



# 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. 2765/2016\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Andrey Pavlenko, Oleg Kondratenko and Konstantin Baryshev (represented by counsel, Shane H. Brady and Victor Shipilov)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	29 February 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 12 May 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	24 October 2023
<i>Subject matter:</i>	Dissolution of a local religious organization of Jehovah's Witnesses for distribution of publications banned as extremist
<i>Procedural issues:</i>	Exhaustion of domestic remedies; substantiation of claims; admissibility <i>ratione personae</i>
<i>Substantive issues:</i>	Cruel, inhuman and degrading treatment; freedom of thought, conscience and religion; freedom of association; discrimination on the ground of religion; minority rights
<i>Articles of the Covenant:</i>	7, 18 (1) and (3), 22 (1) and (2), 26 and 27
<i>Articles of the Optional Protocol:</i>	1–3 and 5 (2) (a) and (b)

1.1 The authors of the communication are Andrey Pavlenko, Oleg Kondratenko and Konstantin Baryshev, nationals of the Russian Federation born in 1962, 1964 and 1971, respectively. They claim that the State party has violated their rights under articles 7, 18 (1)

\* 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, Carlos Gómez Martínez, Laurence R. Helfer, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji and Imeru Tamerat Yigezu.

\*\*\* A joint opinion by Committee members Rodrigo A. Carazo and Carlos Gómez Martínez (partially dissenting) is annexed to the present Views.



and (3), 22 (1) and (2), 26 and 27 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 19 April 2016, the authors submitted a request for interim measures under rule 94 of the Committee's rules of procedure, asking the Committee to request the suspension of the dissolution of the Administrative Centre of Jehovah's Witnesses in Russia and of all local religious organizations of Jehovah's Witnesses in the Russian Federation. On 2 May 2016, the Special Rapporteurs on new communications and interim measures decided not to grant the authors' request.

### **Facts as submitted by the authors**

2.1 The authors are Jehovah's Witnesses. They were members of the committee (the board of directors) of the local religious organization of Jehovah's Witnesses of the city of Abinsk. The organization had 11 members. It was registered on 22 November 1999. Mr. Pavlenko was the chairman of the organization and personally participated in all the proceedings in the domestic courts.

2.2 On 6 December 2012, a Jehovah's Witness, S, was convicted by a justice of the peace of an offence under article 20 (29) of the Code of Administrative Offences, namely the mass distribution of extremist religious literature, in Abinsk. He had been accused of giving away one copy of the book *Mankind's Search for God* and one copy of the book *What Does the Bible Really Teach?*. S had been a member of the Abinsk local religious organization but had terminated his membership on 6 May 2010. Both books had been declared extremist by a decision of the Rostov Provincial Court of 11 September 2009.

2.3 On 20 February 2013, the Abinsk District Prosecutor sent a written warning to Mr. Pavlenko, as chairman of the Abinsk local religious organization, in the light of S's administrative conviction. On 11 March 2013, the organization provided the Abinsk District Prosecutor with a written response to the warning, explaining that S had not been a member of the organization since May 2010 and that there was nothing extremist in its activities.

2.4 On 10 October 2013, another Jehovah's Witness, B, was found guilty of an offence under article 20 (29) of the Code of Administrative Offences, namely the mass distribution of extremist religious literature. He had been accused of giving away one copy of the book *What Does the Bible Really Teach?* and one copy of the book *The Bible: God's Word or Man's?*.<sup>1</sup> He had previously been a member of the Abinsk local religious organization but had terminated his membership on 15 June 2013.

2.5 On 1 December 2014, the Krasnodar Territory prosecutor's office filed a request to declare the Abinsk local religious organization to be an extremist organization and to order its dissolution under Federal Act No. 114-FZ of 25 July 2002 on Combating Extremist Activity. The request was made in the light of the administrative convictions of S and B. On 25 December 2014, Mr. Pavlenko filed an objection with the Krasnodar Territorial Court. On 4 March 2015, the Court granted the prosecutor's request and ordered the dissolution of the organization and the confiscation of its property. It concluded that, although S and B had ceased to be members of the general assembly of the organization, they were still members of the organization itself. On 9 April 2015, the organization appealed to the Supreme Court of the Russian Federation. It argued that S and B had not been members of the organization at the time of their administrative convictions and that the dissolution decision was disproportionate and discriminatory and subjected them to inhuman and degrading treatment by exposing them to a risk of criminal prosecution for the peaceful manifestation of their religious beliefs. On 5 August 2015, the Supreme Court upheld the trial court decision. The books were not mentioned in the trial record, were not discussed by the parties in court and were not viewed or considered by the trial court or the Supreme Court. The written judgment was silent as to the basis for the Court's conclusions that the three books allegedly incited religious discord or threatened social peace and the security of the general public.

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<sup>1</sup> The first book was declared extremist by the Rostov Provincial Court on 11 September 2009 and the second book by the Zavodsky District Court on 28 October 2010.

Mr. Pavlenko, as chairman of the organization, filed a supervisory appeal, which was rejected by the Supreme Court on 17 December 2015.

### **Complaint**

3.1 The authors maintain that, in the wake of the dissolution of the Abinsk local religious organization, they are exposed to the threat of administrative punishment and/or criminal prosecution if they decide to hold religious services. They claim that the decision to declare the organization to be an extremist organization is in itself degrading treatment. The authors have been subjected to obvious public humiliation, shame, indignity and anguish by the judicial decisions, which have equated their religious beliefs with criminal activity and criminal organizations. On that basis, they claim that the State party has violated their rights under article 7 of the Covenant.<sup>2</sup>

3.2 The authors maintain that their rights under articles 18 (1) and (3) and 22 (1) and (2) were violated by the dissolution of their religious organization. They claim that the dissolution of the organization was not grounded in law, refer to the Committee's concluding observations on the seventh periodic report of the Russian Federation<sup>3</sup> and maintain that the definition of "extremism" in article 1 of the Act on Combating Extremist Activity is so nebulous that it could be applied to all religious activities and all religious speech, however peaceful. The authors dispute the claim that any of the three books distributed by S and B was extremist. Those three books are distributed by Jehovah's Witnesses worldwide and do not contain calls to violence or incitement to violence. The authors fail to see any legitimate aim pursued by the State party in dissolving the organization on the basis of the alleged distribution of four copies of those books. Moreover, the measure chosen by the Krasnodar Territorial Court was the most severe available and was not proportionate to the aim pursued. S and B were each fined 3,000 roubles,<sup>4</sup> which was a relatively minor punishment for the offence, but the organization was subjected to the maximum possible punishment, namely dissolution.

3.3 The authors claim a violation of their rights under article 26 of the Covenant, since they are treated differently from followers of the Russian Orthodox Church, without reasonable and objective grounds for that difference in treatment. The Russian Orthodox Church is not subjected to the indignity and humiliation of having one of its religious organizations declared extremist (a label equated with criminal activity) simply because its religious publications contain commentary on religious subjects that some might consider to be negative or critical. Furthermore, the authors were treated as if they were members of a criminal organization, although their actions and publications are entirely peaceful. Nothing in any of the religious publications of Jehovah's Witnesses constitutes a call to violence, incitement to violence or religious hatred.

3.4 The authors claim a violation of their rights under article 27 of the Covenant because Jehovah's Witnesses are a religious minority in the Russian Federation. The decisions by the domestic courts declaring some of the religious publications of Jehovah's Witnesses to be extremist interfere with the rights of members of that minority to practise their own religion. Moreover, they are now exposed to the serious risk of criminal and administrative punishment for using those publications in worship as individuals and in community with their fellow believers.

### **State party's observations on admissibility**

4.1 In a note verbale dated 15 July 2016, the State party submitted its observations, requesting the Committee to find the communication inadmissible under articles 1 to 3 and 5 (2) (a) of the Optional Protocol.

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<sup>2</sup> The authors refer to the conviction of 16 Jehovah's Witnesses in Taganrog for holding religious services after the Taganrog local religious organization had been declared an extremist organization by the Rostov Provincial Court on 11 September 2009.

<sup>3</sup> [CCPR/C/RUS/CO/7](#), para. 20.

<sup>4</sup> Approximately \$95.

4.2 The State party states that the authors allege a violation of articles 18 and 22 of the Covenant in respect of the Abinsk local religious organization and not in respect of themselves personally. That part of the communication should be declared inadmissible because the authors do not have victim status.

4.3 Regarding the allegations under article 26 of the Covenant, the State party submits that the provisions of the Act on Combating Extremist Activity apply to any public or religious association, regardless of its denomination. The authors have failed to demonstrate that the treatment of the Abinsk local religious organization of Jehovah's Witnesses, as manifested by its dissolution by court decision, differs from the treatment of other organizations in a comparable position. Consequently, that part of the authors' communication should be declared inadmissible for lack of substantiation.

4.4 The State party believes that the authors' allegations that they could be subjected to administrative or criminal prosecution cannot be seen as falling under article 7 of the Covenant. That part of the claim should be declared inadmissible as an abuse of the right of submission.

4.5 In addition, the State party informs the Committee that, on 6 March 2014, the complaint of the Taganrog local religious organization and others was communicated to the Russian Federation by the European Court of Human Rights.<sup>5</sup> The complaint concerns the decisions of Russian courts to declare the books *What Does the Bible Really Teach?*, *Mankind's Search for God* and *The Bible: God's Word or Man's?* to be extremist. In the view of the State party, the present communication concerns a subject that is directly connected with the application under review by the European Court. Consequently, the State party believes that the present communication should be declared inadmissible under article 5 (2) (a) of the Optional Protocol.

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

5.1 On 7 November 2016, the authors provided their comments on the State party's observations on admissibility.

5.2 Regarding the victim status of the authors in connection with the alleged violation of articles 18 and 22 of the Covenant, they submit that at the core of freedom of religion and freedom of association is the guarantee of the right to peacefully manifest religious beliefs in community with others. The Committee has repeatedly held that the legal rights afforded by domestic law to registered religious organizations form part of the right of individual believers to manifest their beliefs.<sup>6</sup>

5.3 The authors maintain that, in its decision, the Supreme Court accepted that the dissolution decision imposed a limitation on the rights of the 11 members of the local religious organization to jointly practise and disseminate their faith; to satisfy their spiritual needs; to hold group and individual worship services based on the Holy Scriptures (the Bible); to acquaint people with the teachings, principles and standards of the Holy Scriptures (the Bible); to teach religion and provide religious training; and to support the activity of the religious denomination of Jehovah's Witnesses. The authors are therefore directly affected by the decision to dissolve the organization.

5.4 The State party does not dispute that the Russian Orthodox Church, although similarly constituted as a registered religious organization, does not face the indignity of such a sustained and coordinated attack on the religious beliefs and practices of its members by State officials. The claims under article 26 of the Covenant are well substantiated.

5.5 The authors claim that article 7 of the Covenant covers not only acts that cause physical pain but also acts that cause mental suffering. They argue that they have been subjected to obvious public humiliation, shame, indignity and anguish by the judicial decisions, which have equated their religious beliefs with criminal activity and criminal

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<sup>5</sup> *Taganrog LRO and others v. Russia* (application No. 32401/10 and 19 others). The Taganrog local religious organization, like the Abinsk local religious organization, is part of the structure of the centralized religious organization, the Administrative Centre of Jehovah's Witnesses in Russia.

<sup>6</sup> *Malakhovsky and Pikul v. Belarus* (CCPR/C/84/D/1207/2003), para. 7.2.

organizations. They believe their claim under article 7 of the Covenant is therefore well substantiated. They refer to the conviction of Jehovah's Witnesses in Taganrog and claim that the threat of conviction arouses in them "feelings of fear, anguish and inferiority capable of humiliating and debasing them" and thus of violating the prohibition of degrading treatment.<sup>7</sup>

5.6 As for the State party's argument that the same complaint has been submitted to the European Court of Human Rights, the authors reply that the complaint of the Taganrog local religious organization and others concerns similar issues but does not involve the same parties or the same matter. Neither the authors nor the Abinsk local religious organization have submitted a complaint to that Court.

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

6.1 On 17 November 2016, the State party submitted its observations on the merits of the communication. The State party refers to article 6 of Federal Act No. 125-FZ of 26 September 1997 on Freedom of Conscience and Religious Associations, according to which religious associations can be created in the form of religious groups, which do not require registration, or religious organizations. A religious group is a voluntary association of persons created for the purpose of the joint profession and dissemination of faith, which carries out its activities without State registration and without acquiring the legal capacity of a legal entity. Religious groups have the right to conduct religious services and other religious rites and ceremonies and to provide religious education and instruction to their followers. Representatives of dissolved organizations are not precluded from practising religion as a religious group.

6.2 The State party submits that the dissolution of the Abinsk local religious organization was in accordance with domestic law. It refers to the Act on Combating Extremist Activity, according to which extremist activity includes the storage and mass distribution of banned extremist literature. According to article 17 of the Act on Freedom of Conscience and Religious Associations, a religious organization can be dissolved on the grounds set out in the Act on Combating Extremist Activity. According to article 7 of the Act on Combating Extremist Activity, if extremist activity is detected in the actions of a religious organization or one of its structural entities, a written warning is issued. If, within 12 months of the day on which the warning was issued, new facts are discovered that suggest the involvement of the organization in extremist activities, it is liable to dissolution.

6.3 The State party clarifies the domestic procedure for the classification of publications as extremist. In accordance with article 14 of the Act on Combating Extremist Activity, a federal court decides on the nature of the publication at the location where the publication was discovered or disseminated or at the location of the organization that published it. The Constitutional Court, in its opinion No. 1053-O of 2 July 2013, stated that the classification of information materials as extremist is an acknowledgement of the fact that they violate the prohibitions set out in anti-extremism legislation. By that fact alone, they present a real threat to the rights and freedoms of the individual and the citizen, the foundations of the constitutional order and the integrity and security of the Russian Federation.

6.4 The State party explains the grounds for the decision of the Krasnodar Territorial Court referred to by the authors (see paras. 2.2 to 2.5 above). The Court states that the books disseminated by S and B were included in the federal list of extremist materials by the courts. Under article 61 (2) of the Code of Civil Procedure, once established, that fact could not be challenged.<sup>8</sup>

6.5 The courts pursued the legitimate aim of protecting human rights and freedoms and the foundations of the constitutional order when considering the case of the Abinsk local religious organization. They found that extremist materials denigrate human dignity on the

<sup>7</sup> European Court of Human Rights, *Kudla v. Poland* (application No. 30210/96), judgment, 26 October 2000, para. 92.

<sup>8</sup> According to article 61 (2) of the Code of Civil Procedure, the circumstances established by a court decision in a previously considered case that has entered into legal force are binding on the court. These circumstances are not to be proved again and are not subject to dispute when considering another case in which the same persons are taking part.

ground of attitude towards religion, contain elements of propaganda regarding the pre-eminence of one religion over another, offend religious feelings, incite interreligious conflict, pose a real threat to social peace and security and present a particular threat to the Russian Federation as a religiously diverse, secular State that guarantees the freedom to confess any religion or to confess no religion at all. The State party believes that the dissolution of the organization was proportionate to the legitimate aim pursued. The courts considered that the organization was involved in knowingly extremist activity, which it tried to conceal and which did not cease after the warning. The courts assessed the proportionality of the aim pursued in view of the limited number of affected members of the organization (11 at the time). They were able to continue to practise their religion provided that they were not involved in disseminating extremist literature and threatening the rights and freedoms of others.

6.6 The State party addresses the authors' allegation that S and B were not members of the local religious organization when they were found guilty of distributing the books. The courts concluded that they acted as if they were members of the organization. Their actions were aimed at achieving the organization's goals.<sup>9</sup>

6.7 The Supreme Court checked the Single State Registry of Legal Entities, according to which, on 22 November 1999, the date of registration of the Abinsk local religious organization, S and B had been members of the organization's committee. According to the State party, under the provisions of the Act on Freedom of Conscience and Religious Associations, a religious organization must inform the registration authority of changes to its membership within three days. The authors did not provide documents to confirm the exclusion of S and B from the organization. The State party submits that organizations of Jehovah's Witnesses differentiate between membership of the organization and membership of its general assembly, which serves as its governing body. The authors presented to the first instance court the records of the meetings of the general assembly held on 6 May 2010 and 16 June 2013 concerning the termination of the membership of S and B in the general assembly. The court did not accept that evidence, questioning the date on which the documents had been created and drawing attention to the fact that they had been submitted to the Ministry of Justice in Krasnodar Territory not in 2010 and 2013 but only after the administrative conviction of S and B. The State party notes that B admitted to the justice of the peace that he was a member of the organization. According to the Act on Combating Extremist Activity, the organization is responsible for the extremist activity of its members.

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

7.1 In their reply dated 25 January 2017, the authors state that the State party did not dispute the following facts: (a) that neither the Abinsk local religious organization nor any of its 11 members was engaged in extremist activity and that the organization was dissolved solely because of the administrative conviction of two former members; (b) that S and B terminated their membership of the organization on 6 May 2010 and 15 June 2013, respectively; (c) that the books in question do not contain calls to violence or incitement to violence, as admitted by the State party in its reply to the European Court of Human Rights in the case of *Taganrog and others v. Russia*; and (d) that the organization regularly informed its members of publications added to the federal list of extremist materials and that the books in question were banned from circulation by the Jehovah's Witnesses in the Russian Federation following the decision of the Rostov Provincial Court in 2009.

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<sup>9</sup> The first instance court took into account the nature of their actions, the possible provider of the extremist publications and the relationships among the organization's members, which are not limited by each member's formal status. After ending their membership of the local religious organization, S and B did not change their preaching of the religion in question in Abinsk District. They did not change their relations with members of the organization, with whom they were performing a common religious activity, that is, the preaching of the Jehovah's Witnesses doctrine, an inherent part of which was the spreading of religious, including extremist, literature. The court treated those facts as harmonized, planned actions aimed at spreading the extremist activity of the organization, through the dissemination of extremist literature by individuals performing the same type of activity, in nature, form and method, within the framework of the Abinsk local religious organization.

7.2 The authors repeat their initial claim that the definition of “extremist” in Russian legislation is too vague and that sanctions based on that definition cannot be seen as being prescribed by law.

7.3 They insist that S and B were not members of the local religious organization at the time of the events and provide a copy of a reply from the Ministry of Justice to a local religious organization in Teykovo, according to which only non-profit organizations, which do not include religious organizations, are allowed to request a change to the list of their founding members. Consequently, the records presented to the court by the organization are conclusive proof that S and B had ceased to be members long before the events in question. The organization therefore was not legally responsible for their actions.

7.4 The authors maintain their original claims that the dissolution of their local religious organization was disproportionate and did not pursue any legitimate aim.

### **Additional submissions**

#### *From the State party*

8.1 On 14 September 2017, the State party submitted additional observations. The State party asserts that, contrary to the authors’ conclusion, the courts found the local religious organization itself – and not S and B – guilty of extremist activity. As for the authors’ comment that the State party agrees that there was no call to violence or incitement to violence in the books distributed, the State party submits that the courts in the present case did not assess the books, since they had already been found to be extremist by earlier court decisions. The authors could appeal the relevant decisions to the courts. Lastly, the State party submits that the authors did not claim, in the domestic proceedings, that the organization informed its members of publications added to the federal list of extremist publications, and the courts therefore did not assess that argument.

8.2 The State party repeats its submission concerning the conclusion of the domestic courts that S and B continued to be members of the local religious organization. Concerning the letter from the Ministry of Justice, a copy of which was submitted by the authors, the State party replies that the authors’ interpretation of the letter and the applicable legislation was erroneous. While non-profit organizations cannot make changes to their original list of founders, religious organizations are obliged to notify the registration authority of any changes within three days. The domestic courts found the authors’ claim that S and B were not members of the organization at the time of the events to be unsubstantiated. The State party reiterates the rest of its arguments as submitted in its initial observations on the merits.

#### *From the authors*

8.3 In their response, submitted on 27 November 2017, the authors reiterate their original arguments, disagreeing with the State party’s assertions. In addition, they state that, in the letter of the Ministry of Justice to the Teykovo local religious organization (see paras. 7.3 and 8.2 above), it is clearly stated that only non-profit organizations – and not religious organizations – can change the list of founders after registration. The authors add that, before the domestic courts, they presented documents to confirm that they regularly provided their members with updates on the list of publications included in the federal list of extremist publications. The courts, however, failed to take that information into consideration.

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

#### *Consideration of admissibility*

9.1 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.

9.2 The Committee takes into account the State party’s argument that a similar complaint was submitted to the European Court of Human Rights by the Taganrog local religious organization and others. The Committee notes, however, that, as the authors assert, the complaint submitted to that Court concerned a different set of events and different persons

and that the authors of the present communication have not submitted any complaints to the European Court of Human Rights. The Committee, therefore, is not precluded by article 5 (2) (a) of the Optional Protocol from considering the present communication.

9.3 The Committee notes that, in the present case, the authors claim to have exhausted all available domestic remedies and that the State party has not contested the admissibility of the communication. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

9.4 The Committee notes that, in the present case, the State party contests the admissibility of the communication as concerns articles 18 and 22 of the Covenant on the ground that the authors do not have victim status, since the victim of the alleged violations was the dissolved religious organization. The Committee notes, however, that the authors submit their complaint in a personal capacity and do not claim rights for their organization as a legal entity. It also notes the authors' claim that the dissolution of their religious organization affected their individual rights. In the circumstances of the present case, and in the light of the submissions made by the parties, the Committee considers that the authors have standing under article 1 of the Optional Protocol.<sup>10</sup>

9.5 In the light of the above, the Committee observes that only Mr. Pavlenko, as chairman of the Abinsk local religious organization, took part in the domestic proceedings on behalf of the organization. The other two authors, Mr. Kondratenko and Mr. Baryshev, were not parties at any stage of the domestic proceedings. The Committee therefore finds that Mr. Kondratenko and Mr. Baryshev failed to exhaust domestic remedies, as required by article 5 (2) (b) of the Optional Protocol, and, therefore, finds their claims under the Covenant inadmissible. The Committee will therefore examine the present communication only in respect of Mr. Pavlenko.

9.6 The Committee notes Mr. Pavlenko's claim that, if he continues his religious activities following the dissolution of the Abinsk local religious organization, he will be at risk of administrative and/or criminal prosecution for such activities. He claims that such a risk amounts to treatment contrary to article 7 of the Covenant. Mr. Pavlenko alleges that the finding that the organization is an extremist organization amounts to degrading treatment in itself. The Committee notes, in that regard, that the aim of article 7 is to protect the physical and mental integrity of the individual.<sup>11</sup> Although there is no clear definition of "torture" in the Covenant, the Committee's interpretation of torture and ill-treatment does not cover the elements invoked by Mr. Pavlenko. In the absence of further information on file, the Committee finds Mr. Pavlenko's claims under article 7 to be insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

9.7 The Committee notes that Mr. Pavlenko has sufficiently substantiated his claims under articles 18 (1) and (3), 22 (1) and (2), 26 and 27 of the Covenant, for the purposes of admissibility, and proceeds with its consideration of the merits.

#### *Consideration of the merits*

10.1 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.

10.2 The Committee notes Mr. Pavlenko's claim under article 18 (1) and (3) of the Covenant that his right to manifest his religious beliefs in community with others was violated by the dissolution of the Abinsk local religious organization on the basis of the distribution of a few copies of books considered extremist by the State party, the confiscation of its property and its being declared an extremist organization. The Committee also notes Mr. Pavlenko's claim that the dissolution of the organization was based on a finding that two of its former members – S and B – were distributing banned literature. The Committee further notes the disagreement between the parties concerning whether S and B were members of the organization at the time of the events. The Committee notes that the dissolution of the

<sup>10</sup> *Adyrkhayev, Solikhov and the Religious Association of Jehovah's Witnesses in Dushanbe v. Tajikistan* (CCPR/C/135/D/2483/2014), para. 8.3.

<sup>11</sup> General comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 2.



organization is central to Mr. Pavlenko's complaint. The question of whether S and B were members of the organization at the time of the events does not need to be addressed by the Committee, since the domestic courts considered them as members and arrived at their decision to dissolve the organization on that basis.

10.3 The Committee recalls its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, in which it stated that article 18 does not permit any limitations whatsoever on 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 freedom to manifest one's religion or belief 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 (para. 8). The Committee notes Mr. Pavlenko's argument that the limitation of his rights was not prescribed by law (see para. 3.2 above). The Committee also notes the State party's argument that the Abinsk local religious organization was dissolved in accordance with the Act on Combating Extremist Activity for the mass distribution, by two of its members, of banned extremist literature.<sup>12</sup> The Committee further notes the State party's reference to the reasoning of the domestic courts that the literature in question contained elements of propaganda regarding the pre-eminence of one religion over another, which offended religious sensibilities and incited interreligious conflicts, presenting a threat to the State party as a religiously diverse, secular State. The Committee must ascertain whether the arguments of the State party correspond to the limitations permissible under article 18 (3) of the Covenant.

10.4 Regarding the first requirement under article 18 (3) of the Covenant, namely that the limitation must be prescribed by law, the Committee notes that the Act on Combating Extremist Activity contains a vague and open-ended definition of "extremist activity", which does not require any element of violence or hatred to be present. It also notes that no clear and precise criteria on how materials may be classified as extremist are provided in the law. Furthermore, the Committee takes note of the statement of the domestic courts that the books distributed by the members of the Abinsk local religious organization threatened the rights and freedoms of others and the State. They were considered to denigrate human dignity on the ground of attitude towards religion, contained elements of propaganda regarding the pre-eminence of one religion over another, incited religious discord and presented a threat to the Russian Federation as a religiously diverse, secular State (see para. 6.5 above). This reasoning led the courts to conclude that the organization was itself engaged in extremist activity and to proceed to its dissolution.

10.5 The Committee notes that the State party did not clarify which statements in the publications led the domestic courts to conclude that they were offensive and posed a threat to the rights of others and the State. The Committee also notes that a religiously diverse and secular State should enable every religious organization to coexist peacefully and without discrimination, while freely adhering to its beliefs and doctrines, even if they might be offensive to others. The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it clarified that prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20 (2) of the Covenant. Such prohibitions must also comply with the strict requirements of article 19 (3), as well as such articles as 2, 5, 17, 18 and 26. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.<sup>13</sup> In the present case, the State party did not provide information that would lead the Committee to believe that Mr. Pavlenko's organization acted contrary to article 20 (2) of the Covenant. Without providing any concrete facts about how the distribution of four copies of books by members of the Abinsk local religious organization threatened the rights of others and the secularity of the

<sup>12</sup> The Committee takes into account the author's claim that S and B ended their membership in 2010 and 2013, respectively. The Committee, however, has to accept the facts as established by the domestic courts.

<sup>13</sup> General comment No. 34 (2011), para. 48.

State, the domestic courts imposed the strictest available sanction, namely the dissolution of the organization. In the light of the foregoing, the Committee cannot conclude that the law and its application by the domestic courts provided a valid legal basis for the restriction. The Committee finds that a general reference to protecting the rights of others and the State, relied upon by the State party without explaining how these rights were affected, does not meet the requirements of article 18 (3) of the Covenant.<sup>14</sup>

10.6 The Committee notes Mr. Pavlenko's claim that the dissolution of the Abinsk local religious organization deprived him of the full range of rights enjoyed by members of a registered religious organization. The Committee also notes the State party's argument that Mr. Pavlenko could join a religious group and continue to practise his religion without being involved in extremist activities (see paras. 6.1 and 6.5 above). At the same time, the Committee notes that a religious group, as defined by the legislation of the State party, is a voluntary association of fellow believers without the status of a legal entity. According to Mr. Pavlenko, the status of a registered organization provides the entire range of rights to the religious community, such as the right to own and rent property, to maintain bank accounts, to ensure the judicial protection of the community, to establish places of worship, to hold religious services in places accessible to the public and to produce, obtain and distribute religious literature. The Committee notes that the practices it listed as integral to the freedom to manifest religion or belief in paragraph 4 of its general comment No. 22 (1993) include building places of worship and preparing and distributing religious texts or publications. It seems that, under the legislation of the State party, a religious group does not have any of those rights. The Committee therefore concludes that the dissolution of Mr. Pavlenko's religious organization deprived him of a number of rights essential for the free manifestation of his religion.

10.7 In the light of the above considerations, the Committee finds that the State party has violated Mr. Pavlenko's rights under article 18 (1) of the Covenant.

10.8 The Committee notes Mr. Pavlenko's claims that his rights under article 22 (1) were violated when the Abinsk local religious organization was dissolved. It also notes the State party's observations that the limitation imposed on the organization and, consequently, Mr. Pavlenko's rights was prescribed by law, pursued the legitimate aim of protection of the rights and freedoms of others, public security and safety of the State and was proportionate to the legitimate aim pursued (see paras. 6.2 and 6.5 above), since the organization had only 11 members who could still practise religion in association with others within a religious group, which can operate without registration and the status of a legal entity.

10.9 Pursuant to article 22 (2) of the Covenant, any restriction on the right to freedom of association must meet the following conditions: (a) it must be prescribed by law; (b) it must be imposed for one of the purposes set out in article 22 (2); and (c) it must be "necessary in a democratic society" for achieving one of those purposes. The reference to a "democratic society" in the context of article 22 indicates, in the Committee's opinion, that the existence and operation of associations, including those that peacefully promote ideas that are not necessarily favourably viewed by the Government or the majority of the population, is a cornerstone of any society.<sup>15</sup> The Committee believes that its findings under article 18 (3) (see para. 10.5 above) are applicable in the context of Mr. Pavlenko's allegations under article 22 of the Covenant. The Committee therefore finds that the legal provisions on which the dissolution of the Abinsk local religious organization was based, as well as their interpretation and application by domestic authorities and the courts, did not constitute a valid legal basis for the restrictions and did not meet the criteria contained in article 22 (2) of the Covenant. The Committee notes that the aims invoked by the State as the basis for the dissolution of the organization, such as protecting the rights, freedoms and health of others and public order (see para 6.5 above), correspond to those set out in article 22 (2) of the Covenant. However, the Committee notes that the State party did not specify how the

<sup>14</sup> European Court of Human Rights, *Taganrog LRO and others v. Russia* (application No. 32401/10 and 19 others), judgment, 7 June 2022, paras. 189 and 207; and Inter-American Commission on Human Rights, *Jehovah's Witnesses v. Argentina* (case No. 2137), decision, 18 November 1978.

<sup>15</sup> *Adyrkhayev, Solikhov and the Religious Association of Jehovah's Witnesses in Dushanbe v. Tajikistan*, para. 9.8.

distribution of four copies of banned publications endangered the above-mentioned rights of others and interests of the State to the extent that it necessitated the application of as extreme a measure as the dissolution of the organization.

10.10 With regard to the State party's argument that Mr. Pavlenko could continue to practise his religion in association with others without the status of a registered legal entity, the Committee notes that, while the State party does not tie religious practice to registration, the rights of an unregistered religious group are limited (see para. 10.6 above). Moreover, whether to practise a religion as a group or to register a religious organization should be a decision that rests with the individual. In view of its finding that the dissolution of the Abinsk local religious organization was not proportionate to the legitimate aims pursued (see paras. 10.6 and 10.7 above), the Committee finds that the State party violated Mr. Pavlenko's right to freedom of association under article 22 (1) of the Covenant.

10.11 Having concluded that, in the present case, there has been a violation of articles 18 (1) and 22 (1) of the Covenant, the Committee considers that it has addressed the claims underlying Mr. Pavlenko's complaints under articles 26 and 27 and decides not to examine them separately.

11. 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 articles 18 (1) and 22 (1) of the Covenant.

12. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide Mr. Pavlenko 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: (a) to reopen the domestic proceedings and review the decision of the Krasnodar Territorial Court of 4 March 2015 ordering the dissolution of the Abinsk local religious organization and the confiscation of its property, in accordance with articles 18 and 22 of the Covenant; and (b) to provide Mr. Pavlenko with adequate compensation, including reimbursement of the court fees and legal expenses he has incurred. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

13. 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.

## Annex

[Original: Spanish]

### **Joint opinion of Committee members Rodrigo A. Carazo and Carlos Gómez Martínez (partially dissenting)**

1. We disagree with the Committee's treatment of the authors' claims concerning violations of articles 26 and 27 of the Covenant. After finding the claims under both articles to be admissible for consideration on the merits, the Committee decides not to examine these claims separately, on the basis of a purely formal and tautological argument (see para. 10.11).

2. The Committee's decisions must be duly reasoned. In this case, the violation of the rights of the authors, who are members of a religious community, not to be discriminated against on the ground of religion (article 26) and to practise their own religion (article 27) is an essential question. However, the Committee takes no decision on these violations, despite having found them admissible for consideration. It states that it has no need to do so because of its prior finding of violations of the rights to freedom of religion (article 18 (1)) and freedom of association (article 22 (1)). It provides no further clarification and makes no reference to the principle that specialized law takes precedence over general law.

3. Accordingly, we believe that a minimum argument in this case, aimed at addressing the authors' complaint, could have been: "The Committee considers that the alleged violations of articles 18 and 22 of the Covenant also entail, in particular, a violation of the rights to non-discrimination on the ground of religion (article 26) and respect for religious minorities (article 27)". This should have led the Committee to find that there had been violations of the latter two rights as well instead of deciding not to examine these violations, as it has done.

4. If the Committee considered that the complaints under articles 26 and 27 were inadmissible for lack of sufficient substantiation or that the alleged violations had not occurred, it should have so indicated in an explicit and reasoned manner, either by finding the claims inadmissible on this ground under article 2 of the Optional Protocol or by deciding, on the merits, that there had been no violation.

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