dat registratie van een kerkgenootschap geen voorwaarde hoort te zijn voor uitoefening van een bepaalde religie door individuen of voor het organiseren van religieuze samenkomsten door de betreffende gemeenschap, maar alleen voor het verkrijgen van rechtspersoonlijkheid en daaraan verbonden voordelen, en dat de registratieprocedure niet gepaard moet gaan met uitvoerige formeel-administratieve vereisten. Gerelateerd aan dat laatste punt was er dit voorjaar ook in Nederland nog discussie. Dat gebeurde bij de parlementaire behandeling van de nieuwe Handelsregisterwet. In deze wet wordt het handelsregister uitgebreid tot een basisbedrijvenregister waarin ook kerkgenootschappen opgenomen worden. Vraag was of deze registratie beperkt kon worden tot de gegevens van de landelijke 'koepels' of dat alle lokale kerkgemeenschappen en organisaties daarvan zich zelfstandig zouden moeten laten registreren, hetgeen tot een enorme hoeveelheid administratieve lasten voor hen zou leiden. Uiteindelijk werd door de Tweede Kamer een amendement-Van der Vlies aanvaard waarin is neergelegd dat bij algemene maatregel van bestuur nader wordt geregeld op welke wijze de registratie van kerkgenootschappen moet gaan plaatsvinden, waarbij het de bedoeling is om een zodanige regeling te treffen dat de administratieve lasten zo laag mogelijk blijven en er zoveel mogelijk kan worden volstaan met registratie van de koepelgegevens.[11]

8 Illustratief is het background paper over Scientology van de Duitse Ambassade in Washington op http://www.germany.info/relaunch/info/archives/background/scientology.html.

9 VN Doc. E/CN.4/2005/61, § 55-58.

10 Te vinden op www.osce.org/documents/odihr. Aan de Nederlandse inzet bij de voorbereiding van dit OVSE-document lag onder meer een studie van de Adviesraad Internationale Vraagstukken ten grondslag (AIV-advies no. 21, juni 2001: Registratie van gemeenschappen op het gebied van godsdienst of overtuiging).

11 Zie artikel 6 lid 3 Handelsregisterwet 2007, *Stb.* 2007, 153 en *Kamerstukken II* 2006/07, 30 656, nr. 24.