



# 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. 2695/2015\*, \*\*

<i>Communication submitted by:</i>	Valentin Borovik (represented by counsel, Dina Shavtsova)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	29 March 2011 (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 2 December 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	25 March 2021
<i>Subject matter:</i>	Freedom of religion
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issue:</i>	Freedom of religion
<i>Article of the Covenant:</i>	18 (1) and (3)
<i>Article of the Optional Protocol:</i>	5 (2) (b)

1. The author of the communication is Valentin Borovik, a national of Belarus born on 7 May 1961. He claims that the State party has violated his rights under article 18 (1) and (3) of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is represented by counsel.

#### Facts as submitted by the author

2.1 The author is the leader of a small apostolic Christian religious community of less than 20 members in the town of Mosty, Belarus. There are several apostolic Christian communities in Belarus and some are registered as legal entities. The author's community meets regularly twice a week to pray, study scripture and perform rituals. The author's role as leader consists of organizing sermons and the worship service and performing rituals. Due to its small size, the community did not need to rent premises, hire personnel or carry out

\* Adopted by the Committee at its 131st session (1–26 March 2021).

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



other activities associated with the status of a legal entity. Therefore, the members have been exercising their right to practise their religion in community without creating a legal entity.

2.2 On 16 March 2008, 13 members of the religious community met at the home of one of its members for Sunday worship. The worship service was interrupted by representatives of different State authorities seeking to verify whether the community acted in compliance with the Law on Freedom of Conscience and Religious Organizations. Since the community was not duly registered as a legal entity, as required by the Law, the author, as the community leader, was accused of an administrative offence under article 9.9 (1) of the Code of Administrative Offences (unauthorized activities of a religious organization). According to the charging document, three children were present at the worship service.

2.3 On 28 April 2008, the Court of the Moskovskiy District of the Grodno Region found the author guilty under article 9.9 (1) of the Code of Administrative Offences for creating and leading a religious organization without State registration<sup>1</sup> and fined him 140,000 Belarusian roubles.<sup>2</sup> The District Court considered in particular that the author had been previously informed of the obligation to register the organization, but had continued to organize worship services and rituals without such registration. On an unspecified date, the author filed an appeal with the Grodno Regional Court.

2.4 On 22 May 2008, the Grodno Regional Court reversed the judgment of the court of first instance and remitted the case for reconsideration to the same court, finding that the decision of the District Court contained neither reasoned conclusions as to the author's guilt, nor the assessment of the children's presence at the worship service.

2.5 On 9 June 2008, the Court of the Moskovskiy District of the Grodno Region confirmed its initial findings and raised the fine up to 315,000 Belarusian roubles.<sup>3</sup> The court dismissed the author's assertion that his community was not a religious organization, reasoning that it had all characteristics of a religious community, as the members worshiped a particular belief, organized worship services and educated their followers. The District Court found that article 14 of the Law on Freedom of Conscience and Religious Organizations only allowed the creation and registration of religious communities with over 20 members.<sup>4</sup> The District Court further reasoned that the author's religious community, with the current membership of less than 20 adults, had been created in violation of the Law and had been functioning illegally without registration.

2.6 On an unspecified date, the author filed an appeal with the Grodno Regional Court. He disagreed with the District Court findings that the registration as a religious organization was necessary to exercise the right to manifest his religious beliefs in community with others. He further argued that a group of fewer than 20 persons would be deprived of that right and of the opportunity to register as a religious community as the Law on Freedom of Conscience and Religious Organizations required the membership of at least 20 persons for registration. The author maintained that the District Court decision and the manner in which that court had applied the Law ran counter to articles 23 and 31 of the Constitution. Invoking article 18 (3) of the Covenant, he argued that the enjoyment of the right to manifest religious beliefs in community with others could not be conditioned by the requirement to register a religious organization and constituted a limitation of the right to freedom of religion and belief. The author also relied on the Guidelines for Review of Legislation Pertaining to Religion or Belief

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<sup>1</sup> At the time of the submission of the author's communication to the Committee, article 9.9 (1) of the Code of Administrative Offences read (informal translation):

"Creation or leadership of a religious organisation not registered in accordance with established procedure, or activity by a religious organization not in accordance with its statutes is punishable by a fine of four to ten basic salary units."

Further to amendments introduced by Law No. 98-3 of 28 December 2009, article 9.9 (1) read (informal translation):

"Activity by a religious organization not in accordance with its registered statutes is punishable by a fine of four to ten basic salary units".

<sup>2</sup> Approximately 45 euros at the time of the events.

<sup>3</sup> Approximately 100 euros at the time of the events.

<sup>4</sup> For the text of article 14 of the Law on Freedom of Conscience and Religious Organizations, see <https://www.legislationline.org/documents/id/6401>.

(2004) of the Organization for Security and Cooperation in Europe (OSCE) to argue that registration of religious organizations should not be mandatory and that individuals and groups should be free to practise their religion without registration if they so desired. He further argued that international treaties took precedence over domestic law, in accordance with articles 8 of the Constitution and article 40 of the Law. As neither the Constitution nor the Covenant set restrictions for collective worship or required the mandatory registration as a legal entity for the realization of the right to manifest religious beliefs in community with others, creating and leading a religious organization without State registration should not be considered an offence under article 9.9 (1) of the Code of Administrative Offences.

2.7 On 26 June 2008, the Grodno Regional Court reconfirmed the findings of the District Court and dismissed the author's appeal. The Regional Court established that the District Court had rightly established the author's guilt under article 9.9 (1) of the Code of Administrative Offences as he had created and had been leading the religious community without State registration, in violation of article 14 of the Law on Freedom of Conscience and Religious Organizations.

2.8 On 25 December 2008, the author submitted a supervisory review request to the Supreme Court, which was rejected on 2 March 2009. On an unspecified date, the court decision was enforced and the author paid the fine of 315,000 Belarusian roubles.

2.9 In his communication before the Committee, the author submits that the courts of all instances found that he had committed the administrative offence. With reference to articles 13 and 14 of the Law on Freedom of Conscience and Religious Organizations, the courts established that his community had all the characteristics of a religious organization and therefore was subject to mandatory State registration as a legal entity. The author's activities as the leader of the unregistered religious community thus constituted an administrative offence. The courts disregarded the author's reference to article 31 of the Constitution of Belarus and article 18 of the Covenant, and to the OSCE Guidelines for Review of Legislation Pertaining to Religion or Belief, which recommend that persons should be free to practise their religion without registration if they so desire. The courts did not clarify how to register a religious community with fewer than 20 members as required by the Law, nor how many adult members were necessary to register such a community.

2.10 The author submits that he exhausted all available domestic remedies.

### **Complaint**

3.1 The author claims that his right to freedom of religion and belief under article 18 (1) and (3) was violated by the State party because he was not allowed to practise his religion together with members of his community without registering it as a religious organization. Therefore, the author's right to practise his religion in community with others was disproportionately restricted. The author adds that only religious organizations with at least 20 members are allowed to apply for registration under the Law on Freedom of Conscience and Religious Organizations, while his community comprised only 13 members at the time of the events.

3.2 With reference to paragraph 8 of Human Rights Committee general comment No. 22 (1993), the author underlines that restrictions imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18; restrictions are not allowed on grounds not specified in article 18 (3); and restrictions may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Furthermore, according to the OSCE Guidelines for Review of Legislation Pertaining to Religion or Belief, registration of religious organizations should not be mandatory per se and individuals and groups should be free to practise their religion without registration if they so desire. According to paragraphs 22 and 23 of the 2010 report of the former Special Rapporteur on freedom of religion and belief on elimination of all forms of religious intolerance,<sup>5</sup> registration does not constitute a

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<sup>5</sup> A/65/207.

precondition for practising one's religion or belief and those who cannot or do not wish to register should still be able to individually and collectively manifest their religion or belief.

3.3 However, in accordance with articles 13, 14 and 16 of the Law on Freedom of Conscience and Religious Organizations, all religious organizations, including religious communities, are subject to mandatory State registration. Therefore, people that form a group with all the characteristics of a religious organization within the meaning of article 13 of the Law acquire the right to manifest their religion in community with others only after registration as a legal entity. Conducting religious activities without State authorization is subject to administrative liability under article 9.9 (1) of the Code of Administrative Offences or to criminal liability under article 193.1 of the Criminal Code. Furthermore, owing to amendments made to the Code of Administrative Offences in 2010, administrative liability for unauthorized religious activities was abolished and only the criminal liability applies.

3.4 Therefore, the author claims that his right to manifest his religion in community with others was restricted. Given that participation in and leading a religious organization without State registration may be subject to criminal liability, the restriction imposed constitutes a disproportionate interference with his right to manifest his religion in community with others. Furthermore, while the State party established such a restriction, it did not provide an explanation in its legislation for which purposes among those listed in article 18 (3) of the Covenant it was prescribed. Therefore, this restriction cannot be considered justified. In addition, the status of a religious community whether registered or not has no bearing on the protection of public safety, order, health, or morals or the fundamental rights and freedoms of others. Therefore, imposing mandatory State registration for religious organizations and establishing liability for acting without registration constitutes an unacceptable and disproportionate interference with freedom of religion and belief.

3.5 The author requests that the Committee find a violation of article 18 (1) and (3) of the Covenant and recommend that the State party provide reparation for the violation, guarantee the enjoyment of the freedom of religion and belief, and reimburse the fine that was imposed on him.

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

4. In a note verbale dated 10 February 2016, the State party submitted its observations on the admissibility and the merits of the author's claims. The State party recalls the proceedings before the domestic courts. With reference to the author's appeal for supervisory review before the Supreme Court, the State party submits that it was rejected on 9 March 2009 on the ground that his allegations of a violation of his right to freedom of conscience were unsubstantiated. The author did not submit supervisory review requests to the Prosecutor General's Office. The author's right under article 14 of the Covenant to a fair and public hearing by a competent, independent and impartial trial established in accordance with the law was ensured. Activities in the name of political parties, public associations, religious organizations or foundations that were not duly registered are prohibited in the State party. The author's right to freedom of religion under article 18 (1) of the Covenant was not violated. The procedures provided for the creation and operation of religious organizations under the Law on Freedom of Conscience and Religious Organizations ensure and guarantee the right to freedom of conscience and belief and cannot be considered as a restriction on this right.

#### **Author's comments on the State party's observations on admissibility and the merits**

5.1 On 18 July 2018, the author submitted that the State party did not address his claim according to which the procedure for mandatory registration of religious organizations established under the Law and characterized by strict registration requirements restricted his right to freedom of religion. Regarding the State party's argument that activities in the name of unregistered religious organizations are prohibited, the State party omitted criminal liability under article 193.1 of the Criminal Code in this connection, which has been in force since 2005. This demonstrates that unregistered religious communities face pressure and live under a constant threat of persecution.

5.2 The author submits that his religious community identifies itself with Christian apostolic belief. They continue to meet regularly to study the Bible, pray, discuss and perform

rituals, as well as to perform occasional charity work. However, owing to the small size of the community, they still cannot register their community as a religious organization because the Law requires at least 20 members for registration.

5.3 The author acknowledges that his religious community has all characteristics of a religious organization according to the Law. Therefore, there are sufficient grounds to subject him and the other members of the community to criminal liability. The fear of criminal liability is substantiated as there have been cases of believers in similar situations who received official warnings and had criminal proceedings initiated against them.

5.4 The author refers to proposed legislative amendments to repeal article 193.1 of the Criminal Code and to replace it with administrative liability and a fine of up to 500 euros under article 23.88 of the Code of Administrative Offences. A draft bill in this respect was adopted at first reading. Therefore, restrictions on activities of religious organizations and the right to practise religion in community with others are still pending issues.

5.5 Therefore, the author refutes the State party's assertions that his right to freedom of religion was not violated and that the existing procedure for the creation and operation of religious organizations ensures and guarantees the right to freedom of conscience and belief. The author reiterates the international recommendations that registration of religious organizations should not be mandatory. He also reiterates that restricting his right to freedom of religion by requiring mandatory State registration of religious organizations was not justified.

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

### *Consideration of admissibility*

6.1 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.

6.2 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.

6.3 The Committee notes that the author claims that he has exhausted the available domestic remedies. To the extent that the State party's submission implies that the author has failed to exhaust domestic remedies as he did not submit supervisory review requests to the Prosecutor General's Office, the Committee recalls its jurisprudence according to which a petition for supervisory review to a prosecutor's office, dependent on the discretionary power of the prosecutor, against a judgment having the force of *res judicata* does not constitute an effective remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.<sup>6</sup> The Committee notes that the author unsuccessfully appealed the decisions of the domestic courts, issued on 9 June 2008 and 26 June 2008, to the Supreme Court under the supervisory review proceedings, which was acknowledged by the State party. The Committee notes that in the present case, the author has exhausted all available domestic remedies, including supervisory review proceedings. Therefore, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

6.4 The Committee considers that the author has sufficiently substantiated the claims under article 18 (1) and (3) of the Covenant for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

### *Consideration of the merits*

7.1 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.

<sup>6</sup> *Yakovitskaya v. Belarus* (CCPR/C/128/D/2789/2016), para. 7.3; *Zhukovsky v. Belarus* (CCPR/C/127/D/2955/2017), para. 6.3; *Zhuravlev v. Belarus* (CCPR/C/126/D/2495/2014), para. 7.3; and *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4.

7.2 The Committee recalls its general comment No. 22, according to which article 18 does not permit any limitation whatsoever on freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice.<sup>7</sup> By contrast, the right to freedom to manifest one's religion or beliefs may be subject to certain limitations, but only those prescribed by law and necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

7.3 In the present case, the Committee notes the author's argument that the State party violated his rights under article 18 (1) and (3) of the Covenant by convicting him for an administrative offence and fining him 315,000 Belarusian roubles on the grounds that he had created and led a religious community and conducted religious worship without registering his community as a legal entity. The Committee takes note of the fact that since the author's religious community comprised less than 20 persons, which was smaller than the minimum membership required for registering a religious organization as a legal entity under the Law on Freedom of Conscience and Religious Organizations, it was impossible for him to register his religious community. The Committee also notes the submission by the State party that the requirement to register religious organizations is provided for under the Law, which is aimed at ensuring the right to freedom of conscience and belief and therefore does not constitute a limitation of the author's rights. The Committee recalls that article 18 (1) of the Covenant guarantees the freedom of every person either individually or in community with others and in public or private, to manifest his or her religion or belief in worship, observance, practice and teaching. This right is not dependent for its exercise upon the size of a congregation. In the current circumstances, the Committee considers that the author's claims relate to his right to manifest his religious beliefs in community with others and that his conviction and fine for creating and leading a religious organization of less than 20 members without State registration constitute limitations of that right.

7.4 The Committee must address the issue of whether the said limitations on the author's right to manifest his religious beliefs were necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others within the meaning of article 18 (3) of the Covenant. The Committee recalls that according to its general comment No. 22, article 18 (3) is to be interpreted strictly, and limitations on the freedom to manifest one's religion or beliefs may only be applied for those purposes for which they are prescribed, and must be directly related and proportionate to the specific need on which they are predicated.<sup>8</sup>

7.5 In the present case, the limitations placed on the author's right to manifest his religious beliefs in community with others stem from the requirement under article 9.9 (1) of the Code of Administrative Offences, in force at the time of the events, that a religious organization with more than 20 members should officially register with the Government in order to lawfully operate. While noting the State party's assertion that the author's rights under article 18 (1) of the Covenant were not violated and the findings of the Moskovskiy District Court that the author had been previously informed of the obligation to register his community, the Committee notes that the State party has not specifically explained why the author was convicted and fined for engaging in religious worship in community with others without having met the pre-condition for official registration or why imposing such a pre-condition was at all necessary to ensure the protection of the freedom of religion or belief within the meaning of article 18 (1) of the Covenant. It also notes that neither the State party nor the domestic courts addressed the author's argument that the Law did not provide for the registration of religious organizations with less than 20 members, thereby making it impossible for him to register his small community of 13 members, which resulted in the denial of the right to collective worship. The Committee further takes note of the author's arguments that the liability for operating unregistered religious organizations was toughened in 2010, with the replacement of the administrative liability by criminal liability under article 193.1 of the Criminal Code, that by maintaining his religious community in operation, he had

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<sup>7</sup> Human Rights Committee, general comment No. 22, para. 3. See also *Mammadov et al. v. Azerbaijan* (CCPR/C/130/D/2928/2017), para. 7.3; and *Bekmanov et al. v. Kyrgyzstan* (CCPR/C/125/D/2312/2013), para. 7.2.

<sup>8</sup> Human Rights Committee, general comment No. 22, para. 8. See also *Mammadov et al. v. Azerbaijan* (CCPR/C/130/D/2928/2017), para. 7.3; and *Malakhovsky et al. v. Belarus* (CCPR/C/84/D/1207/2003), para. 7.3.

been living with the risk of being subjected to criminal liability, that criminal proceedings had been initiated against believers in situations similar to his own, and that the criminal liability for operating unregistered organizations was repealed only 10 years after the events, in 2019.

7.6 Furthermore, the Committee notes that the State party has not provided evidence indicating that the peaceful manifestation of the author's religious beliefs in community with others without prior registration of his worship community as a religious organization, particularly on 16 March 2008 when the author engaged in Sunday worship with other members in a private home, threatened public safety, order, health, or morals or the fundamental rights and freedoms of others. Neither has the State party demonstrated that the registration requirement was proportionate to any of such specific objectives, in view of its limitation on the act of religious worship. Nor has the State party attempted to demonstrate that the registration requirement and the author's subsequent conviction and punishment for the failure to comply with it were the least restrictive measures necessary to ensure the protection of the freedom of religion or belief.<sup>9</sup> The Committee concludes that the State party has not provided sufficient basis for the limitations imposed, so as to demonstrate that the measures were permissible, proportionate, and necessary to serve a legitimate purpose within the meaning of article 18 (3) of the Covenant. Accordingly, the Committee finds that by convicting and fining the author for creating and leading a religious organisation without State registration and by restricting the author's right to peacefully manifest his religious beliefs in community with others, the State party violated the author's rights under article 18 (1) of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under article 18 (1) of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose rights under the Covenant have been violated. Accordingly, the State party is obligated to, inter alia, provide the author with adequate compensation, including reimbursement for the fines imposed and for court fees related to the cases in question. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by reviewing its domestic legislation, regulations and/or practices with a view to ensuring that the rights under article 18 of the Covenant may be fully enjoyed in the State party.

10. 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 or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.

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<sup>9</sup> See, *mutatis mutandis*, *Mammadov et al. v. Azerbaijan* (CCPR/C/130/D/2928/2017), paras. 7.5–7.6.