



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. 2417/2014*, **

<i>Communication submitted by:</i>	Sergey Geller (represented by counsel, Elizaveta Moksheva)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kazakhstan
<i>Dates of communication:</i>	12 May 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure (now rule 92), transmitted to the State party on 5 June 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	25 July 2019
<i>Subject matter:</i>	Freedom of religion
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of religion; discrimination on the ground of religion
<i>Articles of the Covenant:</i>	18 (1) and (3), read in conjunction with 2 (1) and (3) (a), (b) and (c); 26, read in conjunction with 2 (1); and 27
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Sergey Geller, a national of Kazakhstan born in 1959. He claims that the State party has violated his rights under articles 18 (1) and (3), read in conjunction with 2 (1) and (3) (a), (b) and (c); 26, read in conjunction with 2 (1); and 27 of the Covenant. The Optional Protocol entered into force for the State party on 30 September 2009. The author is represented by counsel.

* Adopted by the Committee at its 126th session (1–26 July 2019).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



The facts as submitted by the author

2.1 The author is the head of a duly registered local religious organization, Krishna Consciousness Society, in the city of Kostanay. On 9 June 2013, he organized a meeting with members of the Krishna Consciousness Society, followed by a religious ceremony, at a location rented by him, since 2011, specifically for religious activities. Approximately 20 people attended the meeting and ceremony. As was usual practice, the event was attended by a police officer charged with monitoring the legality of such religious ceremonies. The police officer also invited a representative of the regional department of religious affairs who came to verify that the ceremony was held in accordance with the legislation. At some point, both of them left the ceremony. After their departure, the ceremony was interrupted by the police who informed the author that they had received a complaint about the ceremony by telephone. The police took photographs of the attendants, their books and premises. When the attendants wanted to leave, the police would not let them until each attendant provided a written explanation of why they were there and what they were doing.

2.2 On 9 September 2013, the author was summoned to the Kostanay City Prosecutor's Office and interrogated about the meeting of 9 June 2013.

2.3 On 2 October 2013, the Specialized Administrative Inter-district Court of Kostanay City found the author guilty of holding a religious meeting at a place other than the registered address of the Krishna Consciousness Society without previously notifying the regional department of religious affairs. The representative of the department who attended the meeting of 9 June 2013 stated during the court hearing that the department had not been notified about the planned event. The author argued that, although the notification procedure had not been prescribed by the current legislation, for two years he had been informally notifying the department about all the meetings held by the Society at that address. Nevertheless, the Court found the author guilty of violating article 375 (1) of the Administrative Offences Code and fined him 173,100 tenge (approximately \$1,100 at the time) and suspended the Society's activities for three months.

2.4 On 11 October 2013, the author appealed to the Kostanay Regional Court. The Kostanay City Prosecutor's Office also appealed the decision of the Administrative Court asking the appellate court to void the suspension, but to uphold the fine. On 24 October 2013, the Kostanay Regional Court upheld the fine set by the court of first instance but annulled the three-month suspension of the Society's activities.

2.5 On an unknown date, the author submitted a cassation appeal to the Kostanay Regional Court, however, it was rejected on 14 November 2013 on the grounds that cassation appeals in administrative cases can only be reviewed if appealed by the Prosecutor General's Office. At the same time, the author submitted petitions to the Kostanay Region Prosecutor's Office and to the Prosecutor General asking them to appeal the decision of the Kostanay Regional Court. Both petitions were denied. According to the letter signed by the Deputy Prosecutor General on 6 January 2014, the event of 9 June 2013 had been held outside of the Society's registered address and outside of the places listed in article 7 (2) of the Law on Religious Activities and Religious Associations. In its letter, the Kostanay Region Prosecutor's Office stated that the procedure for conducting religious ceremonies was provided by the standards for coordination of religious meetings outside of religious organizations' place of registration dated 9 September 2013.¹

2.6 The author contends that he has exhausted all available domestic remedies.

The complaint

3.1 The author claims a violation of article 18 (1) and (3), read in conjunction with article 2 (1) and (3) (a), (b) and (c), of the Covenant because the State party has restricted his right to manifest his religion in community with others. He argues that the restrictions imposed by the State party were not prescribed by law or necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

¹ The Krishna Consciousness Society was registered at the author's home address.

3.2 The author claims that worshippers of traditional (mainstream) religions in Kazakhstan, such as Islam and Christianity, are not required to obtain permission to hold their ceremonies outside of their places of registration. The author gives an example of a meeting he participated in in November 2013 at the Kostanay regional library, where the imam of a local mosque gave a lecture to students about Islam. In the author's view, he was discriminated against as a representative of a "non-traditional" religion, which violated his rights under article 26, read in conjunction with article 2 (1), of the Covenant.

3.3 The author also claims a violation of article 27 of the Covenant. He submits that the requirement to seek permission to carry out any religious ceremony outside of the place of registration of a religious organization restricts the rights of followers of non-traditional (minority) religious organizations. The mainstream or "traditional" religious groups have sufficient funds to purchase land and build mosques and churches, officially register them and carry out all ceremonies in official places of registration. Meanwhile, minority religious organizations, such as the author's, often have to register at private apartments and rent premises for their ceremonies.

State party's observations on admissibility

4.1 In a note verbale dated 19 December 2014, the State party provided its observations on admissibility of the communication. The State party submits that, on 9 June 2013, the author, as the head of the religious organization Krishna Consciousness Society, held a meeting, which was attended by 20 people, at a location other than the Society's registered address, for which he was sentenced to a fine by the Specialized Inter-district Administrative Court of Kostanay City.

4.2 The State party notes that article 7 (2) of the Law on Religious Activities and Religious Associations provides for the following locations for religious activities to take place without any restrictions: buildings of a religious character; places of worship; the offices and premises of religious associations; cemeteries and crematoriums; homes; and public catering facilities. In all other cases, religious activities must take place in accordance with the legislation of Kazakhstan. The author's meeting of 9 June 2013 was held in a sports gymnasium. However, he did not notify the regional department of religious affairs about the event.

4.3 The State party submits that, in accordance with section 40 of the Administrative Offences Code, judicial decisions that have already entered into force can only be appealed by the Prosecutor General of Kazakhstan or his or her deputies. Although the author's petition to appeal was denied by the Deputy Prosecutor General of Kazakhstan, he never petitioned the Prosecutor General to appeal the decision of the Court. Therefore, he has not exhausted all available domestic remedies as required by article 5 (2) (a) of the Optional Protocol.

Additional observations by the author

5.1 In a letter dated 22 December 2014, the author informed the Committee that, on 20 December 2014, he had been summoned by the regional department of religious affairs and asked to withdraw his communication to the Committee. In return, the head of the department, Nurikan Nugurbekov, had promised to provide authorization to hold religious activities outside of the Society's registered address. Mr. Nugurbekov had told the author that, if he did not withdraw his communication, the department would stop cooperating with the Society and would create obstacles for its work. He had also asked for a copy of the author's communication to the Committee. The whole meeting had lasted for about an hour. After the meeting, a department employee had offered to give the author a ride home. However, during the drive, he had continued pressuring the author psychologically into withdrawing the communication. The author requested the Committee to contact the State party and ask it to stop the reprisals.²

² In a note verbale dated 23 December 2014, the Committee requested the State party to make sure that no reprisals were taken against the author and his religious organization as a result of the submission of the communication.

5.2 In a letter dated 23 December 2014, the author requested the Committee to discontinue his communication since all of his problems had been resolved. He stated that his rights had not been violated and that the people of Kazakhstan fully enjoy their right to manifest their religion individually or in community with others.

5.3 In a letter dated 23 January 2015, the author informed the Committee that he had been pressured by the regional department of religious affairs into submitting his letter dated 23 December 2014 to the Committee. In return, the department had authorized the use of the gymnasium, in which the author had held the event of 9 June 2013, for future religious events by the Society, and had extended the Society's registration certificate for another year. The author also noted that he had submitted a new petition to the Prosecutor General asking him to appeal the decision of the Kostanay Regional Court dated 24 October 2013. Considering the above, the author requested the Committee to suspend its examination of the communication until further notice.

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

6.1 In a letter dated 18 February 2015, the author provided his comments on the State party's observations on admissibility. The author rejects the State party's argument that not all domestic remedies have been exhausted. The author notes that he had submitted a petition for an appeal to the Prosecutor General of Kazakhstan. However, his petition was denied by the Deputy Prosecutor General. Since the law allows for judicial decisions that have already entered their force to be appealed by both the Prosecutor General and his or her deputies, the author considers that he has exhausted all available domestic remedies.

6.2 Furthermore, the author notes that, in accordance with article 7 (3) of the Law on Religious Activities and Religious Associations, religious activities cannot be carried out in the territory and buildings of: (a) State bodies; (b) the armed forces, the judiciary and law enforcement agencies; and (c) educational institutions, excluding those of a religious character. The premises rented by the author for the event of 9 June 2013 do not fall into any of the categories above. Therefore, religious activities can be carried out on those premises without restriction.

6.3 The author submits that, since the State party is taking actions towards restoring his rights, he would like to request the Committee to suspend or postpone its examination of his communication.

State party's observations on the merits

7.1 In a note verbale dated 25 March 2015, reiterated on 26 August 2015, the State party provided its observations on the merits of the communication. The State party submits that, prior to 20 December 2014, the author consulted, on several occasions, with the regional department of religious affairs with regard to organizing religious activities outside of the Society's registered address. However, he was not summoned to the department on 20 December 2014 because it was a Saturday, and the department does not work on Saturdays or Sundays.

7.2 The State party argues that the author's rights as a citizen under article 18 (1) of the Covenant were not violated, because he was found guilty of an administrative offence for his actions as the head of a local religious organization. With regard to article 18 (3), the State party notes that it allows restrictions on the manifestation of one's religion if those restrictions are prescribed by law and necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. In accordance with this, article 3 (6) of the Law on Religious Activities and Religious Associations states that every person is free to have a religion and to manifest it, to participate in the activities of religious organizations and carry out missionary activities in accordance with the legislation of Kazakhstan.

7.3 The State party notes that article 14 of the Constitution prohibits discrimination based on one's religion. At the same time, no one is allowed to disregard certain responsibilities established by the Constitution and laws of Kazakhstan on the basis of one's own religious beliefs. The State party considers that, since the author has paid his administrative fine, he has admitted his guilt.

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

8.1 In a letter dated 6 May 2015, the author provided his comments on the State party's observations on the merits. The author submits that, in 2013, the department on domestic policies of the Kostanay Regional Akimat carried out five social projects funded by the State. One of the projects was on preventing religious extremism. As part of this project, the Kostanay Regional Akimat, based on materials prepared by the Ministry of Culture, distributed brochures that stated that the International Society for Krishna Consciousness called for non-compliance with civil duties and that Krishna followers did not obey the laws of the State in which they lived. This position of the department on domestic policies shows a negative attitude towards Krishna followers, which has also led to shaping a similar attitude in society at large.

8.2 The author notes that, in its observations, the State party refers to article 7 (2) of the Law on Religious Activities and Religious Associations, which requires religious activities in locations other than those mentioned to be held in accordance with the legislation of Kazakhstan. However, the State party does not say which specific law was violated by the author. The author submits that the State party has never given an answer to this question, nor has one been given by the courts during the author's administrative hearing or appeal.

8.3 The author also notes that, on 9 June 2013, there was no legislation in place that required notifying the department of religious affairs about religious activities outside of the registered address. On 2 April 2013, the Government adopted the standards for coordination of religious meetings outside of religious organizations' place of registration. Then, on 9 September 2013, the regional department of religious affairs issued regulations, based on the newly adopted standards, spelling out the procedures for conducting religious meetings. Therefore, the regulations did not exist when the alleged violation by the author took place.

8.4 The author submits that he and the State party are trying to resolve the situation in a friendly manner. The department of religious affairs has already authorized the use of the requested premises for the Society's future events, and its registration has been extended for another year. At the same time, the author requests the Committee to recommend that the State party amend its existing legislation and abolish mandatory registration for religious organizations because such a requirement limits freedom of religion.

Issues and proceedings before the Committee

Considerations 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 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.

9.3 The Committee notes the State party's argument that the author has failed to file a petition for supervisory review with the Prosecutor General. The Committee recalls its jurisprudence according to which a petition to a prosecutor's office requesting a review of court decisions that have taken effect does not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.³ In the present case, the Committee notes the author's claim that he twice petitioned the Prosecutor General's Office for supervisory review of his administrative case. The Committee observes that at least one of those motions was denied by the Deputy Prosecutor General on 6 January 2014. The Committee considers that the State party has not demonstrated that a further petition for supervisory review to the Prosecutor General would have been an effective remedy in this

³ *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; *Lozenko v. Belarus* (CCPR/C/112/D/1929/2010), para. 6.3; *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3; and *Poplavny and Sudalenko v. Belarus* (CCPR/C/118/D/2139/2012), para. 7.3.

case. Accordingly, the Committee finds that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

9.4 The Committee also notes the author's claims that he was discriminated against as a representative of a "non-traditional" religion, and that the requirement to seek permission to carry out any religious ceremony outside of the place of registration limits the rights of minority religious organizations. The Committee observes, however, that these claims do not appear to have been raised at any point during the domestic proceedings. This part of the communication, raising issues under articles 26 and 27 of the Covenant, is accordingly declared inadmissible for failure to exhaust all domestic remedies in accordance with article 5 (2) (b) of the Optional Protocol.

9.5 The Committee considers that the author's claims also raise issues under article 18 of the Covenant. In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, his claims under article 18 (1) (3), read alone and in conjunction with article 2 (3) (a), (b) and (c), of the Covenant and declares them admissible 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 In relation to the author's claim under article 18 of the Covenant, the Committee recalls that article 18 (3) of the Covenant states that 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. In the present case, the Committee notes that the author was issued with a fine for organizing a meeting, followed by a religious ceremony, with members of the Krishna Consciousness Society at a location other than the Society's registered address without previously notifying the regional department of religious affairs. The Committee considers that the State party's authorities imposed limitations on the author's right to manifest his beliefs in community with others and that the imposition of a fine constituted a limitation on that right.

10.3 The Committee must now address the question of whether the relevant limitations on the author's right to manifest his 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 recalls its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, in which it states (para. 8) 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 to and proportionate to the specific need on which they are predicated. The Committee further recalls that, in interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26.

10.4 The Committee notes that the event in question was attended by a police officer, who invited a representative of the regional department of religious affairs to also attend the meeting. The Committee considers that the State party has not advanced any argument as to why it is necessary, for the purposes of article 18 (3), for the author, in order to hold an internal meeting and a religious ceremony with members of the same religious society, to first notify the regional department of religious affairs. In fact, the State party has not sought to justify this infringement of his rights, other than by citing a provision of national law that states that missionary activities must be carried out in accordance with the legislation of Kazakhstan, although never specifying which particular provision of this legislation was violated. The Committee also notes the author's argument, uncontested by the State party, that at the time of the event in question, there was no legislation in place that required notifying the department of religious affairs about religious activities outside of a registered address. The Committee concludes that the punishment imposed on the author amounts to a limitation on the author's right to manifest his religion in community with others under article 18 (1); that the limitation was not based on law in force at the time

of the events and was not shown to serve any legitimate purpose identified in article 18 (3); and that the State party has not shown that this sweeping limitation on the right to manifest one's religion is proportionate to any legitimate purpose that it might serve. The limitation therefore does not meet the requirements of article 18 (3), and the Committee accordingly finds that the author's rights under article 18 (1), read alone and in conjunction with article 2 (3), of the Covenant have been violated.

11. 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 article 18, read alone and in conjunction with article 2 (3), of the Covenant.

12. 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 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 of the present value of the fine and any legal costs or other fees incurred by him. 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 languages of the State party.
