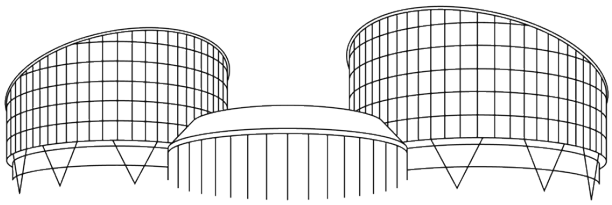

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF AVILKINA AND OTHERS v. RUSSIA

(Application no. 1585/09)

JUDGMENT

STRASBOURG

6 June 2013

FINAL

07/10/2013

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

In the case of Avilkina and Others v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 14 May 2013,

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

PROCEDURE

1. The case originated in an application (no. 1585/09) 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 Administrative Centre of Jehovah's Witnesses in Russia represented by its Chairman, Mr Vasiliy Mikhailovich Kalin ("the applicant organisation"), and three Russian nationals, Ms Yekaterina Sergeyevna Avilkina, a minor represented by her mother Ms Yelena Nikolayevna Avilkina, Ms Nina Nikolayevna Dubinina and Ms Valentina Alekseyevna Zhukova ("the applicants"), on 19 December 2008.

2. The applicant organisation and the applicants were represented by Mr J. Andrik, Mr A. Chimirov, and Mr R. Daniel, lawyers practising in the USA, Russia and the United Kingdom, respectively. The Russian Government ("the Government") were represented Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that the disclosure of their medical files to the prosecutor's office amounted to a violation of their right to respect for their private life.

4. On 6 May 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant organisation is a religious organisation, the Administrative Centre of Jehovah's Witnesses in Russia, located in St Petersburg. The second applicant, Ms Yekaterina Sergeyevna Avilkina, was born in 2006 and lives in Nalchik. The third applicant, Ms Nina Nikolayevna Dubinina, was born in 1959 and lives in Murmansk. The fourth applicant is Ms Valentina Alekseyevna Zhukova, was born in 1956 and lives in the Leningrad region.

A. The authorities' inquiry into the applicant organisation's activities

6. On 23 September 2004 the Committee for Salvation of Youth from Destructive Cults ("the Committee") wrote to the Russian President targeting primarily the beliefs and practices of the applicant organisation and accusing it of extremism. The letter also contained a request for an inquiry into the applicant organisation's activities.

7. On 16 November 2004 the Committee's letter was forwarded by the President's Administration to the St Petersburg City Prosecutor's Office. The ensuing inquiry disclosed no unlawfulness in the applicant organisation's activities.

8. On 28 March 2005 the Committee lodged another complaint against the applicant organisation. It was rejected on 4 April 2005. Subsequently the Committee introduced six more complaints. All of them were rejected following an inquiry.

9. During the period between 7 March 2005 and 3 May 2007 the applicant organisation addressed five letters to the authorities asking about the results of their inquiries. The prosecutor's office responded that the applicant organisation's activities had revealed no violations. The applicant organisation's request to review the relevant file was refused.

10. According to the applicant organisation, within the framework of the inquiries the City Prosecutor's Office interacted with other State agencies, submitted religious literature for expert examination, studied medical files of members of the applicant organisation, intervened in a school matter without parental consent and examined repeated complaints from organisations and individuals.

11. On 1 June 2007 a St Petersburg Deputy City Prosecutor asked the St Petersburg Public Health Committee to instruct all the city's medical institutions to report every refusal of transfusion of blood or its components by Jehovah's Witnesses. The prosecutor's letter read as follows:

> "In response to the order of the Russian Federation Prosecutor General's Office, the city prosecutor's office is investigating the lawfulness of the activity of the religious organisation known as the Administrative Centre of Jehovah's Witnesses in Russia.
>
> The ideology of the said organisation forbids its adherents to accept transfusions of blood or blood components. An investigation has established that in a series of cases refusals of blood transfusions hindered the administration of qualified medical care and aggravated the illness.
>
> In view of the above, I request that you instruct all medical institutions in St Petersburg to inform the committee, without delay, of any incidents of refusal of transfusion of blood or its components by individuals who are members of the said religious organisation."

12. On 4 June 2007 the City Prosecutor's Office dismissed the applicant organisation's request for access to the materials compiled by it in the course of the inquiries.

B. Disclosure of medical information

13. From 2 February to 5 April 2006 the fourth applicant underwent surgical treatment in a state hospital without the use of foreign blood or blood components. On 25 January 2007 the Kurortnyy District Prosecutor's Office asked the hospital to submit her medical record.

14. On 26 July 2007 the fourth applicant learnt that the District Prosecutor's Office had reviewed her medical documents and information on the treatment methods and their results.

15. On 26 March 2007 the third applicant was admitted to a public hospital. She chose to have non-blood management treatment for her condition which the hospital did not agree to provide. On 18 April 2007 she was discharged from hospital. She was then admitted to a private hospital for a surgical intervention. The public hospital did not report her case to the prosecutor's office.

16. On unspecified dates the second applicant underwent chemotherapy in a public hospital, following a non-blood management treatment plan. In response to the Deputy City Prosecutor's request (see paragraph 11 above), the doctors informed the Public Health Committee and the prosecutor's office of her case.

C. Domestic litigation

17. On an unspecified date the applicant organisation and several of its members, including the second, third and fourth applicants, lodged a complaint against the prosecutor's office whereby they asked the court (1) to declare unlawful the inquiries carried out by the prosecutor's office in connection with the applicant organisation's activities; (2) to instruct the

authorities to cease their interference with the rights and lawful interests of the applicant organisation and to discontinue the investigation into its activities; (3) to declare unlawful the decision of the prosecutor's office of 4 June 2007 refusing access to the investigative materials; (4) to order the prosecutor's office to return the medical documents to their respective owners and to require the destruction of the relevant materials, if any, held by the authorities; (5) to order the prosecutor's office to return the religious literature to the applicant organisation in its entirety and undamaged; (6) to oblige the prosecutor's office to provide the applicant organisation with the findings of the expert study of the applicant organisation's religious literature; (7) to instruct the prosecutor's office to restrain the Committee and other similar organisations from their attacks against the applicant organisation; (8) to instruct the prosecutor's office to take appropriate measures regarding malicious and unfounded allegations against the applicant organisation in the event that any such allegations contained slander, defamatory statements, or signs of extremism or were untrustworthy.

18. On 27 March 2008 the Oktyabrskiy District Court of St Petersburg granted the applicants' claims in part. It pronounced unlawful the prosecutor's office's decision of 4 June 2007 and instructed it to grant the applicant organisation's representatives access to the materials from the inquires. The remainder of the application was dismissed.

19. As regards the third applicant's allegedly premature discharge from the public hospital, the court noted that this issue was beyond the scope of the applicants' complaint against the prosecutor's office.

20. The court noted as follows in respect of the disclosure of the second and fourth applicants' medical files:

> "According to Article 61 of the Basic Principles of Public Health Law, information concerning medical consultation, an individual's health, his or her diagnosis and other data obtained in the course of examination or treatment shall be considered confidential (medical secret). A patient is guaranteed confidentiality of the data he or she provides.
>
> Accordingly ... it should be acknowledged that information on blood transfusion and the method of treatment of a patient, is considered confidential, and the disclosure of such [information], in the absence of [the patient's] consent, by a person privy to it as a result of their studies or professional duties is permissible only in the instances provided for in part four of Article 61 of the Basic Principles of Public Health Law.
>
> It is true that, in the letter dated 1 June 2007 ... the St Petersburg Deputy Prosecutor advised the chairman of the St Petersburg Public Health Committee to order all medical institutions in St Petersburg to inform the said committee of each refusal of transfusion of blood or its components by members of the Jehovah's Witnesses, and to forward such information received by the committee to the St Petersburg Prosecutor's Office ... .
>
> ...

According to part 4 § 3 of Article 61 of the Basic Principles of Public Health Law, as in force before the amendments were introduced ... on 24 July 2007, the prosecutor, in connection with an investigation, had a right to apply to a medical institution with a request to disclose confidential medical information.

The court finds incorrect the argument of the representative [of the applicant organisation] and of [the second applicant] that the prosecutor had the power indicated above only when conducting a criminal investigation and not when conducting an investigation concerning compliance with laws, inasmuch as [the wording of Article 61] did not refer to such a restriction. The letter of the St Petersburg Deputy Prosecutor of 1 June 2007 ... was sent to the chairman of the St Petersburg Public Health Committee before [Article 61] was amended and cannot be considered to be in contravention of the law.

...

The request of the Kurortnyy District Prosecutor's Office of St Petersburg of 25 January 2007 ... sent to [the oncology centre where the fourth applicant underwent treatment] requesting [her] medical history file concerned only the information regarding the possibility of blood transfusion for [the fourth applicant], the reasons for her refusal of such treatment and the consequences of her refusal ... ."

21. On 2 July 2008 the St Petersburg City Court upheld the judgment of 27 March 2008 on appeal.

22. According to the applicant organisation, the prosecutor's office failed to comply with the judgment of 27 March 2008 ordering the latter to allow the applicant organisation to review the materials of the inquiry. The applicant organisation's representatives were allowed to review only ten per cent of the materials in question.

II. RELEVANT DOMESTIC LAW

23. The Basic Principles of Public Health Law of the Russian Federation (in force at the relevant time) provided as follows:

Article 61. Confidential medical information (medical secret)

"Information concerning medical consultation, an individual's health, his or her diagnosis and other data obtained in the course of examination or treatment shall be considered confidential (medical secret). ...

Confidential medical information cannot be disclosed by a person privy to it as a result of their studies or their professional, employment-related or other duties, except as provided for in parts three and four of this Article.

A person or his legal representative may consent to the disclosure of confidential medical information to other persons, including officials, for the patient's examination and treatment, scientific research, publications, training and other purposes.

Confidential medical information may be disclosed without the consent of the individual or his legal representative:

...

3) At the request of investigating bodies, a prosecutor or a court in connection with an investigation or judicial proceedings."

Article 69. The individual's right to appeal against actions of state bodies or officers infringing the individual's rights and liberties in the public health sphere

"Actions of State bodies or officers which infringe the individual's rights and liberties set forth in the present Basic Principles in the sphere of public health may be appealed against to higher State bodies or officials or to a court in accordance with the applicable legislation."

24. The Federal Law on the Prosecutor's Office in force since 1992, as amended, provides as follows:

Article 22. The prosecutor's power [as regards legal compliance]

"1. When carrying out the duties incumbent on him or her, the prosecutor may:

...

..., conduct inquiries in respect of materials and requests received by the prosecutor's office ... ;

Summon State officials and private parties in order to obtain their explanations as regards violations of the law."

Article 27. The prosecutor's power [as regards protection of human rights and freedoms]

"1. In performing his or her functions, the prosecutor shall:

Examine and consider reports, complaints and other statements concerning [alleged] infringements of human rights and liberties;

Explain to the persons concerned the procedure to follow to protect their rights and liberties;

Take measures to prevent and to stop violations of human rights and liberties, prosecute individuals who break the law, and have any damage repaired;

... ."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

25. The second, third and fourth applicants complained that the prosecutor's office had asked the doctors to disclose the information contained in their medical files without their consent and in the absence of any criminal investigation warranting such disclosure. As a result, confidential medical information had been disclosed in respect of the second and fourth applicants. The applicants referred to Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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. Admissibility

26. The Court observes, and it is not disputed by the parties, that no disclosure of the third applicant's medical files took place (see paragraph 15 above). It follows that the complaint brought by the third applicant under Article 8 of the Convention is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a), and must be rejected in accordance with Article 35 § 4 thereof.

27. The Court notes that the complaint raised by the second and fourth applicants (hereinafter "the applicants") is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Whether there was interference with the applicants' right to respect for their private life

(a) The parties' submissions

28. Referring to the Court's case-law (*Rotaru v. Romania* [GC], no. 28341/95, § 43, ECHR 2000-V; *Leander v. Sweden*, 26 March 1987, § 48, Series A no. 116; and *I. v. Finland*, no. 20511/03, § 35, 17 July 2008), the second and fourth applicants submitted that the information requested by the prosecutor's office was confidential medical information and fell within the ambit of the protection afforded by Article 8 of the Convention. It was handed over by the medical institutions to the prosecutor's office without their consent. Furthermore, the second applicant's mother had expressly asked the head doctor of the medical institution where the second applicant was undergoing treatment that confidential medical information should not be disclosed to the prosecutor's office. The fact that the second and fourth applicants adhered to the beliefs practised and advocated by Jehovah's Witnesses, including the refusal of blood transfusion, was of no relevance. By choosing to adhere to the beliefs of a particular religion an individual did not automatically forfeit the right to respect for private life guaranteed by the Convention.

29. The Government argued that the disclosure of the applicants' medical files to the prosecutor's office did not constitute an interference with their private life. The applicants were practising Jehovah's Witnesses who publicly advocated their religious beliefs, including the refusal of blood transfusion. In the Government's view the applicants had forfeited their right to confidentiality of the medical documents attesting to their refusal of blood transfusions. Besides, the disclosure of the applicants' medical files to the prosecutor's office had not entailed any negative consequences for them.

(b) The Court's assessment

30. The Court observes that it has previously held that personal information relating to a patient belongs to his or her private life (see, *I.*, cited above, § 35). It also takes into account the position of the Russian national courts that reviewed the applicants' case and concluded that the information concerning the methods of their medical treatment should have been treated as confidential (see paragraph 20 above).

31. The Court further observes that the medical institutions where the second and fourth applicants underwent treatment were public hospitals for whose acts the State is responsible for the purposes of the Convention (see *Glass v. the United Kingdom*, no. 61827/00, § 71, ECHR 2004-II).

32. There is therefore no doubt, in the Court's view, that the disclosure by State hospitals of the second and fourth applicants' medical files to the prosecutor's office constituted an interference with the applicants' right to respect for their private life as secured by Article 8 § 1 of the Convention. It remains to be ascertained whether the interference was justified in the light of paragraph 2 of that Article.

2. Whether the interference was justified

(a) "In accordance with the law"

(i) The parties' submissions

33. The applicants considered that, by requesting the disclosure of medical files in respect of patients who were Jehovah's Witnesses, the prosecutor's office had excessively and arbitrarily extended the meaning of the relevant provisions of the legislation in force at the material time. There had been no criminal action or suspicion of criminal activities on the part of the applicants which could have justified the disclosure. The prosecutor's office had merely been "fishing" for information. In the applicants' view the relevant legislative provisions could not be interpreted in so unrestrictive a manner as to grant the law-enforcement agencies access to confidential medical information without any relation to a specific criminal investigation. That opinion was supported by the fact that the domestic legislation had subsequently been amended by removing the prosecutor from the list of authorities entitled to request the disclosure of confidential medical information without the patient's consent.

34. The Government considered that the disclosure of the applicants' medical files to the prosecutor's office had been carried out in strict compliance with the laws in force at the relevant time. The national courts at two levels of jurisdiction had reviewed the applicants' arguments as regards the interpretation of Article 61 of the Basic Principles of Public Health Law and rejected them as erroneous. In the national courts' view the prosecutor was entitled to request the disclosure of confidential medical information when supervising the activities of certain individuals or organisations and verifying their compliance with the law.

(ii) The Court's assessment

35. The Court observes that the interpretation of the phrase "in accordance with the law" is well developed in the Court's case-law and has been summarised as follows (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, §§ 95-99, ECHR 2008):

> "95. The Court recalls its well-established case-law that the wording "in accordance with the law" requires the impugned measure both to have some basis in domestic law

> and to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention and inherent in the object and purpose of Article 8. The law must thus be adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct. For domestic law to meet these requirements, it must afford adequate legal protection against arbitrariness and accordingly indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise (see *Malone v. the United Kingdom*, 2 August 1984, §§ 66-68, Series A no. 82; *Rotaru v. Romania* [GC], no. 28341/95, § 55, ECHR 2000-V; and *Amann* cited above, § 56).
>
> 96. The level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed (*Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI, with further references)."

36. Turning to the circumstances of the present case, the Court accepts the Government's argument that the disclosure of the applicants' medical files to the prosecutor's office had a basis in domestic law, in the Basic Principles of Public Health Law (see paragraph 23 above). The Court also notes that it was not disputed by the parties that the law in question was "accessible".

37. The Court also takes note of the applicants' argument that the legislative provisions in force at the material time governing the cases where disclosure of confidential medical information was permissible were worded in rather general terms and might have been open to extensive interpretation. The Court considers it essential, in this context, to have clear, detailed rules governing the scope and application of measures, as well as minimum safeguards concerning procedures for the disclosure of such information, thus providing sufficient guarantees against the risk of abuse and arbitrariness (see, *mutatis mutandis*, *S. and Marper*, cited above, § 99). The Court notes, however, that in this case these questions are closely related to the broader issue of whether the interference was necessary in a democratic society. In view of its analysis in paragraphs 43-54 below, the Court does not find it necessary to decide whether the wording of Article 61 meets the "quality of law" requirements of Article 8 § 2 of the Convention.

(b) Legitimate aim

(i) The parties' submissions

38. The applicants did not comment.

39. The Government submitted that the disclosure of the second and fourth applicants' medical files pursued the legitimate aim of protecting public health and the rights of individuals in this area. Such disclosure was necessary in order to avoid the risk of death or serious harm to a patient's health, especially in cases involving minors.

(ii) The Court's assessment

40. While the Court does not consider the Government's argument that the prosecutor's power to order the disclosure of confidential medical information served the State interest of law enforcement to be beyond dispute, similarly to its finding in paragraph 37 above, the Court considers that, in the circumstances of the case, it may dispense with ruling on the issue. To the extent that it is relevant to the assessment of the proportionality of the interference it will be addressed in paragraphs 43-54 below (see, *mutatis mutandis*, *Christian Democratic People's Party v. Moldova*, no. 28793/02, § 53, ECHR 2006-II)

(c) Necessary in a democratic society

(i) The parties' submissions

41. The applicants reasoned that the State's action in targeting members of a religion in general and covertly obtaining the personal medical files of individual members and interfering with their medical treatment was clearly unnecessary. The disclosure of their medical files had been completely unjustified. As regards the medical treatment, the applicants had made a personal and sound choice. The disclosure had been excessive in view of the negative medical consequences for the applicants. The prosecutor's interference had seriously complicated the second applicant's treatment process and obstructed the use of alternative non-blood methods of treatment, including erythropoietin. The attitude of the medical personnel towards her had noticeably deteriorated. Besides, on 18 September 2007 an article had appeared in the media in which one of the doctors openly discussed the second applicant's case. The fourth applicant had been unable to consult the medical institution where she had previously been treated because of the threat that her medical file would again be disclosed.

42. The Government cited certain cases from Russian medical practice where the national courts had overridden the decision of the parents of a minor patient to refuse medical assistance because they were Jehovah's Witnesses. They conceded that the second or fourth applicants' refusal of blood transfusions had not involved any serious risk to their health or life. The disclosures had been carried out within the framework of the inquiry carried out by the prosecutor's office. In the Government's view the collection of medical data on refusals of blood transfusions by Jehovah's Witnesses would help determine what measures the authorities needed to take in order to avoid jeopardising patients' safety, to protect the rights of medical personnel who treated Jehovah's Witnesses and to safeguard the rights of minor patients.

(ii) The Court's assessment

43. In determining whether the impugned measures were "necessary in a democratic society", the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify them were relevant and sufficient and the measures were proportionate to the legitimate aims pursued (see, for example, *Peck v. the United Kingdom*, no. 44647/98, § 76, ECHR 2003-I).

44. The Court notes from the outset that the crucial issue in the present case is the protection of personal data. The applicants' rights to personal autonomy in the sphere of physical integrity and religious beliefs, examined at length in earlier cases, is not at issue (see, for example, *Jehovah's Witnesses of Moscow v. Russia*, no. 302/02, §§ 131-42, 10 June 2010).

45. The Court reiterates that the protection of personal data, including medical information, is of fundamental importance to a person's enjoyment of the right to respect for his or her private and family life guaranteed by Article 8 of the Convention. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. The disclosure of such data may seriously affect a person's private and family life, as well as their social and employment situation, by exposing them to opprobrium and the risk of ostracism (see *Z v. Finland*, 25 February 1997, §§ 95-96, *Reports* 1997-I). Respecting the confidentiality of health data is crucial not only for the protection of a patient's privacy but also for the maintenance of that person's confidence in the medical profession and in the health services in general. Without such protection, those in need of medical assistance may be deterred from seeking appropriate treatment, thereby endangering their own health (see *Z.*, cited above, § 95, and *Biriuk v. Lithuania*, no. 23373/03, § 43, 25 November 2008). Nevertheless, the interests of a patient and the community as a whole in protecting the confidentiality of medical data may be outweighed by the interest of investigating and prosecuting crime and in the publicity of court proceedings, where such interests are shown to be of even greater importance (see, *Z.*, cited above, § 97).

46. The Court further reiterates that in cases concerning the disclosure of personal data, it has recognised that a margin of appreciation should be left to the competent national authorities in striking a fair balance between the relevant conflicting public and private interests. However, this margin goes hand in hand with European supervision (see *Funke v. France*, judgment of 25 February 1993, Series A no. 256-A, p. 24, § 55) and the scope of this margin depends on such factors as the nature and seriousness of the interests at stake and the gravity of the interference (see *Z*, cited above, § 99).

47. Turning to the circumstances of the present case, the Court observes that the applicants were not suspects or accused in any criminal investigation. The prosecutor merely conducted an inquiry into the activities of the applicants' religious organisation in response to complaints received

by his office. The medical facilities where the applicants underwent treatment did not report any instances of alleged criminal behaviour to the prosecutor's office. In particular, it was open to the medical professionals providing treatment to the second applicant, who was two years old at the time, to apply or to ask the prosecutor to apply for judicial authorisation for a blood transfusion if they believed her to be in a life-threatening situation. Likewise, there is nothing in the materials before the Court to suggest that the doctors who reported the fourth applicant's case to the District Prosecutor opined that her refusal of a blood transfusion was not an expression of her true will but rather the product of pressure exerted on her by other adherents of her religious beliefs (see, *mutatis mutandis*, *Jehovah's Witnesses of Moscow*, cited above, §§ 137-38). In such circumstances, the Court does not discern any pressing social need for requesting the disclosure of the confidential medical information concerning the applicants. It therefore considers that the means employed by the prosecutor in conducting the inquiry need not have been so oppressive for the applicants.

48. In this connection the Court does not lose sight of the fact that there were options, other than ordering the disclosure of confidential medical information, available to the prosecutor to follow up on the complaints lodged with his office. In particular, he could have tried to obtain the applicants' consent for the disclosure and/or questioned them in relation to the matter (see paragraphs 23-24 above). Nevertheless, the prosecutor chose to order the disclosure of the confidential medical information without giving the applicants any notice or an opportunity to object or to agree.

49. The Court takes into account the interpretation of the applicable legislation by the domestic courts that at the relevant time the prosecutor's power to request the disclosure of confidential medical information without the patient's consent was not limited to criminal proceedings against the individual concerned (see paragraph 20 above), but could be exercised in connection with any "investigation" carried out by the prosecutor's office. The Government did not deny that the law placed no specific limits on the prosecutor's authority to obtain a person's medical records. Nor did the relevant legal provisions contain any indication as to who might be affected by such disclosure, or the procedures to be observed.

50. Admittedly it was open to the applicants to challenge the lawfulness of the prosecutor's order before a higher-ranking prosecutor or a court after the disclosure had taken place (see paragraph 23 above). The applicants made use of that opportunity. Their grievances were reviewed by national courts at two levels of jurisdiction.

51. Referring to the unlimited power of the prosecutor to request the disclosure of confidential medical information, the courts found the disclosure to be in compliance with the law and dismissed the applicants' claims. The Court discerns no mention in the text of the judgments of any

efforts by the national authorities' to strike a fair balance between the applicants' right to respect for their private life and the prosecutor's activities aimed at protecting public health and individuals' rights in that field. Nor did the authorities adduce relevant or sufficient reasons which would have justified the disclosure of the confidential information.

52. Accordingly, in the Court's view the opportunity to object to the disclosure of the confidential medical information once it was already in the prosecutor's possession did not afford the applicants sufficient protection against unauthorised disclosure.

53. The above considerations are sufficient for the Court to conclude that the collection by the prosecutor's office of confidential medical information concerning the applicants was not accompanied by sufficient safeguards to prevent disclosure inconsistent with the respect for the applicants' private life guaranteed under Article 8 of the Convention.

54. It follows that there has been a violation of Article 8 of the Convention arising from the disclosure of the applicants' medical records for the purposes of an investigation conducted by the prosecutor's office.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 8

55. All applicants complained under Article 14 of the Convention read in conjunction with Article 8 that the individual applicants had been discriminated against on account of their membership of the Jehovah's Witnesses 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."

56. The applicants argued that the whole substratum of the prosecutor's request for disclosure of confidential medical records was that the patients were Jehovah's Witnesses. No similar disclosure had been requested in respect of any other group of patients. Accordingly, the disclosure of the applicants' medical records amounted to unlawful discrimination and constituted a violation of Article 14 read in conjunction with Article 8. The applicants had been treated in the same way as criminals or suspicious characters whose personal data and private life had to be impinged upon in the public interest.

57. The Government considered that the disclosure of the second and fourth applicants' medical files had not been discriminatory. The prosecutor's office had carried out an inquiry in response to complaints lodged by two public associations which alleged, *inter alia*, that the activities of the Jehovah's Witnesses religious organisation were in violation of people's right to receive medical assistance.

A. Admissibility

58. The Court considers that this complaint, in so far as it concerns the second and fourth applicants, is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

59. The third applicant and the applicant organisation were not directly affected by the alleged violation of the Convention. They could not therefore claim to be victims of that violation, as required by Article 34 of the Convention. Accordingly, the Court notes that this part of the application is incompatible *ratione personae* with the provisions of the Convention, within the meaning of Article 35 § 3.

B. Merits

60. The Court reiterates 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).

61. In the circumstances of the present case and in view of the fact that the Court has found a violation of the second and fourth applicants' rights under Article 8 of the Convention, it considers that there is no need to examine the same facts from the standpoint of Article 14 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

62. Lastly, the applicants complained under Article 6 of the Convention of the unfairness of the civil proceedings they had been a party to. The second applicant alleged under Articles 8 and 14 of the Convention that she had been refused treatment in a public hospital because of her religious beliefs. The applicant organisation complained under Articles 9, 11 and 14 of the Convention about the allegedly abusive and excessive manner of the authorities' investigation into its activities. Lastly, the applicants relied on Article 13 of the Convention.

63. In the light of all the material in its possession and in so far as the matters complained of are within its competence, the Court finds that these complaints do not disclose any appearance of violations of the rights and fundamental freedoms set out in the Convention and its Protocols. It follows that the case in this part must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The second and fourth applicants each claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

66. The Government considered the applicants' claims excessive. In their view, no compensation should be awarded to them under this head.

67. The Court grants the second and fourth applicants' claims in full and awards each of them EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicants also claimed the following amounts for the costs and expenses incurred before the domestic courts. The second applicant claimed RUB 22,235 for the work performed by Mr A. Chimirov, RUB 10,716.4 for the pre-trial assistance provided by Ms S. Mikheyeva, RUB 13,200 in travel costs and RUB 700 for court fees and other costs paid by her. The fourth applicant claimed RUB 12,235.69 for the work performed by Mr A. Chimirov, RUB 6,716 for the pre-trial assistance provided by Ms S. Mikheyeva, and RUB 1,100 for court fees and other costs paid by her. Furthermore, for the costs and expenses incurred before the Court the second and fourth applicants each claimed EUR 1,400 for the work performed by Mr R. Daniel. The applicants submitted copies of the corresponding receipts and invoices.

69. The Government considered the applicants' claims unreasonable and excessive. They noted that the applicants had failed to submit the contracts they had entered into with the lawyers. The receipts and invoices submitted did not have stamps or signatures to confirm that the payments had actually been made. They further proposed that the claims in respect of the fee

claimed by Mr R. Daniel be dismissed in full. Referring to the information obtained from the website of certain attorneys practising in St Petersburg, they reasoned that the applicants' case was not complex and, accordingly, the fee charged by Mr A. Chimirov was excessive. As regards Ms S. Mikheyeva, she had not represented the applicants before the domestic courts.

70. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sums of EUR 2,522 and EUR 1,880, to the second and fourth applicants respectively, covering costs under all heads, plus any tax that may be chargeable to them.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 8 of the Convention and Article 14 of the Convention read in conjunction with Article 8 concerning the disclosure of the second and fourth applicants' medical files admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 14 of the Convention read in conjunction with Article 8;

4. *Holds*
   (a) that the respondent State is to pay the applicants, 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 the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 5,000 (five thousand euros) each to the second and fourth applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,522 (two thousand five hundred and twenty-two euros) to the second applicant, plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(iii) EUR 1,880 (one thousand eight hundred and eighty euros) to the fourth applicant, plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 6 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President