



## Obtaining consent for Jehovah's Witnesses' collecting of personal data necessary to protect rights of others

In today's Chamber judgment<sup>1</sup> in the case of [Jehovah's Witnesses v. Finland](#) (application no. 31172/19) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 6 (right to a fair trial) of the European Convention on Human Rights, and**

**no violation of Article 9 (freedom of thought, conscience and religion).**

The case concerns the obligation for individual Jehovah's Witnesses to obtain consent when collecting personal data during their door-to-door preaching.

The Court found in particular that the domestic authorities had correctly balanced the interests of the applicant community with the rights of individuals as regards their personal information, holding that obtaining consent had been necessary.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

### Principal facts

The applicant community, Jehovah's Witnesses (*Jehovan todistajat*), is a Finnish religious community based in Vantaa (Finland).

In 2000 the Data Protection Ombudsman issued an opinion that during the Jehovah's Witnesses' door-to-door visits personal data could only be collected *with* the consent of the individuals in question.

A complaint was taken to the Ombudsman in 2011, alleging that the Jehovah's Witnesses' notes amounted to a "personal-data file". The Jehovah's Witnesses argued that there was no obligation on individual members to return any information to the organisation, and in any case the information was given freely by people at the doorstep. The case went to the Data Protection Board, which ruled that the Jehovah's Witnesses were prohibited from collecting data without meeting the general prerequisites for processing personal and sensitive data set out in law, that is to say without the unambiguous consent of the person whose data it was. It gave the applicant community six months to ensure that collected data met the requirements for such activity.

The applicant community and two individual Jehovah's Witnesses appealed to the courts, in particular seeking to have the Board's order amended so that information collected during door-to-door preaching would be seen as for "personal purposes or for comparable ordinary and private purposes only". The Helsinki Administrative Court partly allowed the applicant community's appeal, annulling the decision. It held, among other rulings, that the applicant community was not the "controller" of the data in question, but that the express consent of the person concerned was nevertheless required for the collection and processing of such data. The Ombudsman appealed in 2015.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

In 2016 the Supreme Administrative Court adjourned the proceedings in order to seek a preliminary ruling from the Court of Justice of the European Union (“CJEU”). In 2018 the latter court held, among other findings, that “in the course of their preaching, those [Jehovah’s Witness] members [made] at least some of the data collected accessible to a potentially unlimited number of persons”.

The collecting of data during evangelising therefore did not fall into the particular categories of data for private or household use.

In 2018 the Supreme Administrative Court quashed the Helsinki Administrative Court’s annulment of the Board’s decision. It decided that an oral hearing was unnecessary, as it had already received written submissions from all witnesses. It held, with reference to the CJEU’s findings, that the collection of data by Jehovah’s Witnesses could not be seen as private data for personal use. Even though door-to-door preaching was also part of the personal religious activity of individual Jehovah’s Witnesses, it was actually organised, coordinated and encouraged by the applicant community. The Jehovah’s Witness community was therefore the “controller” of the data, and thus responsible.

## Complaints, procedure and composition of the Court

Relying on Articles 6 (right to a fair trial), 8 (right to respect for private and family life), 9 (freedom of thought, conscience and religion) 10 (freedom of expression) and 14 (prohibition of discrimination) , and Article 1 of Protocol No. 12 (general prohibition of discrimination), the applicant community complained, in particular, of the lack of an oral hearing in the domestic proceedings, and of the prohibition on note-taking without the consent of the interlocutor while evangelising.

The application was lodged with the European Court of Human Rights on 10 June 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Arnfinn Bårdsen (Norway), *President*,  
Jovan Ilievski (North Macedonia),  
Egidijus Kūris (Lithuania),  
Pauliine Koskelo (Finland),  
Lorraine Schembri Orland (Malta),  
Diana Sârcu (the Republic of Moldova),  
Davor Derenčinović (Croatia),

and also Hasan Bakırcı, *Section Registrar*.

## Decision of the Court

### Article 6

The Court reiterated that in the following circumstances it could be possible to dispense with an oral hearing: where there were no contested facts; in cases that had a purely legal or simple points-of-law scope; where cases were highly technical and therefore might be better dealt with in writing.

It noted that the applicant community had not requested an oral hearing before the Data Protection Board. It had requested an opportunity to present evidence orally during its appeal, without specifying what the evidence in question was or why it was necessary. The administrative court had not seen a need to hold an oral hearing. The Court agreed with that ruling. In the proceedings before the Supreme Administrative Court, the applicant community applied for an oral hearing during the last round of submissions. The Supreme Court saw no need to examine witnesses – all of whom had already given written testimony – orally.

Looked at holistically, the Court stated that the applicant community had had every opportunity to put forward evidence and make arguments over the seven years that the issue had been before the national authorities.

The Court was satisfied that the legal issues at stake had not required an oral hearing for their examination and that there had therefore been no violation of Article 6 of the Convention.

### Article 9

The Court reiterated the importance of freedom of conscience, thought and religion for democratic societies, including the freedom not to hold a belief or practice a religion.

It accepted that the requirement to obtain the consent of individuals whose data the Jehovah's Witnesses had been processing had interfered with the community's Article 9 rights. That interference had been clearly "prescribed by law" as it had been set out in the Personal Data Act and confirmed by the CJEU and the Finnish Supreme Court. The Court was satisfied that restrictions had had the legitimate aim of protecting "the rights and freedoms of others" within the meaning of Article 9 § 2 of the Convention. The core question that remained was whether this interference had been "necessary in a democratic society".

The Supreme Court had reasoned that the restrictions had not been restrictions on religious freedom, but had been there so as to protect the rights of others with regard to the processing of their personal data, finding that the personal or household exemption did not apply. It had correctly balanced the rights of the applicant community against the rights of individuals whose data was being taken.

The Court noted that the relevant law had applied to all religious communities, and that no fine had been imposed on the Jehovah's Witness community in this particular case. It stated that the requirement to obtain consent was necessary in order to prevent disclosure of personal and sensitive data, and that requirement had not hindered the Jehovah's Witnesses' freedom of religion.

In the light of this, the Court held that there had been no violation of the applicant community's right to freedom of thought, conscience and religion.

### Other articles

As Article 9 was to be considered *lex specialis* in the case, it did not consider that there was a need to examine the complaints under Article 10.

It found the complaints under Articles 8 – regarding individual Jehovah's Witnesses' right to privacy – inadmissible as the applicant community lacked standing as regards Article 34 of the Convention, and those under Article 14, and Article 1 of Protocol No. 12 to the Convention inadmissible for failure to raise the complaints before the domestic authorities.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.