



# 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. 2659/2015\*, \*\*

<i>Communication submitted by:</i>	Alymbek Bekmanov, Azamat Kerimbaev, Urmatbek Kobogonov and Erkinbek Mukambetov (represented by counsels)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	3 September 2012 (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 26 October 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	14 July 2021
<i>Subject matter:</i>	Refusal to register three local religious organizations
<i>Procedural issue:</i>	None
<i>Substantive issues:</i>	Freedom of religion; fair trial; freedom of association; discrimination; effective remedy
<i>Articles of the Covenant:</i>	2 (3), 14 (1), 18 (1) and (3), 22 (1) and (2) and 26
<i>Articles of the Optional Protocol:</i>	None

1. The authors of the communication are Alymbek Bekmanov, Azamat Kerimbaev, Urmatbek Kobogonov and Erkinbek Mukambetov, born in March 1972, June 1974, September 1972 and March 1968, respectively. They are all nationals of Kyrgyzstan. Mr. Bekmanov is the Chair of the Religious Centre of Jehovah's Witnesses in Kyrgyz Republic. The other authors are members of the Centre and the Chairs of the entity in the regions of Jalal-Abad, Naryn and Osh in Kyrgyzstan. The authors claim that by refusing to register the three local religious organizations of Jehovah's Witnesses in the aforementioned regions, Kyrgyzstan has violated their rights under article 2 (3) (a) and (b), read in conjunction with articles 14 (1), 18 (1) and (3) and 22 (1) and (2); and article 26, read in conjunction with articles 18 and 22, of the Covenant. The Optional Protocol entered into force for the State

\* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

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



party on 7 January 1995. The authors are represented by counsels, Shane H. Brady and Nurlan Kachiev.

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

2.1 The Religious Centre of Jehovah's Witnesses in the Kyrgyz Republic is the national religious organization of Jehovah's Witnesses in Kyrgyzstan. It was registered on 30 April 1998 by the State Commission on Religious Affairs.

2.2 In 2008, article 10 (2) of the law on freedom of religion and religious organizations<sup>1</sup> was amended, requiring that in order to be legally registered, a religious organization should be established by not less than 200 adult citizens who are permanent residents of Kyrgyzstan. The list should be approved by the local city council where the organization would operate. If the approval is granted, the religious organization should then apply for registration before the State Commission on Religious Affairs, which may order an expert study on the respective religious organizations. The authors stress that the registration is virtually impossible for minority religions and that the city councils' decisions are left to the arbitrary whim of locally elected officials, since there are no established criteria on how exactly to proceed with such requests.

2.3 In the regions of Jalal-Abad, Naryn, Osh and Batken,<sup>2</sup> there are no Jehovah's Witnesses religious organizations registered before the State Commission on Religious Affairs. Some local officials have insisted that Jehovah's Witnesses living in these regions cannot practise their religious beliefs without first obtaining a registration as a religious organization. Therefore, with a view to protecting Jehovah's Witnesses from harassment, the authors established a local chapter of the Religious Centre of Jehovah's Witnesses in each of the regions. They prepared all legal documents required to register the organizations, including a notarized list of at least 200 founding members who were adult citizens and permanent residents of Kyrgyzstan for each organization.

2.4 The authors' applications for the approval of lists by the city councils of Naryn, Osh and Jalal-Abad were rejected on 22 September 2010, 18 October 2010 and 7 December 2010 respectively, on the grounds that there was no government order in place prescribing the criteria and process to be followed. On 20 and 22 December 2010, the authors applied to the State Commission on Religious Affairs. On 16 February 2011, the State Commission on Religious Affairs refused to register the three religious organizations, according to its decision No. 02-16/24. It held that, without the approval of the list of founding members by the local council, it was not possible to proceed with the registration.

2.5 Following the decision of the State Commission on Religious Affairs, the authors filed a complaint before the Bishkek Interdistrict Court. On 21 July 2011, the Court granted the appeal in part, ruling that the State Commission decision had been unlawful. It considered, however, that it had no competence to order the State Commission to register the religious organizations, but only to order it to eliminate in full the infringement of the authors' rights, freedoms and legitimate interests. The State Commission appealed the decision.

2.6 On 15 September 2011, the Appeals Instance of the Bishkek Interdistrict Court granted the appeal on grounds that the refusal of the State Commission on Religious Affairs had not been a decision, since it was only informative in nature and did not establish, change, terminate or suspend rights and duties of individuals. For that reason, it could not be considered by the court. The authors nevertheless contested the decision before the Supreme Court. On 31 May 2012, the Supreme Court upheld the previous ruling. It concluded that the

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<sup>1</sup> Kyrgyzstan has allegedly acknowledged that this law (Act No. 282, 31 December 2008) violates the Covenant. In response to recommendations made during its first universal periodic review on 3 May 2010, Kyrgyzstan accepted recommendation No. 37 to conduct a review of the law on religion to ensure that the right to freedom of religion is upheld in compliance with international standards (A/HRC/15/60, para. 268).

<sup>2</sup> With respect to the region of Batken, a communication regarding the same subject matter was submitted by the authors on 26 March 2013 and registered under No. 2312/2013 on 9 December 2013. The Committee adopted Views in which it acknowledged a violation of the authors' rights: see *Bekmanov and Egemberdiev v. Kyrgyzstan* (CCPR/C/125/D/2312/2013).

decision of 16 February 2011 of the State Commission was only an informative letter because it did not follow the legally prescribed format; therefore, it could not be appealed before a court.

2.7 On 21 February 2014 and 10 February 2015, the authors provided additional information on subsequent developments to the initial submission. On 28 January 2013, the authors once more applied to the city council of Jalal-Abad for the approval of the list of 200 founding members and the registration of the Jehovah's Witnesses religious organization in the region. On 29 March 2013, the Jalal-Abad city council rejected the application, and concluded that granting the registration would violate articles 1 and 7 (2) and (3) of the Constitution, which stipulate that religion and worship are to be separate from the State.

2.8 The authors filed a civil claim before the Jalal-Abad Interdistrict Court. On 8 October 2013, the court suspended the case and sent it to the newly formed Constitutional Chamber of the Supreme Court to determine whether article 10 (2) of the 2008 law on religion was constitutional. The case was later suspended and then discontinued when the Constitutional Chamber of the Supreme Court refused to accept the trial court's request to determine the constitutionality of article 10 (2) of the law, although further details and dates were not provided. The Constitutional Chamber refused to accept the case for consideration owing to technical errors in the referral request submitted by the trial court.

2.9 In April 2014, the Religious Centre of Jehovah's Witnesses filed an application directly with the Constitutional Chamber of the Supreme Court challenging, *inter alia*, the phrase in article 10 (2) of the 2008 law on religion stating that the notarized list of founding members of a religious organization must be approved by the local city council.

2.10 On 4 September 2014, the Constitutional Chamber of the Supreme Court granted the Religious Centre's application and declared the impugned phrase in article 10 (2) of the 2008 law on religion to be unconstitutional and of no force and effect. On 20 November 2014, the authors applied to the State Commission on Religious Affairs for registration of the religious organization of Jehovah's Witnesses in Jalal-Abad.

2.11 On 16 January 2015, the State Commission on Religious Affairs rejected the registration application, refusing to apply the judgment of 4 September 2014 of the Constitutional Chamber. The State Commission insisted that the impugned words of article 10 (2) of the 2008 law on religion remained in effect and that the registration application would not be considered by the State Commission unless the notarized list of 200 founding members was approved by the local city council.

2.12 The authors claim that, for more than five years, hundreds of Jehovah's Witnesses living in the southern regions of Kyrgyzstan, namely in the regions of Jalal-Abad, Naryn and Osh, have tried to register local religious organizations, without success. They consider that the decision of 31 May 2012 of the Supreme Court of Kyrgyzstan satisfies their obligation to exhaust domestic remedies before filing an application with the Committee. In their further submission, dated 10 February 2015, the authors highlight that the new and unsuccessful efforts to obtain registration (see paras. 2.9–2.11) constitute a repeated violation of the rights of Jehovah's Witnesses in Kyrgyzstan under the Covenant by the State party.

### **Complaint**

3.1 The authors claim that the State party has violated their rights under article 2 (3) (a) and (b), read in conjunction with articles 14 (1), 18 (1) and (3) and 22 (1) and (2); and article 26, read in conjunction with articles 18 and 22, of the Covenant.

3.2 The authors assert that the Supreme Court's ruling of 31 May 2012 has arbitrarily insulated the discriminatory actions of the State Commission on Religious Affairs from judicial review and has thus denied the authors of their right to an effective remedy, in violation of their rights under article 2 (3) (a) and (b), read in conjunction with article 14 (1). The Supreme Court wrongfully considered the decision of the State Commission to be an informative letter, even though the law on administrative proceedings (No. 16/2004) and article 41 (1) of the Constitution both impose clear obligations on the State Commission to issue decisions on the registration of applications. The authors further claim that, either way, they should have still been allowed to bring the matter before a court, since article 43 (1) of

the law on administrative proceedings and article 260 (1) (4) of the Civil Procedure Code explicitly provide for judicial appeals against both actions and inactions of the State Commission.

3.3 The authors further claim that their rights under article 18 (1) of the Covenant have been violated by the State party's refusal to register their religious organizations.<sup>3</sup> They claim that their rights to jointly manifest their religious beliefs have been denied by the State party's failure to enact a regulation on the matter and by the national court's refusal to properly assess their claims. Without registration, the authors are hindered in many of the rights enjoyed by a registered religious community, including the right to conduct religious meetings and assemblies, to own or use property for religious purposes, to produce and import religious literature, to receive donations, to carry out charitable activity and to invite foreign citizens to participate in religious events. Furthermore, under article 8 (2) of the 2008 law on religion, an unregistered religious activity constitutes a criminal offence.

3.4 Further, the State party's refusal to register the Jehovah's Witnesses organizations is not justified under the provisions of article 18 (3) of the Covenant.<sup>4</sup> The requirement of having a list of 200 founding members approved by a local city council is in itself a violation of the Covenant and the Constitution, and is allegedly designed to prevent small religious organizations from obtaining registration. It imposes an unnecessary and arbitrary bureaucratic burden on the applicants, delaying the registration process and increasing the costs incurred.

3.5 The authors also argue that the State party's interference with their right to freedom of association, in violation of article 22 (1) and (2) of the Covenant was not prescribed by law and not necessary in a democratic society.<sup>5</sup> They claim that the applicable law is neither adequately accessible nor formulated with sufficient precision to enable individuals to regulate their conduct. Therefore, without legal provisions on the subject, a local city council can refuse to approve an application for reasons that are arbitrary, unpredictable or discriminatory, or in some other unjustified way. It is impossible for individuals to know in advance which criteria will be used to consider their application, or whether it will even be considered.

3.6 Finally, the authors claim that the process for obtaining registration under the 2008 law on religion is not applied equally and, therefore, amounts to a violation of article 26 of the Covenant. Since its enactment in 2008 and until 2011, only the two predominant religions managed to obtain registration of their organizations: 135 Islamic and 3 Russian Orthodox organizations were granted registration by the State Commission on Religious Affairs. No other minority religious organization has been provided with legal status and all registered religious organizations of Jehovah's Witnesses in Kyrgyzstan were registered before the enactment of the 2008 law on religion. The authors claim to have suffered discriminatory treatment on account of their religious beliefs since, out of the 138 religious organizations that have been registered by the State Commission, none belong to the Jehovah's Witnesses.

3.7 In the light of the above, the authors request the Committee to conclude that the State party's refusal to register the three local religious organizations of Jehovah's Witnesses in

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<sup>3</sup> The authors refer to Human Rights Committee decision in *Malakhovsky and Pikul v. Belarus* (CCPR/C/84/D/1207/2003). They also refer to the following decisions of the European Court of Human Rights, which affirm that the failure to register a religious organization is an interference with the right to freedom of religion: *Hasan and Chaush v. Bulgaria*, application No. 30985/96, judgment of 26 November 2000, para. 62; *Metropolitan Church of Bessarabia and Others v. Moldova*, application No. 45701/99, judgment of 13 December 2001, para. 105; *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, application No. 40825/98, judgment of 31 July 2008, paras. 79–80; and *Jehovah's Witnesses of Moscow v. Russia*, application No. 302/02, judgment of 10 June 2010, paras. 99 and 101.

<sup>4</sup> The authors refer to the statement of the Special Rapporteur on freedom of religion or belief: "Any procedures for the registration of religious or belief communities as legal persons should be quick, transparent, fair, inclusive and non-discriminatory" (A/HRC/19/60, para. 54).

<sup>5</sup> European Court of Human Rights, *Jehovah's Witnesses of Moscow v. Russia*, application No. 302/02, judgment of 10 June 2010, paras. 99 and 101; and *Association Les Témoins de Jéhovah v. France*, application No. 8916/05, judgment of 30 June 2011, para. 66.

the regions of Jalal-Abad, Naryn and Osh has violated article 2 (3) (a) and (b), read in conjunction with articles 14 (1), 18 (1) and (3) and 22 (1) and (2); and article 26, read in conjunction with articles 18 and 22, of the Covenant. They further request the Committee to recommend the State party to provide them with an effective remedy, giving full recognition of their rights under the Covenant, by directing Kyrgyzstan to immediately register the three religious organizations.

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

4. In notes verbales dated 3 July 2017, 3 October 2018 and 5 December 2018, the Committee requested the State party to submit to it information and observations on the admissibility and the merits of the present communication. The Committee notes that that information has not been received. The Committee regrets the State party's failure to provide any information with regard to the admissibility or the substance of the author's claims. It recalls that article 4 (2) of the Optional Protocol obliges States parties to examine in good faith all allegations brought against them and to make available to the Committee all information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they have been properly substantiated.

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

##### *Consideration of admissibility*

5.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

5.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 The Committee takes note of the authors' claim that they have exhausted all effective domestic remedies available to them. The Committee notes that the authors challenged the rejection of the registration of their religious organization on two occasions, taking the matter all the way to the Supreme Court, and that they challenged the constitutionality of article 10 (2) of the law on freedom of religion and religious organizations.<sup>6</sup> In the absence of any observations by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

5.4 The Committee considers that the authors have sufficiently substantiated the claims under article 2 (3) (a) and (b), read in conjunction with articles 14 (1), 18 (1) and (3) and 22 (1) and (2); and article 26, read in conjunction with articles 18 and 22, 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*

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

6.2 In relation to the authors' claim under article 18 (1) and (3) of the Covenant, the Committee recalls that article 18 does not permit any limitations whatsoever on the 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. The Committee notes the authors' argument that, by refusing to register the authors' religious organization, the State party denied their rights to jointly manifest their religious beliefs, including the right to conduct religious meetings and assemblies, to own or use property for religious purposes,

<sup>6</sup> See also *Bekmanov and Egemberdiev v. Kyrgyzstan*.

<sup>7</sup> Human Rights Committee, general comment No. 22 (1993), para. 3.

to produce and import religious literature, to receive donations, to carry out charitable activity and to invite foreign citizens to participate in religious events. Consistent with its general comment No. 22, the Committee considers that these activities form part of the authors' right to manifest their beliefs. Furthermore, the Committee notes the authors' uncontested statement that, under article 8 (2) of the law on freedom of religion and religious organizations, an unregistered religious activity constitutes a criminal offence.

6.3 The Committee must address the question of whether the relevant limitations on the authors' right to manifest their religion are 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 again recalls that article 18 (3) is to be interpreted strictly, and that limitations 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.<sup>8</sup>

6.4 In the present case, the limitations placed on the authors' right to manifest their religious belief consist in the requirement under article 10 (2) of the law on freedom of religion and religious organizations to have a list of 200 founding members approved by a local city council, which is a prerequisite for the religious organization concerned to be registered by the State Commission on Religious Affairs. The Committee notes the authors' argument that this requirement is in itself a violation of the Covenant and of the Constitution, in that it imposes an unnecessary and arbitrary bureaucratic burden on the applicants and is allegedly designed to prevent small religious organizations from obtaining registration. The Committee observes that the authors' first applications for approval of the list of founding members of their organizations were rejected by the city councils on the ground that there was no government order prescribing the criteria and process to be followed, while the State Commission refused to register the local religious organizations owing to the lack of approval of the lists of founding members by the local councils. It further observes that the second application to the State Commission, attempting to register the local religious organization in Jalal-Abad, was also rejected.

6.5 The Committee notes that the State party has not advanced any arguments as to why it is necessary, for the purposes of article 18 (3), for a religious organization to have a list of 200 founding members approved by a local city council in order to be registered. In this connection, the Committee notes the information received that, on 4 September 2014, the Constitutional Chamber of the Supreme Court declared the unconstitutionality of article 10 (2) of the law on freedom of religion and religious organizations. The Committee also notes that, despite this, the State Commission on Religious Affairs has rejected the authors' subsequent application for registration of the local religious organization in Jalal-Abad.

6.6 In the light of all the above, and considering the significant consequences of a refusal of registration, namely the impossibility to carry out religious activities, the Committee concludes that the refusal to register the authors' religious organizations amounts to a limitation of the authors' right to manifest their religion under article 18 (1) for which the State party has not demonstrated that is necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others under article 18 (3). The Committee therefore concludes that the authors' rights under article 18 (1) of the Covenant have been violated.

6.7 As regards the authors' claim under article 26 of the Covenant, the Committee refers to its long-standing jurisprudence that there must be a reasonable and objective distinction to avoid a finding of discrimination, particularly on the grounds enumerated in article 26, which include religious belief. The authors claim that the process for obtaining registration under the law on freedom of religion and religious organizations is not applied equally, and they cite official statistics indicating that, within the same period, 135 Islamic and 3 Russian Orthodox organizations have been registered. The State party has provided no reasonable and objective grounds for distinguishing the authors' religious organization from other registered organizations. In the absence of observations from the State party, due weight must be given to the authors' allegations. Therefore, the Committee concludes that such treatment, although

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<sup>8</sup> Ibid., para. 8.

neutral on its appearance as all religious organizations have followed the same procedure, has led to a disproportionately negative impact on the authors' minority religious group and discriminated against the authors on the basis of their religious belief, in violation of their rights under article 26 of the Covenant.<sup>9</sup>

6.8 In the light of this conclusion, the Committee decides not to examine separately the authors' claims under article 2 (3) (a) and (b), read in conjunction with article 14 (1) and 22 (1) and (2) of the Covenant.

7. 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 26 of the Covenant.

8. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors 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, *inter alia*, to take appropriate steps to review the refusal by the State Commission on Religious Affairs of the registration application by the local religious organizations of Jehovah's Witnesses of the Jala-Abab, Naryn and Osh regions, and to provide the authors with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective 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 languages of the State party.

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<sup>9</sup> *Bekmanov and Egemberdiev v. Kyrgyzstan*, para. 7.7.