



International Covenant on Civil and Political Rights

Distr.: General
15 December 2023

Original: English

Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2870/2016*, **

<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>	Republic of Moldova
<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. The authors of the communication are D.O., a national of the Republic of Moldova born in 1974, G.K. and S.G., nationals of the Russian Federation, born in 1972 and 1962 respectively. They claim that the Republic of Moldova¹ has violated their rights under articles 18 (1) and (3), 22 (1) and (2), and 26 of the International Covenant on Civil and Political Rights. The authors are represented by counsel. The Optional Protocol entered into force for the State party on 23 April 2008.

* 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 Maria 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, Kobauyah Kpacha Tchamdja, Teraya Koji, Imeru Tamerat Yigezu.

¹ The same claim, based on the same factual circumstances, has been submitted by the authors in a separate communication regarding the Russian Federation. The communication is registered as a separate case (CCPR/C/139/D/2871/2016).



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 the Jehovah's Witnesses in Transnistria, which was registered there as a religious organization in 1991.

2.2 In 2009, the de facto authorities in Transnistria,³ the authorities of the self-proclaimed Transnistrian Moldovan Republic, adopted Law No. 668-3-IV on the freedom of conscience and religious associations, 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 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 the 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, citing the expert opinion of 30 December 2009 and referring to a number of errors in the application as grounds for refusing registration.

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 of the TMR 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

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.

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 was given 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 and 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

⁵ European Court of Human Rights, *Metropolitan Church of Bessarabia and others v. Moldova*, Application No. 45701/99, Judgment of 13 December 2001, paras. 116 and 123.

3.3 The authors claim that both the State party and the Russian Federation 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, although the State party does not exercise effective control over the Transnistrian region, it has de jure jurisdiction over the territory. 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 the alleged violations of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) in Transnistria.⁷

3.4 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; to 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

4.1 In a note verbale dated 6 February 2017, the State party submitted its observations on the admissibility of the communication. The State party recalls the declaration it made upon ratification of both the European Convention on Human Rights and the Optional Protocol to the Covenant to the effect that until the Moldovan-Transnistrian conflict is finally settled and its territorial integrity fully re-established, the provisions of both treaties would apply only on the territory effectively controlled by the authorities of the State party.⁸ The State party refers to the jurisprudence of the European Court of Human Rights in the cases of *Ilaşcu and others v. the Republic of Moldova and Russia*, *Ivanțoc and others v. the Republic of Moldova and Russia*,⁹ *Catan and others v. the Republic of Moldova and Russia*, and *Mozer v. the Republic of Moldova and Russia*¹⁰ and recalls its position expressed in the proceedings on those cases. In particular, it recalls that although the Transnistrian region is part of its national territory, it does not exercise control over the region, but continues to assume positive obligations towards persons or entities trying to ensure their enjoyment of their rights in that territory. It further recalls its arguments before the Court, in particular that it kept the parties to the ongoing negotiations on the Transnistrian region informed of all relevant developments; continued to request the Russian Federation to withdraw its military equipment and personnel from the territory and to ensure that human rights were observed there; had set up a number

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 20024, 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 and 107. In support of their argument, the authors also refer to resolution 1896 (2012) of the Parliamentary Assembly of the Council of Europe, dated 2 October 2012, paras. 18 and 25.2.

⁸ United Nations, *Treaty Series*, vol. 999, p. 171, declaration of the Republic of Moldova to the Optional Protocol to the International Covenant on Civil and Political Rights: “Until the full re-establishment of the territorial integrity of the Republic of Moldova, the provisions of the [Protocol] will be applied only on the territory controlled effectively by the authorities of the Republic of Moldova. The Human Rights Committee shall not have competence to examine communications from individuals referring to violations of any of the rights set forth in the International Covenant on Civil and Political Rights committed until the date of the entry into force of the present Protocol for the Republic of Moldova.”

⁹ European Court of Human Rights, *Ivanțoc and others v. Moldova and Russia*, Application No. 23687/05, Judgment, 15 November 2011.

¹⁰ European Court of Human Rights, *Mozer v. the Republic of Moldova and Russia*, Application No. 11138/10, Judgment, 23 February 2016.

of legal mechanisms aimed at guaranteeing constitutional rights, including the right to property, medical treatment, justice and education; had opened various amenities in settlements near the region, such as passport and other documentation offices, prosecutors' offices and courts. The State party also recalls the conclusion arrived at by the European Court in *Catan and others v. the Republic of Moldova and Russia* and *Mozer v. the Republic of Moldova and Russia* to the effect that the Republic of Moldova had fulfilled its positive obligations in respect of the applicants in those cases.

4.2 The State party further submits, with reference to the spatial and personal models of State jurisdiction developed by the European Court of Human Rights in its jurisprudence and the approach adopted in *Al-Skeini and others v. the United Kingdom*,¹¹ that the continuing military presence of the Russian Federation in the Transnistrian region engages the jurisdiction of the Russian Federation through the exercise of its "public powers" extraterritorially.

4.3 In relation to the question of its own jurisdiction in the present case, the State party acknowledges that it has positive obligations in relation to the authors and that those positive obligations have been discharged, similarly to the findings of the European Court of Human Rights in the cases of *Ivanțoc and others v. the Republic of Moldova and Russia* and *Catan and others v. the Republic of Moldova and Russia*. The State party invites the Committee to assess the scope of its positive obligations, given that they clash with the authority and power of the Russian Federation. The State party notes that that it is necessary to carefully assess the responsibility of each of the State parties involved in the alleged violation of the authors' rights and to examine how their respective obligations ought to be fulfilled in a situation where a clash between the two jurisdictions persists. It further notes that the above-mentioned jurisprudence of the Court establishes the principle that the scope of a State's positive obligations should be proportionate to the level of control actually exercised.

4.4 The State party submits that it has never supported the separatist entity established in the Transnistrian region and that its only objective has been to settle the dispute, gain control over the territory and establish the rule of law and respect for human rights in Transnistria. The State party notes that it has repeatedly drawn the attention of the de facto authorities in the region to the fact that their actions with respect to human rights are unacceptable and that the respective issues need to be discussed in the framework of the established format 1+1 and 5+2.¹² The State party submits that it has continuously raised the problem of the region at the international level, seeking international assistance and mediation.

4.5 Regarding the particular circumstances of the case, the State party indicates that it is unable to provide any relevant information with a high degree of certainty and that it cannot confirm or refute the veracity of the authors' account. The State party submits that the national constitutional authority in the Republic of Moldova have not received any claims from the authors relating to their inability to register their religious organization and that no requests for registration have been lodged by the authors with the Ministry of Justice of the Republic of Moldova. The State party notes that under its national legislation, namely Law No. 125 of 11 May 2007 on the freedom of conscience, thought and religion, the authors have the possibility to register their religious organization and that no obstacles to the registration exist. It submits in substantiation of its argument that 164 congregations of Jehovah's Witnesses are currently registered in the State party.

4.6 The State party concludes by arguing that it has discharged its positive obligations to ensure the authors' rights and has not violated their rights. It further refers to the findings by

¹¹ European Court of Human Rights, *Al-Skeini and others v. the United Kingdom*, Application No. 55721/07, Judgment, 7 July 2011, paras. 135 and 136.

¹² The 1+1 format involves meetings at the level of political representatives of the Republic of Moldova and Transnistria, see <https://www.osce.org/mission-to-moldova/372141>. The 5+2 format in the framework of the negotiation process on the Transnistrian settlement includes the Republic of Moldova, Transnistria, the Organization for Security and Cooperation in Europe, the Russian Federation, Ukraine, the European Union and the United States of America. The goal of the 5+2 talks is to work out the parameters of a comprehensive settlement based on the sovereignty and territorial integrity of the Republic of Moldova within its internationally recognized borders, with a special status for Transnistria within Moldova, see <https://www.osce.org/mission-to-moldova/119488>.

the European Court in *Jehovah's Witnesses of Moscow v. Russia* concerning a violation by the Russian Federation of the right to freedom of thought, conscience and religion and the right to freedom of association in circumstances similar to those at issue in the present case.¹³ The State party indicates that, following the example of the Russian Federation, the de facto authorities in Transnistria adopted the same approach in the present case. It reiterates that it does not have control over Transnistria, nor over the de facto authorities in the region, their actions, or the legislation they adopt and implement there.

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

5.1 On 31 March 2017, the authors submitted their comments, contesting the State party's assertion that it had received no requests for registration or claims concerning their inability to register their religious organization. The authors reiterate that on 4 April 2015 they sent a letter to the Prime Minister of the Republic of Moldova, drawing the latter's attention to the persistent violation of their rights and requesting the State party to take all necessary measures to protect and restore their rights.¹⁴ In the letter, they specifically asked the Prime Minister to ensure the registration of the constituent documents. The authors provide a copy of the postmark to confirm that the letter was duly dispatched. They further note that the State party does not dispute the fact that it received the letter.

5.2 The authors reiterate that, by failing to respond to their request of 4 April 2015 or to ensure the registration of their religious community in Transnistria, the State party failed in its positive obligations in the present case.

State party's observations on the merits

6.1 In a note verbale dated 1 June 2017, the State party submitted its observations on the merits of the communication. The State party reiterated its position, previously expressed in its observations on admissibility of 6 February 2017. The State party additionally submitted that, as soon as it had been notified of the present communication, it informed the Reintegration Office and the Office of the Prosecutor General with a view to them taking all necessary measures to investigate the matter within the limits of their respective competences.

6.2 The State party concludes by stating that it recognizes its jurisdiction in the present case "as an expression of the territorial application of the Covenant", however, in the absence of effective control over Transnistria, it "does not incur any responsibility for the alleged violations to the extent of its exercised positive obligations". The State party invites the Committee to find the present communication manifestly ill-founded, as the State party has fulfilled its positive obligations to secure the authors' rights under the Covenant. The State party also invites the Committee to find that there has been no violation of the Covenant on its part in the present case.

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

7.1 On 16 August 2017, the authors submitted their comments on the State party's observations on the merits. The authors agree with the State party that the present communication falls within its jurisdiction and that it has positive obligations towards the authors under the Covenant. The authors, however, disagree with the State party's assertion that it has fulfilled its positive obligations in the present case. In that respect, the authors reiterate that the State party ignored their letter of 4 April 2015 requesting concrete action in relation to their situation. By failing to respond or act, the State party failed in its obligations in the present case.

7.2 The authors further argue that the measures referred to by the State party in support of its position in the present case are of a general character and mostly concern the overall political situation in Transnistria. In contrast, the authors assert that the State party is required to take concrete action, including at the highest level, to discharge its positive obligations and

¹³ European Court of Human Rights, *Jehovah's Witnesses of Moscow v. Russia*, Application No. 302/02, Judgment, 10 June 2010, paras. 174 and 181.

¹⁴ Para. 2.10 above.

ensure the protection of their rights.¹⁵ However, the State party did not do so. With reference to the State party informing the Reintegration Office and the Office of the Prosecutor General of their case with a view to investigating the matter, the authors argue that such a measure alone is obviously insufficient for the State party to fulfil its positive obligations. The authors submit that those government agencies did not make any effort to support their situation. Nor did they make any attempt to verify the circumstances of their case. The authors contend that the State party could have easily obtained the case materials to verify their account of the events and could have investigated the circumstances of their case. The authors conclude by asserting that the State party has failed to demonstrate that it took concrete steps to ensure the protection of their rights under the Covenant and, thus, has failed to fulfil its positive obligations in the case.

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 and also notes that the same claim has been raised against both the Republic of Moldova and the Russian Federation.

8.4 The Committee observes that, despite the declaration in the State party's instrument of ratification of the Optional Protocol to the Covenant, the State party has expressly acknowledged its jurisdiction in the present case within the scope of its positive obligations to ensure the rights guaranteed in the Covenant to individuals in Transnistria.

8.5 The Committee notes the State party's argument that the present communication is inadmissible for lack of substantiation, inasmuch as its positive obligations under the Covenant have been fulfilled. In that respect, the State party emphasizes that it has never supported the self-proclaimed entity established in Transnistria, that it had repeatedly drawn the attention of the de facto authorities in the region to the fact that their actions with respect to human rights are unacceptable and that it has continuously raised problems about the region at the international level and sought international assistance and mediation. The State party also submits that it had set up a number of legal institutions and services aimed at guaranteeing individual rights, including the right to property, medical treatment, justice and education, in settlements near the region, such as prosecutors' offices, courts and passport and other documentation offices.

8.6 The Committee also observes the information provided by the State party to the effect that under its national legislation, namely Law No. 125 of 11 May 2007 on freedom of conscience, thought and religion, the authors have the possibility to register their religious organization in the Republic of Moldova and that no obstacles to such registration exist, which is corroborated by the fact that 164 congregations of Jehovah's Witnesses are currently registered in the State party.

8.7 The Committee further notes that both parties acknowledge that the State party has no effective control over the territory of the self-proclaimed entity of the Transnistrian Moldovan Republic or over its de facto authorities. Both parties also agree that the State party had no involvement with the impugned decisions taken by the de facto authorities of the Transnistrian Moldovan Republic.

8.8 The Committee observes, however, that the parties have provided contradictory information as to whether the alleged violations in this case were duly brought to the attention

¹⁵ Reference is made to *Mozer v. the Republic of Moldova and Russia*, para. 153.

of the competent authorities of the Republic of Moldova. While the authors argue that the State party was notified of their situation through the letter of 4 April 2015 addressed to the Prime Minister of the Republic of Moldova, the State party submits that its national constitutional authority has not received any communications from the authors relating to the inability to register their religious organization; that no requests for registration were lodged by the authors with the Ministry of Justice of the Republic of Moldova; and nor is there any information available to the effect that the authors made any other type of request to any Moldovan authority subsequent to the letter of 4 April 2015.

8.9 In the absence of any additional relevant information on how the State party should have acted to secure the authors' rights and taking into account the State party's lack of effective control over Transnistria, including in particular over the registration of religious organizations in that region, the Committee considers, in the circumstances of the present case, that the authors have failed to sufficiently substantiate their claims for the purposes of admissibility. Accordingly, the communication is 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.
