# ASSOCIATION - FREEDOM OF - GENERAL

## III. JURISPRUDENCE

## ICCPR

- *M. A. v. Italy* (117/1981), ICCPR, A/39/40 (10 April 1984) 190 at paras. 1.2 and 13.1-13.3.

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  1.2 The alleged victim is M.A. who at the time of submission was serving a sentence upon conviction of involvement in "reorganizing the dissolved fascist party", which is prohibited by an Italian penal law of 20 June 1952. By order of the Court of Appeals of Florence, M.A. was conditionally released and placed under mandatory supervision on 29 July 1983.
  ...
  13.1 The Human Rights Committee observes that in so far as the author's complaints relate to the conviction and sentence of M.A. for the offence, in Italian penal law, of "reorganizing the dissolved fascist party" they concern events which took place prior to the entry into force of the International Covenant on Civil and Political Rights and the Optional Protocol for Italy (i.e. before 15 December 1978) and consequently they are inadmissible under article 3 of the Optional Protocol, as incompatible with the provisions of the Covenant, *ratione temporis*.

  13.2 In so far as the authors' complaints relate to the consequences, after the entry into force of the Covenant and the Optional Protocol for Italy, of M.A.'s conviction and sentence, it must be shown that there were consequences which could themselves have constituted a violation of the Covenant. In the opinion of the Committee there were no such consequences in the circumstances of the present case.

  13.3 The execution of a sentence of imprisonment imposed prior to the entry into force of the Covenant is not in itself a violation of the Covenant. Moreover, it would appear to the Committee that the acts of which M.A. was convicted (reorganizing the dissolved fascist party) were of a kind which are removed from the protection of the Covenant by article 5 thereof and which were in any event justifiably prohibited by Italian law having regard to the limitations and restrictions applicable to the rights in question under the provisions of articles 18 (3), 19 (3), 22 (2) and 25 of the Covenant. In these respects therefore the communication is inadmissible under article 3 of the Optional Protocol, as incompatible with the provisions of the Covenant, *ratione materiae*.

- *Arenz v. Germany* (1138/2002), A/59/40 vol. II (24 March 2004) 548 at paras. 1, 2.1-2.5, 3.1-3.4, 4.1, 8.5, 8.6 and 9.

  1. The authors of the communication are Paul Arenz (first author) and Thomas Röder (second author), as well as his wife Dagmar Röder (third author), all German citizens and

members of the "Church of Scientology" (Scientology). They claim to be victims of violations by Germany 1/ of articles 2, 18, 19, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights...

2.1 On 17 December 1991, the Christian Democratic Union (CDU), one of the two major political parties in Germany, adopted resolution C47 at its National Party Convention, declaring that affiliation with Scientology is not "compatible with CDU membership". This resolution still continues to operate.

2.2 By letter of 22 September 1994, the chairman of the municipal branch of the CDU at Mechernich (Northrhine-Westphalia), with the subsequent support of the Federal Minister of Labour and regional party leader of the CDU in Northrhine-Westphalia, asked the first author, a long-standing CDU member, to terminate his membership in the CDU with immediate effect by signing a declaration of resignation, stating that he had learned of the first author's affiliation with Scientology. When the latter refused to sign the declaration, the Euskirchen CDU District Board decided, on 17 October 1994, to initiate exclusion proceedings against him, thereby stripping him of his rights as a party member until the delivery of a final decision by the CDU party courts.

2.3 By letter of 24 October 1994, the President of the Euskirchen District Party Court informed the first author that the Board had decided to expel him from the CDU because of his membership in the Scientology Church and that it had requested the District Party Court to take a decision to that effect after providing him with an opportunity to be heard. After a hearing was held on 2 December 1994, the District Party Court, on 6 December 1994, informed the first author that it had confirmed the decision of the District Board to expel him from the party. On 2 October 1995, the Northrhine-Westphalia CDU State Party Court dismissed the first author's appeal. His further appeal was rejected by the CDU Federal Party Court on 18 December 1996.

2.4 In separate proceedings, the second author, a long-standing member and later chairman of the Municipal Board of the CDU at Wetzlar-Mitte (Hessia), as well as the third author, who had also been a CDU member for many years, were expelled from the party by decision of 29 January 1992 of the CDU District Association of Lahn-Dill. This decision was preceded by a campaign against the second author's party membership, culminating in the organization of a public meeting attended by approximately 1,000 persons, in January 1992, during which the second author's reputation and professional integrity as a dentist were allegedly slandered because of his Scientology membership.

2.5 On 16 July 1994, the Middle Hessia District Party Court decided that the expulsion of the second and third authors from the party was in conformity with the relevant CDU statutes. The authors' appeals to the Hessia CDU State Party Court and to the Federal Party

Court at Bonn were dismissed on 26 January 1996 and, respectively, on 24 September 1996.

3.1 On 9 July 1997, the Bonn Regional Court (*Landgericht Bonn*) dismissed the authors' legal action against the respective decisions of the CDU Federal Party Tribunal, holding that these decisions were based on an objective investigation of the facts, were provided by law, and complied with the procedural requirements set out in the CDU statutes. As to the substance of the complaint, the Court limited itself to a review of arbitrariness, owing to the fundamental principle of party autonomy set out in article 21, paragraph 1,2/ of the Basic Law.

3.2 The Court considered the decisions of the Federal Party Tribunal not to be arbitrary, given that the authors had acted in a manner contrary to resolution C47, which spelled out a party principle of the CDU, within the meaning of article 10, paragraph 4, 3/ of the Political Parties Act. The resolution itself was not arbitrary or inconsistent with the party's obligation to a democratic internal organization under article 21, paragraph 1, of the Basic Law, because numerous publications of Scientology and, in particular, its founder Ron Hubbard objectively indicated a conflict with the CDU's principles of free development of one's personality, tolerance and protection of the socially disadvantaged. This ideology could, moreover, be personally attributed to the authors, based on their self-identification with the organization's principles and their considerable financial contributions to it.

3.3 Although the CDU was bound to respect the authors' basic rights to freedom of expression and religious freedom, by virtue of its obligation to a democratic internal organization, the restriction of these rights was justified by the need to protect the autonomy and proper functioning of political parties, which by definition could not represent all political and ideological tendencies and were thus entitled to exclude opponents from within the party. Taking into account that the authors had considerably damaged the public image of the CDU and thereby decreased its electoral support at the local level, the Court considered that their expulsion was not disproportionate since it was the only means to restore party unity, the authors being at liberty to found a new party. Lastly, the Court considered that the authors could not invoke their rights under the European Convention on the Protection of Human Rights and Fundamental Freedoms or under the International Covenant on Civil and Political Rights *vis-à-vis* the CDU, which was not bound by these treaties as a private association.

3.4 By judgement of 10 February 1998, the Cologne Court of Appeals dismissed the authors' appeal, endorsing the reasoning of the Bonn Regional Court and reiterating that political parties, by virtue of article 21, paragraph 1, of the Basic Law, had to balance their right to party autonomy against the competing rights of party members. In addition, the Court found that political parties were entitled to adopt resolutions on the incompatibility of their membership with parallel membership in another organization, in order to distinguish

themselves from competing parties or other associations pursuing opposite objectives, unless such decisions are arbitrary. However, Resolution C47, as well as the decision of the Federal Party Tribunal that the teachings of Scientology were incompatible with basic CDU principles, was not considered arbitrary by the Court.

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4.1 The authors allege violations of their rights under articles 2, paragraph 1, 18, 19, 22, 25, 26 and 27 of the Covenant, as a result of their expulsion from the CDU, based on their affiliation with Scientology, and as a result of the German courts' decisions confirming these actions. In the authors' view, they were deprived of their right to take part in their communities' political affairs, as article 25 of the Covenant protected the right of "every citizen", meaning that "[n]o distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"4/. Their expulsion from the CDU amounted to an unreasonable restriction of that right, in the absence of any reference to a right of party autonomy in article 25.

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8.5 With regard to the State party's argument that it cannot be held responsible for the authors' exclusion from the CDU, this being the decision not of one of its organs but of a private association, the Committee recalls that under article 2, paragraph 1, of the Covenant, the State party is under an obligation not only to respect but also to ensure to all individuals within its territory and subject to its jurisdiction all the rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Where, as in the present case, the domestic law regulates political parties, such law must be applied without consideration. Furthermore, States parties are thus under an obligation to protect the practices of all religions or beliefs from infringement 11/ and to ensure that political parties, in their internal management, respect the applicable provisions of article 25 of the Covenant12/.

8.6 The Committee notes that although the authors have made some references to the hardship they have more generally experienced due to their membership in the Church of Scientology, and to the responsibility of the State party to ensure their rights under the Covenant, their actual claims before the Committee merely relate to their exclusion from the CDU, an issue in respect of which they also have exhausted domestic remedies in the meaning of article 5, paragraph 2 (b), of the Optional Protocol. Consequently, the Committee need not address the broader issue of what legislative and administrative measures a State party must take in order to secure that all citizens may meaningfully exercise their right of political participation under article 25 of the Covenant. The issue before the Committee is whether the State party violated the authors' rights under the Covenant in that its courts gave priority to the principle of party autonomy, over their wish to be members in a political party that did not accept them due to their membership in

another organization of ideological nature. The Committee recalls its constant jurisprudence that it is not a fourth instance competent to re-evaluate findings of fact or re-evaluate the application of domestic legislation, unless it can be ascertained that the proceedings before the domestic courts were arbitrary or amounted to a denial of justice. The Committee considers that the authors have failed to substantiate, for purposes of admissibility, that the conduct of the courts of the State party would have amounted to arbitrariness or a denial of justice. Therefore, the communication is inadmissible under article 2 of the Optional Protocol.

9. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;
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Notes

1/ The Covenant and the Optional Protocol to the Covenant entered into force for the State party on 23 March 1976 and 25 November 1993 respectively. Upon ratification of the Optional Protocol, the State party entered the following reservation: "The Federal Republic of Germany formulates a reservation concerning article 5 paragraph 2 (a) to the effect that the competence of the Committee shall not apply to communications:

(a) Which have already been considered under another procedure of international investigation or settlement; or

(b) By means of which a violation of rights is reprimanded having its origin in events occurring prior to the entry into force of the Optional Protocol for the Federal Republic of Germany;

(c) By means of which a violation of article 26 of the [said Covenant] is reprimanded, if and insofar as the reprimanded violation refers to rights other than those guaranteed under the aforementioned Covenant."

2/ Article 21, paragraph 1, of the Basic Law reads: "Political parties shall participate in the formation of the political will of the people. They may be freely established. Their internal organization must conform to democratic principles. They must publicly account for their assets and for the sources and use of their funds."

3/ Article 10, paragraphs 4 and 5, of the Political Parties Act read: "(4) A member may only be expelled from the party if he or she deliberately infringes the statutes or acts in a manner contrary to the principles or discipline of the party and thus seriously impairs its standing.

(5) The arbitration court competent in accordance with the Code on Arbitration Procedure shall decide on expulsion from the party. The right to appeal to a higher court shall be granted. Reasons for the decisions shall be given in writing. In urgent and serious cases requiring immediate action, the executive committee of the party or a regional association may exclude a member from exercising his rights pending the arbitration court's decision."

4/ The authors quote the Committee's general comment 25, at para. 3.

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11/ Cf. CCPR, forty-eighth session (1993), general comment No. 22, at para. 9.

12/ See CCPR, fifty-seventh session (1996), general comment No. 25, at para. 26.

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- *Wallman v. Austria* (1002/2001), ICCPR, A/59/40 vol. II (1 April 2004) 183 at paras. 2.1-2.4, 3.1, 8.10, 9.2-9.5 and 10.

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2.1 The first author is the director of a hotel in Salzburg, the "Hotel zum Hirschen", a limited partnership (*Kommanditgesellschaft*) acting as the third author. Until December 1999, the first author and Mr. Josef Wallmann were the company's partners, in addition to its general partner, the "Wallmann Gesellschaft mit beschränkter Haftung", a limited liability company (*Gesellschaft mit beschränkter Haftung*). Since December 1999, when the first author and Josef Wallmann left the limited partnership, the second author holds 100 per cent of the shares of both the limited liability company and the limited partnership.

2.2 The "Hotel zum Hirschen Josef Wallmann", a limited partnership (*Kommanditgesellschaft*) is a compulsory member of the Salzburg Regional Section of the Austrian Chamber of Commerce (*Landeskammer Salzburg*), as required under section 3, paragraph 2, of the Chamber of Commerce Act (*Handelskammergesetz*). On 26 June 1996, the Regional Chamber requested the limited partnership to pay its annual membership fees (*Grundumlage*) for 1996, in the amount of ATS 10,230.00 2/.

2.3 On 3 July 1996, the first author appealed on behalf of the limited partnership to the Federal Chamber of Commerce (*Wirtschaftskammer Österreich*) claiming a violation of his right to freedom of association protected under the Austrian Constitution (*Bundesverfassungsgesetz*) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). On 9 January 1997, the Federal Chamber of Commerce rejected the appeal.

2.4 The first author lodged a constitutional complaint with the Austrian Constitutional Court

(*Verfassungsgerichtshof*), which declared the complaint inadmissible on 28 November 1997, since it had no prospect of success in the light of the Court's jurisprudence regarding compulsory membership in the Chamber of Commerce, and referred the case to the Supreme Administrative Court (*Verwaltungsgerichtshof*) to review the calculation of the annual fees. Accordingly, that tribunal did not address the question of the limited partnership's compulsory membership.

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3.1 The authors claim to be victims of a violation of article 22, paragraph 1, of the Covenant, because the limited partnership's compulsory membership in the Regional Chamber of Commerce, combined with the obligation to pay annual membership fees, effectively denies them their right to freedom of association, including the right to found or join another association for similar commercial purposes.

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8.10 To the extent that the second author complains that the practical effect of the annual membership fees is to prevent her from founding or joining alternative associations, the Committee finds that she failed to substantiate, for purposes of admissibility, that the annual payments to the Chamber is so onerous as to constitute a relevant restriction on her right to freedom of association. The Committee concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

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9.2 The issue before the Committee is whether the imposition of annual membership fees on the "Hotel zum Hirschen" (third author) by the Salzburg Regional Chamber of Commerce amounts to a violation of the second author's right to freedom of association under article 22 of the Covenant.

9.3 The Committee has noted the authors' contention that, although the Chamber of Commerce constitutes a public law organization under Austrian law, its qualification as an "association" within the meaning of article 22, paragraph 1, of the Covenant has to be determined on the basis of international standards, given the numerous non-public functions of the Chamber. It has equally taken note of the State party's argument that the Chamber forms a public organization under Austrian law, on account of its participation in matters of public administration as well as its public interest objectives, therefore not falling under the scope of application of article 22.

9.4 The Committee observes that the Austrian Chamber of Commerce was founded by law rather than by private agreement, and that its members are subordinated by law to its power to charge annual membership fees. It further observes that article 22 of the Covenant only applies to private associations, including for purposes of membership.

9.5 The Committee considers that once the law of a State party establishes commerce chambers as organizations under public law, these organizations are not precluded by article

22 of the Covenant from imposing annual membership fees on its members, unless such establishment under public law aims at circumventing the guarantees contained in article 22. However, it does not appear from the material before the Committee that the qualification of the Austrian Chamber of Commerce as a public law organization, as envisaged in the Austrian Constitution as well as in the Chamber of Commerce Act of 1998, amounts to a circumvention of article 22 of the Covenant. The Committee therefore concludes that the third author's compulsory membership in the Austrian Chamber of Commerce and the annual membership fees imposed since 1999 do not constitute an interference with the second author's rights under article 22.

10. The Human Rights Committee is of the view that the facts before it do not disclose a violation of article 22, paragraph 1, of the Covenant.

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2/. 1 euro is equivalent to ATS 13.76.

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- *Lee v. Republic of Korea* (1119/2002), ICCPR, A/60/40 vol. II (20 July 2005) 174 at paras. 2.1-2.5, 7.2-7.4, 8 and 9.

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2.1 In March 1993, the author began his studies at the faculty of architecture of Konkuk University. In his fourth year, he was elected Vice-President of the General Student Council of Konkuk University. As such, he automatically became a member of the Convention of Representatives, the highest decision-making body of the Korean Federation of Student Councils (*Hanchongnyeon*), a nationwide association of university students established in 1993, comprising 187 universities (as of August 2002), including Konkuk University, and pursuing the objectives of democratization of Korean society, national reunification and advocacy of campus autonomy.

2.2 In 1997, the Supreme Court of the Republic of Korea ruled that *Hanchongnyeon* was an "enemy-benefiting group" and an anti-State organization within the meaning of article 7, paragraphs 1 and 3, 2/ of the National Security Law, because the platform and activities of the fifth-year 3/ *Hanchongnyeon* were said to support the strategy of the Democratic People's Republic of Korea (DPRK) to achieve national unification by "communizing" the Republic of Korea.

2.3 In 2001, the author became a member of the Convention of Representatives of the ninth year *Hanchongnyeon*. On 8 August 2001, he was arrested and subsequently indicted under

article 7 of the National Security Law. By judgement dated 28 September 2001, the East Branch Division of the Seoul District Court sentenced him to one year imprisonment and a one-year "suspension of eligibility". His appeal was dismissed by the Seoul High Court on 5 February 2002. On 31 May 2002, the Supreme Court dismissed his further appeal.

2.4 The courts rejected the author's defence that the ninth year *Hanchongnyeon* had revised its platform to endorse the "June 15 North-South Joint Declaration" (2000) on national reunification agreed to by both leaders of North and South Korea and that, even if the programme of *Hanchongnyeon* was to some extent similar to North Korean ideology, this alone did not justify its characterization as an "enemy-benefiting group".

2.5 At the time of the submission of the communication, the author was serving his prison term at Gyeongju Correctional Institution.

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7.2 The issue before the Committee is whether the author's conviction for his membership in *Hanchongnyeon* unreasonably restricted his freedom of association, thereby violating article 22 of the Covenant. The Committee observes that, in accordance with article 22, paragraph 2, any restriction on the right to freedom of association to be valid must cumulatively meet the following conditions: (a) it must be provided by law; (b) it may only be imposed for one of the purposes set out in paragraph 2; and (c) it must be "necessary in a democratic society" for achieving one of these purposes. The reference to a "democratic society" indicates, in the Committee's view, that the existence and functioning of a plurality of associations, including those which peacefully promote ideas not favourably received by the government or the majority of the population, is one of the foundations of a democratic society. Therefore, the existence of any reasonable and objective justification for limiting the freedom of association is not sufficient. The State party must further demonstrate that the prohibition of the association and the criminal prosecution of individuals for membership in such organizations are in fact necessary to avert a real, and not only hypothetical danger to the national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose.

7.3 The author's conviction was based on article 7, paragraphs 1 and 3, of the National Security Law. The decisive question which must therefore be considered is whether this measure was necessary for achieving one of the purposes set out in article 22, paragraph 2. The Committee notes that the State party has invoked the need to protect national security and its democratic order against the threat posed by the DPRK. However, it has not specified the precise nature of the threat allegedly posed by the author's becoming a member of *Hanchongnyeon*. The Committee notes that the decision of the Supreme Court of the Republic of Korea, declaring this association an "enemy-benefiting group" in 1997, was based on article 7, paragraph 1, of the National Security Law which prohibits support for associations which "may" endanger the existence and security of the State or its democratic

order. It also notes that the State party and its courts have not shown that punishing the author for his membership in *Hanchongnyeon*, in particular after its endorsement of the "June 15 North-South Joint Declaration" (2000), was necessary to avert a real danger to the national security and democratic order of the Republic of Korea. The Committee therefore considers that the State party has not shown that the author's conviction was necessary to protect national security or any other purpose set out in article 22, paragraph 2. It concludes that the restriction on the author's right to freedom of association was incompatible with the requirements of article 22, paragraph 2, and thus violated article 22, paragraph 1, of the Covenant.

7.4 In the light of this finding, the Committee need not address the question whether the author's conviction also violated his rights under articles 18, paragraph 1, and 19 of the Covenant.

8. The Human Rights Committee...is of the view that the facts before it reveal a violation of article 22, paragraph 1, of the Covenant.

9. In accordance with article 2, paragraph 3, of the Covenant, the author is entitled to an effective remedy, including appropriate compensation. The Committee recommends that the State party amend article 7 of the National Security Law, with a view to making it compatible with the Covenant. The State party is under an obligation to ensure that similar violations do not occur in the future.

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2/ Article 7 (1) of the National Security Law reads: "Any person who praises, incites or propagates the activities of an anti-State organization, a member thereof, or a person who has received an order from it, or who acts in concert with it, or propagates or instigates a rebellion against the State, with the knowledge of the fact that it may endanger the existence and security of the State or democratic fundamental order, shall be punished by imprisonment for a term not exceeding seven years."

Article 7 (3) of the National Security Law reads: "Any person who forms or joins an organization aiming at the acts referred to in paragraph (1) shall be punished by imprisonment for a term of one year or more."

3/ The Convention of Representatives of *Hanchongnyeon* establishes committees on a yearly basis to carry out the organization's activities.

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## ASSOCIATION - FREEDOM OF - GENERAL

- *Malakhovsky v. Belarus* (1207/2003), ICCPR, A/60/40 vol. II (26 July 2005) 237 at paras. 2.1-2.6, 7.2-7.6, 8, 9 and Individual Opinion of Ms. Ruth Wedgwood (concurring), at 245-246.

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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.

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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.

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.

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8. The Human Rights Committee... 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.

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Notes

1/ General comment 22, para. 3.

2/ General comment 22, para. 4.

3/ General comment 22, para. 8.

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Individual Opinon of 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 10 "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.

## ASSOCIATION - FREEDOM OF - GENERAL

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.