



# 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. 2805/2016\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Aziz Aliyev, Jeyhun Aliyev, Vagif Aliyev, Gamar Aliyeva, Havva Aliyeva and Yevdokiya Sobko (represented by counsels, Daniel Pole and Petr Muzny)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Republic of Azerbaijan
<i>Date of communication:</i>	1 April 2016 (initial submission)
<i>Document reference:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 13 September 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	25 March 2021
<i>Subject matter:</i>	Arrest, detention and fine for religious activity of Jehovah's Witnesses
<i>Procedural issues:</i>	Admissibility – exhaustion of domestic remedies; admissibility – manifestly ill-founded
<i>Substantive issues:</i>	Arbitrary arrest and detention; discrimination; freedom of assembly; freedom of association; freedom of expression; freedom of religion; minorities – right to enjoy one's own culture
<i>Articles of the Covenant:</i>	9 (1), 18 (1), 18 (3), 19 (2), 19 (3), 21, 22 (1), 26 and 27

\* Adopted by the Committee at its 131<sup>st</sup> session (22-26 February 2021).

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

\*\*\* An individual opinion by Committee member José Manuel Santos Pais (partially dissenting) is annexed to the present Views.



*Articles of the Optional Protocol:* 2 and 5 (2) (b)

1. The authors of the communication are Aziz Aliyev, Jeyhun Aliyev, Vagif Aliyev, Gamar Aliyeva, Havva Aliyeva and Yevdokiya Sobko, nationals of Azerbaijan born in 1960, 1989, 1959, 1959, 1969 and 1958, respectively. They claim that the State party has violated their rights under articles 9 (1), 18 (1), 18 (3), 19 (2), 19 (3), 21, 22 (1), 26 and 27 of the Covenant. The Optional Protocol entered into force for the State party on 27 February 2002. The authors are represented by counsels.

**Facts as presented by the authors**

2.1 The authors are Jehovah's Witnesses, a Christian denomination whose members meet in association as part of their religious worship, in places of worship or in private homes. Jehovah's Witnesses rely on the Bible and religious literature in their individual and collective worship. The authors are not members of a religious organization that is officially registered with the Government.

2.2 Jehovah's Witnesses are a religious minority in Azerbaijan, where the population is predominantly Muslim. The religious literature of Jehovah's Witnesses has been subjected to state censorship in Azerbaijan. The State Committee for Work with Religious Associations has the authority to supervise religious activity in Azerbaijan, including the importation of religious literature.<sup>1</sup> The State Committee prepares critical reports about Jehovah's Witnesses and their publications. Those reports often include erroneous and unsupported allegations about the sincere religious beliefs of Jehovah's Witnesses. The Ministry of National Security provided one such report to the Zagatala District Police Department. That report, dated 5 October 2013 and entitled "Opinion on Samples of Religious Literature Presented for Review," stated that the distribution of the following publications was not considered to be advisable, because they had been imported without the appropriate permission of the Committee for Work with Religious Associations: a) What Does the Bible Really Teach?; b) The Bible—God's Word or Man's?; c) Examining the Scriptures Daily—2013 (Russian); d) Examining the Scriptures Daily—2013; e) Shining as Illuminators in the World; and f) 2013 Yearbook of Jehovah's Witnesses.

2.3 On 17 and 18 September 2013, the Zagatala District police initiated an investigation after two residents reported that Jehovah's Witnesses were preaching in the area. On the morning of 21 September 2013, all of the authors except for Aziz Aliyev gathered in the home that the latter shared with his wife, Havva Aliyeva, for a weekly religious service scheduled to begin at 11 a.m. Jeyhun Aliyev, the couple's son, was 24 years old at the time and was at home. Also present in the home were the couple's friends, Vagif Aliyev and Gamar Aliyeva, as well as Yevdokiya Sobko.

2.4 At about 11 a.m., before the service began, plainclothes and uniformed police officers arrived at the home and demanded entry. Jeyhun Aliyev asked the officers to provide authorization to enter, but they told him that they did not need to provide any authorization. Several officers forced their way inside and brought with them neighbours and a representative of the village council. Havva Aliyeva asked the officers to leave the home, and closed the door. However, more police officers arrived instead. They waved a document but would not let the authors read it, and then forced their way in through a window. A police officer started to force the front door open with a screwdriver. The officers shouted at the authors and threatened to put them in prison. They insulted Vagif Aliyev and Gamar Aliyeva, and threatened to have the latter, a schoolteacher, dismissed from her job. They told the couple that they had lost their minds for becoming Jehovah's Witnesses.

2.5 The police officers physically attacked Havva Aliyeva, although Jeyhun Aliyev had warned them that his mother had epilepsy. The officers forced Havva Aliyeva to surrender her house key. The house filled with police officers, including the Deputy Chief, who took

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<sup>1</sup> The author provided a copy of the Law on Freedom of Religious Belief. Article 22 of the Law provides that citizens and religious associations have the right to acquire and use religious literature (printed or electronic), audio and video materials, objects and products and other informational material of religious content in any language, after they have been labelled with a control stamp issued by the relevant executive authority.

charge. The officers searched the home and various possessions belonging to the authors, including beds, bags and other personal items. They seized books, including religious literature, money and private legal and medical documents. The officers occupied the home for hours.

2.6 The police officers then took the authors to the police station in Zagatala District. On the way to the station, Havva Aliyeva suffered an epileptic seizure, lost consciousness, and was taken to the hospital. As soon as she regained consciousness, the police officers harassed her and forced her to go with them to the police station. At the station, the officers threatened the authors with loss of employment and imprisonment. Jeyhun Aliyev was also threatened with sexual assault.

2.7 Aziz Aliyev was away from his home on that day. Havva Aliyeva called to tell him that the police were searching their home. Jeyhun Aliyev later called him when the abuse by the police officers caused Havva Aliyeva to suffer the epileptic seizure. Aziz Aliyev rushed to the hospital, but police blocked him from seeing her, arrested him and took him to the police station.

2.8 Over several hours, the police interrogated the authors and tried to force them to write statements dictated by the police. When the authors refused, the police subjected them to further threats and accused them of being terrorists, traitors, mentally ill individuals and members of a dangerous sect. The police told the authors that they “should rot in prison” and should study the Koran instead of the Bible. They told Yevdokiya Sobko that she was a criminal and that Jehovah’s Witnesses were an extremist religion.

2.9 The police charged each of the authors under article 299.0.2 of the Code of Administrative Offenses,<sup>2</sup> for having violated rules regarding the organizing of and conducting of religious meetings, street processions, and other religious ceremonies. Each author filed a motion to dismiss the charge and invoked their rights under the Covenant.

2.10 On 26 November 2013, the authors’ trial began before the Zagatala District Court. The evidence presented by the prosecution consisted of the statements of two local residents and a document issued by the Ministry of National Security, which contained false information about Jehovah’s Witnesses. The authors each filed statements contradicting the prosecution’s allegations and asserting violations of their human rights, including their rights under the Covenant.

2.11 On the same date, the Zagatala District Court issued nearly identical decisions in which it convicted the authors of having violated article 299.0.2 of the Code of Administrative Offenses. Except for Havva Aliyeva, who was given an official warning, each author was fined 1,500 manats (equivalent to approximately 1,413 euros at the time). In its decision regarding Aziz Aliyev, the District Court stated that the authors, who considered themselves to be members of the Religious Community of Jehovah’s Witnesses, had gathered in the home of Aziz Aliyev “with the goal of conducting propaganda of this religious sect.” According to the District Court, the authors had “violated the procedure determined in the legislation for the organizing and conducting of religious ceremonies by using the six named samples of literature imported without permission from the Azerbaijan Republic State Committee for Work with Religious Associations and considered to be unadvisable for distribution in the territory of the country, in religious propaganda for this religious sect.”

2.12 Each of the authors filed an appeal of the decision of the District Court before the Criminal Board of the Shaki Court of Appeal. A hearing was held on 23 December 2013. On the same date, the Court of Appeal issued nearly identical decisions for each author, stating the following concerning Aziz Aliyev: “He gathered together with others in the circumstance of a Religious Community which has not passed registration in the procedure determined by law and committed the violation of the procedure determined in the legislation for the organization and conducting of religious ceremonies and during these weekly meetings used

<sup>2</sup> Article 299.0.2 of the Code of Administrative Offenses stated at the relevant time, “Violation of rules established by legislation regarding the organizing of and conducting of religious meetings, street processions, and other religious ceremonies [...] entails a penalty in amount of one thousand five hundred to two thousand manats for natural persons and seven thousand to eight thousand manats for officials.”

religious literature brought into the country without permission.” The Court considered that those facts constituted the elements of article 299.0.2 of the Code of Administrative Offenses, and that the decision of the District Court was therefore lawful, grounded and fair.

2.13 The authors maintain that no further domestic remedy is available to them, because there is no right to appeal a decision of the Criminal Board of the Court of Appeal. However, on 21 October 2013, three of the authors (Aziz and Jeyhun Aliyev and Havva Aliyeva) filed a claim before the Shaki Administrative-Economic Board in which they sought damages from the Zagatala District Police Department for the illegal police raid. On 3 December 2014, the Board rejected the claim, reasoning that the raid had been required by an “urgent public need”; that Jehovah’s Witnesses were not officially registered in Zagatala, and that the religious literature used by the authors had not been approved by the State Committee for Work with Religious Associations for importation.

2.14 Aziz and Jeyhun Aliyev and Havva Aliyeva filed an appeal of the decision of the Shaki Administrative-Economic Board before the Shaki Court of Appeal. On 17 June 2015, that appeal was rejected, for the reasons given by the Board. Those authors filed a subsequent appeal to the Supreme Court. On 27 October 2015, the Supreme Court rejected their appeal, for the same reasons given by the Zagatala District Court. The Supreme Court did not dispute that the religious gathering in the Aliyevs’ home had been entirely peaceful, or that the religious literature seized by the police did not incite violence or advocate religious hatred.

### The complaint

3.1 The authors claim that by arresting, detaining, convicting and fining them for possessing religious literature that had not been approved by the State Committee for Work with Religious Associations, and for carrying out religious activity outside of a registered address, the State party violated their rights under articles 9 (1), 18 (1), 18 (3), 19 (2), 19 (3), 21, 22 (1), 26 and 27 of the Covenant.

#### Article 9 (1)

3.2 In violation of article 9 (1) of the Covenant, the police arrested the authors for peacefully manifesting their religious beliefs and exercising their right to religious association; took them to a police station against their will; and detained them at a police station while subjecting them to questioning and threats for several hours. There was no justification for the authors’ arrest and detention.<sup>3</sup> In organising a peaceful religious service to read and study the Bible and other religious publications, the authors were engaged in the legitimate exercise of freedom of religion, association, and expression. Those rights are guaranteed under articles 18, 19, 21 and 22 of the Covenant.<sup>4</sup>

#### Articles 18 (1) and 18 (3)

3.3 The State party violated the authors’ rights under articles 18 (1) and 18 (3) of the Covenant by conducting a police raid to stop them from peacefully exercising their freedom of religion, individually and in community with others, during a religious service in a private home; arresting them and taking them to a police station; and subjecting them to threats and coercion to induce them to abandon their Christian beliefs as Jehovah’s Witnesses and adopt the Islamic faith. The interference with the authors’ freedom to peacefully manifest their religious beliefs and the violation of the sanctity of the Aliyevs’ private home was not

<sup>3</sup> The authors cite European Court of Human Rights *Krupko and Others v. Russia*, application No. 26587/07, judgment of 26 June 2014, paras. 35-36 and 56; and Working Group on Arbitrary Detention, Opinion No. 42/2015 concerning Irina Zakharchenko and Valida Jabrayliova (Azerbaijan), (A/HRC/WGAD/2015), 14 December 2015, paras. 39-44.

<sup>4</sup> The authors cite *Young-kwan Kim et al. v. Korea* (CCPR/C/112/D/2179/2012), para. 7.5; European Court of Human Rights, *Krupko and Others v. Russia*, application No. 26587/07, 26 June 2014, paras. 35-36 and 56; and Human Rights Council, Working Group on Arbitrary Detention, Opinion No. 42/2015 concerning Irina Zakharchenko and Valida Jabrayliova (Azerbaijan), A/HRC/WGAD/2015, 14 December 2015, paras. 39-44.

permissible under article 18 (3) of the Covenant, because it was not lawful, did not pursue a legitimate aim, and was not necessary.

3.4 The authors' conviction under article 299.0.2 of the Code of Administrative Offenses was not prescribed by law. The State party's Constitution guarantees the right to profess religion alone or together with others, and the right to freely gather with others. Moreover, the Law on Freedom of Religious Belief guarantees the right to practice any religion, either alone or together with others. Article 18 of the Covenant does not permit any limitations on the freedom to have or adopt a religion or belief of one's choice. The actions of the State party's authorities were based on a faulty premise, namely, that the religious service on 21 September 2013 was illegal because the State Committee for Work with Religious Associations had not approved the authors' religious publications for use at the service. In fact, the prohibition of the publications was wrongful. However, the domestic courts did not remark upon the unlawfulness of the censorship. As a result, the authors experienced an interference with their rights to meet for religious purposes and to discuss religious texts. In a judgment regarding a separate matter, the European Court of human Rights stated, "It is undeniable that the collective study and discussion of religious texts by the members of the religious group of Jehovah's Witnesses was a recognised form of manifestation of their religion in worship and teaching."<sup>5</sup>

3.5 The interference did not pursue a legitimate aim because the authors' religious activity posed no threat to public safety, order, health or morals, or the fundamental rights and freedoms of others. The domestic authorities never alleged that the authors' religious meeting was not peaceful. The State party has unlawfully interpreted the Law on Freedom of Religious Belief and the Code of Administrative Offenses in such a way as to broaden the authority of the police to determine what constitutes a permissible religious belief or practice. The interference by the police with the sanctity of the Aliyevs' private home, under the pretext of inspecting it to determine whether it was being used for an unlawful religious service, cannot be justified under article 18 (3) of the Covenant.

3.6 In addition, the State party has not advanced any credible argument as to why there was a pressing need to disrupt the authors' peaceful religious service, even though they were not officially registered within a religious association, or why there was a pressing need to confiscate the authors' religious publications, which had not been approved by the relevant state body for publication. The Committee has considered in its previous jurisprudence that a requirement to register in order to be able to practise a religion amounts to a disproportionate limitation of the right to manifest one's religion, in violation of article 18 of the Covenant.<sup>6</sup> Moreover, the seizure of the authors' religious literature constituted impermissible censorship and resulted in the authors' conviction for holding religious beliefs of which the State party's officials disapproved.

3.7 In a report on her mission to Azerbaijan, the former United Nations Special Rapporteur on freedom of religion or belief criticized the censorship of religious literature by the State Committee for Work with Religious Associations. The Special Rapporteur observed that the State party's censorship of religious books was unrelated to protection of the public and "constituted undue limitations to the right to manifest one's religion or belief."<sup>7</sup> The Special Rapporteur called for decisions of the State Committee for Work with Religious Associations to be brought to the courts for judicial review, in accordance with applicable human rights and fair trial standards. However, as demonstrated through the present communication, the judiciary of the State party upholds decisions in which the State Committee for Work with Religious Associations censors religious publications. The restriction on the authors' religious freedom ran contrary to the State party's obligation to foster a pluralistic democratic society. In essence, the police based their justification for the illegal search of the Aliyevs' home on illegal censorship.

<sup>5</sup> The authors cite *Kuznetsov and Others v. Russia*, application No. 184/02, judgment of 11 January 2007, para. 57.

<sup>6</sup> The authors cite *Malakhovsky and Pikul v. Belarus* (CCPR/C/84/D/1207/2003), para. 7.6.

<sup>7</sup> The authors cite Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, Addendum, Mission to Azerbaijan, Asma Jahangir (A/HRC/4/21/Add.2), 18 October 2006, para. 90.

3.8 In a judgment on a separate matter involving Jehovah's Witnesses who resided in the Russian Federation, the European Court of Human Rights stated, "the State does not have the right under the Convention to decide what beliefs may or may not be taught because the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate."<sup>8</sup>

*Articles 19 (2) and 19 (3)*

3.9 The authors rely on their arguments under article 18 of the Covenant in asserting that the State party also violated their rights under articles 19 (2) and 19 (3) of the Covenant. Article 19 (2) of the Covenant protects the collective right to engage in teaching and religious discourse.<sup>9</sup> The actions of the State party interfered with the authors' rights to seek, receive and impart information. The police had a duty to protect the authors from intolerant neighbours. Domestic laws should permit open debate on matters relating to religion and beliefs, and should not give preference to a particular religion in that respect.

*Articles 21 and 22 (1)*

3.10 By conducting a police raid, unlawfully searching and seizing property, and prosecuting, convicting and fining the authors for assembling together for religious worship, the State party violated the authors' rights under articles 21 and 22 of the Covenant. Freedom of association under the Covenant is a dynamic right. Individuals are permitted not only to associate in groups, but also to act together in pursuit of their collective goals as a community.

3.11 In the authors' case, the domestic courts differentiated between the rights of association of individuals belonging to registered and unregistered religious communities. The Shaki Court of Appeal determined that the authors were not members of a registered religious community because Jehovah's Witnesses in Zagatala did not constitute a legal entity. The Court of Appeal therefore concluded that the authors had violated the procedure under domestic law for organizing and conducting religious ceremonies. However, the authors' right to freedom of association and peaceful assembly should not be contingent upon whether the State party agrees to register their religious organization.<sup>10</sup> The authors met for a religious service that was an integral part of their worship as Jehovah's Witnesses. The domestic courts accepted that the authors had engaged in worship along with others and jointly read religious books and performed religious ceremonies. In doing so, the authors were practicing religious activity in common with Jehovah's Witnesses worldwide.

*Articles 26 and 27*

3.12 The State party violated the authors' rights under articles 26 and 27 of the Covenant by subjecting them to religious discrimination on the basis of their minority religious beliefs. As Jehovah's Witnesses, the authors are members of a Christian religious minority in a country which is predominantly Islamic. The police took action against the authors in response to discriminatory reports from individuals who belonged to the majority religious faith. Rather than reject such discriminatory reports, the police not only used those reports as an excuse to launch a raid, but also subjected the authors to abuse and insults. The police denigrated the authors' sincere religious beliefs and used threats to attempt to coerce them into adopting Islamic beliefs.<sup>11</sup>

*Remedies requested*

3.13 The authors request declaratory relief; removal of all restrictions infringing the authors' rights to freely associate for religious or other purposes and to import, discuss and distribute

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<sup>8</sup> The authors cite *Jehovah's Witnesses of Moscow and Others v. Russia*, application No. 302/02, judgement of 10 June 2010, paras. 119 and 141.

<sup>9</sup> The authors cite general comment No. 34 (Article 19): Freedoms of opinion and expression (CCPR/C/GC/34) (2011), para. 11.

<sup>10</sup> The authors cite, for example, *Leven v. Kazakhstan* (CCPR/C/112/D/2131/2012), para. 9.4.

<sup>11</sup> The authors do not provide further information with respect to their claims under articles 26 and 27 of the Covenant, but rely on their arguments under articles 18, 19 and 21 of the Covenant.

religious publications; provision of appropriate monetary compensation for moral damages suffered on account of the actions of the police; reversal of the fines (taking accrued interest into account); and compensation for legal costs and fees incurred by the authors during domestic proceedings.

#### **State party's observations on the merits**

4.1 In its submission dated 30 May 2017, the State party observes that on 21 September 2013, the Zagatala District Police Department conducted an operational search in the Aliyevs' home. The search related to information regarding illegal religious meetings and possession of prohibited religious literature by the religious community of Jehovah's Witnesses, together with a group of people.

4.2 Various samples of religious literature and "electronic carriers" were found during the home inspection. On the same date, the police officers drafted a protocol concerning the inspection, and a video recording that had been made was noted in the protocol.

4.3 On 26 December 2013, the Zagatala District Court found the authors guilty and fined each of them, except for Havva Aliyeva, 1,500 manats under article 299.0.2 of the Code of Administrative Offenses, which was in force until 1 March 2016. Havva Aliyeva was also found guilty by the Court, but was given a warning.<sup>12</sup>

4.4 On 23 December 2013, the Shaki Court of Appeal upheld the decisions of the District Court and dismissed the authors' appeals. Later, Aziz Aliyev and others filed an appeal to the Shaki Administrative-Economic Court concerning the actions of the police, and the Court dismissed the appeal on 3 March 2014. The Court of Appeal and the Court of Cassation upheld that decision on 17 June and 27 October 2015, respectively.

4.5 The domestic courts referred in their decisions to the jurisprudence of the European Court of Human Rights, the European Convention on Human Rights, the Constitution of the Republic of Azerbaijan, and other national legislation, and found the authors' claims to be groundless.

4.6 Under article 18 (3) of the Covenant, the freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law, and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

#### **Authors' comments on the State party's observations on the merits**

5.1 In comments dated 15 September 2017, the authors maintain that the State party attempted to justify its interference with the authors' rights under the Covenant. However, the State party did not provide any evidence to support its position. It simply set forth the findings of the domestic courts and asserted that the limitations upheld by the courts were permissible under domestic and international law. The State party's observations contain neither a justification of the domestic law and the illegal raid on a private home, nor any explanation as to why the law or police conduct were necessary.

5.2 The only excuse that the police provided to the courts for the illegal raid was that two local residents had reported that Jehovah's Witnesses were preaching in the area and were using prohibited religious literature. No other legal basis was provided for the forced entry into the Aliyevs' private home. It is therefore clear that the police investigation and raid were motivated by religious discrimination by neighbours and the police officers themselves.

5.3 The State party did not deny the authors' assertions that they had been subjected to threats, physical abuse, and harassment by the police officers. The State party did not justify its interference with the authors' rights under the Covenant, except to state that the interference was permissible under domestic law. However, under international law, such a justification is an inadequate basis for the violation of obligations imposed by international

<sup>12</sup> The State party states that Havva Aliyeva was found guilty under the same article of the Code as the other authors but "was warned with the application of article 21 of the Code of Administrative Offenses (application of much smoother administrative penalty or releasing from administrative responsibility in view of the lesser significance of the administrative offense)" [*sic*].

law. The State party failed to acknowledge that the domestic law in question, and the actions of the police, were motivated by religious discrimination.

5.4 Such religious intolerance is typical of the State party's attitude towards Jehovah's Witnesses. While the State party informed the Committee that it allows Jehovah's Witnesses to operate freely, the Committee has considered that the State party persistently interferes with the religious activity of Jehovah's Witnesses and other minorities, and has called on the State party to guarantee the effective exercise of freedom of religion and belief.<sup>13</sup> The State party's position that the authors violated domestic law by worshipping in a private home without official authorization demonstrates that the State party continues to ignore the Committee's recommendation.

5.5 The courts imposed a severe fine of 1,500 manats (equivalent to approximately 1,413 euros at the time) on all but one of the authors, disregarding the fact that they were unemployed. The courts must have realized that it would be impossible for the authors in question to pay those substantial sums. Such excessive penalties create inequities by discriminating against the poor, for whom non-payment often results in imprisonment.<sup>14</sup>

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

### *Consideration of admissibility*

6.1 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.

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

6.3 The Committee notes that the State party does not dispute the authors' assertion that they have exhausted all available domestic remedies, as required by article 5 (2) (b) of the Optional Protocol. The Committee notes that when filing unsuccessful appeals of their convictions to the Shaki Court of Appeal, the authors expressly invoked articles 9, 18, 19, 26 and 27 of the Covenant, and also raised the substance of their claim under article 21 of the Covenant. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining those claims. However, the information made available to the Committee does not allow it to conclude that the authors raised their claims under article 22 (1) of the Covenant before the domestic courts. Accordingly, the Committee finds the authors' claims under article 22 (1) of the Covenant inadmissible under article 5 (2) (b) of the Optional Protocol.

6.4 With respect to the authors' claims under articles 26 and 27 of the Covenant, the Committee considers that the authors have not provided sufficient details concerning their arguments, in particular with respect to any differential treatment they experienced in comparison to individuals belonging to other religions and engaging in the same activity. The Committee considers that the authors' claims under articles 26 and 27 are therefore insufficiently substantiated for purposes of admissibility, and are inadmissible under article 2 of the Optional Protocol.

6.5 The Committee notes that the State party has not contested the admissibility of the present communication, and considers that the authors have sufficiently substantiated their claims under articles 9 (1), 18 (1), 18 (3), 19 (2), 19 (3) and 21 of the Covenant for the purpose of admissibility. Accordingly, the Committee declares these claims admissible and proceeds to examine them on the merits.

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<sup>13</sup> The authors cite Concluding observations on the fourth periodic report of Azerbaijan (CCPR/C/AZE/CO/4) (2016), para. 33.

<sup>14</sup> The authors cite Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Research on Alternatives to Imprisonment (A/CONF.144/13) (1990), para. 40.



*Consideration of the merits*

7.1 The Committee has considered the present communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 With respect to the authors' claim under article 18 (1) and (3) of the Covenant, the Committee recalls its general comment No. 22, according to which 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.<sup>15</sup> By contrast, the 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.<sup>16</sup> The Committee recalls that the practice and teaching of religion includes the freedom to prepare and distribute religious texts or publications.<sup>17</sup> In the present case, the Committee notes the authors' arguments that the State party violated their rights under article 18 (1) of the Covenant by apprehending them during a private discussion of religious beliefs in the Aliyevs' home, confiscating their religious literature, detaining them, convicting them of an administrative offense, fining Aziz, Jeyhun and Vagif Aliyev and Gamar Aliyeva 1,500 manats (approximately 1,413 euros), and giving Havva Aliyeva a warning. The Committee notes the authors' assertions that the police forced their way into the Aliyevs' house, including through windows; spent several hours thoroughly searching the home and possessions therein; confiscated the authors' religious literature; compelled the authors to go to the police station, where they were held until late that night; threatened to have the authors dismissed from their jobs and imprisoned; and threatened to subject Jeyhun Aliyev to sexual assault. The Committee considers that the authors' claims relate to their right to manifest their religious beliefs, and that the arrest, detention, conviction and fine constitute limitations of that right.<sup>18</sup>

7.3 The Committee must address the issue of whether the said limitations on the authors' right to manifest their religious beliefs were "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 that according to its general comment No. 22, article 18 (3) is to be interpreted strictly, and limitations on the freedom to manifest one's religion or beliefs may only be applied for those purposes for which they are prescribed, and must be directly related and proportionate to the specific need on which they are predicated.<sup>19</sup>

7.4 In the present case, the limitations placed on the authors' right to manifest their religious beliefs stem from the requirements, under domestic laws, that religious literature must be approved for importation by the State Committee for Work with Religious Associations, and that religious associations officially register with the Government in order to lawfully operate. The Committee notes that according to the decisions of the Zagatala District Court, the police acted in response to a complaint by the Aliyevs' neighbour, who had reported that Jehovah's Witnesses were preaching widely in the area. The Committee notes that the information before it does not contain any indications that the authors were engaged in acts that were detrimental to others, themselves, or public safety and order. None of the authors present at the Aliyevs' home during the religious service allege to have been coerced by the other authors into engaging in harmful or non-peaceful acts. The Committee notes that other than by citing domestic laws, the State party has not specifically explained why the authors were punished for possessing religious literature that had not officially been approved for use, or for engaging in religious worship without having met the precondition

<sup>15</sup> General comment No. 22: The right to freedom of thought, conscience and religion (Art. 18) (CCPR/C/21/Rev.1/Add.4), para. 3; see also *Bekmanov et al. v. Republic of Kyrgyzstan* (CCPR/C/125/D/2312/2013), para. 7.2.

<sup>16</sup> See, for example, *Mammadov et al. v. Republic of Azerbaijan* (CCPR/C/129/D/2928/2017), para. 7.3.

<sup>17</sup> General comment No. 22 (CCPR/C/21/Rev.1/Add.4), para. 4.

<sup>18</sup> General comment No. 22 (CCPR/C/21/Rev.1/Add.4), para. 4.

<sup>19</sup> General comment No. 22 (CCPR/C/21/Rev.1/Add.4), para. 8; see also *Malakhovsky et al. v. Belarus* (CCPR/C/84/D/1207/2003), para. 7.3; *Mammadov et al. v. Republic of Azerbaijan* (CCPR/C/129/D/2928/2017), para. 7.4.

of registering as a religious association. The Committee observes that the State party has not specified why the confiscated literature was deemed to be inadvisable for distribution, as it has not described any harmful material contained therein. The Committee considers that the State party has not provided evidence indicating that the peaceful manifestation of the authors' religious beliefs in the Aliyevs' home threatened public safety, order, health, or morals, or the fundamental rights and freedoms of others, either through the literature the authors were using, or through the religious service that they had organized. Even if the State party could demonstrate the existence of a specific and significant threat to public safety and order, it has failed to demonstrate that the application of article 299.0.2 of the Code of Administrative Offenses and related laws was proportionate to that objective, in view of the considerable limitation on the authors' act of religious worship. Nor has the State party attempted to demonstrate that the prior approval and registration requirements were the least restrictive measure necessary to ensure the protection of the freedom of religion or belief. The Committee therefore considers that the State party has not provided a sufficient basis for the limitations imposed, so as to demonstrate that they were permissible within the meaning of article 18 (3) of the Covenant.

7.5 The Committee recalls that article 18 (1) of the Covenant protects the right of all members of a religious congregation to manifest their religion in community with others, in worship, observance, practice and teaching.<sup>20</sup> The Committee notes that during the domestic proceedings, the actions taken against the authors were upheld as violating domestic laws. However, the Committee considers that the justifications provided by the District Court, the Court of Appeal, and the Shaki Administrative-Economic Court do not demonstrate how the requirements to obtain official approval of religious literature prior to importation, or to obtain legal registration as an association before conducting religious worship, were proportionate measures necessary to serve a legitimate purpose within the meaning of article 18 (3) of the Covenant. The Committee concludes that the punishment imposed on the authors amounted to a limitation of their right to manifest their religion under article 18 (1) of the Covenant, and that neither the domestic authorities nor the State party have demonstrated that the limitation represented a proportionate measure necessary to serve a legitimate purpose identified in article 18 (3) of the Covenant. Accordingly, the Committee concludes that by arresting, detaining, convicting and fining the authors for possessing religious literature and holding a peaceful religious service in a private home, the State party violated their rights under article 18 (1) of the Covenant.

7.6 The Committee notes the authors' claim that on 21 September 2013, the police arbitrarily detained them for several hours. The Committee observes that Jeyhun and Vagif Aliyev, Havva and Gamar Aliyeva, and Yevdokiya Sobko were at the house when the police arrived at approximately 11 a.m. and searched the home for several hours. They were all taken to the Zagatala District police station, including Havva Aliyeva, who lost consciousness on the way there and was taken to the hospital first. The Committee notes that according to statements the authors provided during domestic proceedings, Yevdokiya Sobko was released sometime around 7 p.m.; Aziz Aliyev was taken by police officers from the hospital to the police station at around 9 p.m.; and he and the remaining authors were released by the police at around 11-11:30 p.m. that night. The Committee must first ascertain whether the authors were deprived of their liberty within the meaning of article 9 (1) of the Covenant. The Committee recalls its general comment No. 35, in which it stated, "Deprivation of personal liberty is without free consent. Individuals who go voluntarily to a police station to participate in an investigation, and who know that they are free to leave at any time, are not being deprived of their liberty."<sup>21</sup> In contrast, the Committee notes the authors' claim that they were not free to leave police custody during the relevant period. In the absence of information from the State party contesting this specific allegation and indicating that the authors could have freely decided not to accompany the police officers to the police station or, once there, could have left at any time without facing adverse consequences, the

<sup>21</sup> General comment No. 35 (CCPR/C/GC/35), para. 6.

Committee concludes that the authors were coerced into accompanying the police to the station and remaining there until their release, and were therefore deprived of their liberty.

7.7 Noting that the authors claim to have been arrested and detained for six hours, the Committee refers to its general comment No. 35, in which it stated that “the term ‘arrest’ refers to any apprehension of a person that commences a deprivation of liberty, and the term ‘detention’ refers to the deprivation of liberty that begins with the arrest and continues in time from apprehension until release.” The Committee therefore observes that article 9 of the Covenant does not require that detention occupy a minimum duration in order to be arbitrary or unlawful.<sup>22</sup> The Committee also recalls that arrest within the meaning of article 9 of the Covenant need not involve a formal arrest as defined under domestic law.<sup>23</sup> Accordingly, the Committee considers that the authors were arrested and detained within the meaning of article 9 of the Covenant.

7.8 Recalling that under article 9 (1) of the Covenant, deprivation of liberty must not be arbitrary, and must be carried out with respect for the rule of law,<sup>24</sup> the Committee must next assess whether the authors’ arrest and detention were arbitrary or unlawful. The Committee recalls that the protection against arbitrary detention is to be applied broadly, and that the “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.<sup>25</sup> The Committee also recalls that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of religion.<sup>26</sup> The Committee notes the authors’ allegation that Jehovah’s Witnesses face a pattern of harassment by the State party’s authorities, and that in the authors’ specific case, the police officers threatened to imprison them, insulted some of them, and criticized their religion, but did not inform them of any potential disturbance or harm caused by their religious service or the religious literature they were using. The Committee therefore considers that the actions of the police lacked appropriateness, predictability and regard for due process guarantees. Further, referring to its findings in paragraphs 7.4 and 7.5 above, the Committee considers that the authors’ arrest and detention constituted punishment for the legitimate exercise of their right to manifest their religious beliefs. The Committee therefore concludes that the authors were arbitrarily arrested and detained in violation of their rights under article 9 (1) of the Covenant.

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

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of each of the authors’ rights under articles 9 (1) and 18 (1) of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose rights under the Covenant have been violated. Accordingly, the State party is obligated to, *inter alia*, provide the authors with adequate compensation, including reimbursement for the fines imposed and for court fees related to the cases in question. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by reviewing its domestic legislation, regulations and/or practices with a view to ensuring that the rights under the Covenant may be fully enjoyed in the State party.

10. 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 or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been

<sup>22</sup> See *Mammadov et al. v. Republic of Azerbaijan* (CCPR/C/129/D/2928/2017), para. 7.8.

<sup>23</sup> General comment No. 35 (CCPR/C/GC/35), para. 13.

<sup>24</sup> General comment No. 35 (CCPR/C/GC/35), para. 10.

<sup>25</sup> See, for example, *Formonov v. Uzbekistan* (CCPR/C/122/D/2577/2015), para. 9.3.

<sup>26</sup> General comment No. 35 (CCPR/C/GC/35), para. 17.

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 disseminate them widely in the official languages of the State party.

## Annex

### **Individual opinion of Committee member José Santos Pais (partially dissenting)**

1. I concur with the conclusion reached in the present Views, that the State party has indeed violated the authors' rights under article 18 (1) of the Covenant. I have doubts, however, on the conclusion of a violation of article 9 (1).

2. The Committee justified this violation by accepting the authors' claim that they were arbitrarily arrested and detained for several hours on 21 September 2013, therefore being deprived of their liberty. The actions of the police lacked appropriateness, predictability and regard for due process guarantees and the authors' arrest and detention constituted punishment for the legitimate exercise of their right to manifest their religious beliefs (para 7.8). Although I understand this reasoning by the majority of the Committee, I am inclined to come to a different conclusion.

3. The rationale behind the decision of the Committee is that the police caught the authors having a private discussion of religious beliefs in Aliyevs' home, confiscated their religious literature and then forcefully took them to a police station and detained them. Since they were not free to leave the police station, the authors were therefore subject to arrest. Such reasoning by the majority of the Committee may however, in itself, entail a vice of *petitio principii*, since the main reason for finding a violation of article 9 is the direct consequence of finding a violation of article 18.

4. According to the State party (para 4.1), domestic authorities conducted an operational search in Aliyevs' home. The search related to information regarding illegal religious meetings and possession of prohibited religious literature by the religious community of Jehovah's Witnesses, together with a group of people. The authors gathered as a Religious Community which had not passed registration determined by law and thus committed the violation of the procedure determined in the legislation for the organization and conducting of religious ceremonies. During weekly meetings, they used religious literature brought into the country without permission. The authors therefore violated article 299.0.2 of the Code of Administrative Offenses (paras 2.11, 2.12, 4.3).

So, there is a *prima facie* lawful motive for the intervention of the police, even if the Committee rightly concluded that the restrictions imposed on the authors' rights under article 18(1) were not proportionate (para 7.5).

5. We also have a lawful motive for the transportation of the authors to the police station since they were suspected of having violated the law and were taken, as it were, in *flagrante delicto*. In many jurisdictions, this situation entails the need for suspects to accompany police officers for identification and drafting of all the necessary legal documentation that will later allow the courts to trial the case, if need be.

6. As for holding the authors for a few hours in the police station when they were brought into police custody, written protocols of the suspected events had to be drafted and signed by them (para 2.8). The drafting of such written administrative offense protocols was important for the protection of the authors' rights, since by taking notice of these protocols, the authors were *ipso facto* informed of the reasons behind the police intervention, aware of their status in the proceedings and therefore also able to begin preparing their defence. Moreover, the limited time period for holding the authors in the police station – 6 hours (para 7.7) – does not seem unreasonable under the circumstances, due to the diverse materials confiscated, the number of suspects interrogated and the fact that not all of them were present at the same time. Police work can be time-consuming.

7. The question is therefore whether the authors were coerced to come to the police station and whether their situation was different from the situation of any other citizen cooperating with the police, for instance, as a witness, a victim or a defendant.

It should be expected from any law-abiding citizen to assist investigations led by law enforcement officers, particularly if they are caught in what can be considered as in flagrante delicto. Police investigations may involve, and often do, routine questioning of individuals at police stations in order to ascertain facts and address allegations of violations or crimes, without this necessarily constituting arbitrary or unlawful deprivation of liberty. If someone is summoned to a court or to a police station, that person is not necessarily arrested nor detained, but remains at the disposal of the authorities until the goal for which he/she was summoned has been met. That is what happened in the present case, where the authors were free to leave the police station once the necessary legal documents were drafted and signed.

8. In my view, it has not been demonstrated that these investigative actions of the police went beyond what was reasonably necessary to ascertain whether a violation of domestic law had taken place. Therefore, the said actions may still be considered as non-arbitrary.

I would therefore have concluded that the State party did not violate the authors' rights under article 9(1) of the Covenant.

9. A totally different matter is the way law enforcement officials acted during the apprehension and interrogation of the authors. If the statements of the authors are accurate, then these officials behaved in a clearly inappropriate manner, disrespecting their duties as law enforcement officials who must act in a professional, unbiased way, respecting the principle of equality of everyone before the law, particularly when dealing with suspects of a violation of the law.

The said conduct may therefore entail disciplinary responsibility, but not necessarily affect the legality and appropriateness of the duty to bring suspects into police custody for adequate and proper interrogation.

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