



## International Covenant on Civil and Political Rights

Distr.: General  
18 November 2022

Original: English

### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2616/2015\*, \*\*

<i>Communication submitted by:</i>	Kiryl Dashkouski (represented by counsel, André Carbonneau)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	10 November 2014 (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 3 June 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	1 July 2022
<i>Subject matter:</i>	Unjustified interference with freedom of religion, expression and assembly
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Freedom of thought, conscience or religion; freedom of opinion and expression; freedom of assembly; freedom of association
<i>Articles of the Covenant:</i>	18 (1); 19 (2); 21; and 22 (1)
<i>Articles of the Optional Protocol:</i>	2

1. The author of the communication is Kiryl Dashkouski, a national of Belarus born in 1977. He claims that the State party has violated his rights under articles 18 (1), 19 (2), 21 and 22 (1) 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 Chair of the Jehovah's Witnesses Community (hereinafter "the Community") in the city of Rahachow. The Community has been formally registered as a legal entity since 17 December 1998. Although the Community does not have its own

\* Adopted by the Committee at its 135th session (27 June–27 July 2022).

\*\* 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 Gómez Martínez, Marcia V.J. Kran, 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.



permanent place of worship, since 2002, it has regularly held its religious services at the private home of one of its members, Ms. Volchkova. Both law enforcement officials and the Rahachow District Executive Committee have been aware of this long-standing arrangement. Article 25 of the Freedom of Conscience and Religious Organizations Act states that religious services may be held, inter alia, in private residences, if the service is not of a “mass or systematic character”. Religious services cannot be held in any other location without the consent of the relevant government authority.

2.2 On 29 March 2012, the Acting Prosecutor of Rahachow District sanctioned the search of Ms. Volchkova’s residence on the grounds that the Community had not been authorized by the Executive Committee to hold services at that address. On 1 April 2012, the police raided the home of Ms. Volchkova at the same time as she was hosting a gathering of 47 members of the Community for a religious service. The police videotaped and interrogated everyone in attendance and recorded their names, addresses and other personal details. The police also seized the religious literature of those in attendance, as well as a number of CDs and DVDs containing religious material.

2.3 On 5 April 2012, the author was charged with the administrative offence of having organized an “other mass event” on 1 April 2012 without authorization in violation of article 23.34 (2) of the Code of Administrative Offences.<sup>1</sup> The police issued an administrative citation against the author on 18 April 2012, which specified that the author had acted in violation of article 25 (5) of the Freedom of Conscience and Religious Organizations Act<sup>2</sup> and articles 5–6 of the Public Events Act.<sup>3</sup> The Public Events Act categorizes events into “mass events”,<sup>4</sup> which includes assemblies, rallies, protests etc., and “other mass events”, which includes religious, sports, cultural and other events.<sup>5</sup> However, as of 25 November 2011, the administrative sanction for conducting unauthorized “other mass events” was removed from the Code of Administrative Offences.

2.4 The author’s trial took place on 8 May 2012 before the Rahachow District Court. The judge dismissed the case on the basis that the Code of Administrative Offences no longer prescribed liability for holding “other mass events” without authorization. The Chief of the Rahachow District Police Department appealed the decision to the Gomel Regional Court claiming that the Rahachow District Court had erred in its decision as it should have returned the case materials to the police for it to amend the errors in the administrative citation against the author. On 6 June 2012, the Gomel Regional Court held that the Rahachow District Court had failed to establish whether the religious service conducted on 1 April 2012 was “an assembly” or an “other mass event”, and ordered a new trial. On 19 July 2012, the Rahachow District Police Department issued a new administrative citation charging the author with organizing an unauthorized “prayer assembly”, in violation of both the Freedom of Conscience and Religious Organizations Act and the Public Events Act.

2.5 On 10 August 2012, the Rahachow District Court convicted the author pursuant to article 23.34 (2) of the Code of Administrative Offences – violation of the established procedure for organizing and holding assemblies – and ordered him to pay a fine of 2 million Belarusian roubles. The Court considered that the event of 1 April 2012 constituted a

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<sup>1</sup> Article 23.34 (2) states that violating the established procedure for organizing or conducting an assembly, rally, street procession, demonstration or picket, as well as public exhortations to organize or conduct an assembly, rally, street procession, demonstration or picket in violation of the established procedure for organizing or conducting them – if such actions do not constitute a crime – shall entail the imposition of a fine of between 20 and 40 basic units or administrative arrest, if the violation is committed by the organizer of such events.

<sup>2</sup> Article 25 (5) of the Freedom of Conscience and Religious Organizations Act states that religious services and ceremonies and other mass events, having the overall objective of satisfaction of religious needs, when held in open air and indoor premises not specifically designed for these purposes, may be carried out only after receiving an appropriate decision from the head of the local executive or administrative body or its deputy in the order established by the legislation of Belarus.

<sup>3</sup> Articles 5 and 6 of the Public Events Act describe the procedure for obtaining an authorization for a mass event.

<sup>4</sup> Article 2 of the Public Events Act mentions assembly, rally, march, demonstration, picket or other mass event.

<sup>5</sup> Article 2 of the Public Events Act mentions sporting, cultural spectacle and other entertainment event, religious event, held in places not specially intended for the purpose in the open air or indoors.

religious service and, as such, amounted to a “prayer assembly” according to article 3 of the Freedom of Conscience and Religious Organizations Act. The Court held that the prayer assembly constituted a mass event and had been held outside of the Community’s registered address without prior authorization, which violated both the Freedom of Conscience and Religious Organizations Act and the Public Events Act.

2.6 On an unspecified date, the author appealed the decision before the Gomel Regional Court, arguing that there was no evidence to qualify the religious service outside of the “other event” category and that his right to a peaceful assembly had been violated. On 7 September 2012, the Gomel Regional Court dismissed the author’s appeal.

2.7 On an unspecified date, the author submitted a supervisory appeal to the Supreme Court but his appeal was remanded to the Gomel Regional Court. The Gomel Regional Court rejected the appeal on 25 March 2013 on the basis that the restrictions on conducting mass events were in the interest of public order, the protection of public health or morals and the rights and freedoms of others; and that the author’s prayer assembly constituted a violation of the Freedom of Conscience and Religious Organizations Act and the Public Events Act that incurred liability under article 23.34 (2) of the Code of Administrative Offences.

2.8 The author attempted to find a permanent solution to enable the Community to have a place of worship, including building a dedicated place for services on a plot of land. However, his applications for two different plots of land were refused by the Rahachow District Executive Committee. On 11 June 2012, the author, in his capacity as Chair of the Community, formally requested an authorization to hold regular services at Ms. Volchkova’s home. Following successive applications, he was given temporary authorizations to do so until 31 December 2012, first to conduct services once a week, then twice a week, but only at predetermined hours. No explanation was given by the Executive Committee for the arbitrary limits imposed on the days and times when the Community members could hold their religious services. However, when Ms. Volchkova applied for a permit to use her residence as a permanent place of worship for the Community, in January 2013, the Executive Committee denied her request. On 2 March 2013, the Housing Code was amended to allow for the use of private houses for religious services. Ms. Volchkova applied twice, in 2013 and 2014, to convert part of her residence for religious use by the Community, but both of her applications were rejected by the Executive Committee on the grounds that sanitary and fire regulations established for residences would not be observed.

2.9 The author submits that he has exhausted all effective domestic remedies.

### **Complaint**

3.1 The author claims that his prosecution and his conviction for organizing and holding religious services on the basis of the Code of Administrative Offences, in conjunction with the Public Events Act and the Freedom of Conscience and Religious Organizations Act, violate his rights under articles 18 (1), 19 (2), 21 and 22 (1) of the Covenant. He considers that such prosecution and conviction amount to interferences with his right to freely manifest his religious beliefs in community with others and his rights to freedom of expression, assembly and association, which bear no justification. The author also refers to the Committee’s jurisprudence in which it has repeatedly held that limitations cannot only be justified on the basis of domestic law and that the limitation must be necessary for one of the legitimate purposes prescribed by the Covenant.

3.2 The author claims that the requirement to give notice of a religious service held in a private residence is not necessary in a democratic society. He notes that it targets minority religious groups that often do not have their own places of worship, unlike the Russian Orthodox Church. The author argues that, while sanitation and fire safety can be legitimate State concerns, they cannot justify the total ban imposed by article 25 of the Freedom of Conscience and Religious Organizations Act on holding religious services in locations that are not specifically designated for such purposes without prior permission from the local governments. He notes that a similar ban is not imposed on non-religious gatherings, such as weddings and family gatherings, at which similar numbers of persons may gather in a rented facility or private residence.

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

4. On 21 August 2015, 29 November 2018 and 12 November 2020, the Committee requested the State party to provide information and its observations on the admissibility and the merits of the present communication. The Committee regrets the failure of the State party to provide any information with regard to the admissibility or the merits of the author's claims. It recalls that it is implicit in article 4 (2) of the Optional Protocol that States parties examine in good faith all allegations brought against them and that they 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 are substantiated.<sup>6</sup>

### **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 In accordance with article 5 (2) (b) of the Optional Protocol, the Committee shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the author has exhausted all available domestic remedies. Accordingly, the Committee considers that it is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol from examining the present communication.

5.4 The Committee considers that the author has sufficiently substantiated, for the purposes of admissibility, his claims under articles 18 (1), 19 (2), 21 and 22 (1) of the Covenant. The Committee therefore declares them 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 submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

6.2 The Committee notes the author's claim that his prosecution and conviction for organizing and holding religious services of the Jehovah's Witnesses Community outside of a registered address constitute a violation of article 18 (1) of the Covenant. The Committee observes that the State party has submitted no observations with regard to the communication and that, in those circumstances, due weight must be given to the author's claims as far as they are sufficiently substantiated.<sup>7</sup> The Committee recalls its general comment No. 22 (1993), according to which 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 freedom to manifest religion or belief may be exercised either individually or in community with others and in public or private.<sup>8</sup> Moreover, article 18 (3) is to be interpreted strictly and limitations on the freedom to manifest one's religion or beliefs 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>9</sup>

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<sup>6</sup> General comment No. 33 (2008), paras. 8 and 10. See also *Malashenak v. Belarus* (CCPR/C/129/D/2486/2014), para. 4.

<sup>7</sup> *Reviako v. Belarus* (CCPR/C/129/D/2455/2014), para. 8.1.

<sup>8</sup> General comment No. 22 (1993), para. 4. See also *Bekmanov and Egemberdiev v. Kyrgyzstan* (CCPR/C/125/D/2312/2013), para. 7.2.

<sup>9</sup> General comment No. 22 (1993), para. 8. See also *Mammadov et al. v. Azerbaijan* (CCPR/C/130/D/2928/2017), para. 7.4.

6.3 In the present case, the Committee observes that the Rahachow District Court found the author guilty of violating the established procedure for organizing and holding assemblies. The Court held that the religious service constituted a prayer assembly held outside of the Community's registered address without prior authorization, which violated both the Freedom of Conscience and Religious Organizations Act and the Public Events Act. The Committee further observes that the Gomel Regional Court considered that the restrictions on conducting mass events were in the interest of public order, the protection of public health or morals and the rights and freedoms of others; however, the Court did not provide any justification to support its finding. In the absence of the State party's observations that might have explained how the imposed limitation represented a proportionate measure necessary to serve a legitimate purpose identified in article 18 (3) of the Covenant, the Committee considers that the punishment imposed on the author amounted to a limitation of his right to manifest his religion under article 18 (1) of the Covenant. Accordingly, the Committee concludes that, by convicting and fining the author for organizing and holding religious services, the State party violated his rights under article 18 (1) of the Covenant.

6.4 In the light of its findings, the Committee does not deem it necessary to examine whether the same facts constitute a violation of articles 19, 21 and 22 of the Covenant.

7. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of the author's rights under article 18 (1) of the Covenant.

8. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. That 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 provide the author with adequate compensation, including reimbursement for the fines imposed and for court fees related to the case 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 the Covenant may be fully enjoyed in the State party.

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 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 languages of the State party.

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