

THE JEHOVAH'S WITNESSES CASE: TESTING THE 1997 LAW "ON FREEDOM OF CONSCIENCE AND RELIGIOUS ASSOCIATIONS" AND THE RUSSIAN LEGAL PROCESS

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I. INTRODUCTION

Since the fall of Communism in 1991, Russian citizens have faced economic and cultural, as well as political, upheaval on an enormous scale. In a society where so much was predictable, now there is chaos and uncertainty. Where there was once a strong sense of national identity, now there is fragmentation.

In 1996, a deputy to a Moscow regional legislative assembly wrote, "Where is the intelligent force that will unite us, Russians, for the sake of a bright life?"¹ This search for a new, national idea to replace the abandoned crutch of Communist ideology inspired Boris Yeltsin that same year to commission a government team to explore the issue.² The team traveled the length and breadth of the country, asking Russians what it meant to be Russian.³ Sadly, it failed to produce any significant findings. "Seeking to fill this vacuum," as one commentator put it, Yeltsin opponents in the legislature (Nationalists, and Communists "backed by the Russian Orthodox Church") in June 1997 passed a bill promoting their own national idea—to officially elevate Russian Orthodoxy to a preeminent position.⁴ Three months later President Yeltsin, ignoring threats from the West, signed into law the overwhelmingly popular bill, "On Freedom of Conscience and Religious Associations" [hereinafter OFCRA].⁵

1. Guriy Sudakov, *Six Principles of Russianness, or When Will Russia Have a Kingdom of Denmark Holiday?*, ROSSIYSKAYA GAZETA, Sept. 17, 1996, translated in F.B.I.S.-SOV-97-059. In answer to his own question, Guriy Sudakov noted that many were beginning to lean toward religion by flocking to the Russian Orthodox Church, although he believed this was insufficient.

2. Holger Jensen, *Finding Unity in Intolerance*, J. COM., Oct. 17, 1997, at 11A, LEXIS, Nexis Library, J. Com. File.

3. *Id.*

4. *Russia Adopts Federal Law on Freedom of Conscience*, ITAR-TASS, June 23, 1997, F.B.I.S.-SOV-97-174. Describing the Patriarch's assumed role vis-à-vis the collective Russian soul-searching at that time, Harold Berman writes:

The Moscow Patriarchate respects the rights of others, including their legal rights, but it subordinates them to divine duties, and especially now to the duty to help to restore the spiritual identity of the Russian people at this time of crisis when the very soul of the Russian people is in danger of being lost.

Harold J. Berman, *Freedom of Religion in Russia: An Amicus Brief for the Defendant*, 12 EMORY INT'L L. REV. 313, 313 (1998) [hereinafter *Amicus Brief*].

5. *O svobode sovesti i o religioznykh ob'edineniiakh*, Federal'nyi zakon 4465, Sobr. Zakonod. RF, 1997, No. 39, Item 4465. [hereinafter OFCRA]. On September 19, 1997, the Russian Parliament passed a cosmetically amended, Yeltsin-approved version of the bill on a vote of 358-6 with four abstentions. Anton Medvenko, *Duma Passes Yeltsin-Proposed Freedom of Conscience Law*, INTERFAX, Sept. 19, 1997, F.B.I.S.-SOV-97-262. Six days later the bill was signed into law. Natalya Panshina, *New Religion Law Passed Through Federation Council*, ITAR-TASS, Sept. 25, 1997, F.B.I.S.-SOV-97-268. In an amendment to its foreign aid bill, the United States Congress had threatened to withhold an estimated \$195 million in aid to Russia

The purpose of this Article is not to discuss the merits of OFCRA,⁶ nor its constitutionality *per se*, but rather to examine how a post-Soviet Russian court handled OFCRA's first test, and to discuss what that process reveals about the Russian legal system today. OFCRA's first test began in April 1998, in a small district court in Moscow. A local prosecutor brought suit to ban Jehovah's Witnesses from the city, claiming the religious organization had violated OFCRA. It took almost three years before the district court judge would finally decide to dismiss the case, on February 23, 2001.

This Article will present the first Western study of the Jehovah's Witnesses case. Parts II-V will provide a detailed summary and analysis of the court's proceedings—from pre-trial maneuvers to suspension of trial in March 1999, a decision that appeared to leave OFCRA in limbo. In a trial covered by Western media, the confrontation of the traditionally Soviet judge-prosecutor paradigm with Western-financed defense attorneys, knowledgeable of, not only Russian, but also international law, seemed to paralyze the court.

Part VI will show, however, that events outside the courtroom during the two-year pre-verdict interim contrast with the quagmire of the court's indecision. Jehovah's Witnesses, though threatened, continued to thrive in Russia. Long before the Moscow District Court's sanction, the Justice Department officially granted the Witnesses reregistration, and even extended the OFCRA deadline for registering other religions. Yet OFCRA, with its numerous provisions for liquidating minor religions and its discriminatory registration rule that defies international law, remained on the books. The Russian Constitutional Court voiced its right to uphold OFCRA's restrictive registration provision. Yet the Court swore allegiance to international law, and overruled a lower court that had denied a smaller Jehovah's Witnesses congregation registration.

Part VII will discuss the final stage of the original Jehovah's Witnesses trial in Moscow. It will review the strained court proceedings as the trial resumed, the court's difficult verdict, and early reactions to the first court's decision.

Part VIII, a recent update to this writing, briefly describes the appeal, the resultant remand, beginning of the retrial, and prospects for the future.

The Article will show that the Jehovah's Witnesses case tests not only OFCRA, but also the Russian legal system as a whole.⁷ The first Golovin-

if Yeltsin signed the bill. *U.S. Senate's Objections to Russian Religious Law Noted*, MOSCOW ROSSIYSKIYE VESTI, July 18, 1997, F.B.I.S.-SOV-97-199.

6. This topic has already been treated in depth by T. Jeremy Gunn, *Caesar's Sword: The 1997 Law of the Russian Federation on the Freedom of Conscience and Religious Associations*, 12 EMORY INT'L L. REV. 43 (1998); Arina Lekhel, *Leveling the Playing Field for Religious "Liberty" in Russia: A Critical Analysis of the 1997 Law "On Freedom of Conscience and Religious Associations"*, 32 VAND. J. TRANSNAT'L L. 167 (1999). See also Irina G. Basova, *Freedom Under Fire: The New Russian Religious Law*, 14 TEMP. INT'L. & COMP. L.J. 181, 189-98 (2000).

7. At the time of writing this article, the author did not realize the full extent of this

skiy court proceedings will demonstrate a shift from the traditional judge-prosecutor paradigm and xenophobic law, to respect for a Western-funded defense and recognition of international law. In her 1993 study, Frances Foster argued that the trial against the newspaper *Izvestiia* suggested a "marked divergence between law and reality" in Russia at that time.⁸ Unabated activities and even official recognition of the Jehovah's Witnesses during the long interim while the first court deliberated, were affirmed by that court's agonizing decision to dismiss the case. Even the Constitutional Court's dictum, in a concurrent case that OFCRA was still potentially valid, was trumped by its affirmation of international law, and its decision to permit a smaller Jehovah's Witnesses congregation to continue to practice.

The analysis of the first court's proceedings in this Article draws heavily on Jehovah's Witnesses websites.⁹ Jehovah's Witnesses spokesperson, Judah Schroeder, also provided valuable insights and information not available on the Web. To counteract potential bias, the above information was supplemented with reports from Russian and Western media, and amplified by the studies of international scholars. Any remaining bias is due to the preponderance of information supplied by Jehovah's Witnesses, without which this Article would not have been possible. The author asks the reader's forbearance.

II. THE JEHOVAH'S WITNESSES CASE: PRE-TRIAL MANEUVERS

A. *Climate Before Trial*

A *Moscow News* correspondent, writing in 1997 before OFCRA was even proposed, described his encounter with a picketer outside a Jehovah's Witnesses meeting.¹⁰ The picketer was waving a poster that read, "Sectarians, get out of Russia!" When the correspondent asked the picketer what he disliked about Jehovah's Witnesses, the picketer showed him an article, "Religious Syphilis Outbreak in Kamchatka," accusing the sect of trying to raise money through prostitution rings that were spreading venereal disease

statement, as the pendulum would swing again after the original trial, with the prosecution's appeal to the Moscow Municipal Court, that would remand the case to the district court for retrial. See Part VIII, *infra*. The author's comments here are largely based on the original trial, as OFCRA's "first test." Although the process of the shifting paradigm is curiously repeated in the retrial, the outcome of the retrial is unknown as of this writing. If the new judge finds for the prosecution, the recognition of international law will come through the Witnesses' appeal to the European Court of Human Rights, rather than through the decision of the district court judge as in the subject case. Conversation with Judah Schroeder, spokesperson for Jehovah's Witnesses (Jan. 14, 2002) [hereinafter *Schroeder Conversation II*].

8. Frances Foster, *Izvestiia as a Mirror of Russian Legal Reform: Press, Law, and Crisis in the Post-Soviet Era*, 26 VAND. J. TRANSNAT'L L. 675, 730 (1993).

9. See Jehovah's Witnesses in Russia Homepage, at <http://www.jw-russia.org> for transcripts and summaries of the trial as well as copies of the expert study reports.

10. Sergei Ivanenko, *Should We Be Afraid of Jehovah's Witnesses?*, MOSCOW NEWS, Feb. 20, 1997, at 7, LEXIS, Nexis Library, Moscow Times File.

among sailors.¹¹ When asked if he believed the article, the picketer responded, "It doesn't matter. The main thing is that this American sect is destroying Russia's spirituality and culture, and we must stop it."¹²

For several years before the Golovinskiy District Court trial in Moscow, anti-cult groups had been writing to various state agencies demanding a ban on Jehovah's Witnesses. Some criminal cases had gone to court, but all were dismissed due to lack of cause or lack of evidence.¹³ In 1996, two anti-cult organizations, the Committee for the Protection of the Family and the Individual, in St. Petersburg, and the Committee for the Salvation of Youth from Totalitarian Sects, in Moscow (hereafter CSY), filed a joint suit demanding liquidation of the Jehovah's Witnesses Administrative Center in St. Petersburg, and 100 billion rubles in damages for harm inflicted on the mental and physical health of the religion's members.¹⁴ The plaintiffs claimed that by declaring to be the only true religion, Jehovah's Witnesses were inciting religious dissension among non-believers; that the sect refused involvement in political affairs; and was endangering believers' health by prohibiting blood transfusions.¹⁵ In December 1997, the St. Petersburg Municipal Court found that the plaintiffs had no standing to file for liquidation of a religious organization, and thus could claim no damages.¹⁶

B. Expert Studies for the Prosecution

1. Galitskaya-Metlik Study

As evidence for their St. Petersburg case, the plaintiff CSY requested that an "expert study" on so-called "totalitarian sects" be produced by an organization called Russia's Independent Psychiatric Association.¹⁷ Published

11. *Id.*

12. *Id.*

13. Galina Krylova, *Defence Counsel Commentary*, at <http://www.jw-russia.org/eng/frames/moscow.htm>. The Moscow Helsinki group opined that the upcoming trial was "unlawful," and stated that "the civil action is based on materials of a criminal case, which the prosecutor's office maintained against Jehovah's Witnesses for two years and which was closed four times in the absence of *corpus delicti*." *Russia: Group Reports Violation of Religious Freedom in Russia*, MOSCOW INTERFAX, Sept. 23, 1998, F.B.I.S.-SOV-98-266.

14. Krylova, *supra* note 13. During the Soviet era, infiltration of religious organizations by Councils on Religious Affairs, trained by the state secret police (KGB), was common. Lauren B. Homer & Lawrence A. Uzzell, *Federal and Provincial Religious Freedom Laws in Russia: a Struggle for and against Federalism and the Rule of Law*, 12 EMORY INT'L L. REV. 247, 257 (1998). The role of the CSY in this case, to find fault with the Jehovah's Witnesses organization, appears to be similar to that of the Soviet Councils on Religious Affairs.

15. Krylova, *supra* note 13. The claims in Golovinskiy Court will be strikingly similar.

16. *Id.*

17. I.A. Galitskaya & I.V. Metlik, *Expert's Conclusions on the Contents of Beliefs, Teachings and Practices of the Religious Organization of Jehovah's Witnesses* (1996), at http://www.jw-russia.org/eng/MoscowCourt/crt_Experts.htm (last visited Oct. 23, 1999).

a year before the adoption of OFCRA, the study addressed issues that later became incorporated into the new law, some of which were then used to support the prosecution in the Golovinskiy Court case. The authors, I.A. Galitskaya and I.V. Metlik, defined "sect" as "any association with global anti-cultural orientation, that denies all human culture and experience in their totality, except [its] own."¹⁸ They identified Jehovah's Witnesses as such a sect or "destructive cult," and described the cult's practice of "witnessing," i.e. spreading information to recruit new members, as threatening non-believers with the imminent end of the world when only believers will be saved.¹⁹ The authors ominously suggested that Jehovah's Witnesses are so zealous they might even try to provoke such an event, like the gassing of the Tokyo subway by the cult, Aum Shinrikyo, earlier that year.²⁰

Galitskaya and Metlik further claimed that propagating such antisocial views as the Witnesses' end-of-the-world threat "deeply offends the feelings of all Russians."²¹ The authors accused the Witnesses of "exploiting" their believers with time and financial commitments that not only alienate families, friends and colleagues, but also create dangerous psychological and financial dependence on the organization.²² The authors claimed that the Witnesses' mass gatherings were used to "achieve emotional peaks" and to "change one's consciousness."²³

Galitskaya and Metlik also criticized the Jehovah's Witnesses' stance on blood transfusions, echoing a worldwide concern that the religious organization not only precludes believers from "dealing with the situation according to their understanding," but also denies its children medical choice on this issue.²⁴ The study called Jehovah's Witnesses a "serious danger to society."²⁵ Without furnishing specific citations, the authors alleged that the religious organization is "incompatible with international law on human rights and Russian legislation on freedom of worship, education . . . [and] the Russian Constitution."²⁶

18. *Id.* This is similar to one of the claims against Jehovah's Witnesses in the Golovinskiy Court case.

19. *Id.* This will also be a claim in the Golovinskiy Court case.

20. *Id.*

21. *Id.* See OFCRA, *supra* note 5, art. 14(2) (citing "fomenting religious discord" as cause for liquidating a religious organization).

22. Galitskaya & Metlik, *supra* note 17. See OFCRA, *supra* note 5, art. 14(2) (citing "coercion to break up families," as a cause for liquidation).

23. Galitskaya & Metlik, *supra* note 17.

24. *Id.*

25. *Id.*

26. *Id.*

2. Kondratyev Study

In July 1997, on the heels of the Russian parliament's vote in favor of OFCRA, but before President Yeltsin's original veto,²⁷ a second "expert study" was produced on Jehovah's Witnesses.²⁸ The author, F.V. Kondratyev, a psychiatrist at the Health Ministry's V.P. Serbskiy State Scientific Center of Social and Forensic Psychiatry,²⁹ stated that he was director of the group for "the development of materials concerning the negative medico-social consequences of the activities of organizations in Russia that have the character of destructive, totalitarian sects," and that he was writing in response to a CSY inquiry about "the Jehovah's Witnesses cult."³⁰

Kondratyev attacked the *theology* of the Witnesses as "extremely primitive, contradictory, and directed toward people who don't know Orthodoxy," and accused the religious organization of suppressing the rights of its own members.³¹ The author affirmed the Galitskaya-Metlik claims that the Witnesses' belief in Armageddon and the salvation of only believers, is psychologically damaging to others. Kondratyev argued that the "cult's" stand on blood transfusions was medically dangerous to children as well as to adult members.³² The study ended incongruously with a long list of items, not always clearly related to the text, intended to prove the illegality of the "cult's" activities—each item supported by a specific legal citation, as if the psychiatrist had already made his case, and a legal hand were taking over the report.³³ The author concluded that the official registration of Jehovah's Witnesses in Russia should be revoked.³⁴

27. *Yeltsin Warns Parliament Against Adopting Conscience Bill*, INTERFAX, July 23, 1997, F.B.I.S.-SOV-97-204. The controversial law was not passed until September. After a heated national debate, and protests from both the Pope and the United States Congress, which resulted in cosmetic concessions in the form of amendments, the Russian Parliament overwhelmingly passed and President Yeltsin signed into law the new OFCRA. *Details of Yeltsin's Religious Law Passed by Duma*, INTERFAX, Sept. 19, 1997, F.B.I.S.-SOV-97-262.

28. Memorandum from F.V. Kondratyev, to the Chairman of the Committee for the Salvation of Youth (July 10, 1997), available at http://www.jw-russia.org/eng/MoscowCourt/crt_97jul10.htm (last visited Oct. 22, 1999).

29. A New York Times correspondent commented that the Serbskiy Center was "notorious in Soviet times for its 'treatment' of dissidents." Celestine Bohlen, *U.S. Keeping Vigil on Russian Trial of Jehovah's Witnesses*, INT'L. HERALD TRIB., Feb. 12, 1999, at 5.

30. Kondratyev, *supra* note 28.

31. *Id.*

32. *Id.*

33. *Id.* Such items include: "coercion to reject one's own opinions and convictions;" "possibility of psychological impact, belittling the dignity of the people [that is] protected by the State;" "refusal to accept necessary medical assistance;" "destruction of family ties and the fulfillment of family obligations;" "incitement of religious intolerance;" "opposition to or disparagement of the traditional national spirituality of the people of the RSFSR (Russian Soviet Federal Socialist Republic);" "refusal to realize the basic rights and responsibilities of the citizens of the RSFSR." *Id.*

34. *Id.* Registration was the first step required for the legitimacy of any religious organization in Russia, a rule to be affirmed by the not-yet-enacted OFCRA. The similarly named OFCRA of 1990 made registration of religious organizations significantly easier than in So-

C. The Complaint—April 1998

Just four months after the dismissal of the St. Petersburg case against Jehovah's Witnesses, and seven months after OFCRA became law, the prosecutor for the Moscow Northern Administrative District brought suit to ban Jehovah's Witnesses in Moscow.³⁵ The complaint, as stated, was in response to a report from the CSY.³⁶ The prosecutor cited violations of Article 14(2), the "liquidation" provision of OFCRA, constitutional violations, and discrepancies between the Witnesses' practice and their own official manual filed with the Justice Department upon registration, as the grounds for its complaint.³⁷ The allegations, which were similar to those in the dismissed St. Petersburg case, and also reflected the above-described expert studies, included: 1) inciting religious dissension; 2) coercion to destroy the family; 3) members' tendency toward suicide by refusal of medical assistance in life-threatening situations; 4) infringements on citizens' individual rights; and 5) luring teenagers and young children into the "cult" in violation of the Witnesses' manual, that indicates only adults are members.³⁸ Grounds for the allegations were largely theoretical.

viet times, despite the registration policy. See generally Anatoly Krasikov, *From the Annals of Spiritual Freedom: Church-State Relations in Russia*, 7 E. EUR. CONST. REV. 75 (1998) (for a detailed analysis of the effect of the more liberal rule as compared to the more recent OFCRA). See also Lekhel, *supra* note 6, at 189-90; and Basova, *supra* note 6, at 186-87.

35. Prosecutor's Complaint for the Liquidation of the Religious Organization, "Jehovah's Witnesses" and the Ban of Its Activity (Apr. 20, 1998) (No. H-7-02/98) at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Complaint*]. See also WILLIAM E. BUTLER, *RUSSIAN LAW 216-17* (1999). The author notes that Russian legal doctrine, unlike that of Western Europe, regards civil and criminal procedure, "as parts of a larger whole rather than as two entirely distinct legal realms." *Id.* at 216 (emphasis added). Butler adds that, "Unlike Anglo-American proceedings, it is common under Russian law for a *civil suit to be dealt with simultaneously in a criminal proceeding.*" *Id.* at 217 (emphasis added). This may suggest the idea behind the prosecutor's claim, but the technical reason the claim avoids *res judicata* is that in St. Petersburg the Committee for the Salvation of Youth was the plaintiff, while here the plaintiff is the state prosecutor, albeit on behalf of CSY. "Russian law prohibits the bringing and consideration of a suit already settled *between the same parties*, concerning the same subject, and on the same grounds." *Id.* at 223-24 (emphasis added). The only discrepancy between the St. Petersburg trial and the case at hand is a (slightly) different plaintiff.

36. *Complaint*, *supra* note 35. The complaint began by stating that the prosecutor had reviewed the CSY chairman's declaration on the negative effects of the influence of Jehovah's Witnesses, as well as the religious organization's violations of current legislation. The prosecution included in the rationale for its complaint, the Galitskaya-Metlik and Kondratyev expert studies, produced originally for CSY. *Id.*

37. OFCRA, *supra* note 5, art. 14(1). Article 14(1) states that religious organizations may be liquidated for systematic activity that conflicts with the goals of its formation. OFCRA art. 10(1) states that a religious organization must operate on the basis of its bylaws. *Id.* art. 10(1).

38. *Complaint*, *supra* note 35.

1. *Inciting Religious Dissension*³⁹

The first count was based on the Jehovah's Witnesses published materials, which allegedly declared their religion to be the only true religion, and predicted imminent destruction for all others. Non-believers, the prosecutor reported, without offering a citation, were described as "goatlike" or "supporters of Satan's world."⁴⁰ The complaint alleged that this offended the sensibilities of non-believers.⁴¹

2. *Coercion to Destroy Family*⁴²

The prosecution accused Jehovah's Witnesses of causing disruption to normal family life by requiring members to relinquish personal ties outside the organization, and to give up celebrating traditional holidays, such as birthdays, anniversaries, and funerals. The complaint also contended that discord was created within families, where a believer-parent would refuse a blood transfusion for his/her child that the non-believer parent thought was necessary.⁴³ The prosecution cited the fact that the rights of one Natalya Zhuravlyova's father were "stripped" because her Jehovah's Witness mother insisted that the minor carry an identity card, refusing blood transfusions.⁴⁴

3. *Tendency Toward Suicide by Refusing Medical Assistance in Life-Threatening Situations*⁴⁵

The prosecutor's third count was "the danger of suicide," when a Jehovah's Witness patient refuses a blood transfusion on religious grounds. The prosecution cited a Moscow Health Department report, specifically referring to the 1996 case of one patient, P. V. Semitko, who refused a blood transfusion alleged to be medically necessary, after visits from fellow Jehovah's Witnesses.⁴⁶

39. *Id.* See also OFCRA, *supra* note 5, art. 14(2) (stating that the incitement of "social, racial, national or religious discord" shall be grounds for liquidation of a religious organization or prohibition of the activity of a religious organization or religious group (emphasis added)).

40. *Complaint, supra* note 35.

41. *Id.* See also OFCRA, *supra* note 5, art. 14(2) (listing infliction of injury to the morals or health of citizens as cause for liquidation of a religious organization).

42. *Complaint, supra* note 35. This is word for word a specific cause of action, listed under OFCRA 14(2) for liquidation of a religious organization.

43. *Complaint, supra* note 35. This accusation clearly reflected the Galitskaya-Metlik study. Galitskaya & Metlik, *supra* note 17.

44. *Complaint, supra* note 35.

45. *Id.* See also OFCRA, *supra* note 5, art. 14(2) (stating as grounds for liquidation of a religious organization, "a tendency toward suicide or toward the refusal of medical assistance to those in a life-endangering situation"). The lack of punctuation between "tendency toward suicide" and "refusal of medical assistance" seems to imply that the two concepts are linked.

46. *Complaint, supra* note 35.

4. *Infringement of Individual Rights and Freedoms*⁴⁷

For its fourth count, the prosecution cited as its sole evidence the application form for living and working at the Jehovah's Witnesses Center in St. Petersburg. The prosecution argued that the Center's rule, as stated on the form, that candidates must subordinate personal desires and capabilities according to the needs of the Center, belittled human dignity in violation of the Russian Constitution.⁴⁸

5. *Luring Teenagers and Young Children into the Jehovah's Witnesses Organization in Violation of Church Bylaws*⁴⁹

The prosecution claimed that the Witnesses' practice of attracting teenagers and young children to the faith contradicted the religious organization's by-laws, which stated that all members were adult believers.⁵⁰ The prosecution contended that such involvement of minors could create family discord, where parents were of a different faith than the child, because members must give up traditional holidays, and students are told to preach during recess and on holidays and to attend religious meetings.⁵¹

D. *The Defense Objection—August 1998*

In August 1998, the defense filed a point-by-point objection to the complaint.⁵² In its objection the defense counsel, unlike the prosecution, extensively cited specific references to OFCRA, the Russian Constitution, and the European Convention on Human Rights, which Russia had ratified in March 1998.⁵³

47. *Id.* See also OFCRA, *supra* note 5, art. 14(2) (stating as grounds for liquidation of a religious organization, "infringement upon the individuality, rights and freedom of citizens.").

48. *Complaint*, *supra* note 35. Article 21(1) of the Russian Constitution states, "The dignity of the person shall be protected by the state. No circumstance may be a pretext for belittling it." KONST. RF art. 21(1) (1993), available at <http://www.gov.ru:8104/main/konst/konst0.html>, and http://www.uni-wuerzburg.de/law/rs_00000.html (English translation). Note the exact same wording as one of the citations at the end of the Kondratyev study. Kondratyev, *supra* note 28.

49. *Complaint*, *supra* note 35. See also OFCRA, *supra* note 5, art. 10(1) (stating that a religious organization shall operate according to its bylaws).

50. *Complaint*, *supra* note 35.

51. *Id.*

52. A.E. Leontyev, Objection Against the Complaint of the NAC [Northern Administrative Circuit] of Moscow, to the Golovinskiy Circuit Court (Aug. 24, 1998) at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Objection*].

53. *Id.*

1. *Jehovah's Witnesses View their Religion as the Only True Religion*

The defense argued that a person convinced of the rightness of his faith does not violate the law, and accused the prosecution of wanting the Russian government to "carry out ideological control over the conscience and thinking of Russian citizens."⁵⁴ In support of its argument, the defense bombarded the court with constitutional citations including: Article 13, recognizing ideological diversity;⁵⁵ Article 14, guaranteeing that Russia is secular, thus prohibiting an official or mandatory religion, like Russian Orthodoxy;⁵⁶ Article 28, guaranteeing freedom of religion;⁵⁷ Article 29, allowing freedom of thought and expression;⁵⁸ and Article 2, as well as the Human Rights Convention, providing for individual rights and freedoms.⁵⁹ The defense cited its own expert, Religious Studies Professor N.S. Gordienko, who asserted that a critical attitude toward other religions is fundamental to all religions and may not be considered the cause of religious dissension.⁶⁰ The defense concluded its argument by stating that a secular court has no power to determine the legality of a person's religious convictions.⁶¹

2. *The Family Unit is Sacred*

In response to the prosecution's second count, the defense argued that Jehovah's Witnesses were not required to give up relationships outside the organization, but rather were encouraged to live and work with non-believers.⁶² The defense emphasized that the family unit is sacred to Jehovah's Witnesses. If one family member did not recognize another's freedom of conscience, this was an internal family matter.⁶³ The defense further cited

54. *Id.*

55. KONST. RF art. 13(1) (1993).

56. *Id.* art. 14(1).

57. *Id.* art. 28.

58. *Id.* art. 29(1). Article 29(2) of the Russian Constitution expressly prohibits "[p]ropaganda or campaigning, inciting social, racial, national or religious hatred and strife." *Id.* art. 29(2) (emphasis added).

59. Article 2 of the Russian Constitution states that the individual, his rights and freedoms, are of highest value, and that to recognize, maintain, and defend these rights is the duty of the State. *Id.* art. 2. See also Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* Nov. 4, 1950, 213 U.N.T.S. 222 (entered into force Sept. 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 respectively). [hereinafter Human Rights Convention].

60. *Objection, supra* note 52 (construing N.S. Gordienko, Expert Study of April 6, 1998).

61. *Objection, supra* note 52. The defense cited Article 14 of the Constitution, to show that Russia is now a secular state. KONST. RF art. 14(1) (1993) (stating, "Russia is a secular state. No religion may be established as a state or mandatory religion.").

62. *Objection, supra* note 52.

63. KONST. RF art. 23(1) (1993) (guaranteeing the right to individual and family privacy); Human Rights Convention, *supra* note 59, art. 8 (guaranteeing the right to privacy).

the Jehovah's Witnesses' right to peaceful assembly and free association,⁶⁴ and accused the prosecution of contrarily requesting the court to control who associated with whom.⁶⁵

3. *Jehovah's Witnesses Prefer Bloodless Forms of Medical Treatment*

In defense of the controversial Jehovah's Witnesses practice of refusing blood transfusions, the defense argued the rights to religious freedom and to personal inviolability, as guaranteed by the Russian Constitution and the Human Rights Convention.⁶⁶ The defense averred that bloodless methods of medical treatment had the advantage of avoiding the risk of infectious diseases, such as AIDS and hepatitis.⁶⁷ The defense's arguments that each Russian citizen had the right "to choose the type and method of (medical) treatment," and that parents had the right to decide medical treatment for children under 15, were supported by expert opinion prepared by a Russian Parliament committee.⁶⁸ The defense also denied allegations that patient Semitko had experienced pressure from fellow Witnesses, or acted against his own will, and noted that the patient was still alive despite his refusal to undergo a blood transfusion.⁶⁹

4. *To Work at their Religious Center, Members Must Sign a Vow of Obedience*

In challenging the prosecution's accusation that Jehovah's Witnesses lose basic rights and freedoms when they serve at the organization's religious center in St. Petersburg, the defense argued that such service was voluntary, and the vow of obedience to give priority to religious service over personal desires a conscious choice.⁷⁰ This argument was buttressed by the Russian Constitution that gives Russian citizens the right to freedom of thought, conscience, and religion.⁷¹

5. *Children May Prefer the Religion of One Parent Over That of the Other*

In response to the prosecution's final count, the defense contended that both the Human Rights Convention and the Russian Constitution gave Rus-

64. Human Rights Convention, *supra* note 59, art. 11.

65. *Objection, supra* note 52.

66. KONST. RF art. 22(1) (1993); Human Rights Convention, *supra* note 59, art. 14 and art. 8(1).

67. *Objection, supra* note 52.

68. *Id.* (quoting an expert opinion prepared for The Committee for Public Associations and Religious Organizations of the Government Duma of the Russian Federation).

69. *Id.*

70. *Id.*

71. *Objection, supra* note 52. See KONST. RF art. 28 (1993).

sians the right to freedom of conscience and expression of religious faith, and that even OFCRA allowed parents the right to provide a religious upbringing for their children.⁷² The defense asserted that all formal members of Jehovah's Witnesses were indeed adults, but that anyone, including children and teenagers, might participate in the public religious services of any religion.⁷³

E. Attempts to Dismiss

The defense denounced the prosecution's expert studies as unreliable and unscientific.⁷⁴ Defense expert N.S. Gordienko debunked prosecution expert F.G. Ovsienko's analyses of the Jehovah's Witnesses religion as unreliable for lack of scientific evidence of members' actual practice.⁷⁵ In contrast, Gordienko cited a study by acting director of the Department of Religious Studies of the Russian Academy and Ovsienko's superior, Professor M.I. Odintsov, whose evidence-based conclusions contradicted those of his subordinate.⁷⁶ The defense noted that nothing regarding the actual activity of the Jehovah's Witnesses congregation in Moscow was mentioned in the Galit-skaya-Metlik study.⁷⁷

Procedurally, the defense pointed out that the violations of OFCRA alleged by the prosecution took place before the 1997 enactment of the law, and thus were not subject to review by the court.⁷⁸ Nor had the prosecutor previously requested an injunction against these alleged violations. The defense noted that two such orders for injunction were required before suit could be filed to liquidate the Witnesses, making the prosecution's complaint procedurally invalid.⁷⁹ The defense concluded that, because the prosecution had not observed proper procedure for filing suit to liquidate a religious organization, it must have acted in bad faith.⁸⁰ Substantively accusing the prosecution, not only of demanding to revoke Russian rights and free-

72. *Objection, supra* note 52. *See also* Human Rights Convention, *supra* note 59 art. 9 (stating that everyone has a right to freedom of thought, conscience and religion). OFCRA art. 5(2) states that parents or legal guardians shall raise or educate their children with regard to the child's right to freedom of conscience and religion. OFCRA, *supra* note 5, art. 5(2).

73. *Objection, supra* note 52.

74. *Id.*

75. *Id.* (quoting expert opinion prepared by Professor N.S. Gordienko, (Apr. 6, 1998)).

76. *Objection, supra* note 52 (referring to M.I. Odintsov, Study Prepared for Government Duma Committee (Mar. 1998)).

77. *Objection, supra* note 52. *See also, supra* Part II.B.

78. *Objection, supra* note 52.

79. *Id.* The federal law "Regarding Non-Commercial Organizations," requiring two orders to enjoin alleged violations before filing to liquidate a religious organization, was in effect at the time of the alleged violations. *Id.*

80. *Id.*

doms, but of violating Russia's international obligations, the defense requested dismissal of the claim.⁸¹

F. *The Real Contest*

Thus, the swords were drawn. The court had the opportunity to dismiss the case on grounds asserted by the defense. The prosecution appeared to have weak arguments with little substantive evidence, procedural problems, and irrelevant, if not invalid "expert studies." The Jehovah's Witnesses had mounted not only a strong defense, but an attack on the prosecution.

The role of the prosecutor, however, is still powerful in Russia, as it was in her Soviet past.⁸² Such power has not evaporated overnight, despite the demise of the former Soviet Union. A prosecutor in today's Russian court is not to be dismissed lightly, since he or she may in fact be charged with a government mandate.⁸³ The defense, in fact, believed such a *modus operandi* to be operating in this case.⁸⁴

The real contest in this trial is not only between prosecutor and defendant. The real contest is between the established Russian/Soviet judicial system, faced with the imposition of Western judicial methods infiltrating its laws, and Western-supported and even Western-trained attorneys infiltrating its courts.⁸⁵ New freedoms and the contemporary technology of mass communication, no longer allow the Russian judicial system to hide from the

81. *Id.*

82. See FERDINAND J.M. FELDBRUGGE, *RUSSIAN LAW: THE END OF THE SOVIET SYSTEM AND THE ROLE OF LAW* 205-07 (1999). Unlike prosecutors in the West, the prosecutor in Russia, *prokuror*, is a member of the Procuracy, *Prokuratura*, a government agency charged with supervising and promoting the rule of law. In Soviet law the *Prokuratura* was viewed as the fourth branch of government. Members were "completely independent of local government and subordinate only to the Procurator-General." *Id.* at 205. To this day the Procuracy is more rigidly centralized than most state agencies. Its most important instrument is the power to file protests and proposals. The *prokuror* in civil matters is supposed to be an advocate of "those who lacked adequate protection." *Id.* at 206. Ironically here it is apparently the "Russian people," or perhaps underlying the complaint, the powerful Russian Orthodox Church, who is appealing to the prosecution for protection from the defendant minority religious organization. Under the 1992 Law on the Procuracy of the Russian Federation, the Procuracy became responsible for dealing with complaints concerning alleged violations of law which are not "subject to the jurisdiction of ordinary courts." *Id.* at 207.

83. See *id.* at 205-06. "[The Procuracy] was viewed in Soviet law as the fourth branch of government." *Id.* at 205.

84. Defense attorney Krylova reported to the Jehovah's Witnesses, "[T]here is no doubt that the attempt in this case to take the trial out of the legal arena and into the sphere of doctrinal disputes is coming from the government, whose interests are being presented by the prosecutor." See Krylova, *supra* note 13.

85. A.E. Leontyev, who filed the objection, is Russian-trained, as is leading attorney, Galina Krylova. Both are well aware, however, of Western court procedure as well as applicable law, both domestic and international, having attended and participated in numerous Human Rights Conferences abroad. John Burns, also hired to defend Jehovah's Witnesses, is a Canadian attorney. Conversation with Judah Schroeder, Jehovah's Witnesses Spokesperson, (Nov. 22, 1999) [hereinafter *Schroeder Conversation I*].

critical eye of world opinion. The situation poses a real conflict for the Russian judiciary, as will become evident in this case. The test of OFCRA merely provides a playing field for this contest.⁸⁶

III. THE TRIAL BEGINS: THE JUDGE'S ROLE

On September 29, 1998, the trial to ban Jehovah's Witnesses in Moscow opened in Golovinskiy Court, in the Northern Administrative District of Moscow, Judge E. I. Prokhorycheva having failed to dismiss the case.⁸⁷ With the shift to the courtroom, the role of the judge would take on vital importance in the proceeding. A judge in the former Soviet Russia was more than the neutral administrator of law idealized, if not always practiced, in the West.⁸⁸ In describing Soviet civil procedure, William Butler writes, "Well-enshrined . . . was the principle that the State was entitled to take an *active role* in the settlement of civil disputes both through the initiative of the court and the intervention, when necessary, of the Procuracy in a civil proceeding."⁸⁹ The trial to ban Jehovah's Witnesses in Moscow provides a look at whether the role of the judiciary may or may not have changed in post-Soviet Russia.

Transcripts of audio-cassette tapes recorded by Jehovah's Witnesses observers show from the moment the courtroom doors open, that Judge Prokhorycheva, although clearly intelligent and reasonably knowledgeable of the law, was uncomfortably nervous in her position. The crowd was large, the topic volatile, and her first responsibility was to maintain order. Several times the judge cut off the defense's pleadings, and once even the prosecution's.⁹⁰ Her otherwise official speech is peppered with colloquialisms, repeated words and ellipses, indicating hesitation or omission.⁹¹ She appears at the outset to favor the prosecution by admitting new witnesses, despite the

86. Arina Lekhel in her 1999 article voices typical skepticism that local Russian courts would take up a constitutional challenge to OFCRA because "they [were] still adjusting to their new institutional independence." Lekhel, *supra* note 6, at 229. Lekhel notes that "even if judges are able to claim *de jure* institutional independence, many judges are still part of the *nomenklatura*, a Soviet-built establishment, and they are unable to sever personal ties to it." *Id.* at 229 n.368. Lekhel opines, however, that judicial review by the Constitutional Court would provide the only way to invalidate OFCRA. *Id.* at 228. The Jehovah's Witnesses case in Moscow obviously begins closer to the grassroots level.

87. Andrei Zolotov Jr., *Case to Ban Jehovah's Witnesses Starts*, MOSCOW TIMES, Oct. 1, 1998, § 1551, LEXIS, Nexis Library, Moscow Times File.

88. Lekhel, *supra* note 6, at 229 n.369. Lekhel believes that judicial independence is problematic in Russia because it combines two traditions, civil law and socialist, which "relegate judges to servants of the other branches and blind enforcers of legal norms." *Id.*

89. BUTLER, *supra* note 35, at 219 (emphasis added).

90. Chastichnaia Raschifrovka Audiozapisi Sudebnogo Zasedaniia, 29 Sentiabria 1998 [Partial Transcription of Audio-recording of Judicial Hearing] (Sept. 29, 1998) at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter Russian Transcript of Sept. 29].

91. *Id.*

defense's lengthy, detailed protests of bias.⁹² The competency and persistence of the defense, particularly in contrast to the often unsubstantiated arguments of the prosecution, will eventually exacerbate the judge's discomfort. She will use a variety of procedural tools to deal with the situation, some dogmatic, others reflecting the delicate balance required of the judge's "new" position in modern Russia. Her first stance, however, was to hold to traditional pro-prosecutor ground.

A. *Compromises to Avoid Publicity*

The defense first requested removal of the trial to a higher (provincial, as opposed to regional) court, the Moscow Municipal Court, on ground that the earlier St. Petersburg case had shown a district court had no standing to liquidate the religious organization.⁹³ In response, Judge Prokhorycheva answered sharply that she had the right to refuse the case, and since she had not, there was nothing more to be said about it.⁹⁴

Given the large number of people left standing outside the courtroom, some of whom had come from other parts of the country and the world to witness the trial, the defense requested a larger courtroom and permission to video the proceedings. The judge denied the first request on grounds that there was no larger room in the courthouse and noted that she had allowed video-cameras for two minutes, then asked photographers to leave, but would still permit tape recorders.⁹⁵ The court was obviously trying to minimize publicity, but with a significant compromise—allowing tape recorders.

B. *Disallowing Defense Objections to the Prosecution Witnesses*

When the prosecution requested to add Metlik and Dvorkin to their witness list, the defense asked what the circumstances were for adding them, testing possible bias. The prosecution responded vaguely that the new witnesses would be asked to speak about the activity of Jehovah's Witnesses in Moscow. When the defense asked the prosecutor to describe what questions

92. *Id.* The prosecution succeeded in adding to the witness list: I.V. Metlik, co-author of the Galitskaya-Metlik study, which was submitted to the CSY for the St. Petersburg case, and A.L. Dvorkin, who, as the defense indicates, is a priest of the Russian Orthodox Church. *Id.* Lekhel refers to him as a "popular anti-cultist," who has contributed to the "mass hysteria . . . that has found its way into the judicial system." Lekhel, *supra* note 6, at 230 (quoting G.A. KRYLOVA, SVOBODA SOVESTI NA VESAKH PRAVOSUDIJA) [FREEDOM OF CONSCIENCE ON THE SCALES OF JUSTICE] 22 (1998)).

93. See Krylova, *supra* note 13.

94. *Id.* Actually the Golovinskiy Court apparently refused the case at first, but the Moscow City Court, sustaining the prosecutor's protest, ordered the case sent back to the regional level. *Id.*

95. Russian Transcript of Sept. 29, *supra* note 90. The Soviet state would "prevent politically undesirable behavior by simply not allowing the citizen to acquire the means needed (space to meet in, access to media, etc.)." FELDBRUGGE, *supra* note 82, at 218.

would be asked, in order to clarify under what circumstances the prosecutor believed witnesses should be admitted, the judge removed the defense's question and simply agreed to admit the two witnesses.⁹⁶

C. *Allowing Postponement of the Prosecution's Response*

The defense argued that criticism of doctrinal religious literature, on which the prosecution largely based its claims, could not substitute for facts of legal consequence in a court of law. When the prosecutor could not generate more specific facts, the court allowed the prosecutor to give her "response" later, through trial witnesses.⁹⁷ The defense again argued unavailingly that this decision violated its constitutional right to equality in court, by not revealing the claims of the case before trial.⁹⁸

D. *Postponing Response to Defense Request for Medical Records*

The defense asked the court to request medical records for the prosecution's claim of one Witness's refusal of medical help and alleged tendency toward suicide. The judge responded that she would locate the records when necessary.⁹⁹

E. *Admitting Issues From the 1996 St. Petersburg Complaint Under Law that is no Longer Valid*

On grounds that the more liberal Law of Freedom of Religion had been in effect from 1990 until October 1997, the defense argued that issues of the 1996 complaint, which in any event had been dismissed, should not be admitted.¹⁰⁰ The judge responded that in order to hear all sides of the issue, the prosecution's evidence, including witnesses, would be admitted. Three times the judge repeated the word "concrete" to indicate what kind of facts she expected from such witnesses, as if herself responding to the defense's objection that there were no facts of legal consequence.¹⁰¹

96. Russian Transcript of Sept. 29, *supra* note 90.

97. *Id.*

98. Article 19(1) of the Constitution states KONST. RF art. 19(1) (1993) (stating that all people shall be equal before the law and in the court of law).

99. Russian Transcript of Sept. 29, *supra* note 90.

100. These were issues stated in the Galitskaya-Metlik study of 1996. See *supra* Part II.B. Note that the distinction between civil and criminal procedure is more blurred in the Russian legal system than it is in the West. The same courts hear both types of proceeding, and "Russian legal doctrine continues to regard both types of procedure as parts of a larger whole rather than as two entirely distinct legal realms." BUTLER, *supra* note 35, at 216. This approach is sometimes referred to as "Judicial Law." *Id.* at 216 n.1.

101. Russian Transcript of Sept. 29, *supra* note 90.

F. Admitting Prosecution Witnesses, but Refusing Defense Witness Requests

At the prosecution's request, the court admitted, the following witnesses: A.L. Dworkin, an employee of a Russian Orthodox training facility, who had made claims about the "mafia-like nature of sects," A.N. Khvyla-Olinter, who previously had filed suit against Hare Krishnas, and I.V. Metlik, co-author with I.A. Galitskaia of the first expert study for the St. Petersburg trial, an openly declared supporter of the Russian Orthodox Church.¹⁰²

The court denied, however, defense requests to admit Jehovah's Witnesses elders, although they clearly had an interest in the outcome of the case, and Jehovah's Witnesses from abroad, although Dworkin, whom the court had allowed to participate for the prosecution, was from the United States.¹⁰³

G. Admitting Plaintiff in the St. Petersburg Case, the Committee for Salvation of Youth from Totalitarian Sects, as "Third Party"

Possibly the most offensive request from the defense's point of view, was the prosecution's motion that the CSY (Committee for Salvation of Youth) be admitted as a "third party."¹⁰⁴ A CSY complaint to the prosecutor had initiated this trial, but CSY had not directly filed suit in this instance because its previous complaint to ban Jehovah's Witnesses in St. Petersburg had been dismissed.¹⁰⁵ The group was rumored to be affiliated with the Russian Orthodox Church.¹⁰⁶ Russian civil procedure distinguishes between third

102. *Id.* In considering the various requests of the prosecution and the defense to admit certain persons into the case, it is important to understand the role and rights of third party "participants in a case" in Russia. See BUTLER, *supra* note 35, at 222-23. Butler defines "persons participating in a case" as "all who participate in a civil proceeding: plaintiff, third persons, defendant, agencies of State administration, experts, procurator [and] witness." Each of these participants has procedural rights: access to all the materials in the case file, and the right to make copies of anything in that file. Participants may also "challenge the composition of the court, the procurator . . . submit evidence . . . and put questions to other persons participating in the case." *Id.* at 222. They may request expert studies, suspend proceedings, present arguments on any issues which arise, raise objections and even appeal. *Id.* All participants in a case are of course required to act in good faith. *Id.* at 223. The scope of the role which participants in a case may play is extensive, and the desirability for each side to have its participants accepted significant. The admission of participants requested by the prosecution appears to show the Golovinskiy Court's bias, at this point in the trial, to be consistent with Russian/Soviet legal tradition, in favor of the prosecution.

103. Russian Transcript of Sept. 29, *supra* note 90.

104. See *supra* note 102 (discussing the role and rights of third party "participants" in the Russian court system).

105. See *supra* Part II.A, and Krylova, *supra* note 13.

106. A Russian Orthodox Church spokesperson denied rumors that the Committee for the Salvation of Youth was a church organization, but acknowledged that Orthodox Christians might be among its members. Zolotov, *supra* note 87. *The Christian Science Monitor* more explicitly described CSY as "a shadowy organization linked to the Russian Orthodox Church." Fred Weir, *Jehovah's Witnesses on trial in Moscow face ban*, CHRISTIAN SCIENCE MONITOR, Feb. 16, 1999, at 8.

persons who have independent complaints and those who have dependent complaints. Third persons who have independent complaints may enter the case on the side of plaintiff or defendant if the decision could affect their duties with regard to that party.¹⁰⁷ The prosecution argued incorrectly that there was a “legal link” between CSY and the prosecution in that CSY filed the original complaint with the prosecutor’s office, and provided materials, such as the “expert” studies, for the basis of the prosecution’s complaint. The rule, however, states that the “legal link” should be in the effect, not cause, of the complaint on a third party. “Third persons” are defined as those “whose rights and interests may be influenced by the decision in the case.”¹⁰⁸ The defense objected that the CSY did not qualify as a third party because it would not be affected by the outcome of the case.¹⁰⁹

The judge, nonetheless, granted the CSY third-party status on ground that the organization “defends the rights of citizens.”¹¹⁰ This grant was made, despite the fact that CSY had not submitted the proper documents for admission.¹¹¹ This admission brought the party line-up of the Golovinskiy Court civil case closer to the criminal case that was dismissed in St. Petersburg. The judge allowed admittance to all but one CSY member, whose individual suit was concurrently being tried in another chamber of the court.¹¹² A later defense report suggested that the “anti-cultist” CSY participation had been agreed upon in advance, and the court was merely recognizing its own official role in the process.¹¹³

107. See BUTLER, *supra* note 35, at 226-27.

108. *Id.*

109. Russian Transcript of Sept. 29, *supra* note 90.

110. Again the court’s reasoning is facially askew. State agencies and social organizations have the right in certain instances to bring suit in defense of the interests of other persons, or to act in a proceeding already underway in order to give an opinion with regard to a case. BUTLER, *supra* note 35, at 227. It is by no means clear, however, that the suit to ban Jehovah’s Witnesses would fall under any of the categories stipulated for such proceedings: consumer rights, ecological concerns, questions of trusteeship, guardianship, inaccuracies in electoral lists, or anti-monopoly issues. *Id.* The court’s reasoning may be based on the fact that in Russia the general public may take part in civil proceedings through representatives of social organizations. *Id.* at 228. This procedure, originating in Soviet ideological tenets of the early 1960’s, is used in labor, housing, tort, alimony and deprivation of parental rights cases. *Id.* Such representatives must be duly authorized by the sending organization, and “*must be impartial and have no interest in the outcome of the case.*” *Id.* at 229 (emphasis added). Clearly, the court’s reasoning here is in conflict with its decision to allow the CSY in as “third party.” See *supra* note 102 (defining third party “persons participating in a case” and their rights). The court’s ulterior motive is likely adherence to its traditional role of favoring the prosecution. See *id.*

111. Galina Krylova, *Second Attempt available at* <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Second Attempt*] (reporting that CSY never petitioned the court in defense of rights and legally guarded interests of one of the parties in the case, nor would the CSY representative provide basic facts, such as the number of members in their organization, or who approached them with complaints about Jehovah’s Witnesses).

112. Krylova, *supra* note 13.

113. See *Second Attempt, supra* note 111.

H. *Denying the Validity of Photocopied Documents Showing the Jurisdiction of the District Court to be Inappropriate*

The most outrageous move of the judge at this stage of trial occurred after the defense attempted to present documents indicating that the scope of Jehovah's Witnesses' activity in Moscow was beyond the jurisdiction of the Golovinskiy Court.¹¹⁴ The court declared the documents *invalid* on ground that they were photocopied!¹¹⁵ At such moments, even an objective Western observer might wonder who in the higher administration was pulling the strings of the puppet that was the district court judge. The threat that the higher Moscow Municipal Court might remand the case a second time, coupled with the possibility of state government directives behind the scenes, may have been the implied reasons which prevented the normal legal process from removing this trial to its proper jurisdiction.

I. *Rescheduling Trial, Thus Allowing the Prosecution to Develop Its Case*¹¹⁶

The defense, doing the prosecutor's job for them, next requested that the Justice Department be included as a "third party" on grounds that the outcome of the case would affect the Justice Department's duties since the Department would be responsible for enforcing an order to liquidate the religious organization if the plaintiff proved its case. The defense wrote that its only "strategy" in making this request was to keep the case valid, since it was legally mandatory for the Justice Department to participate, according to the Civil Procedure Code.¹¹⁷ Of course, the defense may have had some self-interest in hoping that, in return for gaining its "third party" status, the Justice Department would subsequently be favorable to the defendant.

Explicitly because the Justice Department might require some time to respond, but implicitly perhaps to allow the prosecution more time to de-

114. Russian Transcript of Sept. 29, *supra* note 90. The defense explained that, although the official address of the Jehovah's Witnesses in Moscow was in the Golovinskiy District, their activity was not limited to that district, but extended throughout the city of Moscow. The defense cited the Russian Constitution as stating that no one may be denied the right to have his or her case reviewed by the court and the judge under whose jurisdiction the given case falls. *Id.* See KONST. RF art. 47(1) (1993).

115. Russian Transcript of Sept. 29, *supra* note 90.

116. Arina Lekhel notes that a judge in September 1998 similarly rescheduled the trial of a claim to liquidate a youth organization affiliated with the Unification Church, when the prosecutor was unable to prove the case. Lekhel, *supra* note 6, at 232 n.382.

117. According to defense attorney Krylova, the defense decided to demand adherence to all procedural norms as a matter of principle, even where ignoring such norms to exploit the prosecution's ignorance of the law might have given a tactical advantage. Krylova stated, "Temporary gain and games with the law cannot form the tactics, much less the strategy, of a religious organization in a case that will set a precedent." Krylova, *supra* note 13.

velop its case, the court decided to adjourn until November 17, 1998.¹¹⁸ This opening “trial” was essentially reduced to a hearing.

IV. THE TRIAL REOPENS: JUDICIAL BIAS CONTINUES

At the trial’s reopening on November 17, 1998, the court had banned video and refused a larger courtroom. The Jehovah’s Witnesses case was being allowed to go forward, despite the absence of facts of legal consequence. The court had admitted expert testimony from the dismissed St. Petersburg case and “expert” witnesses in favor of the Russian Orthodox Church, but refused to admit the testimony of the elders of the Jehovah’s Witnesses community. Moreover, the Committee for the Salvation of Youth had been permitted to enter as a third party, defending citizens’ rights (a legal contradiction).¹¹⁹ The court had refused to remove the trial to a higher court, thus giving the prosecution more time to develop its case.¹²⁰

Meanwhile, the prosecutor, T.I. Kondratyeva,¹²¹ had not made the best use of her time to come up with further evidence for her claim. Nevertheless, the judge, as seen below through excerpts from the trial transcripts, continued to find ways to support the prosecution. In a Russian court, the fact that “persons participating in the case” may question each other¹²² creates the spectacle, unusual to Westerner observers, of a defense attorney interrogating the prosecutor and vice versa. The well-prepared defense in this case again went on the attack, demanding that the prosecution defend its claims. To protect the prosecution, the court dismissed many of the defendants’ questions, or allowed the prosecutor to defer questions she could not answer to upcoming witnesses.¹²³ Judge Prokhorycheva’s statements are shown in italics.

118. This decision contradicts the Russian legal system’s usual imposition of strict procedural time periods within which court actions must be decided. According to William Butler, “*unless there are justifiable reasons*, the penalties for failure to comply can be Draconian” (emphasis added). BUTLER, *supra* note 35, at 231. The general period for considering civil cases in Russia is within one month from the date the case was filed. *Id.* The judge may be subject to disciplinary responsibility for failing to comply with the procedural period. *Id.* at 232. Judge Prokhorycheva here appears to be taking a calculated risk, as the deadline is long past the April 1998 filing date.

119. *See supra* note 102. *See also supra* note 110. This suit does not fall under the proper category for such admission, nor is the CSY “disinterested” in the outcome of the case.

120. Russian Transcript of Sept. 29, *supra* note 90.

121. Prosecutor Kondratyeva is no relation to F.V. Kondratyev, the psychiatrist, author of the expert study used by the prosecution, according to Jehovah’s Witnesses spokesperson, Judah Schroeder. *Schroeder Conversation I, supra* note 85.

122. *See supra* note 102.

123. *See Slushaniie dela v Golovinskom mezhmunitsipal’nom sude*, 17-18 noiabria 1998 [Hearing in the Golovinskiy District Court, Nov. 17-18, 1998] at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter Hearing Nov. 17-18].

A. *Dismissing Defense Questions or Deferring Their Response*

On the claim of Jehovah's Witnesses inciting religious dissent by declaring themselves to be the one true faith, the defendant asked the prosecution to name the specific law forbidding a religious organization to declare itself to be the one true faith. "*Withdraw your question.*"¹²⁴ The defendant asked whether the prosecutor's office had ever received declarations from individuals claiming that the Jehovah's Witnesses offended them. The prosecutor confessed she had not. Judge Prokhorycheva: "*There are no such declarations. Next question please.*"¹²⁵

The defendant then asked to specify the time of the Jehovah's Witnesses' alleged violations.¹²⁶ The prosecution responded that Jehovah's Witnesses had been violating the law "since they were registered," but she was not sure what year that was.¹²⁷ The defendant informed the prosecution that the Jehovah's Witnesses organization was registered in Moscow in 1993, and asked why the prosecutor had not filed suit earlier.¹²⁸ The prosecutor hesitantly responded that a criminal case (the dismissed St. Petersburg case) was being investigated earlier, and that it was considered the foundation for this charge.¹²⁹ When the defendant attempted to elucidate that answer from the prosecutor, with its blatant disregard of *res judicata*, the judge interrupted. "[Y]ou have received an answer . . . the prosecutor considered it possible to file this suit in '98. That is all. . . ." ¹³⁰

The prosecution had identified distribution of literature as evidence of inciting religious dissent. The defense again tried to attach specific facts to the claim, "when, in what year, under what circumstances?" "*Withdraw your question.*"¹³¹

On the issue of destroying families, the defense asked, "Of the 10,000 Jehovah's Witnesses in Moscow, how many families were destroyed?" Judge Prokhorycheva: "*Withdraw your question.*" When the defense put the same question to a representative of the CSY, the representative responded that he had no declarations from Jehovah's Witnesses families. "*Next ques-*

124. *Id.*

125. *Id.*

126. *Id.* The defense is clearly seeking evidence as to whether the alleged violations took place before or after OFCRA to determine whether that law, or its more liberal 1990 predecessor, would apply. See *supra* note 34.

127. Hearing Nov. 17-18, *supra* note 123.

128. *Id.* The defense's question not only suggests the need to determine under which law the prosecution's claims were being made, but also hints at the need to follow the rules of expediency, demanded by the Russian Civil Code. See *supra* note 118.

129. Hearing Nov. 17-18, *supra* note 123. Such an admission is surprising since the St. Petersburg case was dismissed. See *supra* Part II.A; and see *Second Attempt*, *supra* note 111.

130. See *Second Attempt*, *supra* note 111.

131. *Id.*

tion please.” When the defense persistently tried to elicit the specifics of the claim, the judge deferred the questions to upcoming witnesses.¹³²

When questioned about Jehovah’s Witnesses’ inclination toward suicide for rejecting blood transfusions, the prosecution could cite no more than one instance, the Semitko case, to show a Jehovah’s Witness refusing blood transfusion, and could not provide the relevant medical record for Semitko.¹³³ When the defense asked on what basis the prosecution was claiming inclination to suicide, given the absence of a relevant medical record, the judge interjected, “*I will request that the attorney give that question after we hear witnesses. . . . Let’s not dwell on that right now.*”¹³⁴

On the issue of infringement of individual rights and freedoms, the defense asked the prosecution to name the citizens whose rights had allegedly been violated. The prosecution was unable to do so. When the defense followed up, “[W]hich rights . . . were violated?” the judge responded, “[*We*] will have that question after the questioning of witnesses.”¹³⁵

The defense asked if the prosecutor was hoping that a ban on Jehovah’s Witnesses would prevent Russian citizens from learning about this religion. The judge dismissed the question.¹³⁶ The defense rephrased the question, specifically citing potential violation of the European Convention on Human Rights, which the prosecutor had said she recognized and accepted. Again the judge dismissed the question.¹³⁷

The defense then appealed to the judge for the right to fairness in court, based on the European Convention of Human Rights. The defense argued that by denying to the defense the prosecutor’s specific accusations, the court was impeding the defense’s preparation of its case.¹³⁸ The challenge was denied.¹³⁹ The defense subsequently challenged the composition of the court on grounds that it was neither impartial nor objective.¹⁴⁰ This challenge was also denied.¹⁴¹

132. *Id.* See also *supra* note 118 (noting the strict time limitations on civil trials).

133. See *supra* Part II.C.3.

134. *Second Attempt, supra* note 111.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Second Attempt, supra* note 111. Here the defense cited *Grazhdanskii Kodeks RF* (Civil Code) [GK RF] art. 145.

139. *Second Attempt, supra* note 111.

140. *Id.* Generally a case is heard by a judge and two assessors. BUTLER, *supra* note 35, at 235. The Russian Constitution provides that everyone shall be guaranteed protection of his or her rights and liberties in a court of law. KONST. RF (46)(1) (1993). The defense was again standing on principle, at the risk of procedural disadvantage. See *supra* note 117. In a Russian court, the bench may not change during trial. Any bench changes require retrial. BUTLER, *supra* note 35, at 235.

141. Given the quick response on the motion to remove the judge, the author assumes here that the lay assessors determine whether there are grounds to remove a judge.

B. *Giving the Prosecutor Not Only More Time, But a New Trial*

Since the prosecutor could provide no more specific claims at the time, the judge, rather than dismissing the case, decided to give the prosecution yet another chance to develop its arguments and evidence. The court adjourned the trial until February 1999, with an explicit directive to the prosecutor to prepare her case.¹⁴² This delay would create, in fact, a long enough interim that a new trial would be required.¹⁴³

Theoretically, this decision to adjourn could be seen as a response to the defense's repeated request for specificity of claims. Procedurally, however, the decision clearly favored the beleaguered prosecutor. The prosecutor was awarded more time, despite the fact that the Russian legal system, following Soviet tradition, imposes strict procedural deadlines within which cases must be heard,¹⁴⁴ and despite the fact that the Russian Civil Code requires that each party show the circumstances which are the bases of their demands and objections.¹⁴⁵ The defense, on the other hand, already prepared for this November trial, will have to make its case all over again in February. At this point, it would appear that the Soviet tradition of the court working hand-in-hand with the prosecutor to reflect the demands of the State, is being upheld, despite its resultant un-Soviet inefficiency.

V. THE "SECOND" TRIAL: A CHANGING PARADIGM?

A. *Week One*

1. *The "Complaint Supplement"*

On January 15, 1999, the state prosecution submitted what it called a "complaint supplement" to the Golovinskiy Court.¹⁴⁶ The claims were the same as those in April 1998: 1) incitement of religious dissension; 2) coercion to destroy the family; 3) inclination to commit suicide by refusing medical treatment; 4) infringement on personal rights and liberties of members; and 5) luring minors into the religious organization.¹⁴⁷ Like the April 1998 claims, these claims were largely based on Jehovah's Witnesses literature. The ultimate request was also the same as in April—to revoke the Je-

142. *Second Attempt*, *supra* note 111.

143. *Id.* Here the defense cited GK RF (Civil Code) art. 161.

144. *See supra* note 118.

145. BUTLER, *supra* note 35, at 223.

146. Prosecutor's Complaint (Supplement) for the Liquidation of the Religious Organization, "Jehovah's Witnesses" and the Ban of Its Activity (Jan. 15, 1999) at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Supplement*].

147. *Id.*

hovah's Witnesses' registration and ban the religious organization from Moscow.¹⁴⁸

2. *A Shift in the State-Prosecutor-Judge v. Defendant Paradigm*

Although the prosecution's complaint was the same, as the "new" trial began on February 9, 1999, Judge Prokhorycheva's attitude toward the prosecution appeared markedly different. The "second" trial began with a surprising concession on the judge's part in favor of the defense. The defense had made five motions; the judge decided to sustain a significant one—the motion to dismiss the CSY as a publicly representative "third party" in the case.¹⁴⁹ As the defense had earlier argued, the case outcome would not affect CSY, as is required for the admission of a "third party" participant, but rather CSY had hoped to affect the outcome of the case!¹⁵⁰ By ruling a new trial, the judge had given herself the opportunity to correct her earlier decision. The persistent defense had at last scored a major point with the judge.¹⁵¹

Judge Prokhorycheva's concession to the defense was, however, limited. She again denied the defense request for a larger courtroom to allow the majority of press, public and international human rights organizations to attend the trial.¹⁵² She again refused to dismiss the entire case on the defense's argument of no material evidence. She also refused to dismiss the prosecution's pre-OFCRA claims and denied a defense motion to counterclaim on grounds that the prosecution was violating the right to freedom of religion, as determined in several Greek cases.¹⁵³ The judge nonetheless took up the

148. Unlike the earlier complaint, however, this one included numerous references—to the prosecution's "experts." *Id.* Page citations to the Jehovah's Witnesses' literature were interspersed throughout the text. *Id.* Twenty-one listed witnesses, of the "approximately 100 citizens" who had complained to CSY, had been summoned. *Id.* At the end of the complaint was an itemization of references to Jehovah's Witnesses' literature for each claim. *Id.* The list suspiciously resembled prosecution expert Kondratyev's list of legal references at the end of his report. See *supra* Part II.B.2; *infra* Part V.C.2, n.183.

149. Summary of February 9, 1999, at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, Feb. 9*].

150. See *supra* note 102. Third party participants are those who do not have the procedural status of a party to the case, but whose rights and interests will be influenced by the decision in the case. They enjoy many of the same rights and privileges as the parties, once they have formally applied, paid duty, and been admitted by the court. BUTLER, *supra* note 35, at 226.

151. Judge Prokhorycheva also decided to postpone, rather than dismiss the defense request to admit a report on Nazi and Soviet liquidation of Jehovah's Witnesses. *Summary, Feb. 9, supra* note 149.

152. *Id.*

153. Gunn, *supra* note 6, at 67 (citing *Manoussakis and Others v. Greece*, 1996-IV Eur. Ct. H.R. 1346). The European Court in *Manoussakis* considered whether Greece, whose citizens are predominantly members of the Greek Orthodox Church, might legally impose restrictions on the activities of minority religions. *Id.* The Court found for the plaintiffs, stating:

The fact that a religion is recognized as a State religion or that it is established as

defense's questioning, which she had dismissed at the November trial, and demanded that the prosecution identify specifically what law it claimed had been violated, and what material evidence showed that Jehovah's Witnesses literature was causing religious dissension.¹⁵⁴

At this relatively more favorable judiciary opening, the encouraged defense seized the upper hand in a kind of role reversal, continuing the court's line of questioning the prosecution about its claim that OFCRA 14(2) had been violated.¹⁵⁵ The prosecutor conceded that only the Jehovah's Witnesses' dissemination of religious literature (not the writings themselves) incited religious dissension, and agreed at least in theory that the international law of the European Court was now incorporated into Russian law.¹⁵⁶ The prosecution insisted, however, that the European Court's decisions applied to individual rights, not to the rights of an organization.¹⁵⁷ Thus, despite the fact that the European Court had protected Jehovah's Witnesses' right to exist in the Greek cases, the prosecution, like the district court judge, stood firmly by its case to ban the religious organization in Moscow.¹⁵⁸

3. Prosecution Motions

On the third day of trial Prosecutor Kondratyeva presented the following motions: 1) to release medical records of two deaths (although there was no proof that either victim was a Jehovah's Witness); 2) to remove defense attorney John Burns because he was a foreigner; 3) to reinstate the CSY as autonomous "people's representative;" and 4) two motions that the judge remove herself from the case due to bias.¹⁵⁹ Judge Prokhorycheva, clearly

official or traditional . . . shall not result in . . . any discrimination against adherents of other religions . . . [including] imposing special restrictions on the practice of other faiths . . . freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the [Human Rights] Convention.

Id. at 68. The defense cited the European Court's decisions in *Kokkinakis, Manoussakis and Tsavachidis*, which based their decision on Article 9 of the Human Rights Convention's grant of freedom of religion, including religious practice. Summary of February 10, 1999, at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, Feb. 10*]. The second clause of Article 9 restricts that freedom, however, to within the limits necessary in a democratic society for the police power interests of "public peace, protection of public order, health and morals, or in defense of the rights and freedoms of others." Human Rights Convention, *supra* note 59, art. 9.

154. *Summary, Feb. 9, supra* note 149.

155. *Id.* OFCRA 14(2) (governing the liquidation of religious organizations). OFCRA, *supra* note 5, art. 14(2). *See also supra* note 102 (the rights of participants in a case to question each other).

156. *Summary, Feb. 10, supra* note 153.

157. *Id.*

158. *Id.*

159. Summary of February 11-12, 1999, at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, Feb. 11-12*]. *See also supra* notes 140, 141. The prosecution's motions to remove the judge appear to be frustrated outbursts rather than reasoned pro-

becoming frustrated with her traditional “ally,” denied all of the prosecutor’s requests.¹⁶⁰ Meanwhile the defense’s consistent attitude of respect for the court, coupled with a thorough knowledge of the contemporary legal process and law, both domestic and international, was encouraging a slight shift in the old state prosecutor-judge versus defendant paradigm. Elements in this traditional society do not adapt easily to change, however. On the fourth day of trial the prosecutor called in sick.¹⁶¹

B. Week Two

1. Claims and Rebuttals

The second week opened with a continuation of the defense interrogating the prosecution concerning the prosecution’s claims.¹⁶² The prosecutor based her claim that Jehovah’s Witnesses were destroying families by not celebrating traditional Russian holidays, disorienting youth, and creating mass psychosis with their threat of Armageddon, largely on a reading of Jehovah’s Witnesses literature.¹⁶³ When she could provide no more concrete evidence, the prosecutor would defer her answers to future witnesses.¹⁶⁴

The defense, when called to the stand, rebutted the accusation that Jehovah’s Witnesses consider themselves to be the one, true religion (thus offending others and inciting religious dissent) by the fact that all religions consider themselves to be the only true religion.¹⁶⁵ In response to the blood transfusion issue, defense attorney Leontyev referred to five expert studies showing that alternative methods to blood transfusions were acceptable, even preferable as they avoid the risk of AIDS or hepatitis.¹⁶⁶ The defense refuted the argument that any further expert studies would be necessary to determine the validity of the Jehovah’s Witnesses organization, citing the

cedure. Prosecutor Kondratyeva’s first motion to dismiss the judge occurred in apparent reaction to the judge dismissing the first motion to release medical records of the two deaths in Kazan, Tatarstan, which the prosecutor claimed were caused by Jehovah’s Witnesses, although there was no evidence to support this claim. The prosecutor’s second motion to dismiss the judge, occurred on the heels of the judge’s refusal to reinstate CSY as a third party participant. *Id.*

160. *Summary, Feb. 11-12, supra* note 159. At one point after the recalcitrant prosecutor refused to answer defense’s questions because her “evidence was still not ready,” the judge requested to put on record that the prosecutor was refusing to adhere to procedure. *Id.*

161. *Summary of February 15, 1999, at* <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, Feb. 15*].

162. *Id.*

163. *Id.*

164. *Id.* For instance, to prove the claim that the religious teaching of Armageddon caused mass psychosis, Prosecutor Kondratyeva promised an upcoming “expert” witness. *Id.*

165. *Summary of February 16, 1999, at* <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, Feb. 16*].

166. Defense attorney Leontyev included expert studies by Russian academics on religious studies, law, hematology and psychiatry in his argument. *Id.*

European Court's decision in *Manousakkis*, "The right to freedom of religion as guaranteed under the (Human Rights) 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."¹⁶⁷

2. *Rift Between Judge and Prosecutor*

A rift appeared to be developing in the traditional prosecutor-judge bond. When the prosecution began to question the defense, the judge dismissed the prosecution's questions concerning religious doctrine and organizational structure as irrelevant.¹⁶⁸ The prosecutor lashed back with a third unsuccessful attempt to remove the judge.¹⁶⁹ Judge Prokhorycheva, trying to move the trial forward, demanded that the prosecutor bring witnesses the following day. The following morning, fifty minutes after the proceedings were to begin, Kondratyeva faxed the court that she could not appear due to "urgent professional activities."¹⁷⁰ In the participatory procedure typical of the Russian court, the judge asked the defense's opinion as to whether to go forward. The judge, however, then ignored the defense's response that they were prepared, and again decided to postpone proceedings in deference to the prosecution, until the following Monday.¹⁷¹

C. *Week Three*

1. *Still No Prosecution Witnesses*

On Monday, February 22, Prosecutor Kondratyeva appeared in court, but still without witnesses.¹⁷² She continued to question the defense, including questions on the Jehovah's Witnesses' religious doctrine.¹⁷³ This tact evoked Judge Prokhorycheva's stern reminder to ask "relevant" questions, and her repeated request for the prosecution to summon witnesses.¹⁷⁴ The

167. *Id.* (quoting the European Court in *Manoussakis and Others v. Greece*, 1996-IV Eur. Ct. H.R. 1346).

168. Summary of February 17-18, 1999, at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, Feb. 17-18*]. The judge's dismissal of prosecutorial questions contrasted with her repeated dismissal of defense questions in September and November. See *supra* Parts III and IV. The judge here appeared to be supporting the defense's argument that theological merits have no place in court. See *supra* text accompanying note 61.

169. *Summary, Feb. 17-18, supra* note 168.

170. *Id.*

171. *Id.*

172. Summary of February 22, 1999, at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, Feb. 22*]. William Butler states that the failure of a participant in the case to appear, depending upon the circumstances, may or may not result in postponement of the trial. It is up to the court to decide. BUTLER, *supra* note 35, at 236. See also *supra* note 118 on the mandate for judicial efficiency.

173. *Summary, Feb. 22, supra* note 172.

174. *Id.* The judge's rebuke of the prosecutor's formerly permitted questions on religion

prosecution responded by asking to include as participant an attorney who previously represented the Committee for the Salvation of Youth, but currently purported to represent the Justice Department.¹⁷⁵ Appropriately by standards of positive law, but not necessarily according to Russian tradition or what Arina Lekhel calls "moral theory,"¹⁷⁶ the court dismissed the prosecution's request to admit the former CSY prosecutor, having officially banned the CSY from participation in the case.¹⁷⁷

The prosecutor next requested an advance copy of the court record in order to begin criminal proceedings against defense attorney Krylova, for comparing the prosecution to the Nazi ban on Jehovah's Witnesses.¹⁷⁸ The court denied this request as well.¹⁷⁹ Again the prosecutor asked a number of questions of defense attorney Leontyev about the religious doctrine of Jehovah's Witnesses. The court reminded the prosecutor to ask "relevant" questions, supporting the defense's earlier argument that theology was not a matter for the court.¹⁸⁰ Judge Prokhorycheva repeated her request that the prosecution bring witnesses.¹⁸¹ The judge's actions in this "new" trial so far suggest that the tide may be shifting in favor of the defense.

appears to be a direct response to the defense's arguments the previous week, based on the Human Rights Convention and European Court decisions.

175. Summary of February 23, 1999, at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, Feb. 23*]. The reader may recall that in the September hearing the defense had moved to add the Justice Department as "participant in the case" on legally mandatory grounds, despite the defense's expectation that this inclusion might be harmful to its case. See *supra* note 117. Here the prosecution persists in trying to revive the dismissed St. Petersburg case. See Part II.A., *supra*.

176. Lekhel, *supra* note 6, at 180. According to the 1995 Law on the Procuracy, prosecutors may not be members of social organizations, which pursue political purposes. Yet Lekhel describes what she calls "Russia's traditional moral theory," as based upon: "(1) autocracy and all-encompassing state control; (2) lack of the inalienable rights concept; (3) great affinity between church and state; (4) orthodoxy as part of Russian national identity; [and] (5) xenophobia. Here the court deliberately excludes "traditional concepts" from the courtroom. *Id.*

177. Summary of February 25, 1999, at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, Feb. 25*]. According to the 1995 Law on the Procuracy, prosecutors may not be members of social organizations, which pursue political purposes. BUTLER, *supra* note 35, at 179.

178. *Summary, Feb. 22, supra* note 172. In November Judge Prokhorycheva had asked the defense which countries had banned Jehovah's Witnesses. Defense attorney Leontyev replied that the Witnesses had been banned in Nazi Germany and in the former USSR. *Second Attempt, supra* note 111. What probably most incensed Prosecutor Kondratyeva, however, was defense attorney Krylova's statement during the current trial that the reasoning behind the Nazi and Soviet bans was the same as that of the prosecutor. *Summary, Feb. 16, supra* note 165.

179. *Summary, Feb. 22, supra* note 172.

180. See *supra* note 61. See KONST. RF, art. 14(1) (1993).

181. *Summary, Feb. 22, supra* note 172.

2. *Expert Testimony for the Prosecution*

On Thursday of the third week of trial, the prosecution finally called three "expert witnesses," who essentially testified against the theology of Jehovah's Witnesses.¹⁸² The psychiatrist F.V. Kondratyev, author of the later expert study used by the prosecution,¹⁸³ opined that Jehovah's Witnesses religious teaching adds to members' stress, creating mental problems. When confronted by the defense with the fact that some of his "expert" statements were taken verbatim from a document by the Moscow patriarchate, Kondratyev replied, "We work from one diskette."¹⁸⁴ Cross-examination indicated that most of this witness's knowledge of Jehovah's Witnesses was based on reading the organization's religious literature and some informal discussion with members. The "expert" had never attended a Jehovah's Witnesses meeting, nor treated a Jehovah's Witness patient.¹⁸⁵

The other two witnesses called by the prosecution claimed to be experts in religious studies. These experts demonstrated the prosecution's greatest fear about Jehovah's Witnesses in Moscow, and the claim probably of least concern to non-Jehovah's Witnesses in the West—the incitement of religious discord. Although facially part of OFCRA's rule for liquidating religions,¹⁸⁶ this issue, as presented by the prosecution, frequently bordered on the controversial topic of theology. I.V. Metlik, co-author with I.A. Galitskaya of the 1996 study on Jehovah's Witnesses made for the CSY, testified that Jehovah's Witnesses do not interpret the Bible correctly, and that the Russian Orthodox Church is more authoritative.¹⁸⁷ The court stumped him by asking what "Jesus" meant, to which Metlik replied, "I don't know."¹⁸⁸ Prosecution expert Frederikh Ovsienko, another alleged religious studies expert, emotionally reiterated the argument that Jehovah's Witnesses incite religious discord by declaring other religions to be false.¹⁸⁹

182. Summary of February 24, 1999, available at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, Feb. 24*]; and *Summary Feb. 25, supra* note 177. The prosecution called a psychiatrist and two religious experts.

183. See *supra* Part II.B.2. F.V. Kondratyev is of no relation to the prosecutor. *Schroeder Conversation I, supra* note 85.

184. *Summary, Feb. 23, supra* note 175. Kondratyev's remark may be more than a metaphor. The author has noted the similarity of style between the attached list of legal citations at the end of Kondratyev's study and the January complaint. See *supra* note 148.

185. *Summary, Feb. 23, supra* note 175.

186. Incitement of "social, racial, national or religious discord" as cause for liquidating a religious organization. OFCRA *supra* note 5, art. 14(2) (emphasis added).

187. *Summary, Feb. 24, supra* note 182.

188. *Id.*

189. *Id.* Ovsienko would remove his glasses and raise his voice for effect. Under cross-examination he admitted the Russian Orthodox Church also proclaimed other religions to be false, but argued that this case was about Jehovah's Witnesses, not Russian Orthodoxy. *Id.*

3. *Expert Testimony for the Defense*

The defense called psychiatrist, V. Kagan, to give expert testimony on the psychological state of the Jehovah's Witnesses community. Kagan described his study of a Jehovah's Witnesses congregation in Moscow, concluding that they were "psychologically normal."¹⁹⁰ He explained that parent-child conflicts were also "normal," especially where parents are rigid.¹⁹¹ The defense called a surgeon with fifty years experience, including the field of trauma medicine, to refute fears about alternative methods to blood transfusion, and to confirm a patient's right to choose treatment.¹⁹²

During the third week, the defense succeeded in avoiding theological debate by using its expert psychiatrist to respond with scientific studies on the normal psychological state of Jehovah's Witnesses. The defense's expert surgeon presented medical evidence of the merits of bloodless medical procedures and informed the court about patient's rights. In contrast, the prosecution experts for the most part failed to present any objective scientific criteria as evidence.¹⁹³

4. *Lay Witnesses for the Prosecution*

Although the court had denied the CSY permission to become a third party participant in the case, the majority of lay witnesses for the prosecution during the third week were all connected to the CSY. The first four witnesses admitted that they were members of the CSY, the last two acknowledged that they had asked the organization for help.¹⁹⁴ At first it appeared that the testimonies of these lay witnesses would be the prosecution's most

190. *Id.* Kagan claimed that his random sampling of 113 members of the Moscow congregation showed not only that members had normal mental health, but that they had generally become more tolerant of other religions since becoming Jehovah's Witnesses. *Id.*

191. *Id.*

192. Summary of February 26, 1999, at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, Feb. 26*]. Dr. Victor Kalnberzs noted that alternative methods were available in Moscow. *Id.* He also commented that the doctor who first performed blood transfusions in Russia had died from a blood transfusion. Kalnberzs claimed that he had seen more people die from blood transfusions than from refusing them. *Id.*

193. Ironically, when the prosecution does attempt to put on a medical expert to testify to the necessity of blood transfusions, the testimony backfires. Dr. N. Omelyanenko, Head of Hematology at the hospital where the Jehovah's Witness patient, P. Semitko, had been treated [see *supra* Part II.C.3], expressly admitted that hospital staff had secretly administered a blood transfusion although the patient had refused it. Summary of March 1, 1999, at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, March 1*]. Upon cross-examination the doctor was asked whether she was aware of the rule of "informed consent." *Id.* She responded that the patient had been hypnotized or "zombified," implying that she was not aware of such a rule. *Id.* The doctor also reported that she had sent the patient's "no blood" card to the President of the Russian Federation and to the Russian Orthodox Patriarch because she had been asked to do so. *Id.*

194. *Summary, Feb. 25, supra* note 177; *Summary, Feb. 26, supra* note 192.

effective evidence. All complained of family break-ups or family problems because a spouse or child had joined the Jehovah's Witnesses.¹⁹⁵

Some parents claimed their children had mental problems or problems adjusting in school, due to the other parent being a Jehovah's Witness, or they feared for the child's health because of the Jehovah's Witnesses stand against blood transfusions.¹⁹⁶ One witness complained that his son had left a responsible position in the military and taken a lower job as errand boy after joining Jehovah's Witnesses.¹⁹⁷ A mother claimed her son was "zombified," a buzzword in Russian society for the negative effect of "totalitarian sects."¹⁹⁸

On cross-examination, however, the defense and the judge impeached the credibility of some of the prosecution's witnesses. One father complained that his son had suffered eyesight, skin problems, and fear of thunderstorms, since the son's mother had joined the religious organization.¹⁹⁹ The defense later showed that the father had beaten his wife, and had custody of the child solely because the mother was a Jehovah's Witness; the mother had subsequently filed a pending suit in the European Court on Human Rights on grounds of religious discrimination.²⁰⁰ Another witness complained that her twenty-eight-year-old son had developed mental problems due to excessive preaching, meetings and Bible study with Jehovah's Witnesses.²⁰¹ The judge then produced the medical file on the son, which indicated that the son had had severe mental problems from childhood, before joining the Witnesses.²⁰² Two of the testifiers, upon cross-examination by the defense, acknowledged that they had been accused of wife-beating.²⁰³

D. Week Four

1. Rebuttals

During the fourth week, the defense called its lay witnesses to rebut the prosecution's evidence. N.V. Nikishina, who had appealed to the European Court on Human Rights for custody of her child currently living with the ex-husband who had beaten her, testified to discrimination in the custody suit because of her membership in Jehovah's Witnesses.²⁰⁴ A daughter, whose fa-

195. *Summary, Feb. 25, supra* note 177; *Summary, Feb. 26, supra* note 192.

196. *Summary, Feb. 25, supra* note 177; *Summary, Feb. 26, supra* note 192.

197. *Summary, Feb. 25, supra* note 177.

198. *Summary of March 2, 1999, at* <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, March 2*].

199. *Summary, Feb. 25, supra* note 177.

200. *Id. Summary, March 2, supra* note 198. *See also Nikishina Application to the European Court of Human Rights at* <http://www.jw-russia.org/eng> (last visited Oct. 22, 1999).

201. *Summary, Feb. 26, supra* note 192.

202. *Id.*

203. *Summary, Feb. 25, supra* note 177; *Summary, Feb. 26, supra* note 192.

204. *Summary, March 2, supra* note 198.

ther had claimed that his wife's joining Jehovah's Witnesses had broken up their marriage, testified that her parents had divorced *before* her mother joined the religious organization.²⁰⁵ An ex-wife, whose ex-husband admitted to "slapping" her although he said it was her fault for joining the Jehovah's Witnesses, testified that they had actually divorced due to his ongoing affair with another woman.²⁰⁶

The son whose father complained about him leaving the military after joining the Witnesses, said his family had had conflicts with the father long before the son joined the religious organization, and that the father had treated his sister very harshly.²⁰⁷ A young man, whose mother had accused Jehovah's Witnesses of exploiting him at their administrative center, brought photographs to show that he was well cared for, not exploited, and reported that he had regular contact with his parents.²⁰⁸ N. Zhuravlyova, whose non-custodial father had complained about her carrying the "no blood transfusion" card, testified that her father never allowed her to visit him.²⁰⁹ An atheist mother of a college-age Jehovah's Witness reported her son's strong relationship with his atheist parents, and excellent grades.²¹⁰ The "zombified" son of still another testifier turned out to be a fifth-level student at the Moscow Conservatory of Music, who played in the Moscow orchestra.²¹¹

Two lay witnesses for the defense testified to discrimination and exile to labor camps for their membership in Jehovah's Witnesses during the Soviet period.²¹² One defense witness, who is currently working at the Jehovah's Witness administrative center, testified that he had tried to meet with CSY to discuss their concerns, but instead CSY had sought litigation.²¹³

2. Justice Department Supports Ban

During the previous week, Judge Prokhorycheva had refused to allow the former attorney for the CSY to represent the Justice Department, since the CSY had been dismissed from the case.²¹⁴ Yet at the beginning of the fourth week, the judge changed her mind, allowing the newly appointed representative to voice the Justice Department's support to ban Jehovah's Wit-

205. *Id.* N. Zhuravlyova testified that since the divorce she has never visited her father, because he would not allow it. *Id.*

206. *Id.* Y. Slobodenyuk first testified that his wife's claim that he was aggressive was a "wild lie." On cross-examination he admitted to "slapping" her once, however. *Summary, Feb. 25, supra* note 177.

207. *Summary* of March 3, 1999, available at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, March 3*].

208. *Summary, March 2, supra* note 198.

209. *Id.* Zhuravlyova's father's testimony appears in *Summary, Feb. 25, supra* note 177.

210. *Summary, March 3, supra* note 207.

211. *Summary, March 2, supra* note 198.

212. *Summary, March 3, supra* note 207.

213. *Id.*

214. *See supra* Part V.A.2.

nesses in Moscow.²¹⁵ The new representative echoed some of the prosecution's claims as grounds for the Department's decision: Jehovah's Witnesses' refusal of blood transfusions, the destruction of families, and the luring of minors into the religious organization.²¹⁶ Although the Justice Department's position confirmed the traditional state-prosecutor link, paradoxically it also enhanced the defense's integrity. At the September hearing the defense had moved to include the Justice Department in the trial as a "third party" participant on purely legal grounds, despite the real risk that the Department might support the prosecution's case.²¹⁷

3. Judge Requests New Expert Study

On March 2, Judge Prokhorycheva suddenly ruled that the expert studies made for the St. Petersburg criminal trial were not applicable at this trial.²¹⁸ This decision appeared to confirm the defense's earlier argument that the case should not be tried at the district level because it had already been dismissed at that level²¹⁹—another point in the defense's favor. The defense's victory, however, was short-lived. The judge immediately pursued the prosecution's original line of argument, by calling for a new expert study on the literature, language and psychology of Jehovah's Witnesses, as compared with teachings of traditional religions.²²⁰ The defense repeated its objection that trying theology violates the decisions of the European Court of Human Rights.²²¹

The following day defense witness, Lyudmila Alekseyeva, president of the International Helsinki Federation, and chairperson of the Moscow Helsinki Group, voiced concern for Russian society's intolerance of diverse viewpoints, and for the slippery slope of human rights violations that might follow a decision in favor of the prosecution.²²² N.S. Gordienko, doctor of philosophy and lecturer in Religious Studies, whose expert study had been at first admitted, but later denied, testified that the charges against the Jehovah's Witnesses were as ridiculous as accusations against the Bible.²²³ None

215. *Summary, March 1, supra* note 193.

216. *Id.* See also *supra* Parts II.C, V.A.1.

217. See *supra* note 117.

218. *Summary, March 2, supra* note 198.

219. See *supra* note 94 (showing that Judge Prokhorycheva had already refused to try the case once, but the higher Moscow City Court had remanded to the district court, despite the fact that the district court case in St. Petersburg, based on similar claims, had been dismissed).

220. *Summary, March 2, supra* note 198.

221. *Id.* Human Rights Convention, *supra* note 59, art 14. See also *supra* notes 153 and 167.

222. *Summary of March 4, 1999, at* <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, March 4*]. Alekseyeva even contested the need for OFCRA, alleging that criminal laws were sufficient to cover crime. *Id.*

223. *Summary of March 5, 1999, at* <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, March 5*].

of the defense witnesses or their arguments, however, were sufficient to dissuade Judge Prokhorycheva from her decision (or possibly mandate) for the new expert study. Despite earlier “skirmishes” with the prosecution, the court by the end of the fourth week seemed to have reverted to Russian judicial tradition, leaning back in favor of its old ally, the prosecution.

E. Week Five

1. Evidence for Dismissal of the Case

As the final week of trial began, the defense continued to argue for dismissal of the case. A Duma Deputy, baptized in the supposedly prosecution Russian Orthodox Church, testified that there was no evidence to support the charges against Jehovah’s Witnesses and, like the psychiatrist for the defense, affirmed that family disagreements over religion are not unique to Jehovah’s Witnesses.²²⁴ As if to counterbalance her threat to delay the case with yet another theologically-based expert study, Judge Prokhorycheva paradoxically agreed to admit into evidence the three European Court decisions (the “Greek cases”), which held that Jehovah’s Witnesses was a religion deserving protection, not banishment.²²⁵

2. Objections to the Court’s Proposed Expert Study

The defense made several objections to the judge’s proposed expert study. First, the obvious effect of the decision would be delay, contradicting the Russian Civil Code that requires trials to be resolved within a month.²²⁶ The defense reminded the court that the prosecutor’s lack of material evidence and lack of preparation had already caused delays, and that the defense should not be further penalized for this.²²⁷ The defense repeated its argument that there was already sufficient evidence to try the case, and reminded the court that the Russian Civil Code only allows an expert to assess the facts of a case, not the theological merits of a religion.²²⁸

224. Summary of March 9, 1999, at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, March 9*]. See also the expert testimony of V. Kagan, *supra* Part V.C.3.

225. Summary of March 10, 1999, available at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, March 10*]. See also *supra* notes 153 and 167.

226. *Summary, March 9, supra* note 224. William Butler describes the Soviet tradition of procedural economy to avoid the errors of czarist times where justice delayed was justice denied. For either plaintiff or defendant, failure to comply with strict procedural deadline could mean a suit would be terminated to the benefit of the opponent. According to Butler, the failure of a court to comply with procedural periods, however, does not affect the proceeding, although the judge may be subject to discipline if such failures become systematic. BUTLER, *supra* note 35, at 231-32. See also *supra*, note 118.

227. Summary of March 11, 1999, available at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, March 11*].

228. *Summary, March 10, supra* note 225. The defense encouraged the court to use the

3. Judge's Response

At first the judge agreed to the defense's recommendation to consider the Justice Department's expert committee report as sufficient evidence for trying the case. The judge even requested that the Justice Department representative be prepared to testify about the study on March 12, 1999.²²⁹ This conciliatory gesture to the defense was quickly reversed the following day, however, when the judge announced she had changed her mind and would *not* allow the Justice Department report.²³⁰ The window briefly opened for the defendant to win on dismissing the case, or at least to obtain a decision, was now slammed shut. Judge Prokhorycheva held the line on her "expert panel" request,²³¹ which could delay the trial indefinitely.

Not only did the judge reverse her decision to admit the expert testimony of the "neutral" Justice Department representative, she also changed her mind on whether her proposed expert study should include comparison to other religions.²³² Such a sudden about-face inevitably leads to speculation as to whether the reversed directives had come from a source higher than Judge Prokhorycheva.

expert study recently done by the Justice Department to evaluate the Jehovah's Witnesses religion for purposes of deciding whether the religious organization should be allowed to reregister. *Id.* The Justice Department, having pronounced itself in favor of banning Jehovah's Witnesses from Moscow, could hardly be said to show bias toward the defense. *Id.* The defense further argued that the judge's proposed expert panel would be considering the very same questions that were asked in the Justice Department's expert study, thus the judge's panel would waste time and resources. *Id.* The new Justice Department representative, however, had no objection to the court's proposed study. Ruling of Golovinskiy Intermunicipal District Court of Moscow, March 12, 1999 at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Ruling*].

229. *Summary, March 10, supra* note 225.

230. *Summary, March 11, supra* note 227.

231. Judge Prokhorycheva described her proposed panel's expected constituency as five members, three to be chosen by the prosecution and two by the defense. *Summary of March 12, 1999, available at* <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Summary, March 12*]. The judge rejected the seven proposed questions submitted by the prosecution and thirteen questions submitted by the defense in favor of her own two: "1) [Do] the literature and documents of Jehovah's Witnesses contain signs of a) incitement of religious discord (undermining respect toward other religions and encouraging hostility toward them), b) coercion to destroy the family, c) infringements on the individual rights and freedoms of citizens? 2) Are the texts of the literature and [writings] of Jehovah's Witnesses subject to study [as] an expression commonly used in religion?" *Ruling, supra* note 228.

232. *Summary, March 11, supra* note 227. Defense attorney John Burns objected to a study of the religion without comparison to other religions as discriminatory, in violation of Article 9 of the Human Rights Convention. *Sudebnoe zasedaniie* (12 marta 1999 g.) [*Judicial Hearing, March 12, 1999*] [hereinafter *Hearing, March 12*]. The defense also moved that literature of the Russian Orthodox Church be allowed in the expert study in order to compare its theological language with that of Jehovah's Witnesses, but the judge overruled the motion. *Summary of March 12, supra* note 231. The reader should note that in the subsequent retrial in October 2001, Russian Orthodox literature was permitted for this purpose. *See infra*, Part VIII.

4. *Deus Ex Machina*

On March 11, 1999, the European Parliament passed a resolution, specifically requesting federal and local officials to guarantee freedom of religion in Russia, citing both the European Convention on Human Rights and the Russian Constitution.²³³ Like a *deus ex machina*, the Parliament faxed to the Golovinskiy Court the following message: "The European Court of Human Rights states that the freedom of religion guaranteed by the Court precludes any action by the State to determine whether religious beliefs or the means of their expression are legitimate."²³⁴ Based on the European Court's statement, cited by the Parliament, the defense moved again to dismiss the case.²³⁵ Judge Prokhorycheva's response was to overrule the motion on ground that the message was faxed and therefore not a valid document.²³⁶ Thus, on March 12, 1999, the final day of trial, the judge ignored an explicit ruling of the European Court, and proceeded with her expert study plan, in direct violation of the Court's ruling and in opposition to the defense's argument.²³⁷ The only window of hope left for the defense was the judge's mandatory procedural announcement that any appeal must be filed within ten days to the Moscow Municipal Court.²³⁸

233. *Summary, March 12, supra* note 231. Both article 9 of the European Convention on Human Rights and article 28 of the Russian Constitution guarantee freedom of religion. The European Parliament's resolution cited the Greek cases, where the European Court on Human Rights had found that Jehovah's Witnesses had the right to practice in Greece. *Id.* See also *supra* note 153 and 167. The resolution emphasized the fact that decisions of the European Court, affecting human rights, according to the Human Rights Convention, are in force for all members of the European Council, including Russia. *Id.*

234. *Summary, March 12, supra* note 231.

235. *Id.*

236. *Id.*

237. *Id.* The fax presents more than a political dilemma for the judge. There may be a conflict of law. The Russian version of the European Convention on Human Rights art. 1(2) states that the generally accepted rules pertaining to human rights supersede the law of the Russian Federation. *Declaration of Human Rights and Civil Liberties*, RUSSICA INFORMATION INC., Nov. 22, 1991 in *LEXIS/Russian Legal Texts/rsfsr/code* of civil procedure. OFCRA 2(2), on the other hand, states that (OFCRA) shall govern any normative legal documents adopted by the Russian Federation on the subject of freedom of conscience and freedom of religion, as well as the activities of religious organizations. What is meant by "normative legal documents" is not specified. Harold Berman aptly describes the complexity of relationship between the international law and OFCRA in light of Russia's spiritual crisis:

The issue . . . is whether . . . [OFCRA] is a violation of the internationally accepted human right of religious freedom, or whether, on the contrary, the internationally accepted human right of religious freedom, as applied to Russia, must be qualified to take account of Russia's present spiritual crisis viewed in the light of Russia's historical experience.

Amicus Brief, supra note 4, at 315. Professor Berman concludes by recommending conciliation, rather than legislation, to resolve what he calls "inter-church" and "inter-denominational" conflicts.

238. *Summary, March 12, supra* note 231. See also BUTLER, *supra* note 35, at 238 (confirming the ten-day limit on appeals, and stating that the higher court reviews the entire case,

5. Appeal

Seven days later, the defense appealed to dismiss the case. The defense argued that the proposed expert study would be used to determine points of law rather than fact, that the appointment of the expert panel violated rules of procedure,²³⁹ and that the questions for the panel were leading and in violation of the right to freedom of opinion.²⁴⁰ The defense maintained that the trial violated both the international and national right of Jehovah's Witnesses to religious freedom, and that suspension of the trial would violate legal rights of Jehovah's Witnesses in both international and national law.²⁴¹ On June 28, 1999, the Moscow Municipal Court rejected the appeal.²⁴²

VI. IN THE INTERIM

Judge Prokhorycheva's final demand for the expert study postponed a verdict for the Jehovah's Witnesses for almost two years.²⁴³ During the pending litigation, however, significant related events occurred.

On April 13, 1999, following the trial suspension in Golovinsky Court, twelve countries of the Council of Europe signed a motion, declaring that the Law on Freedom of Conscience and Religious Associations contravened the European Convention on Human Rights and Russia's obligations thereto, as

not merely errors of law or fact alleged by the appellants). What hypothetical "judicial decision" would be reviewed is questionable, since the case has been suspended. Such an appeal under the circumstances may be moot.

239. GK RF (Civil Code) art. 14. The Russian Civil Code requires *equality of parties*, not the 3-2 vote allocation between the prosecution's and the defense's respective recommendations of experts. See *Summary, March 12, supra* note 231. A.Y. Leontyev & G.A. Krylova, *Limited Appeal Against the Ruling for Suspension of the Case (to the Moscow City Court, from the Religious Community of Jehovah's Witnesses in Moscow)* at <http://www.jw-russia.org/eng/frames/moscow.htm> [hereinafter *Limited Appeal*].

240. KONST. RF art. 29(3) (1993) (stating that no one may be coerced into expressing his opinions and convictions or into renouncing them); Convention for the Protection of Human Rights, *supra* note 58 art. 10(1) (stating that everyone has the right to express his opinion).

241. The defense had claimed that, because the prosecution had only argued theology, and never proven legitimate claims against the Witnesses, the case should have been dismissed, and the length of trial violated Russian Civil Code. *Limited Appeal, supra* note 239. On the issue of delay, the defense noted that not only was the delay unfair to the defense, but could be costly to the prosecution. Defense attorney Leontyev cited a \$96,000 "price tag" on the Greek cases tried by the European Court. Leontyev remarked that the Greek cases involved only a few Jehovah's Witnesses, whereas this case involved 10,000 [The size of the Moscow congregation]. *Hearing, March 12, supra* note 232.

242. *Middle East News Items, July 7, 1999, LEXIS, Nexis Library, Interfax News Agency File* (citing *Jehovah's Witnesses Lose Court Appeal, July 8, 1999, Radio Free Europe/Radio Liberty*). See also *supra* note 238.

243. Some sources thought the wait would be significantly shorter. For instance, Interfax reported on March 5, that the Court was about to "call a break for about a month." *Jehovah's Witnesses in Moscow, INTERFAX, Mar. 5, 1999, LEXIS, Nexis Library, Interfax News Agency File*.

well as the Russian Constitution.²⁴⁴ Despite the lack of decision from Golovinskiy Court, the Moscow Justice Department on May 6 reregistered Jehovah's Witnesses,²⁴⁵ and on October 1, extended the deadline for reregistering all religious organizations for one year until December 31, 2001.²⁴⁶

On November 23, 1999, a Jehovah's Witnesses congregation in Yaroslavl filed suit on grounds that the fifteen-year OFCRA requirement was discriminating.²⁴⁷ The Russian Constitutional Court upheld the OFCRA fifteen-year registration provision, but noted its qualification: the rule would not apply to congregations that were part of a "centralized religious organization."²⁴⁸ Based on the fact that the Yaroslavl congregation was considered part of the "centralized" Jehovah's Witnesses organization in Moscow, the Court allowed the Yaroslavl congregation to reregister. The Court embellished this backhanded concession to the legality of the Moscow Jehovah's Witnesses, with an ironic affirmation of Russia's commitment to international law, expressly acknowledging the authority of the European Court of Human Rights on the right to religious freedom.²⁴⁹

244. Russian Law on Religion and Jehova's Witnesses, DOC. NO. 8351 revised, at http://stars.coe.fr/index_e.htm. Over half of the signatories of the motion were from former "Eastern bloc" countries, indicating that politics, as well as human rights, are perhaps at stake. Representatives from the United Kingdom, Turkey, Croatia, Ireland, Hungary, Poland, Estonia, Lithuania, Bulgaria, Denmark, and Latvia signed. Russia had just ratified the Human Rights Convention in May 1998. *European Court Receives 2,000 Complaints From Russians—Judge*, INTERFAX, Sept. 24, 1999, LEXIS, Nexis Library, Interfax News Agency File.

245. *Religious Group Staves Off Ban*, INDEPENDENT (LONDON), May 7, 1999, LEXIS, Nexis Library, The Independent (London) File.

246. *Re-registration of Religious Organizations Prolonged for a Year*, VREMYA MN, Oct. 1, 1999, at 3, LEXIS, Nexis Library, What the Papers Say File.

247. Press Release, Jehovah's Witnesses, Jehovah's Witnesses Win Russian Constitutional Case, But Court Upholds 15-year Rule in 1997 Religion Law, (Nov. 23, 1999) at <http://www.jw-russia.org/eng/frames/press.htm> [hereinafter *JW's Win, But Court Upholds*]. See also Natalya Panshina, *Restrictions in Federal Law on Religion Legal: Court*, ITAR-TASS, Nov. 23, 1999, LEXIS, Nexis Library, TASS file [hereinafter Panshina, *Restrictions*]. OFCRA art. 9(1) requires a religious organization to show documentation that it has been on Russian soil 15 years in order to officially register. OFCRA *supra* note 5, art. 9(1).

248. The law states an exception for religious organizations that can show documented proof they are part of a "centralized religious organization." OFCRA *supra* note 5 art. 11(4). A "centralized religious organization" is defined as a religious organization with at least three local registered congregations. OFCRA *supra* note 5, art. 8(4).

249. *JW's Win, But Court Upholds*, *supra* note 247. The Court's affirmation of the international rule on freedom of religion is in theoretical conflict at least with the 15-year rule which facially discriminates against certain religions. The Convention for the Protection of Human Rights art. 9(2) states that human rights and civic freedoms may be limited by law only to the extent necessary for protecting the constitutional system, morality, and the health, legitimate rights and interests of other people in a democratic society. Human Rights Convention, *supra* note 59, art. 9(2). Echoing this provision, the Constitutional Court declared that in the interests of "public quiet, maintaining public order, health and morals, as well as the protection of rights and freedoms of others," the law "in a democratic society" can envision certain restrictions, even certain barriers to prevent a religious organization from receiving status automatically. Panshina, *Restriction*, *supra* note 247. The State has the right, the judge added, to prevent the legalization of sects violating human rights and committing illegal and criminal actions, and to impede missionary activity. *Id.* The statement appears to be a thinly veiled ref-

Once reregistered, with the Golovinskiy Court decision still pending, the Jehovah's Witnesses continued to advance their presence on Russian soil. On August 13, 1999, the annual congress of Jehovah's Witnesses opened at the Olympic Sports Complex in Moscow, although up until the night before, stadium administration had denied the Witnesses access to the contracted stadium due to an unspecified "serious demand" from Moscow city government.²⁵⁰ In Fall 1999, the Jehovah's Witnesses opened their own 2,600-seat hall in St. Petersburg, where they planned at the time of this writing to hold three congresses. Their first congress took place on October 1, 1999.²⁵¹ On October 17, 1999, the Russian Foreign Ministry, responding to U.S. State Department condemnation of instances of religious intolerance in Russia, proclaimed that "the leadership and government of the Russian Federation is curtailing in an *extremely resolute way* any violations of religious freedoms and manifestations of aggressive nationalism and xenophobia."²⁵² Nonetheless, the *St. Petersburg Times* reported shortly thereafter that nerve gas had been placed at a Jehovah's Witnesses meeting,²⁵³ and quoted an archimandrite from the St. Petersburg Spiritual Academy (of the Russian Orthodox Church) as stating that the activities and beliefs of Jehovah's Witnesses were dangerous and unacceptable.²⁵⁴

erence to the Golovinskiy Court case. Its equivocal nature is reminiscent of Judge Prokhorycheva's own behavior, particularly during the last week of the Jehovah's Witnesses trial in her court.

250. Andrei Zolotov, *Jehovah's Witnesses Meet as Planned*, MOSCOW TIMES, Aug. 21, 1999, LEXIS, Nexis Library, Moscow Times File.

251. Vita Bekker, *New Premises for Jehovah's Witnesses*, ST. PETERSBURG TIMES, Nov. 2, 1999, available in LEXIS, Nexis Library, St. Petersburg Times File.

252. *Nationalism, Xenophobia Being Fought in Russia*, INTERFAX, Oct. 17, 2000, LEXIS, Nexis Library, Interfax News Agency File.

253. *New Premises for Jehovah's Witnesses*, ST. PETERSBURG TIMES, Nov. 2, 1999, LEXIS, Nexis Library, St. Petersburg Times File.

254. Vita Bekker, *New Premises for Jehovah's Witnesses*, ST. PETERSBURG TIMES, Nov. 2, 1999, (quoting Archimandrite Augustine, in KOMMERSANT, October 1999), WL 16534431. Lest the reader hastily conclude that the threat to ban religious sects in Russia and the legal issue of defending their right to exist is a matter of East versus West, it should be noted that, while Judge Prokhorycheva's expert panel was deliberating, the French Parliament adopted "Europe's toughest anti-sect legislation yet." Jon Henly, *Church Attacks New French Anticult*, THE GUARDIAN (LONDON), June 23, 2000, 2000 WL 23283093. This law allows judges to order the dissolution of any sect whose members are convicted of a criminal offence. *Id.* It bans sects from advertising, and prohibits them from opening missions or recruiting new members near schools, hospitals or retirement homes. *Id.* The law's key feature is its creation of a controversial new crime, "mental manipulation," described as "exercising within a group whose activities are aimed at creating or exploiting psychological dependence, heavy and repeated pressure on a person, or using techniques likely to alter his judgment, so as to induce him to behave in a way prejudicial to his interests." *Id.* The law's proponents say previous French law was "inadequate to deal with increasingly sophisticated and manipulative groups," while opponents argue that the new law may lead to "over-zealousness and judicial excess," and deem it "a slippery slope for democracy." *Id.* The "slippery slope" concept recalls Human Rights leader, Lyudmila Alekseyeva's admonition of repercussions to other religions in Russia, were the Golovinskiy Court to find for the prosecution. See *supra* Part V.D.3.

VII. THE VERDICT

The trial to ban Jehovah's Witnesses from Moscow resumed in Golovinskiy Court on February 6, 2001, nearly two years after Judge Prokorycheva had called for an expert study of the Jehovah's Witnesses religion to resolve the case. A possible unstated reason for the delay may have been the court's intention to give the prosecutor, whose arguments and presentation had been weak, still more time to develop a stronger case.²⁵⁵

Prosecutor Kondratyeva, however, presented essentially the same arguments she had presented two years earlier—namely, that Jehovah's Witnesses foment religious hatred by holding their own to be the sole true religion; that they coerce members to commit suicide by prohibiting blood transfusions; and that they promote the disintegration of families and injure children's psyches by discouraging contact with the outside world.²⁵⁶ The prosecutor again argued that minors were participating in the Witnesses' community life, contrary to the religious organization's charter.²⁵⁷

Under questioning by Defense Attorney Krylova, Prosecutor Kondratyeva could cite no specific instances of the "disintegration of families" among Jehovah's Witnesses. The Prosecutor did state, however, that the prosecution had received 100 letters of such complaints, but those complaints had not been further investigated. Defense Attorneys Burns and Leontyev urged the Court to dismiss the case on grounds of lack of evidence for the other claims.²⁵⁸

Representing the Department of Justice as a third party,²⁵⁹ Yelena Filipchuk asserted that the Jehovah's Witnesses promoted the rejection of all governments, and that their literature was "hostile to the state (government)" because it contained appeals to refuse to serve in the military and to show disrespect for state symbols, such as the national anthem and the flag.²⁶⁰

The following week, the panel of five court-appointed experts, specialists in religion, literature, linguistics, psychology and ethnography, largely echoed Filipchuk's theme, prompting the question as to whether they had ar

255. See *supra* Part IV.B. and Part V. A.,B.,C.

256. *Court in Moscow to Continue Hearing Jehovah's Witnesses Case*, INTERFAX, Feb. 6, 2001, LEXIS, Nexis Library, Interfax News Agency File.

257. *Id.*

258. *Case Against Jehovah's Witnesses Has No Leg to Stand On*, INTERFAX, Feb. 7, 2001, LEXIS, Nexis Library, Interfax News Agency File.

259. See *supra* note 102.

260. Oksana Alekseyeva, *Golovino Court Acquits Witnesses—Jehovah's Witnesses, That Is*, KOMMERSANT, Feb. 26, 2001, at 7, reprinted in CURRENT DIGEST OF THE POST-SOVIET PRESS, Mar. 28, 2001, LEXIS, Nexis Library, Current Digest of the Post-Soviet Press File.

rived at their own conclusions, or simply those of the prosecutor.²⁶¹ Witnesses' disrespect for the state system and for Russia's cultural heritage were claimed by at least two of the experts, a psycholinguist from Moscow State University, and an ethnographer from the Russian Academy of Sciences.²⁶² The ethnographer announced that the Jehovah's Witnesses literature "clearly evidences a hostile attitude toward Orthodoxy, a historic religion that is a fundamental component of our country's culture."²⁶³ She found the Jehovah's Witnesses organization to bear the earmarks of "a political party more than . . . a religious organization."²⁶⁴ The psycholinguist reported that the literature of the Jehovah's Witnesses used techniques of psychological influence, even hypnotic suggestion, and that the Witnesses doctrine was "anti-social."²⁶⁵ Four of the five concluded that the Witnesses should be banned.²⁶⁶

The judge's next move undoubtedly surprised both traditional observers and participants in the Russian legal system. On its face, her decision even seemed to thwart common sense and logic. Defying her own authorization of the expert study which had delayed the trial for nearly two years, as if waving a magic wand, on February 23, 2001, Judge Prokhorycheva simply rejected the expert assessments and dismissed all charges against the Jehovah's Witnesses.²⁶⁷

The Jehovah's Witnesses organization immediately commended her decision as requiring courage and professionalism,²⁶⁸ apparently referring to the potential hazards for the judge of "bucking the system," as well as the deeper logic required to decide according to the merits of the case. Defense Attorney Krylova summarized the precedential legal significance of the decision in clear contradistinction to the experts' conclusions: "the Court has confirmed that theological differences cannot be used as a basis for prosecution of any offences, and should not be allowed judicial consideration."²⁶⁹ On the political front, the newspaper, *Segodnya*, reasoned that "this court ruling is of fundamental importance for a large number of religious organizations

261. *Id.* Judah Schroeder said of the two experts allowed to be chosen by the defense, one seemed to have become persuaded by the majority, much as an uncertain or insecure juror can be swayed. *Schroeder Conversation II*, *supra* note 7.

262. Yelena Dorofeyeva, *Expert Backs Charge Against Jehovah's Witnesses*, ITAR-TASS NEWS AGENCY, Feb. 13, 2001, LEXIS, Nexis Library, TASS File.

263. Alekseyeva, *supra* note 260 (quoting Marina Gromyko).

264. *Id.*

265. *Id.*

266. Michael Wines, *Religious Sect Gains Victory in Moscow Trial*, N.Y. TIMES, Feb. 23, 2001. See also *Schroeder Conversation I*, *supra* note 85.

267. *Id.*

268. *Moskva podtverdila pravo na svobodu veroispovedaniia [Moscow Confirms the Right of Freedom of Religion]*, Feb. 23, 2001, at <http://www.jw-russia.org/eng/frames/moscow.htm>.

269. *Id.*

functioning in Russia. Had Judge Prokhorycheva taken the side of the prosecutor's office, she would have created a dangerous legal precedent.²⁷⁰

The Prosecutor, deprived of her traditional ally, sent a confusingly mixed response to the press. In one instance she remarked that she would have to "study the court ruling in detail . . . and then maybe I will agree with what it says."²⁷¹ There was some speculation that the prosecution "intends to appeal the ruling to the Moscow Municipal Court."²⁷²

VIII. THE APPEAL AND RETRIAL

The prosecution did appeal to the Moscow Municipal Court. On May 30, 2001, that court decided to vacate the Golovinskiy district court decision, and to remand the case to the Golovinskiy court for retrial, with a new judge.²⁷³

On October 30, 2001, the retrial began, before Judge Vera Dubinskaya.²⁷⁴ Not only substantively, but procedurally, the retrial appeared to mirror the original trial.²⁷⁵ The prosecution presented the same claims. The defense presented the same motions. The judge began by denying the defense's motions, and granting those of the prosecution. Then, just like the original trial, the old judge-prosecutor paradigm began to shift to recognize the defense. Going even beyond her predecessor, Judge Dubinskaya allowed the defense to bring in evidence of Russian Orthodoxy's claims to be the only faith, to show the similarity to statements of Jehovah's Witnesses.²⁷⁶

The retrial adjourned on November 9, resumed for one day on November 26, and is, as of this writing, adjourned, pending yet another forensic study on the Jehovah's Witnesses' literature.²⁷⁷

Moscow News noted that experts from the Russian Language Institute had already conducted a thorough investigation of the Jehovah's Witnesses from 1993-2000, and found no illegal activity, nor had any contradictory facts since emerged.²⁷⁸ The author of the Moscow News article, Sergei

270. Alexei Makarkin, "Witnesses" in *Their Own Case*, RUSSIAN PRESS DIGEST, Feb. 26, 2001, LEXIS, Nexis Library, Russian Press Digest File.

271. *Court Rejects Prosecutor Lawsuit Against Moscow Branch of Jehovah's Witnesses*, INTERFAX, Feb. 23, 2001, LEXIS, Nexis Library, Interfax News Agency File.

272. Alekseyeva, *supra* note 260.

273. Krylova, *Obshchi znamenatel' lichnoi svobody* [A Common Denominator of Personal Freedom], NG-RELIGII, Nov. 28, 2001 at <http://www.jw-russia.org/eng/frames/moscow.htm>.

274. *Id.* Judge's name supplied by Judah Schroeder, *Schroeder Conversation II*, *supra* note 7.

275. The author owes the description of the proceedings in this paragraph entirely to Judah Schroeder. *Id.*

276. *Id.*

277. *Id.*

278. Sergei Ivanenko, *Svideteli Svidetelei*, MOSKOVSKIE NOVOSTI, Dec. 18-24, 2001, available at <http://www.jw-russia.org>.

Ivanenko, concluded that "There must be another reason [for the new investigation]. There are real forces in [our] society, that would like to change the existing, established, constitutional order that all religions are equal under the law."²⁷⁹

Spokesperson for the Jehovah's Witnesses, Judah Schroeder, reports meanwhile that the Witnesses are now likely to move on "another track—" to take the case to the European Court of Human Rights, on grounds of *res judicata*, and the impossibility of obtaining a fair trial in Moscow.²⁸⁰

IX. OFCRA'S FIRST TEST: PARADOXES IN THE RUSSIAN JUDICIARY AND THE RUSSIAN LEGAL SYSTEM

A. Significance of OFCRA's First Test for the Judiciary

The first test of the 1997 Russian law, On Freedom of Conscience and Religious Associations, reveals the predicament of the Russian judiciary today. The Russian Parliament almost unanimously supported the bill; President Yeltsin flaunted Western threats to cut off aid to sign it into law. Still, a Soviet-trained judge in a small Moscow district courtroom found herself faced with the threat of a Western-based religious organization, that could and had, like the U.S. Congress, put its money where its mouth was—in the form of expert, professional legal defense. The judge's training, and OFCRA itself, advised her to side with the prosecution. During the initial stages of trial, she did—tolerating the prosecution's failure to mount legal evidence, while dismissing the defense's questions and denying defense witnesses. Yet somewhere between her adjournment of the trial in November 1998 and opening of a "new" trial in February 1999, the very time period which she had granted the prosecutor to develop the case, the judge's attitude shifted, as if she were trying to balance the scales of justice.

What persuaded Judge Prokhorycheva to decide in favor of the defense? Was it the quality of the defense's arguments? The lack of strong arguments from the prosecution? The fact that the trial had an international audience via the web? A changing political climate? All of the above? Some of the above? Something else?²⁸¹ What really happened in the interim may never be

279. *Id.* Ivanenko speculates that the "anticult attack" comes from parents who have joined CSY, or the Committee for the Defense of Families and Individuals from Totalitarian Sects in St. Petersburg. Since CSY has only 15-20 members, however, Ivanenko further supposes a "third level" of enemy—members of the Administration, who believe that curtailing the influence of non-Orthodox religions is in the best interests of the Russian government. *Id.*

280. *Schroeder Conversation II, supra* note 7.

281. Yet another possible reason was the prosecution's diminished funds. According to Jehovah's Witnesses spokesperson Judah Schroeder, in November 1999, the prosecution was "running out of money." See *Schroeder Conversation I, supra* note 85. Judge Prokhorycheva had stipulated that the prosecution would be required to pay entirely for the expert study. See *Hearing, March 12, supra* note 232. The district court, when and if it ever hears the report of the expert study, might be inclined to officially allow Jehovah's Witnesses to practice their

fully known. The first trial to ban Jehovah's Witnesses in Golovinskiy Court provides a glimpse of the post-Soviet Russian judiciary, much like the nation itself, walking a fine line between traditional security and future uncertainty, and deciding the road less-traveled had greater merits.

The prosecution's subsequent appeal and the Moscow Municipal Court's decision to demand a retrial, appear an attempt to return the legal system in Russia to its familiar past control of society, even in extreme violation of its legal efficiency code, not to mention international law and world opinion. The extraordinary efforts of the Jehovah's Witnesses to persuade a Russian judge to rely on international law, instead of Russian law, and other "traditional influences," could be a flash in the dark, a briefly opened window, about to be slammed shut . . . were it not for the defense's plan to appeal to the European Court of Human Rights.

B. Significance of OFCRA's First Test for the Legal System

The legal system in Russia today can become almost neutralized by the forces of change. International law and world opinion compel concessions to the West. Western legal systems, like Western commerce and culture, are infiltrating the former Soviet Union, while international law in general is becoming more intra-state than inter-state.²⁸² At the same time centuries-old Russian xenophobia, coupled with a traditionally State-oriented judicial system, have required Russian courts to try to at least control, if they cannot outright forbid Western influences, such as religion.²⁸³

In Russian, the expression "all right" means literally "everything is in order," reflecting Russians' traditional longing for control. The Russian Constitutional Court's recent ruling, like OFCRA itself, is aptly two-edged. It maintains on one hand, an allegiance to international law, on the other it retains the right to restrict a religion, if necessary.²⁸⁴ This "Damocles sword" hanging over the heads of Jehovah's Witnesses and other non-Orthodox religions in Russia, can be a psychological protection to Russian society today, desperate for a sense of control over imposing Western influences, for a sense, if not of national identity, at least of order.

religion in Moscow, if to banish them would ultimately force the case to the level of the European Court on Human Rights. The international Court could then affirm its opinion that States have no right to decide religion. Such a decision could cost Russia in this case an exorbitant amount. See *supra* note 241 (citing a \$96,000 damages award to Jehovah's Witnesses when the Greek government tried to banish the Witnesses).

282. U.N. Secretary-General Boutros-Ghali wrote, "so many of today's conflicts are within States rather than between States," *Supplement to an Agenda for Peace, Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, U.N. Doc. A/50/60-S/1995/1, Jan. 3, 1995, in *An Agenda for Peace 1995*, at 5 (2d ed. 1995) (U.N. Sales No. E.951.15) in *INTERNATIONAL LAW, CASES AND COMMENTARY* 457 (Mark W. Janis & John E. Noyes eds., 1997).

283. This phobia is of course not limited to Russia. See *supra* note 254.

284. See *supra* note 249, and Part V.E. 3.

By contrast, the Moscow District Court's first decision on the Jehovah's Witnesses case, in February 2001, was a bold and difficult step in the face of Russian tradition, showing a new inclination for not only extra-judicial Russian reality, but Russian courts as well, to be more in line with international norms, if not with Russian statutes. For such decisions to become more common in Russia seems unlikely at the moment, given the higher court's decision to retry the case. The question now is, whether the European Court of Human Rights, which is most likely to find for the defense,²⁸⁵ can impose its judgments on Russia. Beyond that decision, lies the more important issue provoked by this case, will Russia in the future impose such judgments upon itself?

285. Spokesperson Judah Schroeder said, "We have a good track record Strasbourg." *Schroeder Conversation II*, *supra* note 7. See also *Manoussakis and Others v. Greece*, 1996-IV Eur. Ct. H.R. 1346.

