



# International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2483/2014\*,\*\*

<i>Communication submitted by:</i>	Vladimir Adyrkhayev, Behruz Solikhov and “The Religious Association of Jehovah’s Witnesses in Dushanbe” (represented by counsel, Shane H. Brady and Yuriy Toporov)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Tajikistan
<i>Date of communication:</i>	30 August 2012 (initial submission)
<i>Document references:</i>	Special Rapporteur’s rule 92 decision, transmitted to the State party on 1 December 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	7 July 2022
<i>Subject matter:</i>	Refusal to re-register religious organization
<i>Procedural issue:</i>	Lack of standing ( <i>ratione personae</i> )
<i>Substantive issues:</i>	Right to freedom of religion or belief; right to freedom of association
<i>Articles of the Covenant:</i>	18 (1) and (3), 22 (1) and (2)
<i>Article of the Optional Protocol:</i>	1

1. The authors of the communication are Vladimir Adyrkhayev, born in 1974, and Behruz Solikhov, born in 1976, both nationals of Tajikistan. The communication is also submitted by a legal entity, “The Religious Association of Jehovah’s Witnesses in Dushanbe” (hereinafter “RAJW”). Both individual authors are Jehovah’s Witnesses and founding members of the RAJW, while Mr. Adyrkhayev is also the Chairman of the Association. The individual authors and the RAJW (the authors) claim that the State party has violated their rights under articles 18 (1) and (3), and 22 (1) and (2) of the Covenant. The Optional Protocol entered into force for Tajikistan on 4 April 1999. The authors are represented by counsel.

\* Adopted by the Committee at its 135<sup>th</sup> session (27 June-27 July 2022).

\*\* The following members of the Committee participated in the examination of the communication: Tania Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Shuichi Furuya, Carlos Gómez Martínez, Marcia V. J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Changrok Soh, Kobayyah Kpatcha Tchamdja, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

**The facts as submitted by the authors**

2.1 The Jehovah's Witnesses have been active in Tajikistan for more than 50 years. On an unspecified date in 1994, the RAJW was granted registration by the former State Committee on Religious Affairs pursuant to the Law "On Religion and Religious Organizations" of 8 December 1990 (the "1990 Religion Law"). On 15 January 1997, the RAJW was re-registered with national status under the amendments to the 1990 Religion Law. On 11 September 2002, the State Committee on Religious Affairs suspended the activities of the RAJW for three months for door-to-door propaganda and propaganda in public places.

2.2 On 18 April 2007 and 26 May 2007, respectively, two humanitarian cargos of religious publications arrived at the Dushanbe-2 Customs Post from the German religious organization of Jehovah's Witnesses. The customs authorities orally refused to release the cargos to the RAJW on the ground that examinations of the publications were being made by the State Committee on National Security. The RAJW did not receive any response in writing to their numerous requests to release the cargos during a period of, respectively, one and two months, after the arrival of the cargos. On 26 May 2007 and 6 August 2007, respectively, the Main Directorate for Religious Affairs under the Ministry of Culture conducted expert analysis of the religious publications distributed by the RAJW and found that they contained propaganda. As a result of the analysis, the Dushanbe-2 Customs Post refused to release the cargos to the RAJW.

2.3 In its decision of 11 October 2007, the Ministry of Culture banned the RAJW and annulled its charter, pursuant to the directive of the Prosecutor General of 27 July 2007.<sup>1</sup> The Ministry of Culture determined that the RAJW's registration of 15 January 1997 was unlawful. It concluded that the RAJW repeatedly violated the national legislation, including the Constitution of Tajikistan and the 1990 Religion Law, by distributing religious publications in public places and door-to-door, which caused discontent on the part of the population.

2.4 On an unspecified date, the RAJW, represented by the authors and another Jehovah's Witness, filed a complaint with the Dushanbe Civil Court, challenging the seizure of the two cargos and the decision of the Ministry of Culture of 11 October 2007 to ban the RAJW. The Dushanbe Civil Court subsequently transferred the complaint to the Dushanbe Garrison Military Court because the State Committee on National Security was a party to the proceedings.

2.5 On 29 September 2008, the Dushanbe Garrison Military Court rejected the complaint and found that the aforementioned decisions were well-founded. An expert analysis of the publications was conducted by the Institute of Philosophy of the Academy of Science in the course of the court proceedings.<sup>2</sup> According to the expert reports made by the Ministry of Culture on 26 May 2007 and 6 August 2007 and by the Institute of Philosophy of the Academy of Science on 27 January 2008, the publications distributed by the RAJW "incited to extremism and fanaticism" and the RAJW was perceived to be "a dangerous and totalitarian sect" by followers of other religions.<sup>3</sup> The Dushanbe Garrison Military Court

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<sup>1</sup> The decision was made pursuant to article 16 (2) of the 1990 Religion Law, which stipulates that the decision to terminate the activity of a religious organization shall be made by the body that registered the charter thereof.

<sup>2</sup> On 3 December 2007, the Dushanbe Garrison Military Court, at the request of a prosecutor, ordered the Institute of Philosophy of the Academy of Science to conduct an expert evaluation of the publications distributed by the RAJW.

<sup>3</sup> In the course of the proceedings before the Dushanbe Garrison Military Court, the authors claimed that the findings of the expert report made by the Institute of Philosophy of the Academy of Science were unfounded and made a request for a further expert evaluation with participation of foreign experts, which was rejected by the court. On an unspecified date, the authors filed a complaint with the Military Collegium of the Supreme Court, requesting it to annul the findings of the expert report by the Institute of Philosophy of the Academy of Science. The Military Collegium of the Supreme Court rejected the complaint on 24 January 2008 and the authors made a request to the Presidium of the Supreme Court for a supervisory review of the decision. On 23 June 2008, the Presidium of the Supreme Court rejected their request.

ruled that the RAJW had violated article 22 (3) of the 1990 Religion Law<sup>4</sup> by: 1) advocating for the establishment of alternative civilian service in lieu of compulsory military service; 2) distributing fanatical and extremist religious materials, which negatively affected psyche of young people; 3) conducting activities that could potentially lead to sectarian conflicts. A representative of the State Committee on National Security stated during the hearing before the Dushanbe Garrison Military Court that several foreign nationals who were members of Jehovah's Witnesses were arrested for their unlawful activity and deported from Tajikistan. The Dushanbe Garrison Military Court also established that the full name of the religious organisation registered on 15 January 1997 was "The Religious Association of Jehovah's Witnesses". However, in violation of article 12 of the 1990 Religion Law, the letterhead used by the organisation's Chairman, Mr. Adyrkhayev, referred to the "The Religious Association of Jehovah's Witnesses in Dushanbe".

2.6 On an unspecified date, the authors appealed against the decision of the Dushanbe Garrison Military Court to the Military Collegium of the Supreme Court. On 12 February 2009, the Military Collegium of the Supreme Court upheld the decision of the Dushanbe Garrison Military Court, based on the same grounds and arguments. In addition, the Military Collegium of the Supreme Court emphasized that the publications distributed by the RAJW contained extremist and radical religious views,<sup>5</sup> such as that "national pride and obedience to political organizations are a lie of Satan" and that people should not accept blood transfusions.<sup>6</sup> Furthermore, these publications were published outside of Tajikistan and, contrary to the requirements of article 27 of the Law "On Printing and Publishing Activity", they did not contain the required imprint data, such as press run and price.

2.7 On an unspecified date, the authors made a request to the Presidium of the Supreme Court for a supervisory review of the lower courts' decisions. On 17 February 2010, a single judge of the Supreme Court ruled that the authors' appeal would not be transferred to the Presidium of the Supreme Court for consideration, because there were no grounds for overturning the lower courts' decisions.

2.8 Meanwhile, the 1990 Religion Law was repealed and replaced by the Law "On Freedom of Conscience and Religious Associations" of 26 March 2009 (the "2009 Religion Law"). The 2009 Religion Law guarantees the right "to freely choose, disseminate and change religious or other beliefs"<sup>7</sup> and the right "to engage in large scale preaching

<sup>4</sup> According to the provision, it was prohibited to export, import or distribute religious objects, literature and other information sources, inciting to extremism and fanaticism, destabilizing the society, and directed at the citizens' health or morals, as well as their rights and freedoms.

<sup>5</sup> The decision of the Military Collegium of the Supreme Court specifically states that: "[...] in the booklet "Jehovah – Who Is He?" and the book "What Does the Bible Really Teach?" (pages 14, 15, 42, 197), Jehovah and paradise are falsely presented and verses from the Koran are incorrectly interpreted. The following points are particularly noteworthy: in the booklet "How to Find the Road to Paradise" the recognition of the name of the one God (Jehovah), the recognition of Jesus Christ as the only-begotten son of Jehovah; the description of all religions except "Jehovah's Witnesses" as contrived and false (the brochure "What Does God Require of Us?," the booklet "The End of False Religion is Near!" and pages 145, 147 and 148 of the book "What Does the Bible Really Teach?"); the need to ignore the truth in the teachings of all religions except the Religious Community "Jehovah's Witnesses" (page 148 of the book "What Does the Bible Really Teach"). The Religious Community "Jehovah's Witnesses" spreads extremist and totalitarian propaganda, claiming, for example, that national pride and obedience to political organizations are a lie of Satan. Jesus Christ became the appointed king of paradise in 1914 and is soon to judge people. A single rulership, God's Kingdom, will replace all human rulerships and rule the whole earth (page 13 of the brochure "What Does God Require of Us?")."

<sup>6</sup> The decision of the Military Collegium of the Supreme Court specifically states that: "One of the main teachings of the "Jehovah's Witnesses" is the complete refusal to transfuse blood to other people (donorship), which is detrimental to the health of the individual and has caused the death of a large number of the Community's members. This teaching is propagandized in, for example, the brochure "What Does God Require of Us?" (Lesson 12, pages 24, 25). According to article 22 of the 1990 Religion Law, religious organizations do not have the right to import, publish or distribute literature that is detrimental to citizens' health".

<sup>7</sup> Article 4 (1) of the 2009 Religion Law.

activities”.<sup>8</sup> Article 33 (3) of the 2009 Religion Law required all religious organizations to submit an application for re-registration by 1 January 2010.

2.9 On 1 December 2009, the authors applied for re-registration of the RAJW. On 18 January 2010, the Ministry of Culture rejected their application on the ground that the RAJW did not have the right to carry out its activities in Tajikistan, since the association was banned pursuant to the aforementioned court decisions. On an unspecified date, the authors appealed the decision of the Ministry of Culture. On 23 August 2010, the Dushanbe Economic Court rejected their appeal on the ground that the same matter had already been examined by the courts and the court decisions had come into force. The Dushanbe Economic Court also stressed that, according to the domestic legislation, civil laws did not have retroactive force. On 27 October 2010 and 16 December 2010, respectively, the decision of the Dushanbe Economic Court was upheld by the Plenum of the Dushanbe Economic Court and the High Economic Court. On 12 July 2011, the High Economic Court refused to transfer the authors’ appeal to the Presidium of the High Economic Court for consideration under the supervisory review procedure.

2.10 The authors submit that, due to the ban on the RAJW, Jehovah’s Witnesses have been subjected to numerous arrests, detentions, searches, beatings, as well as a deportation.<sup>9</sup> On 4 June 2009, sixteen Jehovah’s Witnesses had a peaceful gathering in a private apartment in Khujand to read and discuss the Bible. Eleven officials, including officers of the State Committee on National Security, forced their way into the apartment, searched it and the participants of the gathering and seized their Bibles, as well as other religious publications. Several participants were subsequently brought to the headquarters of the State Committee on National Security, where they were interrogated for six hours. On an unspecified date, a criminal case was initiated against the participants of that gathering. The case was dismissed in October 2009 after the OSCE Human Dimension Implementation Meeting.<sup>10</sup> On 21 April 2010, the participants were summoned to the Khujand City Court and charged under article 474 of the Code of Administrative Offences for conducting religious activities in violation of the 2009 Religion Law. The prosecutor decided to dismiss the administrative charges and to reopen the criminal case, which remained pending at the time of submission of the present communication to the Committee.

2.11 A similar incident occurred on 22 July 2011, when eight Jehovah’s Witnesses gathered in a private apartment in Dushanbe to read and discuss the Bible. After a police raid of the apartment, two participants were brought to the police station and interrogated for more than 20 hours by several police officers and officers of the State Committee on National Security. One of those participants,<sup>11</sup> who was beaten up during the interrogation in order to force him to renounce his faith, was deported to Uzbekistan on 17 August 2011, despite having a valid residence permit in Tajikistan. On 27 July 2011, the owner of the apartment where the gathering of 22 July 2011 took place was summoned to the Dushanbe Police Department. Upon her arrival, she was taken to a court where she was tried without an attorney and fined four times the monthly minimum wage<sup>12</sup> for attending an “unlawful” religious gathering.

2.12 On 2 March 2012, the authors submitted an application to the Constitutional Court of Tajikistan, requesting it to declare unconstitutional article 16 (2) of the 1990 Religion Law, on which the decision of the Ministry of Culture of 11 October 2007 to ban the RAJW was based. The authors argued that the provision in question was discriminatory vis-à-vis

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<sup>8</sup> Article 4 (9) of the 2009 Religion Law.

<sup>9</sup> The authors refer to, *inter alia*, following articles: “Tajikistan: “It seems that reading the Bible together is now a criminal offence”, available at <https://www.refworld.org/pdfid/4ac1b6340.pdf>; “Tajikistan: In Dushanbe, “Religious Radicalism” Comes In Many Forms”, available at <https://eurasianet.org/tajikistan-in-dushanbe-religious-radicalism-comes-in-many-forms>; and “Religious Freedom Concerns in Tajikistan - Statement by the European Association of Jehovah’s Christian Witnesses”, HDIM.NGO/0040/11, 26 September 2011.

<sup>10</sup> At the meeting, the Deputy Minister of Culture of Tajikistan provided the OSCE with a written statement dated 9 October 2009, in which he likened Jehovah’s Witnesses to Al-Qaeda and the Taliban. See HDIM.DEL/0578/09, 9 October 2009, p. 11.

<sup>11</sup> Name is available on file.

<sup>12</sup> Around 350 Tajikistani somoni, approximately 74 US dollars.

religious associations and constituted a violation of their right to freedom of association.<sup>13</sup> They also emphasized that, due to the ban, Jehovah's Witnesses in Tajikistan have been subjected to harassment and intimidation by the authorities. On 29 March 2012, the Constitutional Court refused to initiate judicial proceedings on the ground that the 1990 religion Law was no longer in force.

### The complaint

3.1 The authors claim that their rights under articles 18 (1) and (3), and 22 (1) and (2) of the Covenant have been violated. They argue, in particular, that the decisions of the Ministry of Culture of 11 October 2007 and 18 January 2010, respectively, to ban the RAJW and to deny its re-registration, resulted in a violation of their rights under article 18 (1) and (3) of the Covenant. The authors claim that the right to form a religious organization is integral to the freedom to manifest religion or belief "individually or in community with others and in public or private".<sup>14</sup> Due to the ban, Jehovah's Witnesses in Tajikistan have been denied a full range of rights enjoyed by a registered religious organization, including the right to conduct religious meetings and assemblies, to own or use property for religious purposes, to produce and import religious publications, to receive donations, to carry out charitable activities, and to invite foreign citizens to participate in religious events. Religious activities of Jehovah's Witnesses have been perceived as illegal by the Tajik authorities and led to arrests, detentions, interrogations, searches, beatings, seizures of religious materials, as well as a deportation of Jehovah's Witnesses.

3.2 The authors further submit that the three reasons the Ministry of Culture and domestic courts provided for their decisions to uphold the ban on the RAJW (see, also paras. 2.5 and 2.6 above),<sup>15</sup> are in violation of article 18 (3) of the Covenant. The right of conscientious objection to military service and the right to peacefully discuss religious beliefs, in public or in private, are of such fundamental nature that they cannot be subject to limitations.<sup>16</sup>

3.3 The authors also submit that the ban on the RAJW on the ground that its members believe that their religion is the right one, is unlawful. They note that the belief that one's religion is the right one is inherent to all religions. Moreover, the State is prohibited from imposing "any limitations whatsoever" on sincerely held religious beliefs.<sup>17</sup> The authors argue that the decision to ban the RAJW because some individuals might dislike the religious

<sup>13</sup> Article 16 (2) of the 1990 Religion Law stipulated that the decision to terminate the activity of a religious organization should be made by the body that registered the charter thereof. At the same time, article 62 (2) of the Civil Code of Tajikistan prescribed that a legal entity could be terminated only pursuant to a court order. The authors claimed, therefore, that article 16 (2) of the 1990 Religion Law was discriminatory vis-à-vis religious associations.

<sup>14</sup> Reference is made to *Malakhovsky et al v. Belarus* (CCPR/C/84/D/1207/2003), para.7.2; European Court of Human Rights: *Jehovah's Witnesses of Moscow v. Russia*, application No. 302/02, 10 June 2010, paras. 99, 101; *Hasan and Chaush v. Bulgaria*, application No. 30985/96, 26 November 2000, para. 62.

<sup>15</sup> The Ministry of Culture and the domestic courts gave three reasons for the decision to ban the RAJW: (1) individual Jehovah's Witnesses might request to substitute compulsory military service with alternative civilian service; (2) individual Jehovah's Witnesses were discussing the Bible and religious subjects in public places, homes, and on the streets; and (3) Jehovah's Witnesses believed their religion is "true" and such belief "could lead to incitement of religious and confessional intolerance."

<sup>16</sup> Reference is made to *Jeong et al v. Republic of Korea* (CCPR/C/101/D/1642-1741/2007), para. 7.3; *Atasoy and Sarkut v. Turkey* (CCPR/C/104/D/1853-1854/2008), para. 10.4. The authors also refer to the Committee's General Comment No. 22, paras. 3-5, and to the jurisprudence of the European Court of Human Rights: *Bayatyan v. Armenia*, application No. 23459/03, 7 July 2011; *Erçep v. Turkey*, application No. 43965/04, 22 November 2011; *Bukharatyan v. Armenia*, application No. 37819/03, 10 January 2012; *Tsatryan v. Armenia*, application No. 37821/03, 10 January 2012; *Feti Demirtaş v. Turkey*, application No. 5260/07, 17 January 2012; *Kokkinakis v. Greece*, application No. 14307/88, 25 May 1993, para. 31; *Jehovah's Witnesses of Moscow v. Russia*, supra n. 14, para. 122, 129; *Kuznetsov et al v. Russia*, application No. 184/02, 11 January 2007, paras. 56-57; and *Nolan and K. v. Russia*, application No. 2512/04, 12 February 2009, para. 61.

<sup>17</sup> See, the Committee's General Comment No. 22, supra n. 16, at para. 3.

beliefs of Jehovah's Witnesses fosters intolerance and contradicts the essence of article 18 of the Covenant.<sup>18</sup>

3.4 The authors further claim that the decision to ban the RAJW and to refuse to re-register it amounts to a violation of the right to freedom of association under article 22 (1) of the Covenant. They claim that the restriction imposed on their right is not necessary in a democratic society and does not meet the requirements of article 22 (2) of the Covenant.<sup>19</sup>

3.5 The authors, therefore, request the Committee to conclude that the decisions to ban and not to re-register the RAJW, have violated their rights under articles 18 (1) and (3), and 22 (1) and (2) of the Covenant. They further request the Committee to direct the State party to provide them with an effective remedy and to re-register the RAJW in Tajikistan.

#### State party's observations on the merits

4.1 On 28 January 2015, the State party submitted its observations on the merits of the communication. It states that there are more than 4,100 religious associations registered in Tajikistan, 73 of which are non-Islamic. The procedure for registration of religious associations is set out in articles 13 and 14 of the 2009 Religion Law, which fully complies with international human rights standards, including article 18 (3) of the Covenant and aims at protecting public safety, order, health, or the rights and freedoms of others. According to article 14 (2) of the 2009 Religion Law, citizens have the right to appeal in court the groundless denial of registration of a religious association.

4.2 The State party further submits that the concept of "unregistered religious group"<sup>20</sup> does not exist in the domestic legislation. The law provides any group of individuals the opportunity to register freely and even prior to registration their freedom of worship and conscience is guaranteed by constitutional provisions. No one has the right to interfere with their freedom of conscience; they are free to exercise their freedom of worship and to express their attitude toward religion. Registration of a religious association provides additional rights and powers to groups of individuals to collectively and systematically perform collective religious rites on certain plots of land upon obtaining the right of ownership and certificate of land use. However, there are certain groups and individuals who systematically perform collective religious rites on plots of land, which have been occupied by them without authorization.

4.3 The State party notes that the Charter of the RAJW was registered by the State Committee on Religious Affairs on 15 January 1997. Subsequently, this religious community systematically violated domestic legislation. In view of this, the State Committee on Religious Affairs issued an order for the RAJW to remedy these violations of the domestic legislation,<sup>21</sup> which however was not done. Therefore, on 11 September 2002, the State Committee on Religious Affairs suspended the activities of the RAJW for three months for door-to-door propaganda and propaganda in public places. The State party adds that law-enforcement agencies and the Main Directorate of Religious Affairs under the Ministry of Culture received numerous complaints concerning members of the Jehovah's Witnesses community, because of the propaganda of their religious teachings and the distribution of religious publications in public places. Furthermore, in violation of article 22 of the 2009 Religion Law and articles 10 and 42 of the Constitution, the RAJW continued its unlawful propaganda of refusal to perform compulsory military service and establishment of an alternative service.

4.4 In light of the foregoing and based on the directive of the Prosecutor General of 27 July 2007 and the decision of the Ministry of Culture of 11 October 2007, the activities of the RAJW were initially suspended for three months and then banned on the territory of Tajikistan pursuant to article 16 (2) of the 1990 Religion Law. As a result, the Charter of the

<sup>18</sup> Reference is made to the jurisprudence of the European Court of Human Rights: *Jehovah's Witnesses of Moscow v. Russia*, supra n. 14, paras. 111, 132, 135-136; and *Bayatyan v. Armenia*, supra n. 16, para. 126.

<sup>19</sup> Reference is made to *Korneenko et al v. Belarus* (CCPR/C/88/D/1274/2004), paras. 7.2 and 7.3.

<sup>20</sup> The State refers to the term "незарегистрированная религиозная группа" in quotation marks.

<sup>21</sup> The RAJW was apparently requested to review para. 2.2 of the Charter.

RAJW registered by the State Committee on Religious Affairs on 15 January 1997 was also revoked.

4.5 The State partly recalls the steps taken by the authors to challenge the seizure, on 18 April and 26 May 2007, of the two cargos with religious publications sent to the RAJW by the German religious organization of Jehovah's Witnesses and the decision of the Ministry of Culture of 11 October 2007 to ban the RAJW (see, paras. 2.2 – 2.9 and 2.12 above). With reference to the decision of the Military Collegium of the Supreme Court of 12 February 2009, the State party submits that the decision of the Ministry of Culture of 11 October 2007 to terminate the activities of the RAJW on the territory of Tajikistan was lawful and based on article 16 (2) of the 1990 Religion Law.

4.6 In light of the foregoing, the State party argues that there were no violations of the authors' civil and political rights during the court proceedings related to the consideration of the civil cases based on the claims brought by the RAJW, as these cases were examined within the framework of current domestic legislation. The aforementioned judicial acts were well-grounded and there is no basis for their review. According to article 84 (1) of the Constitution of Tajikistan, the judiciary is independent and its authority is exercised in the name of the State by courts; the judiciary protects the rights and freedoms of individual and citizen, and the interests of the State, organizations, institutions, lawfulness and justice. Article 87 of the Constitution stipulates that judges are independent in their activity and are subject only to the Constitution and law; interference in their activity is prohibited. The court proceedings in the RAJW's civil cases were conducted in open court on the basis of the principles of adversarial proceedings and equality of arms; the decisions of the State party's courts at all levels have already entered into legal force.

4.7 The State party further submits, that, in response to the requests of the representatives of the RAJW, the leadership of the State Committee on Religious Affairs met with them on several occasions. On 14 November 2013, the Committee had an official meeting with representatives of the RAJW and the organization "Watchtower Bible and Tract Society"<sup>22</sup> in Dushanbe. During the meeting, the parties reached an understanding on the issues concerning religious rights and freedoms. In particular, they agreed on the importance of both, the State party's responsibility for ensuring the right to freedom of conscience and religion and the obligation to comply with the State party's laws. The representatives of the RAJW expressed interest in resubmitting the registration application of the RAJW in accordance with the established procedure.

4.8 On an unspecified date, representatives of the RAJW submitted the registration application to the State Committee on Religious Affairs. On 11 September 2014, the Committee returned the application package to representatives of the RAJW for further revision, since it did not fulfil the legal requirements.<sup>23</sup>

4.9 The State party emphasizes that registration of a religious association is not a legal precondition for recognition of a particular religion as such in Tajikistan. The Constitution of Tajikistan guarantees each person the right to determine independently his or her attitude towards a religion and the right to exercise any religion or not to exercise any. Registration of a religious association in accordance with the State party's law is a basis for acquiring legal personality and the associated benefits and authority to use the territory, buildings, etc.

4.10 The State party submits that Tajikistan has one active religious association per 1900 inhabitants, compared to one religious association per 3000-3500 inhabitants in developed countries.<sup>24</sup> These statistics show, therefore, that the State party's authorities are not restrictive in their policy on registration of associations belonging to various religions and religious denominations in a country where the majority of the population is Muslim.

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<sup>22</sup> The Watchtower Bible and Tract Society is an organization directed by the leaders of the Jehovah's Witnesses. The Watchtower Society was founded in 1886 and is currently located in Warwick, New York.

<sup>23</sup> The application did not comply with, *inter alia*, article 13 of the 2009 Religion Law. It is not specified which paragraph of the provision has been breached.

<sup>24</sup> No information is provided by the State party on the source of the statistics.

### Authors' comments on the State party's observations

5.1 On 31 March 2015, the authors submitted that the State party did not provide any specific observations concerning the alleged violations of their rights under articles 18 (1) and (3), and 22 (1) and (2) of the Covenant. The State party only reiterated the three reasons provided by the domestic courts for upholding the decision of the Ministry of Culture of 11 October 2007 to ban the RAJW. With regard to the first reason, i.e. that individual Jehovah's Witnesses had refused to perform compulsory military service, asking instead that alternative service be provided (see, para. 4.3 above), the authors refer to the Committee's jurisprudence, which states that "right to conscientious objection to military service" is guaranteed by article 18 (1) of the Covenant.<sup>25</sup> Therefore, the decision to ban the RAJW because individual Jehovah's Witnesses refused military service asking instead for "alternative service" is a serious violation of article 18 (1) of the Covenant. It also amounts to impermissible State "coercion" on the right to conscientious objection, making the right to manifest religious beliefs in community with others (via a registered religious organisation) conditional on accepting military service.

5.2 The authors further argue that the right to freely manifest religious beliefs includes "the freedom to communicate within one's own religious or belief group, share one's conviction with others [and] receive and disseminate information about religious or belief issues and try to persuade others in a non-coercive manner".<sup>26</sup> As to the State party's claim that there were numerous complaints concerning members of the Jehovah's Witnesses community, because of the propaganda of their religious teaching and the distribution of religious publications in public places, i.e. the second reason for banning the RAJW (see, para. 4.3 above), the authors submit that no evidence was provided by the State party in support of this assertion. Moreover, like freedom of expression, the right to peacefully manifest religious beliefs should be "applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population".<sup>27</sup>

5.3 With regard to the State party's assessment that all religious publications distributed by the RAJW, "encouraged fanaticism and extremism and [had] a negative psychological influence on young people" (see, para. 2.5 above), the authors submit that the State party did not explain what is meant by "fanaticism and extremism" or how the religious publications of Jehovah's Witnesses supposedly had a "negative psychological influence on young people".<sup>28</sup> The authors add that the religious publications of Jehovah's Witnesses are distributed worldwide in tens of millions of copies and in more than 200 lands and territories. They are the most widely circulated religious publications in the world. Those publications promote Biblical values, including love of neighbour. Contrary to what is claimed by the State party, these publications do not contain "calls to violence," "incitement of violence," nor do they incite "religious hatred." The authors note in this regard that Jehovah's Witnesses shun all forms of violence and hatred and that they "are a religious group committed to pacifism".<sup>29</sup>

5.4 As to the meeting held in Dushanbe on 14 November 2013 between the Chairman of the State Committee on Religious Affairs, the Director of the Department of Religious Affairs of the Executive Office of the President of Tajikistan and their counsel (see, para. 4.7 above), the authors submit that the meeting in question was a result of the Committee's Concluding Observations on the second periodic report of Tajikistan, in which the Committee expressed its serious concern about the absolute ban of several religious denominations, including

<sup>25</sup> See, *Young-kwan Kim et al v. Korea* (CCPR/C/112/D/2179/2012), para. 7.3.

<sup>26</sup> See, interim report of the Special Rapporteur on freedom of religion or belief report, A/67/303, 13 August 2012, para. 26, 27; Human Rights Council, Resolution 21/16 on the rights to freedom of peaceful assembly and association, A/HRC/RES/21/16, 11 October 2012, art. 1.

<sup>27</sup> Reference is made to the jurisprudence of the European Court of Human Rights: *Fatullayev v. Azerbaijan*, no. 40984/07, 22 April 2010, para. 86; *Sürek and Özdemir v. Turkey* (no. 4) / Grand Chamber, nos. 23927/94 and 24762/94, 8 July 1999, para. 57.

<sup>28</sup> Reference is made to *Jehovah's Witnesses of Moscow v. Russia*, supra n. 18, at paras. 124-125 and 128-129.

<sup>29</sup> *Ibid*, at para. 150.



Jehovah's Witnesses.<sup>30</sup> Despite the understanding reached by the authors' counsel with the State party's authorities that the RAJW would submit a new application for registration of a religious organization under the name "Watch Tower Bible and Tract Society of Dushanbe", the registration application was refused by State Committee on Religious Affairs on several occasions throughout 2014 for alleged technical deficiencies, most recently in October 2014 because the Sino District of Dushanbe (where the religious organisation was to have its legal address) declined to issue a certificate required under the 2009 Religion Law,<sup>31</sup> confirming that "there have been followers of the religious organisation on the territory of its activities for a period of not less than the past 5 years."

5.5 On 20 March 2015, the authors' counsel, met with representatives of the State Committee on Religious Affairs. During the meeting, the First Deputy Director of State Committee on Religious Affairs informed counsel that the Committee had changed its mind and would not accept a new application for registration of Jehovah's Witnesses in Tajikistan, because the religious organisation of Jehovah's Witnesses had been banned on 11 October 2007 by the Ministry of Culture and that decision was upheld by all levels of the domestic courts. The First Deputy Director relied on section 32 (5) of the 2009 Religion Law which states that a "liquidated religious association cannot register under another name." The First Deputy Director of State Committee on Religious Affairs also stated that a new application for registration of a religious organisation of Jehovah's Witnesses would be considered and granted by State Committee on Religious Affairs only if the Committee declared that the 11 October 2007 decision of the Ministry of Culture was unlawful and should be reversed.

5.6 The authors argue that the 11 October 2007 decision of the Ministry of Culture, banning the RAJW, continues to have a serious and profound negative impact on the right to freedom of religion and freedom of association of all Jehovah's Witnesses in Tajikistan. Not only did that decision terminate their registered religious organisation and expose Jehovah's Witnesses to harassment and arrest based on the claim their religious activity is "illegal," it is now being used by State Committee on Religious Affairs to refuse to register any other religious organisation of Jehovah's Witnesses in Tajikistan.

5.7 The authors also submit that their standing to bring this communication to the Committee is not in dispute. They note that the State party did not challenge the RAJW's standing to bring this communication in its own name and also on behalf of all Jehovah's Witnesses in Tajikistan. They recall in this context that pursuant to the Committee's jurisprudence, a communication may be submitted on behalf of a group of individuals.<sup>32</sup> The authors submit that there is a substantial difference between a commercial legal entity and a religious organisation, which is more in the nature of a "group of individuals." This recognizes the reality that in exercising rights under article 18 (1) of the Covenant individuals professing a particular faith most often do so in community with others as part of a religious organisation. This is explicitly recognized under article 27 of the Covenant. It also recognizes the reality that members of a religious organisation expect that the religious organisation (directly or through its representatives) will take steps to protect their fundamental rights, including by filing a complaint under the Optional Protocol to the Covenant to protect their right to receive religious literature.<sup>33</sup> The authors submit that the Committee should conclude that the RAJW, as a religious organisation, is a proper party to the communication and that it may bring this communication on behalf of all Jehovah's Witnesses in Tajikistan.

5.8 In light of the foregoing, the authors request the Committee to conclude that the decision of the State party's authorities, banning the RAJW, has violated articles 18 (1) and (3), and 22 (1) and (2) of the Covenant. They also request that the Committee direct Tajikistan

<sup>30</sup> See, Concluding observations on the second periodic report of Tajikistan, 22 August 2013, CCPR/C/TJK/CO/2, para. 20.

<sup>31</sup> Under section 13 (5), sub-paragraph 5, of the 2009 Religion Law, it is required to have a certificate from the local executive body, stating that there have been followers of the religious organization on the territory of its activity for a period of minimum 5 years.

<sup>32</sup> Reference is made to *Howard v. Canada* (CCPR/C/84/D/879/1999), para. 8.3; and *Ominayak (Lubicon Lake Band) v. Canada* (CCPR/C/38/D/167/1984), paras. 2.2, 29.1, 31.1 and 32.1.

<sup>33</sup> Reference is also made to the jurisprudence of the European Court of Human Rights: *Cha'are Shalom Ve Tsedek v. France* [Grand Chamber], no. 27417/95, ECHR 2000-VII, at para. 72.

to provide them with an effective remedy, giving full recognition to their rights under the Covenant, as required by article 2 (3) (a) of the Covenant. The authors argue that this can only be achieved by: (a) declaring that the 11 October 2007 decision of the Ministry of Culture of Tajikistan, banning “The Religious Association of Jehovah’s Witnesses in Dushanbe”, has violated articles 18 and 22 of the Covenant and should be annulled; and (b) directing Tajikistan to immediately register or re-register “The Religious Association of Jehovah’s Witnesses in Dushanbe.”

#### **Additional submission from the State party**

6. On 5 February 2016 and 13 May 2016, the State party resubmitted its observations on the merits of 28 January 2015 in response to the authors’ comments of 31 March 2015.

#### **Additional submission from the authors**

7.1 On 4 October 2018, the authors submitted that the 11 October 2007 decision of the Ministry of Culture, banning the RAJW, is interpreted by police as meaning that the State has imposed a total ban on the religious activities of Jehovah Witnesses. Since October 2007, there have been numerous police raids, some of which have been violent, of religious services of Jehovah’s Witnesses. As a result, Jehovah’s Witnesses throughout Tajikistan are relegated to holding their religious services in secret to try to avoid police raids and arrests.<sup>34</sup>

7.2 The authors’ counsel has been involved in meetings with senior State officials in Tajikistan, in order to persuade them to re-register Jehovah’s Witnesses pursuant to the Committee’s recommendation in its Concluding Observations on the second periodic report of Tajikistan (see, para. 5.4 above). In response, State authorities commented that there were no available domestic remedies in Tajikistan to grant re-registration and that the only remedy was for the 11 October 2007 decision to be reversed, which is the subject matter of the present communication. Without registration, the many hundreds of Jehovah’s Witnesses living in Tajikistan live in a climate of fear, not knowing when the next police raid will occur. In view of this ongoing and serious harm suffered by individual Jehovah’s Witnesses in Tajikistan, the authors ask that the Committee gives this communication priority status.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes that the present communication is submitted by two individuals and also by a legal entity, the religious organisation RAJW. The Committee recalls in this regard that under article 1 of the Optional Protocol only individuals may submit a communication to the Committee. Although Mr. Adyrkhayev and Mr. Solikhov are Jehovah’s Witnesses and founding members of the RAJW, with Mr. Adyrkhayev being a Chairman of the Association, and that the individual rights guaranteed under articles 18 (1) and 22 (1) of the Covenant have a collective dimension, the religious organisation RAJW nevertheless has its own legal personality. The Committee recalls in this regard that the rights of legal entities are not protected under the Covenant.<sup>35</sup> Consequently, the Committee

<sup>34</sup> Reference is made to the Statement by the European Association of Jehovah’s Witnesses on the religious freedom concerns in Tajikistan that was submitted to the OSCE Human Dimension Implementation Meeting in Warsaw on 14 September 2018.

<sup>35</sup> See, for example, *S.M. v. Barbados* (CCPR/C/50/D/502/1992), paras. 6.2 and 6.3; *Lamagna v. Australia* (CCPR/C/65/D/737/1997), para. 6.2; and *V.S. v. Belarus* (CCPR/C/103/D/1749/2008), para. 7.3.

considers that only the two individuals, who represented the RAJW in the proceedings before the State party's authorities and courts, have standing under article 1 of the Optional Protocol.

8.4 The Committee takes note of the authors' claim that they have exhausted all effective domestic remedies available to them. The Committee notes that the authors challenged the rejection of the re-registration of the RAJW on numerous occasions, taking the matter all the way to the High Economic Court, and that they also unsuccessfully challenged the constitutionality of article 16 (2) of the 1990 Religion Law, on which the decision of the Ministry of Culture of 11 October 2007 to ban the RAJW was based. In the absence of any objection from the State party and in light of the information available on file, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.5 The Committee also considers that the authors have sufficiently substantiated, for the purposes of admissibility, their claims under articles 18 (1) and (3), and 22 (1) and (2) of the Covenant. It therefore declares these claims admissible and proceeds with their consideration of the merits.

#### *Consideration of the merits*

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 In relation to the authors' claim under article 18 (1) and (3) of the Covenant, the Committee recalls its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, which states that article 18 does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice (para. 3). By contrast, the right to freedom to manifest one's religion or beliefs may be subject to certain limitations, but only those prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The Committee notes the authors' argument that, by banning the RAJW and by refusing to re-register it, they have been denied by the State party a full range of rights enjoyed by members of a registered religious organisation. Namely, the rights to jointly manifest their religious beliefs, including the right to conduct religious meetings and assemblies, to own or use property for religious purposes, to produce and import religious literature, to receive donations, to carry out charitable activity and to invite foreign citizens to participate in religious events. Consistent with its general comment No. 22, the Committee considers that these activities form part of the authors' right to manifest their beliefs. Furthermore, the Committee notes the authors' uncontested assertion that religious activities of Jehovah's Witnesses have been perceived as illegal by the Tajik authorities and led to arrests, detentions, interrogations, searches, beatings, seizures of religious materials, as well as a deportation of Jehovah's Witnesses. In this regard, the Committee also notes that the authors maintain that the re-registration of the RAJW could not be approved by the State Committee for Religious Affairs as long as the decision of the Ministry of Culture of 11 October 2007 to ban the RAJW remains in force and that there are no legal avenues available in Tajikistan to have that decision annulled, since the decision in question was taken pursuant to article 16 (2) of the 1990 Religion Law, which is no longer in force.

9.3 The Committee must address the question of whether the relevant limitations on the authors' right to manifest their religion are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, within the meaning of article 18 (3) of the Covenant. The Committee again recalls its general comment No. 22, which states that article 18 (3) is to be interpreted strictly, and that limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated (para. 8).

9.4 In the present case, the Ministry of Culture and the State party's domestic courts gave three reasons for the decision to ban the RAJW and to refuse its re-registration, thus placing limitations on the authors' right to manifest their religious belief: (1) individual Jehovah's Witnesses might request to substitute compulsory military service with alternative civilian service; (2) individual Jehovah's Witnesses were discussing the Bible and religious subjects in public places, homes, and on the streets, and conducting propaganda of their religious teachings; and (3) Jehovah's Witnesses believed their religion is "true" and such belief "could

lead to incitement of religious and confessional intolerance.” With regard to the first reason put forward by the State party’s authorities and courts, the Committee notes the authors’ argument that the right to conscientious objection to military service is guaranteed by article 18 (1) of the Covenant.<sup>36</sup> The Committee also notes the authors’ additional argument that the decision to ban the RAJW amounts to impermissible State “coercion” on the right to conscientious objection, making the right to manifest religious beliefs in community with others (via a registered religious organisation) conditional on accepting military service.

9.5 With regard to the second reason put forward by the State party’s authorities and courts to justify the decision to ban the RAJW and to refuse its re-registration, the Committee notes the authors’ argument that the right to freely manifest religious beliefs includes “the freedom to communicate within one’s own religious or belief group, share one’s conviction with others [and] receive and disseminate information about religious or belief issues and try to persuade others in a non-coercive manner”.<sup>37</sup> With regard to the State party’s third reason to ban the RAJW and to refuse its registration, based on the assessment that beliefs held by Jehovah’s Witnesses “could lead to incitement of religious and confessional intolerance”, the Committee notes the authors’ statement that Jehovah’s Witnesses shun all forms of violence and hatred and that they “are a religious group committed to pacifism”.<sup>38</sup>

9.6 The Committee also takes note of the State party’s specific argument that the RAJW was banned by the decision of the Ministry of Culture, because it continued its unlawful propaganda of refusal to perform compulsory military service and establishment of an alternative service. In this context, the Committee recalls its prior jurisprudence stating that although the Covenant does not explicitly refer to a right of conscientious objection, such a right derives from article 18, inasmuch as the obligation to be involved in the use of lethal force may seriously conflict with the freedom of thought, conscience and religion.<sup>39</sup> The right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if such service cannot be reconciled with that individual’s religion or beliefs, as is the case with Jehovah’s Witnesses. The Committee further notes that the State party has not provided any evidence in support of its assertion that there were numerous complaints concerning members of the Jehovah’s Witnesses community, because of the propaganda of their religious teaching and the distribution of religious publications in public places, i.e. the second reason for banning the RAJW. The Committee also observes that religions and beliefs should not be discriminated against by the State parties on the ground that they are newly established or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.<sup>40</sup>

9.7 In light of the foregoing, the Committee is of the opinion that none of the reasons put forward by the State party’s authorities and courts to justify the decision to ban the RAJW and to refuse its re-registration, thus placing limitations on the authors’ right to manifest their religious belief, meets the requirement of article 18 (3) of the Covenant to be necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. In light of all the above, and considering the significant consequences of a refusal of re-registration of the RAJW, namely the impossibility of carrying out religious activities, the Committee concludes that the refusal to re-register the RAJW amounts to a limitation of the authors’ right to manifest their religion under article 18 (1) that is unnecessary to achieve a legitimate aim under article 18 (3) of the Covenant. The Committee therefore concludes that the authors’ rights under article 18 (1) of the Covenant have been violated.

<sup>36</sup> See, *Young-kwan Kim et al v. Korea*, supra n. 25, para. 7.3.

<sup>37</sup> See, interim report of the Special Rapporteur on freedom of religion or belief report, A/67/303, 13 August 2012, para. 26, 27; Human Rights Council, Resolution 21/16 on the rights to freedom of peaceful assembly and association, A/HRC/RES/21/16, 11 October 2012, art. 1.

<sup>38</sup> Ibid, at para. 150.

<sup>39</sup> See, *Yeo-Bum Yoon and Myung-Jin Choi v. the Republic of Korea* (CCPR/C/88/D/1321-1322/2004), para. 8.3; *Jong-nam Kim et al. v. the Republic of Korea* (CCPR/C/106/D/1786/2008), para. 7.3; and *Atasoy and Sarkut v. Turkey*, supra n. 16, paras. 10.4 and 10.5.

<sup>40</sup> See, the Committee’s general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, para. 2.

9.8 The next issue before the Committee is whether the refusal of the State party's authorities to re-register the RAJW unreasonably restricted the authors' right to freedom of association. In this regard the Committee recalls that its task under the Optional Protocol is not to assess in the abstract laws enacted by State parties, but to ascertain whether the implementation of such laws in the case in question gives rise to a violation of the authors' rights.<sup>41</sup> In accordance with article 22 (2) of the Covenant, any restriction on the right to freedom of association must cumulatively meet the following conditions: (a) it must be provided for by law; (b) may only be imposed for one of the purposes set out in paragraph 2; and (c) must be "necessary in a democratic society" for achieving one of these purposes.<sup>42</sup> The reference to "democratic society" in the context of article 22 indicates, in the Committee's opinion, that the existence and operation of associations, including those which peacefully promote ideas not necessarily favorably viewed by the government or the majority of the population, is a cornerstone of any society.<sup>43</sup>

9.9 In the present case, the State party's authorities have banned the RAJW and refused its re-registration on the basis of a number of stated reasons (see, para. 9.4 above). These reasons must be assessed in the light of the consequences which arise for the authors and the RAJW. The Committee notes that even though such reasons were prescribed by the relevant law, the State party has not advanced any argument as to why they are *necessary*, in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The Committee also notes that the refusal to re-register the RAJW led directly to the de facto unlawfulness of its operation on the State party's territory, thus precluding the authors from enjoying their right to freedom of association, with religious activities of Jehovah's Witnesses being perceived as illegal by the Tajik authorities and leading to arrests, detentions, interrogations, searches, beatings, seizures of religious materials, as well as a deportation of Jehovah's Witnesses. Accordingly, the Committee concludes that the refusal by the State party's authorities to re-register the RAJW does not meet the requirements of article 22 (2) of the Covenant in relation to the authors. The authors' rights under article 22 (1) of the Covenant have thus been violated.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the authors' rights under articles 18 (1) and 22 (1) of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to review the conditions for the consideration of the RAJW's application for re-registration and to provide the authors with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

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<sup>41</sup> See, *Faurisson v. France* (CCPR/C/58/D/550/1993), para 9.3.

<sup>42</sup> See, e.g. *Zvozkov et al. v. Belarus* (CCPR/C/88/D/1039/2001), para 7.2.

<sup>43</sup> *Ibid.*