



## International Covenant on Civil and Political Rights

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### Advance unedited version

#### Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2616/2015\*, \*\*

<i>Communication submitted by:</i>	Kiryl Dashkouski (represented by counsel, André Carbonneau)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	10 November 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 3 June 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	1 July 2022
<i>Subject matter:</i>	Unjustified interference with freedom of religion, expression and assembly
<i>Procedural issue:</i>	None
<i>Substantive issues:</i>	Freedom of thought, conscience or religion; freedom of opinion and expression; freedom of assembly; freedom of association
<i>Articles of the Covenant:</i>	18 (1); 19 (2); 21; and 22 (1)
<i>Articles of the Optional Protocol:</i>	2

1. The author is Mr. Kiryl Dashkouski, a citizen of Belarus born in 1977. He claims to be a victim of a violation, by the State party, of his rights under articles 18 (1); 19 (2); 21; and 22 (1) of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is represented by counsel, Mr. André Carbonneau.

#### The facts as submitted by the author

2.1. The author is the chairman of the Jehovah's Witnesses Community (hereinafter "the Community") in the city of Rogachev. The Community has been formally registered as a legal entity since 17 December 1998. Although the Community does not have its own

\* Adopted by the Committee at its 135th session (27 June–27 July 2022).

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

permanent place of worship, since 2002, it has regularly held its religious services at the private home of one of its members Ms. Volchkova. Both law enforcement officials and the Rogachev District Executive Committee have been aware of this long standing arrangement. Article 25 of the Law on Freedom of Conscience and Religious Organisations states that religious services may be held *inter alia* in private residences, if the service is not of a “mass or systematic character”. Religious services cannot be held in any other location without the consent of a relevant government authority.

2.2 On 29 March 2012, the Acting Prosecutor of the Rogachev District sanctioned the search of Ms. Volchkova’s residence on the grounds that the Community had not been authorized by the Executive Committee to hold services at that address. On 1 April 2012, the police raided the home of Ms. Volchkova at the same time as she hosted a gathering of 47 members of the Community for a religious service. The police videotaped and interrogated everyone in attendance and recorded their names, address and other personal details. The police also seized religious literature of those in attendance as well as a number of CDs and DVDs containing religious material.

2.3 On 5 April 2012, the author was charged with the administrative offence of having organised an “other mass event” on 1 April 2012 without authorisation in violation of article 23.34 (2) of the Code of Administrative Violations.<sup>1</sup> The police issued an administrative protocol against the author on 18 April 2012, which specified that the author acted in violation of article 25 (5) of the Law on Freedom of Conscience and Religious Organisations<sup>2</sup> and articles 5 and 6 of the Law on Mass Events.<sup>3</sup> The Law on Mass Events categorizes events into “mass events”,<sup>4</sup> which includes assemblies, rallies, protests, etc., and “other mass events”, which includes religious, sports, cultural and other events.<sup>5</sup> However, as of 25 November 2011, the administrative sanction for conducting unauthorized “other mass events” was removed from the Code of Administrative Violations.

2.4 The author’s trial took place on 8 May 2012 before the Rogachev District Court. The judge dismissed the case on the basis that the Code of Administrative Violations no longer prescribed liability for holding “other mass events” without authorisation. The Chief of the Rogachev Police Department appealed the decision to the Gomel Regional Court claiming that the Rogachev District Court had erred in its decision as it should have returned the case materials to the police for it to amend the errors in the administrative protocol against the author. On 6 June 2012, the Gomel Regional Court held that the Rogachev District Court had failed to establish whether the religious service conducted on 1 April 2012 was “an assembly” or an “other mass event”, and ordered a new trial. On 19 July 2012, the Rogachev District Police Department issued a new administrative protocol charging the author with organizing an unauthorized “prayer assembly”, in violation of both the Law on Freedom of Conscience and Religious Organisations and the Law on Mass Events.

2.5 On 10 August 2012, the Rogachev District Court convicted the author pursuant to article 23.34 (2) the Code of Administrative Violations – violation of the established procedure for organizing and holding assemblies – and ordered him to pay a fine of 2,000,000 Roubles. The Court considered that the event of 1 April 2012 constituted a religious service

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<sup>1</sup> “Violating the established procedure for organizing or conducting an assembly, rally, street procession, demonstration, or picket, as well as public exhortations to organize or conduct an assembly, rally, street procession, demonstration or picket in violation of the established procedure for organizing or conducting them – if such actions do not constitute a crime – shall incur a fine in the amount of 20 to 40 basic units or administrative arrest, if the violation is committed by the organizer of such events”, Article 23.34 (2).

<sup>2</sup> “Religious services and ceremonies and other mass events, having the overall objective of satisfaction of religious needs, when held in open air and indoor premises not specifically designed for these purposes, may be carried out only after receiving an appropriate decision from the head of local executive or administrative body or its deputy in the order established by the legislation of the Republic of Belarus”, Article 25 (5) of the Law on Freedom of Conscience and Religious Organisations.

<sup>3</sup> Articles 5 and 6 of the Law on Mass Events describe the procedure for obtaining an authorization for a mass event.

<sup>4</sup> “Assembly, rally, march, demonstration, picket or others”, Article 2 of the Law on Mass Events.

<sup>5</sup> “Sporting, cultural spectacle and other entertainment event, religious event, held in places not specially intended for the purpose in the open air or indoors”, Article 2 of the Law on Mass Events.

and, as such, amounted to a “prayer assembly” according to article 3 of the Law on Freedom of Conscience and Religious Organisations. The Court held that the prayer assembly constituted a mass event and was held outside of the Community’s registered address without prior authorization, which violated both the Law on Freedom of Conscience and Religious Organisations and the Law on Mass Events.

2.6 On an unspecified date, the author appealed the decision before the Gomel Regional Court arguing that there was no evidence to qualify the religious service outside of the “other event” category, and that his right to a peaceful assembly had been violated. On 7 September 2012, the Gomel Regional Court dismissed the author’s appeal.

2.7 On an unspecified date, the author submitted a supervisory appeal to the Supreme Court but his appeal was remanded to the Gomel Regional Court. The Gomel Regional Court rejected the appeal on 25 March 2013 on the basis that the restrictions to conduct mass events were in the interest of public order, the protection of public health or morals and the rights and freedoms of others; and that the author’s prayer assembly constituted a violation of the Law of Freedom of Conscience and Religious Organisations and the Law of Mass Event that incurred liability under article 23.34 (2) of the Code of Administrative Violations.

2.8 The author attempted to find a permanent solution to enable the Community to have a place of worship, including building a place dedicated for services on a plot of land. However, his applications for two different plots of land were refused by the Rogachev District Executive Committee. On 11 June 2012, the author, in his capacity as a chairman of the Rogachev Religious Community, formally requested an authorization to hold regular services at Ms. Volchkova’s home. Following successive applications, he was given temporary authorizations to do so until 31 December 2012, first to conduct services once a week, then twice a week, but only at predetermined hours. No explanation was given by the Rogachev District Executive Committee for the arbitrary limits imposed on the days and times when the Community members could hold their religious services. However, when in January 2013, Ms. Volchkova applied for a permit to use her residence as a permanent place of worship for the Community, the Rogachev District Executive Committee denied her request. On 2 March 2013, the Housing Code was amended to allow for the use of private houses for religious services. Ms. Volchkova applied twice, in 2013 and 2014, to convert part of her residence for religious use by the Community, but both of her applications were rejected by the Rogachev District Executive Committee on the grounds that sanitary and fire regulations established for residences would not be observed.

2.9 The author submits that he has exhausted all effective domestic remedies.

### **Complaint**

3.1 The author claims that his prosecution and his conviction for organizing and holding religious services on the basis of the Code of Administrative Violations, in conjunction with the Law of Mass Events and the Law of Freedom of Conscience and Religious Organisations, violate his rights under articles 18 (1), 19 (2), 21, and 22 (1) of the Covenant. He considers that such prosecution and conviction amount to interferences with his right to freely manifest his religious beliefs in community with others and to his rights to freedom of expression, assembly and association, which bears no justification. The author also refers to the Committee’s jurisprudence which has repeatedly held that limitations cannot only be justified on the basis of domestic law, and that the limitation must be necessary for one of the legitimate purposes prescribed by the Covenant.

3.2 The author claims that the requirement to give notice of a religious service held in a private residence is not necessary in a democratic society. He notes that it targets minority religious groups that often do not have their own places of worship unlike the Russian Orthodox Church. The author argues that while sanitation and fire safety can be legitimate State concerns, they cannot justify the total ban imposed by article 25 of the Law of Freedom of Conscience on holding religious service in locations which are not specifically designated for such purposes without prior permission from the local governments. He notes that a similar ban is not imposed on non-religious gatherings, such as weddings and family gatherings, where similar numbers of persons may gather in a rented facility or private residence.

### **Lack of cooperation by the State party**

4. On 21 August 2015, 29 November 2018 and 12 November 2020, the Committee requested the State party to provide information and its observations on the admissibility and the merits of the present communication. The Committee regrets the failure of the State party to provide any information with regard to the admissibility or the merits of the author's claims. It recalls that it is implicit in article 4 (2) of the Optional Protocol that States parties examine in good faith all allegations brought against them, and that they make available to the Committee all information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they have been sufficiently substantiated.<sup>6</sup>

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

#### *Consideration of admissibility*

5.1 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.

5.2 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.

5.3 In accordance with article 5 (2) (b) of the Optional Protocol, the Committee shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies. Accordingly, the Committee considers that it is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol from examining the present communication.

5.4 The Committee considers that the author has sufficiently substantiated, for the purposes of admissibility, his claims under articles 18 (1), 19 (2), 21, and 22 (1) of the Covenant. The Committee therefore declares them admissible and proceeds with their consideration on the merits.

#### *Consideration of the merits*

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

6.2 The Committee notes the author's claim that his prosecution and conviction for organizing and holding religious services of the Jehovah's Witnesses Community outside of a registered address constitutes a violation of article 18 (1) of the Covenant. The Committee observes that the State party has submitted no observations with regard to the communication and that, in those circumstances, due weight must be given to the author's claims as far as they are sufficiently substantiated.<sup>7</sup> The Committee recalls its general comment No. 22 (1993), according to which 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 freedom to manifest religion or belief may be exercised either individually or in community with others and in public or private.<sup>8</sup> Moreover, article 18 (3) is to be interpreted strictly, and limitations on the freedom to manifest one's religion or beliefs may be applied only for those

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<sup>6</sup> General comment No. 33 (2008), paras. 8 and 10; see also *Malashenak v. Belarus* (CCPR/C/129/D/2486/2014), para. 4.

<sup>7</sup> *Reviako v. Belarus* (CCPR/C/129/D/2455/2014), para. 8.1.

<sup>8</sup> General comment No. 22 (1993), para. 4; see also *Bekmanov and Egemberdiev v. Kyrgyzstan* (CCPR/C/125/D/2312/2013), para. 7.2.

purposes for which they were prescribed, and must be directly related and proportionate to the specific need on which they are predicated.<sup>9</sup>

6.3 In the present case, the Committee observes that the Rogachev District Court found the author guilty of violating the established procedure for organizing and holding assemblies. This court held that the religious service constituted a prayer assembly held outside of the Community's registered address without prior authorization, which violated both the Law on Freedom of Conscience and Religious Organisations and the Law on Mass Events. The Committee further observes that the Gomel Regional Court considered the restrictions to conduct mass events were in the interest of public order, the protection of public health or morals and the rights and freedoms of others; however, the court did not provide any justification to support its finding. In the absence of State party's observations which might have explained how the imposed limitation represented a proportionate measure necessary to serve a legitimate purpose identified in article 18 (3) of the Covenant, the Committee considers that the punishment imposed on the author amounted to a limitation of his right to manifest his religion under article 18 (1) of the Covenant. Accordingly, the Committee concludes that by convicting and fining the author for organizing and holding religious services, the State party violated his rights under article 18 (1) of the Covenant.

6.4 In the light of its findings, the Committee does not deem it necessary to examine whether the same facts constitute a violation of articles 19, 21 and 22 of the Covenant.

7. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of the author's rights under article 18 (1) of the Covenant.

8. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. That requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is under an obligation, inter alia, to provide the author with adequate compensation, including reimbursement for the fines imposed and for court fees related to the case in question. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by reviewing its domestic legislation, regulations and/or practices with a view to ensuring that the rights under the Covenant may be fully enjoyed in the State party.

9. 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 and enforceable 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 language of the State party.

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<sup>9</sup> General comment No. 22 (1993), para. 8; see also *Mammadov et al. v. Azerbaijan* (CCPR/C/130/D/2928/2017), para. 7.4.