



HIGH COURT OF AUSTRALIA

Public Information Officer

21 April 2004

MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS v RESPONDENTS
S152/2003

Attacks and abuse by some Ukrainians on people engaging in Jehovah's Witness activities were not shown to involve persecution, the High Court of Australia held today, in rejecting a claim for refugee status.

The respondents, who cannot be named by courts under section 91X of the Migration Act, are a Ukrainian de facto couple. The husband became involved with the Jehovah's Witnesses in May 1998 and began distributing publications and engaging in other forms of proselytising. As well as meeting hostility, he was set upon and beaten twice by groups of males, his front door was set alight, and was sacked from his job. The wife is not a Jehovah's Witness. The couple left for Australia in December 1998 and applied for protection visas. Their applications were rejected by the Immigration Department, the Refugee Review Tribunal and the Federal Court of Australia but the respondents appealed successfully to the Full Court of the Federal Court. The Full Court unanimously held that the RRT failed to consider the right question, that is, whether in a practical sense the State was able to protect the man from harm. The Minister appealed to the High Court.

The husband claimed the Ukrainian government encouraged persecution of Jehovah's Witnesses and that police condoned such violence. Their claims were rejected by the RRT. The question then was whether there was a failure by the Ukrainian State in its protection obligations. The RRT noted that country information by the United States State Department, the British Home Office and Australia's Department of Foreign Affairs has never carried the suggestion that the Ukrainian government was not in control or that the police and judiciary were not reasonably fair and effective. That information also indicated the government allowed religious freedom, including for more than 100,000 Jehovah's Witnesses. The church itself did not claim to be persecuted in the Ukraine. The RRT regarded the assaults as random and uncoordinated incidents. It found the police responded appropriately when the man called them after one attack but he was unable to identify his attackers. The RRT had no evidence that the man sought the protection of Ukrainian authorities, either in the Ukraine or after he arrived in Australia.

The High Court held that the RRT was not in error and overturned the decision of the Full Court of the Federal Court. It unanimously allowed the Minister's appeal.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*