



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/84/D/1207/2003
23 August 2005

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-fourth session
11 – 29 July 2005

VIEWS

Communication No. 1207/2003

<u>Submitted by:</u>	Sergei Malakhovsky and Alexander Pikul (not represented by counsel)
<u>Alleged victim:</u>	The authors
<u>State Party:</u>	Belarus
<u>Date of communication:</u>	24 July 2003 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 91 decision, transmitted to the State party on 22 October 2003 (not issued in document form)
<u>Date of adoption of Views:</u>	26 July 2005

Subject matter: Refusal to register a religious association and consequent limitations on the association's activities.

Substantive issues: Right to manifest one's beliefs and to associate with others; whether limitations are necessary and proportionate.

Articles of the Covenant: 18(1), 18(3), 22(1), 22 (2)

On 26 July 2005, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1207/2003. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights

Eighty-fourth session

concerning

Communication No. 1207/2003*

Submitted by: Sergei Malakhovsky and Alexander Pikul (not represented by counsel)

Alleged victim: The authors

State Party: Belarus

Date of communication: 24 July 2003 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 26 July 2005,

Having concluded its consideration of communication No. 1207/2003, submitted to the Human Rights Committee by Sergei Malakhovsky and Alexander Pikul under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The authors of the communication are Mr. Sergei Malakhovsky and Mr. Alexander Pikul, citizens of Belarus, born in 1953 and 1971 respectively. They claim to be victims of violations by Belarus of article 18, paragraphs 1 and 3, and article 22, paragraphs 1 and 2 of the International Covenant on Civil and Political Rights. They are not represented by counsel.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

The text of an individual opinion signed by Committee member Ms. Ruth Wedgwood is appended to the present document.

1.2 The Covenant and the Optional Protocol entered into force for Belarus on 23 March 1976 and 30 December 1992, respectively.

Factual background

2.1 The authors are members of the Minsk Vaishnava community (community of Krishna consciousness), one of seven such communities registered in Belarus. The applicable law distinguishes between a registered religious *community* and a registered religious *association*. The authors state that certain activities which are essential to the practice of their religion may only be undertaken by a religious association. According to the domestic statute on 'freedom of conscience and religious organizations' ('the Statute'), and the Decree of the Council of Ministers on 'approval of invitation of foreign clerics and their activity in Belarus' ('the Decree'), only religious associations are entitled to establish monasteries, religious congregations, religious missions and spiritual educational institutions, or invite foreign clerics to visit the country for the purposes of preaching or conducting other religious activity.

2.2 On 10 May 2001, the authors filed an application with the Committee on Religions and Nationalities ('the C.R.N.'), seeking the registration of the seven Krishna communities in Belarus as a religious association. The application included a draft statute and other pertinent documentation required by law, including documents identifying an officially approved 'legal address' of the association, 11 Pavlova Street, Minsk, which satisfied all relevant requirements under the Housing Code, including regulations regarding fire and sanitation facilities.

2.3 On 5 June 2001, the C.R.N. returned these documents with a direction that certain changes be made. The authors resubmitted the documents, but on 27 July 2001, they were returned again with a direction for further changes. On each occasion, most of the required changes were not based on applicable laws, and appeared to reflect the personal views of the officials processing the application. The authors submitted the documents for a third time on 11 August 2001.

2.4 Although the Statute required the authors' application to be determined within one month, a period of over a year elapsed after the documents were initially filed, without any decision from the C.R.N.. On 30 May 2002, the authors filed an application in the Central Court of Minsk seeking an order to direct the C.R.N. to determine their application. On 4 July 2002, the Court issued an order requiring the C.R.N. to decide on the authors' application within a month.

2.5 On 2 August 2002, the C.R.N. refused the authors' application, on the ground that they had not provided a proper legal address. It found that the earlier decision of the Central Regional Administration of the City of Minsk to approve the legal address for the religious association was invalid, as it had been based on an earlier decision of the Minsk City Executive Committee, which, by virtue of another law, did not apply to the registration of religious organizations.

2.6 As a result of the C.R.N.'s refusal to register the association, members of the seven Krishna communities, including the authors, have been deprived of the right to establish spiritual educational institutions to train their priests, making it impossible to support religious doctrine appropriately. They cannot invite foreign priests to visit the country,

resulting in a decline of spiritual standards due to their inability to associate with more spiritually advanced believers. They have also been unable to create monasteries and missions, for the purpose of realizing certain essential tenets of their religion.

2.7 On 24 September 2002, the authors appealed the C.R.N.'s refusal to register the association in the Central District Court of Minsk; the appeal was dismissed on 18 October 2002. On 29 October 2002, they filed a cassation appeal in the Minsk City Court; the appeal was dismissed on 28 November 2002. On 21 December 2002, the authors filed an application for supervisory review with the President of the Minsk City Court; this was dismissed on 17 February 2003. On 14 April 2003, they filed an application for supervisory review in the Supreme Court of Belarus; this was dismissed on 30 May 2003. The grounds for the dismissal of the appeals were twofold: first, the absence of a proper legal address, for the reasons mentioned in the C.R.N.'s decision (paragraph 2.5 above); secondly, the premises did not comply with the requirements of the Housing Code, as several violations of sanitary and fire safety measures had been identified.

2.8 The authors submit that the decision of the administrative body to approve the legal address of their association was never set aside, and remains in force. They acknowledge that the earlier decision of the Minsk City Executive Committee, on which the decision to approve their legal address was based, was not applicable to the registration of religious bodies, but argue that it was simply irrelevant, and that the premises only needed to comply with relevant provisions of the Housing Code, which it did. As to concerns about the fire safety and sanitation facilities of the premises, the authors note that the building is residential, that people are living in it, and that it cannot be argued that the building is safe for these residents but unsafe for their organization.

2.9 The authors submit that amendments to the Statute adopted on 31 October 2002 make it even more difficult to have a religious association registered. The Statute now requires that an association be comprised of at least 10 religious communities, of which at least one must have conducted its activities in Belarus for not less than 20 years.

The complaint

3.1 The authors submit that the refusal of the C.R.N. to register their religious association, and the failure of domestic judicial instances to uphold their appeals, together with the consequences which flow from these decisions, amount to a violation of their rights under article 18, paragraphs 1 and 3, and article 22, paragraphs 1 and 2. They note that the process of unsuccessfully pursuing the registration of the association took two years, which is said to be evidence of a discriminatory policy of the State party towards religious minorities.

3.2 The authors contend that the requirements for the registration of a religious association established under the State party's laws are unwarranted limitations of their right to manifest their religion and restrictions on the exercise of their freedom of association with others which do not meet the criteria of necessity to 'protect public safety, order, health, or morals, or the fundamental rights and freedoms of others', as provided for in articles 18, paragraph 3, and the corresponding provision in article 22, paragraph 2, of the Covenant.

The state party's observations on admissibility and merits

4.1 In its observations dated 29 April 2004, the State party submits that the communication does not reveal any violation of articles 18 or 22 of the Covenant. It notes that the authors are able to practice their religion unobstructed both personally and in association with others. Since 1992, the authors have actively participated in the Minsk Krishna community, which has been registered in accordance with law. The seven existing Krishna communities in Belarus have an autonomous status and are not subject to religious control.

4.2 The State party confirms that on 16 November 2002, amendments to the Statute introduced new requirements for registration of a religious association, which require such an association to have 10 or more communities, at least one of which must have been conducting activities within Belarus for a period of 20 years or more.

4.3 In relation to the authors' application for registration, the State party notes that the first two applications did not comply with legal requirements. In relation to the third application, the C.R.N. was required to examine thoroughly the association's statute, teachings and activities, as its stated objectives and tasks were significantly different from those of the seven religious communities of which it was comprised. In particular, the draft constitution of the association stated that the new body aspired to making the International Society of Krishna Consciousness, which is only one of many branches of Vishnu Hinduism, the only religious organization representing Vishnuism in Belarus.

4.4 The State party confirms that a key requirement for the registration of religious associations is that the body in question must have an approved legal address. The authors' application referred to a housing block at 11 Pavlova Street in Minsk. The State party's Housing Law provides that any non-residential use of housing estates must be carried out with the agreement of local authorities, and in accordance with rules governing sanitary conditions and fire safety; inspection of the premises by the authorities revealed violations of these norms. The State party notes that the authors proposed to use the site for collective purposes – religious ceremonies, rituals and other group undertakings, which require particular safety arrangements and strict compliance with relevant standards. Thus an inspection of the premises after a wedding ceremony on 25 May 2002 revealed that open fires had been used on the premises.

4.5 The State party submits that the courts which examined the authors' appeals were correct in their assessment that the administrative decision which had approved the use of the premises as the association's legal address had been taken without the required inspection of the premises, and in violation of the housing laws referred to above. In any event, this administrative body had no jurisdiction in relation to religious and social associations. Accordingly, the State party's courts were correct in dismissing the authors' appeals against the C.R.N.'s refusal to register the association.

The authors' comments on the State party's observations and subsequent submissions

5.1 In their comments on the State party's observations dated 31 May 2004, the authors reiterate that the State party, by denying their association's registration on unjustified and unlawful grounds, significantly restricted their right to practice their religion and profess their opinions, together with others, including with others coming from abroad. They add that, following the amendments to the Statute in 2002, it will not be possible for them to register

their association, as they have only 7 communities in Belarus, none of which has been active for more than 20 years. They submit that such requirements discriminate against those religions which had no opportunity to be active during the Soviet era.

5.2 The authors contend that the State party's references to the safety concerns about the premises in question are inaccurate, as the authorities had previously conducted an inspection of the fire safety at the premises and approved its use as a legal address, subject to seven remedial measures, all of which the authors fulfilled.

5.3 It is submitted that the State party's reference to the open fire used during a marriage ceremony at the premises points to the discriminatory character of the refusal to register their association, as other religions practice similar forms of devotion without any adverse comment from the authorities. Finally, the authors state that the purpose of having a legal address is not necessarily to conduct religious ceremonies and rituals on the site, but to have a centre for the organization of their activities. Accordingly, there is no need for the special safety measures referred to by the State party.

5.4 In a further submission dated 26 November 2004, the State party reiterates that the provisions of the 2002 Statute on 'Freedom of Conscience and Religious Organisations' are not discriminatory in nature, and refers to national laws of other states which require a minimal number of constituent bodies and a certain period of prior existence as a prerequisite for registration of a religious community.

5.5 The State party notes that numerous violations of health and fire regulations were recorded at the Minsk Vaishnava community's premises. A wedding ceremony had been held there on 25 May 2002, which was subsequently evaluated by the administration of the Central Minsk District as an 'event which created a threat to the life and health of the participants and neighbours.' On this basis, the C.R.N. refused to register the statute of the association. On 18 October 2002, the Central District Court of Minsk rejected the authors' appeal against the C.R.N.'s decision on the same grounds; this decision was in turn affirmed on appeal.

5.6 The State party explains that the registration of the association was impossible at this particular address, because it would have resulted in an increase in the frequency and attendance of religious events at the premises, which in turn would have increased health hazards. The founders of the association were requested to remedy the health and safety violations, and were invited to study the possibility of moving their proposed statutory address to another location.

Issues and proceedings before the Committee:

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its Rules of Procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 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 considers that the author has sufficiently substantiated his claims under articles 18, paragraphs 1 and 3, and article 22, paragraphs 1 and 2, for purposes of

admissibility. It concludes that the communication is admissible and proceeds to an examination on the merits.

7.1 The Human Rights Committee has considered the present communication on the merits in the light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol.

7.2 In relation to the authors' claim under article 18, paragraphs 1 and 3, the Committee recalls its General Comment No 22, which states that 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.¹ 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. Further, the right to freedom to manifest one's beliefs in worship, observance, practice and teaching encompasses a broad range of acts, including those integral to the conduct by the religious group of its basic affairs, such as the freedom to choose religious leaders, priests, and teachers, and the freedom to establish seminaries or religious schools.² In the present case, the Committee notes that the State party's law distinguishes between religious communities and religious associations, and that the possibility of conducting certain activities is restricted to the latter. Not having been granted the status of a religious association, the authors and their fellow believers cannot invite foreign clerics to visit the country, or establish monasteries or educational institutions. Consistent with its General Comment, the Committee considers that these activities form part of the authors' right to manifest their beliefs.

7.3 The Committee must now 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, paragraph 3, of the Covenant. The Committee recalls its General Comment No 22, which states that paragraph 3 of article 18 is to be interpreted strictly, and that limitations may only be applied for those purposes for which they are prescribed and must be directly related to and proportionate to the specific need on which they are predicated.³

7.4 In the present case, the limitations placed on the authors' right to manifest their belief consist of several conditions which attach to the registration of a religious association. One of the criteria which the authors' application for registration did not meet was the requirement to have an approved legal address, which satisfied certain health and fire safety standards necessary for premises used for purposes such as religious ceremonies. These limitations must be assessed in the light of the consequences which arise for the authors and their religious association.

7.5 The Committee considers that the precondition, whereby a religious association's right to carry out its religious activities is predicated on it having the use of premises which satisfy relevant public health and safety standards, is a limitation which is necessary for public safety, and proportionate to this need.

¹ General Comment 22, paragraph 3.

² General Comment 22, paragraph 4.

³ General Comment 22, paragraph 8.

7.6 The Committee notes, however, that the State party has not advanced any argument as to why it is *necessary* for the purposes of article 18, paragraph 3, for a religious association, in order to be registered, to have an approved legal address which not only meets the standards required for the administrative seat of the association but also those necessary for premises used for purposes of religious ceremonies, rituals, and other group undertakings. Appropriate premises for such use could be obtained subsequent to registration. The Committee also notes that the argument of the State party in its comments on the communication that the authors' community sought to monopolize representation of Vishnuism in Belarus did not form part of the domestic proceedings. Also taking into account the consequences of refusal of registration, namely the impossibility of carrying out such activities as establishing educational institutions and inviting foreign religious dignitaries to visit the country, the Committee concludes that the refusal to register amounts to a limitation of the authors' right to manifest their religion under article 18, paragraph 1 that is disproportionate and so does not meet the requirements of article 18, paragraph 3. The authors' rights under article 18, paragraph 1 have therefore been violated.

7.7 In light of the above, the Committee does not consider it necessary to consider the authors' claims of a violation of their rights under article 22 of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose violations of article 18, paragraphs 1 and 3, of the Covenant.

9. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee considers that the authors are entitled to an appropriate remedy, including a reconsideration of the authors' application in accordance with the principles, rules and practice in force at the time of the authors' request, and duly taking into account of the provisions of the Covenant.

10. By becoming a State 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 pursuant to article 2 of the Covenant, the State party has undertaken to ensure all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in cases where a violation has been established. The Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's views. The State party is also requested to publish the Committee's views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

APPENDIX

Individual opinion by Committee member Ms. Ruth Wedgwood (concurring)

The right of a religious community to establish monasteries, educational institutions, or missions, and to invite foreign religious figures to speak, has been sharply restricted by the government of Belarus. Only those groups officially registered with the state as “religious associations” can enjoy these aspects of the free practice of religion.

The seven “Krishna” religious communities of Belarus have attempted to gain the state’s approval as a registered association, applying to the “Committee on Religions and Nationalities.” The state committee denied the application, after a year’s delay, on the ground that the Krishna group lacked a proper “legal address.” The address used by the applicants was located in a residential housing bloc. The same address had earlier been approved by the Minsk City Executive Committee.

The refusal to register the Krishna group as a religious “association” was appealed to the Minsk Central District Court in 2002. One month after the first-level dismissal of the appeal, the state amended the applicable law to add further new restrictions on the registration of religious associations.

Under the additional test, a religious group seeking qualification as an “association” must show that it has been active in Belarus for at least 20 years, and that it has at least 10 “communities” within the country. The Krishna does not have the minimum number of communities, and cannot point to a 20-year history within Belarus.

The Human Rights Committee now properly finds that the state party violated Article 18 of the Covenant by refusing to accept the legal address of the Krishna community as an “administrative seat” for a religious association. I join my colleagues in their conclusion that the state has a valid interest in assuring safe conditions for large public gatherings, but that such gatherings can also be held in other locations. The refusal to register the Krishna group because of its residential address was thus unreasonable.

However, the state party’s new “grandfathering” rule is also highly problematic – as an added obstacle to free religious practice in Belarus. It is hard to imagine why a newer faith should be forbidden to engage in religious education, and thus the demand for 20 years of prior practice is doubtful. It is difficult to fathom why ten “communities” could be a prerequisite to educational activity, especially since one “community,” such as that in Minsk, may be larger than many small separate communities.

Having found a violation of Article 18, the Committee does not have occasion to reach these further issues. But it is well to remember that the Covenant recognizes and guarantees the freedom of every person “either individually or in community with others and in public or private to manifest his religion or belief in worship, observance, practice and teaching.” See Article 18(1). This right is not limited to old and established religions, or to large congregations, and it is fundamental to the freedom of religious conscience.

[signed] Ms. Ruth Wedgwood

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
