



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2871/2016*, **

<i>Communication submitted by:</i>	D.O., G.K. and S.G (represented by counsels, Haykaz Zoryan and Ali Dzhililov)
<i>Alleged victim:</i>	The authors
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	29 June 2016 (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 7 December 2016
<i>Date of adoption of decision:</i>	23 October 2023
<i>Subject matter:</i>	Refusal to register changes to constituent documents of a religious organization
<i>Procedural issue:</i>	Substantiation of claims
<i>Substantive issues:</i>	Freedom of religion; freedom of association; discrimination on the ground of religious beliefs
<i>Articles of the Covenant:</i>	18 (1) and (3), 22 (1) and (2) and 26
<i>Article of the Optional Protocol:</i>	2

1.1 The authors of the communication are D.O., a national of the Republic of Moldova born in 1974, and G.K. and S.G., nationals of the Russian Federation, born in 1972 and 1962 respectively. They claim that the Russian Federation¹ has violated their rights under articles 18 (1) and (3), 22 (1) and (2) and 26 of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The authors are represented by counsel.

1.2 On 13 February 2018, the authors and the State party were informed of the decision of the Special Rapporteurs on new communications and interim measures, acting on behalf

* Adopted by the Committee at its 139th session (9 October–3 November 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Tijana Šurlan, Kobayyah Kpatcha Tchamdja, Teraya Koji.

¹ The same claim, based on the same factual circumstances, has been submitted by the authors in a separate communication regarding the Republic of Moldova. The communication is registered as a separate case (CCPR/C/139/D/2870/2016).



of the Committee, to examine the admissibility of the communication first, separately from the merits.

Facts as submitted by the authors

2.1 The authors belong to the religious community of Jehovah's Witnesses in the Transnistrian region of the Republic of Moldova (Transnistria).² They are religious ministers (elders) and members of the board of directors of Jehovah's Witnesses in Transnistria, which was registered there as a religious organization in 1991.

2.2 In 2009, the de facto authorities of the self-proclaimed Transnistrian Moldovan Republic³ adopted Law No. 668-3-IV on freedom of conscience and religious association, which required all religious organizations registered in Transnistria to bring their constituent documents into conformity with the new legislation within a specified deadline or face liquidation.⁴ On four occasions between July 2009 and March 2014, the authors, as representatives of Jehovah's Witnesses, applied to the Ministry of Justice of the Transnistrian Moldovan Republic, requesting that the changes to the constituent documents of the organization be registered, in order to bring them into conformity with the new legislation. All their requests for registration were refused.

2.3 In particular, on 8 July 2009, the authors submitted a request to the Ministry of Justice of the Transnistrian Moldovan Republic to register changes to the constituent documents of the organization. The Ministry ordered that a board of experts under the Administration of the President of the Transnistrian Moldovan Republic conduct a religious examination. On 30 December 2009, the board produced an expert opinion, finding, among other things, that the belief system of Jehovah's Witnesses, as well as the activities of the religious organization based on that belief system, contradicted the foundations of the constitutional order, health and morals, the rights and legitimate interests of persons and citizens, and the defence and security of the State.

2.4 On 10 January 2010, the Ministry of Justice of the Transnistrian Moldovan Republic, referred to the board's expert opinion and rejected the authors' application for registration, finding that the goals and activities of the organization contradicted the Constitution and legislation of the entity. The Ministry of Justice also referred to several errors in the authors' application as grounds for refusing registration.

2.5 The authors challenged that refusal before the Tiraspol City Court. On 31 May 2012, the court dismissed the complaint, having found that the decision to refuse registration on the grounds specified was lawful. On 12 July 2012, the Judicial Board for Civil Cases of the Supreme Court of the Transnistrian Moldovan Republic quashed that decision on appeal and remitted the case to the first instance court for fresh examination, on the grounds that the first instance court had examined the case in the authors' absence and had failed to give reasons for its decision and to duly examine the circumstances of the case. On 26 October 2012, the Presidium of the Supreme Court quashed the appeal decision and upheld the decision of the first instance court.

2.6 On 16 May 2013 and 15 January 2014, the authors submitted their second and third requests for registration to the Ministry of Justice, having corrected the previously identified shortcomings. Their requests were rejected on 14 June 2013 and 14 February 2014, respectively, with the expert opinion of 30 December 2009 cited and a number of errors in the application referred to as grounds for refusing registration.

² In 1990, the Transnistrian region (also Transnistria or Transdniestria) unilaterally declared independence from the Republic of Moldova. A self-proclaimed entity, the Transnistrian Moldovan Republic (or alternatively the Moldavian Republic of Transnistria) is not recognized as a State entity under international law but is considered to be an integral part of the Republic of Moldova.

³ References in this document to the de facto authorities in Transnistria, including all government ministries and judicial bodies, do not amount to recognition of their legitimacy, nor should they be interpreted to confer recognition of any legal status of the territory.

⁴ The deadline was initially set for 31 December 2009 and subsequently extended to 31 December 2010.

2.7 On 14 March 2014, the authors submitted a fourth application for registration of changes to the constituent documents. On 11 April 2014, the Ministry of Justice referred to the expert opinion of 30 December 2009 and rejected the application on the grounds that the goals and activities of the organization were contrary to the Constitution and legislation of the Transnistrian Moldovan Republic; the charter and other documents submitted did not meet the requirements of the current legislation of the entity; the information contained in the documents was inaccurate; and the decision to amend the charter of the organization was made by an unauthorized body.

2.8 The authors challenged the decision of 11 April 2014 before the Tiraspol City Court, contending, among other things, that the Ministry of Justice had deliberately created obstacles to the registration of changes to the constituent documents of their organization, as all the shortcomings indicated in the previous decisions to refuse registration had been corrected.

2.9 On 28 July 2014, the Tiraspol City Court granted the authors' claim, deciding that the refusal of the registration was groundless and that the expert opinion of 30 December 2009 was not applicable to the current registration procedure. On 25 September 2014, the Judicial Board on Civil Cases of the Supreme Court quashed the decision on appeal and rejected the authors' complaint, finding that the decision to refuse the registration was lawful and that the expert opinion of 30 December 2009 was correct. The authors complained against that decision in an application for a supervisory review. On 18 February 2015, the Supreme Court rejected the authors' application for a supervisory review.

2.10 On 4 April 2015, one of the authors, D. O., sent two separate letters with identical content to the Prime Ministers of the Russian Federation and the Republic of Moldova on behalf of the Jehovah's Witnesses community in Transnistria. In the letters, he complained about the persistent violations of the community's rights under the Covenant, due to the repeated refusals to register changes to the constituent documents of the organization under the new law on religious associations, and about the attempts to end its religious activities in Transnistria. In the letters, the author requested that the Prime Ministers of both the Russian Federation and the Republic of Moldova "urgently intervene in the situation and take all possible measures to protect and restore the violated rights of Jehovah's Witnesses, namely that the Community be re-registered and the changes made to the constituent documents be registered". No response to the letters was forthcoming.

Complaint

3.1 The authors claim that the repeated refusal by the de facto authorities in Transnistria to register changes in the constituent documents of their religious organization constitutes a violation of their rights under articles 18 (1) and (3), 22 (1) and (2) and 26 of the Covenant. They submit that an unregistered religious activity constitutes an offence under the legislation of the Transnistrian Moldovan Republic and that obtaining registration was a necessary prerequisite for the exercise of their religious beliefs. Without a revised registration, their organization is unable to maintain the status of a legal entity and, consequently, to enjoy the rights attributed to registered religious organizations, such as the right to rent property, establish places of worship, hold religious services in places accessible to the public and produce, obtain and distribute religious literature. The authors submit that the refusal to register was not prescribed by law, as none of the grounds cited in the decisions of the authorities are envisaged in the law on religious associations. The grounds invoked by the authorities were arbitrary, inconsistent, formalistic and unsubstantiated. Furthermore, the refusal to register was not necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, as envisaged by article 18 (3) and article 22 (2) of the Covenant. The authors also contend that the expert opinion of 30 December 2009 was unfounded and could not serve as a basis for refusing re-registration.

3.2 The authors further argue that they were subject to discrimination based on their religious beliefs, in violation of article 26 of the Covenant. They were treated differently from other similar organizations, with no reasonable or objective justification, since 24 out of 28 other religious organizations registered in Transnistria had successfully obtained registration under the new law. The authors argue that the expert opinion of 30 December 2009 was

discriminatory and based on a judgment of the legitimacy of their religious beliefs, which was incompatible with the State duty to remain neutral and impartial.⁵

3.3 The authors claim that both the State party and the Republic of Moldova bear responsibility for the alleged violations of their rights under the Covenant. In that respect, they invoke the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to the Republic of Moldova, in which he states that “the Transnistrian region of the Republic of Moldova comes under the jurisdiction of both the Republic of Moldova and the Russian Federation and that, therefore, both of them share the responsibility to uphold respect for human rights”.⁶ The authors argue that the issues raised in the present communication fall within the jurisdiction of the State party by virtue of the effective control it exercises over Transnistria. In this connection, they refer to the findings made to that effect by the European Court of Human Rights in its judgments in the cases of *Ilaşcu and others v. the Republic of Moldova and Russia* and *Catan and others v. the Republic of Moldova and Russia* concerning the responsibility of both the Republic of Moldova and the Russian Federation for alleged violations of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) in Transnistria. The authors refer to the facts established and conclusions reached by the Court in its judgments in the two cases that, while the Republic of Moldova has de jure jurisdiction over Transnistria, it exercises little or no effective control over the region. Due to continuous and uninterrupted support by the Russian Federation, both militarily and politically, Transnistria was established and has survived. The high level of dependence by the Transnistrian authorities on the military, economic, financial and political support provided by the Russian Federation indicates that it exercises effective control over the Transnistrian administration.⁷ The authors refer to the approach developed by the Court, that: “The obligation to secure ... [by a Contracting State exercising effective control over an area outside its national territory] the rights and freedoms set out in the Convention, derives from the fact of such control, whether it be exercised directly, through the Contracting State’s own armed forces, or through a subordinate local administration. Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration. The fact that the local administration survives as a result of the Contracting State’s military and other support entails that State’s responsibility for its policies and actions.”⁸

3.4 In support of their assertion as to the existence of the State party’s jurisdiction in the present case, the authors submit, without providing any further details, that many residents of Transnistria have been granted citizenship of the Russian Federation.⁹ They also refer to resolution 1896 (2012) of the Parliamentary Assembly of the Council of Europe, dated 2 October 2012, concerning, inter alia, the “passportisation” by the Russian Federation of the population in Transnistria and the opening of polling stations in the region without the explicit consent of the de jure authorities of the Republic of Moldova. In the resolution the Assembly also calls on the Russian Federation to, inter alia, complete the withdrawal of the remaining Russian military forces and their equipment from the territory of the Republic of Moldova without further delay (paras. 18 and 25.2.). The authors further submit that a major part of the State party’s legislation has been adopted by the authorities in Transnistria as the legislation of the Transnistrian Moldovan Republic. In that regard, the authors refer to the “Concept of harmonization of the legislation of the Transnistrian Moldovan Republic with the legislation of the Russian Federation” and the unified plan for the harmonization, approved by the President of the Transnistrian Moldovan Republic in decree No. 586pn of

⁵ paras. 116 and 123.

⁶ [A/HRC/10/44/Add.3](#), para. 6.

⁷ European Court of Human Rights, *Ilaşcu and others v. the Republic of Moldova and Russia*, Application No. 48787/99, Judgment, 8 July 2002, paras. 351, 352 and 394; and *Catan and others v. the Republic of Moldova and Russia*, Applications No. 43370/04, No. 8252/05 and No. 18454/06, Judgment, 19 October 2012, paras. 106–109.

⁸ *Catan and others v. the Republic of Moldova and Russia*, para. 106.

⁹ No exact number of persons who have been granted citizenship of the Russian Federation is provided, nor are the grounds for granting citizenship specified.

26 June 2007. The authors note that the law on religious associations applied by the Transnistrian authorities in their case is similar to Law No. 125-Φ3 of the Russian Federation of 26 September 1997 on freedom of conscience and religious associations.¹⁰

3.5 The authors ask the Committee to find a violation of their rights under articles 18 (1) and (3), 22 (1) and (2) and 26 of the Covenant, and to require the State party to provide them with an effective remedy, in particular to ensure the re-registration of their religious organization; provide appropriate monetary compensation for the moral damage suffered; and to cover the expenses incurred in connection with the proceedings before the courts in Transnistria and before the Committee in the present case.

State party's observations on admissibility

4. In a note verbale dated 16 February 2017, the State party submitted its observations on the admissibility of the communication. The State party indicates that it does not recognize Transnistria as an independent subject of international law and considers it to be part of the territory of the Republic of Moldova. The State party submits that it has not established legislative authorities in Transnistria, nor has it ever carried out a legislative initiative on the territory. Accordingly, it does not exercise any control over Transnistria, which is not subject to its jurisdiction, *de jure* and *de facto*. The State party further submits that there is no causal link between the actions of its own authorities and the actions of the local authorities in Transnistria. The State party indicates that the communication should be declared inadmissible.

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

5. On 31 March 2017, the authors submitted comments in response to the State party's observations, stating that they relied on the information and arguments provided in their initial communication and left it to the Committee to decide whether the State party bore responsibility for the alleged violations.

Authors' additional comments on the State party's observations on admissibility¹¹

6.1 On 4 February 2019, the authors provided additional comments on the admissibility of the communication. The authors elaborate on the concepts of State extraterritorial jurisdiction and effective control, as developed by the European Court of Human Rights in its jurisprudence, in particular in three cases before it.¹² The authors refer to the approach developed by the Court to the effect that the question of whether a State exercises effective control over an area outside its own territory is a question of fact, determined through indicators such as the strength of the State's military presence in the area and "the extent to which its military, economic, and political support for the local subordinate administration provides it with influence and control over the region".¹³ They refer in particular to the Court's findings of fact and conclusions in *Mozer v. the Republic of Moldova and Russia* that "Russia continues to exercise effective control and a decisive influence over the 'MRT' authorities" (para. 110).¹⁴

6.2 The authors indicate that the fact of effective control exercised by the State party over Transnistria should be accepted as established on the basis of the Court's jurisprudence. They

¹⁰ European Court of Human Rights, *Jehovah's Witnesses of Moscow and others v. Russia*, Application No. 302/02, Judgment, 10 June 2010, paras. 72–80.

¹¹ At the Committee's 124th session, discussions were held on the present case. As a result, the Committee decided to request the authors to provide further information regarding the admissibility of the communication, specifically legal and factual arguments related to the authors' claim that the Russian Federation exercises "effective control" over the territory of Transnistria. On 3 December 2018, the Secretariat communicated the decision of the Committee to the authors, with a deadline for submitting their comments of 4 February 2019.

¹² European Court of Human Rights, *Ilașcu and others v. the Republic of Moldova and Russia; Catan and others v. the Republic of Moldova and Russia*; and *Mozer v. the Republic of Moldova and Russia*, Application no. 11138/10, Judgment, 23 February 2016.

¹³ *Catan and others v. the Republic of Moldova and Russia*, para. 107.

¹⁴ See also para. 157.

argue that the findings of the Court are also relevant in the present case, in that they confirm that the State party is responsible for the violation of their rights under the Covenant stemming from the acts of the “subordinate local administration” in Transnistria. The authors submit that the period when they attempted to obtain registration broadly corresponds to the period covered by the judgments of the Court above. They are not aware of any other changes in the State party’s effective control over Transnistria. In that respect, the authors refer to resolution 2034 (2015) of the Parliamentary Assembly of the Council of Europe, calling on the Russian Federation, inter alia, to withdraw the 14th Army and its equipment from the territory of the Republic of Moldova and promptly implement the ruling of the European Court of Human Rights in the case of *Catan and others v. the Republic of Moldova and Russia*.¹⁵ The authors note that the State party’s submission to the Committee does not challenge the findings and conclusions made by the Court in relation to its effective control over the region. Moreover, the State party’s argument that it has never carried out any legislative initiative on the territory of the region and does not have any legislative authorities established there does not disprove the fact of its exercising effective control over the territory.

6.3 The authors further submit that a “strong degree of integration” between Transnistria and the State party is evident from the fact that the de facto authorities have harmonized legislation in the region with that of the State party.¹⁶ The authors refer, as an ongoing example of the integration, to a series of amendments aimed at combating terrorism that the State party introduced into its domestic legislation on 24 June 2016, which, inter alia, prohibits unauthorized missionary activity and restricts that of the Jehovah’s Witnesses community. The authors indicate that, three months later, on 12 October 2016, “nearly the same word-for-word” amendments were introduced into the legislation of Transnistria and adopted on 16 November 2016.¹⁷

State party’s additional observations on admissibility

7.1 In a note verbale dated 23 December 2021, the State party reiterated its previous position in all respects regarding the inadmissibility of the communication. It further argued that the refusal to re-register the authors’ religious organization was made by a Transnistrian Ministry and challenged before the Transnistrian courts, both acting as authorities of the Republic of Moldova. Accordingly, the alleged violation of the Covenant took place on the territory of the Republic of Moldova.

7.2 The State party asserts that the arguments presented by the authors are not supported by the facts of the case. In particular, in the Russian Federation the Administrative Centre of Jehovah’s Witnesses in Russia was liquidated by a decision of the Supreme Court on 20 April 2017, several years later than in the Republic of Moldova. The reasons for that decision were the activities of the organization, which affected the rights of others, including minors, and complaints received from relatives of persons who were involved in local organizations of Jehovah’s Witnesses and had suffered from their activities. The complaints received included information on divorce and other forms of termination or complications of family relationships; refusal of medical assistance to minors (for example for blood transfusions); the involvement of minors in the lifestyle of adherents; the lack of housekeeping in families with children; regular obligatory donations, which caused significant financial hardship to families; and other demonstrations of gross violations by the religious organization of the rights of its members and other persons, who, against their will, found themselves in situations that threatened their well-being, health and life.

¹⁵ Resolution 2034 (2015), para. 12. Reference is also made to the statement of the Mission of the United States of America to the Organization for Security and Cooperation in Europe (OSCE) delivered at the OSCE Permanent Council meeting on 10 January 2019 to the effect that the Russian Federation had failed to fulfil all the commitments it made at the 1999 Istanbul OSCE Summit to withdraw its forces from Moldova.

¹⁶ Reference is made to decree No. 586пп of the President of the Transnistrian Moldovan Republic of 26 June 2007 (see para. 3.4 above).

¹⁷ The authors have provided the Committee with the text of the law on religious associations with the 2016 amendments.

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 the authors' claims of the violation of their rights under the Covenant on account of the acts by the de facto authorities in the Transnistrian region of the Republic of Moldova, which the authors have raised in separate communications to the Russian Federation and the Republic of Moldova. The Committee notes that, in both communications, the alleged violations took place in Transnistria, which is part of the territory of the Republic of Moldova.

8.4 The Committee recalls the provisions of article 1 of the Optional Protocol, according to which it has competency to receive and consider communications from individuals subject to the jurisdiction of States parties. In its general comment No. 31 (2004) the Committee stated that States parties are required under article 2, paragraph 1, of the Covenant, to respect and to ensure the Covenant rights to all persons within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within the territory of the State party (para. 10).

8.5 The Committee notes the authors' position that the State party is responsible for the alleged violations by virtue of the effective control it exercises over Transnistria, which engages the State party's jurisdiction for purposes of the Covenant and the Optional Protocol. According to the authors, the State party's effective control of Transnistria stems from its military presence in the area and the high level of dependence of the de facto authorities in the region on support from the State party (paras. 3.3, 3.4 and 6.1–6.3 above).

8.6 The Committee further notes the evidence and arguments relied on by the authors to substantiate their claim. These include: (a) the respective judgments of the European Court of Human Rights in cases lodged under various articles of the European Convention on Human Rights, with findings that the Russian Federation exercises effective control of Transnistria;¹⁸ (b) the issuance by the State party of Russian passports to a large number of residents in Transnistria; (c) resolutions 1896 (2012) and 2034 (2015) of the Parliamentary Assembly of the Council of Europe calling on the Russian Federation to withdraw its military forces and equipment from the Republic of Moldova;¹⁹ (d) the alleged harmonization of the legislation in Transnistria with that of the State party, demonstrated by the similarity between the law on religious associations of the Transnistrian Moldovan Republic and Law No. 125-Φ3 of the Russian Federation of 26 September 1997 on freedom of conscience and religious associations, as well as considerable similarity between the 2016 amendments to both laws.

8.7 The Committee observes that to substantiate their claims concerning the State party's jurisdiction in the present case, the authors mainly rely on the conclusions of the European Court of Human Rights in its jurisprudence on Transnistria. They invite the Committee to accept the State Party's effective control of Transnistria, based on the findings established by the Court. However, the Committee is obligated to make its own determination as to whether a claim brought before it is well founded, both legally and factually.

¹⁸ For example, *Ilașcu and others v. the Republic of Moldova and Russia*; *Catan and others v. the Republic of Moldova and Russia*; and *Mozer v. the Republic of Moldova and Russia*.

¹⁹ Resolution 1896 (2012) also recognizes a violation of the territorial integrity of the Republic of Moldova on account of the "passportisation" by the Russian Federation of the population in Transnistria and the opening of polling stations in the region without the explicit consent of the de jure authorities of the Republic of Moldova.

8.8 The authors in this case allege violations of the Covenant resulting from a set of decisions, not of the State party's authorities but of the de facto authorities of Transnistria: specifically, the refusal by the Ministry of Justice of the Transnistrian Moldovan Republic to register changes to the constituent documents of their religious organization, and the ruling of the Supreme Court of the Transnistrian Moldovan Republic upholding that refusal. With respect to those impugned decisions and taking into account the totality of the evidence and arguments presented by the authors (see paras. 8.6 and 8.7) and the circumstances of the present case, the Committee concludes that the authors have failed to sufficiently substantiate their claims for the purposes of admissibility. Accordingly, it declares the communication inadmissible under article 2 of the Optional Protocol.

9. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the authors.
