



## International Covenant on Civil and Political Rights

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English

### Advance unedited version

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#### Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3153/2018 \*\*\*

<i>Communication submitted by:</i>	Rovshan Mursalov, Fatima Balova, Milena Makarenko, Basti Rasulova, Galina Fazliahmadova, and Goderdzi Kvaratskhelia (represented by counsel)
<i>Alleged victim:</i>	The authors
<i>State party:</i>	Azerbaijan
<i>Date of communication:</i>	22 May 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 23 March 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	1 November 2022
<i>Subject matter:</i>	Arrest, detention, home search, and administrative expulsion of a foreigner for participation in religious activity of Jehovah's Witnesses
<i>Procedural issue:</i>	Exhaustion of domestic remedies; level of substantiation of a claim;
<i>Substantive issues:</i>	Arbitrary arrest and detention; home search; discrimination; freedom of expression; freedom of religion;
<i>Articles of the Covenant:</i>	9, 13, 17, 18, 19, 26 and 27
<i>Articles of the Optional Protocol:</i>	2 and 5(2)(b)

[Note: Explanatory notes in square brackets will be removed from the final text.]

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\* Adopted by the Committee at its 136th session (10 October – 4 November 2022).  
\*\* The following members of the Committee participated in the examination of the  
communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan,  
Mahjoub El Haiba, Shuichi Furuya, Carlos Gomez Martinez, Marcia V. J. Kran, Duncan  
Laki Muhumuza, Hernan Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais,  
Chongrok Soh, Kobaujah Tchamdja Kpatcha, Imeru Tamerat Yigezu and Gentian Zyberi

1.1 The authors of the communication, are Mr. Rovshan Mursalov, Ms. Fatima Balova, Ms. Milena Makarenko, Ms. Basti Rasulova, Ms. Galina Fazliahmadova, and Mr. Goderdzi Kvaratskhelia, born in 1975, 1966, 1967, 1974, 1948, and in 1965, respectively. All authors are citizens of Azerbaijan, except for Mr. Kvaratskhelia who is a Georgian citizen. The authors claim that the State party has violated their rights under articles 9(1), 13, 17(1), 18(1) and (3), 19(2) and (3), 26, and 27 of the Covenant. The Optional Protocol entered into force for the State party on 4 April 1999. The authors are represented by counsels.

1.2 On 22 May 2018, the State party requested the Committee to consider admissibility of the communication separately from the merits. On 23 October 2018, the Committee acting through its Special Rapporteurs on new communications and interim measures, denied the State party's request.

### **The facts as submitted by the authors**

2.1 All authors identify as Jehovah's witnesses. On 9 April 2015, the authors were gathered at Mr. Musalov's (the first author) home, in Baku, for religious worship and discussion of holy books. The police entered the first author's home, searched all authors, and confiscated various items without providing a warrant. They made humiliating comments about the Jehovah's Witnesses' faith, saying things like 'Islam is the last religion and the only one'. The authors were taken to the police station and were held for a minimum of five hours, sometimes outside in the cold. The authors explained that, in Baku, Jehovah's Witnesses are registered as a legal association.

2.2 On 29 June 2015, the authors were summoned to the police station and charged with attending an unlawful religious meeting under article 299.0.2 of the Code of Administrative Offences (CAO) (violation of rules of organisation and conducting of religious meetings, street processions and other religious ceremonies), except for Mr. Kvaratskhelia (the sixth author). The authors claim that their charges were brought outside the time period in which charges may be made against individuals after their arrest. On 8 July 2015, the authors, except Mr. Kvaratskhelia, were found guilty of committing an administrative offence by the Garadagh District Court and were issued with a warning under article 21 of the CAO. The Court held that the authors had unlawfully conducted a religious meeting at an address other than the legal address used for the registration of Jehovah's Witnesses in Baku, according to article 12 of the Law on Freedom of Religious Beliefs of the Azerbaijan Republic.<sup>1</sup>

2.3 The authors, except Mr. Kvaratskhelia, filed separate appeals on 21 July 2015 and these were rejected on 6 August 2015 and 18 August 2015 by the Baku Court of Appeal. The authors claimed that the trial court had incorrectly applied the law and that the decision violated their rights under the Constitution, European Convention on Human Rights (ECHR), Universal Declaration of Human Rights and the Covenant. In their appeal the authors claimed violations of the same articles of the Covenant as they raise in the present communication.

2.4 On 6 July 2015, Mr. Kvaratskhelia was found guilty by the Garadagh District Court. He was charged under article 300.0.4 of CAO (conducting of religious propaganda by foreigners and persons without citizenship). The author notes that although when administrative charges were brought against him the maximum penalty allowed was expulsion from the country, the article was amended on 1 March 2016 with the maximum penalty of one year imprisonment. The author claims that this in itself demonstrates the disproportionate effect of the penalty imposed on him. The Court held that Mr. Kvaratskhelia was guilty of religious propaganda and was issued with a warning and ordered to be expelled. He was held in custody in Baku overnight and on 7 July 2015, he was deported to Georgia. Mr. Kvaratskhelia only received a copy of the trial decision on 10 November 2015 after requesting it.

2.5 On 20 November 2015, Mr. Kvaratskhelia filed an appeal, which was dismissed on 25 November 2015 as time barred. On 28 March 2016, Mr. Kvaratskhelia filed the appeal again stating that he had only received the trial decision on 10 November 2015. On 30 March 2016, the

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<sup>1</sup> Article 12 of the Law on Freedom of Religious Beliefs establishes the procedure for registration of religious associations.

Garadagh District Court dismissed his appeal. On 18 April 2016, the Criminal Board of the Baku Court of Appeal confirmed the decision of 30 March 2016 to dismiss the author's appeal. Mr. Kvaratskhelia claims that he did not receive any summons notifying him of the date of the court hearing for this appeal and was only provided with a copy of the Baku Court of Appeal decision on 21 January 2017 after requesting it on multiple occasions.

### **The Complaint**

3.1 The authors claim that articles 9(1), 17(1), 18(1) and (3), 19(2) and (3), 26 and 27 of the Covenant have been violated as a result of their convictions under the CAO. Further, Mr. Kvaratskhelia claims the article 13 of the Covenant has also been violated by his expulsion from Azerbaijan without the opportunity for review or appeal.

3.2 The authors claim that their detention at the police station was unlawful as per article 9(1) of the Covenant because its purpose was not investigatory, but aimed at intimidating and coercing the authors from exercising their freedoms and was thus discriminatory in nature, as demonstrated by the discriminatory and abusive speech of the police against their beliefs. The authors claim that the police provided no evidence to justify their arrest, which was not based on a legitimate lawful necessity. Further, the authors state that even if the arrest was necessary, a detention of more than five hours was unreasonable.

3.3 Further, Mr. Kvaratskhelia claims that he suffered additional instances of arbitrary detention when he was held in detention overnight prior to his deportation. Mr. Kvaratskhelia also claims that his rights under article 13 of the Covenant were violated when he was expelled from Azerbaijan on the basis of religious discrimination, in the absence of any legitimate basis such as threat to public safety. Further, the author was expelled without a copy of the trial decision, and he did not have the opportunity for a review or appeal of the decision. The author submits that this penalty was arbitrarily imposed and the violation of his rights under article 13 was further exacerbated when his appeal was not heard due to procedural deficiencies, which were caused by the undue delay of State party's authorities to address his case.

3.4 The authors claim that Messrs. Mursalov and Kvaratskhelia's right to privacy and security of their homes was violated under article 17(1) of the Covenant by the police's search. The authors claim that this interference cannot simply be justified by their unlawful conduct. They submit that a higher degree of protection is warranted by article 17 which refers to the interference of a private space and that the State party did not sufficiently justify such interference.

3.5 The authors claim that the police investigation and trial decision interfered with their right to freedom of religion and expression under articles 18(1) and (3) and 19(2) and (3) of the Covenant. They submit that the interference is not justified and was not prescribed by law because the CAO, under which the authors were held guilty, was not formulated nor applied 'with sufficient precision to enable them...to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail'. Further, the authors submit that the interference did not pursue a legitimate aim and is not necessary in a democratic society because the actions of the authors were peaceful.

3.6 Finally, the authors claim that they were subject to discriminatory abuse and insults by State party's authorities, as well as discriminatory laws, violating their rights under articles 26 and 27 of the Covenant.

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

4.1. On 22 May 2018, the State party challenged the admissibility of the communication on the basis that the authors failed to exhaust all available domestic remedies.

4.2 With regard to the authors' claim under article 17 of the Covenant, the State party submits that the domestic courts were only limited to reviewing the case as brought before them by the police, i.e. on the issue of attending an unlawful religious meeting. Since the cases before the domestic courts did not concern the alleged human rights violations, the authors should have launched separate legal proceedings as to allegations of violations of their rights under article 17. Those remedies could have included complaints to the Prosecutor's Office, initiation of judicial proceedings in domestic courts, or complaining to the Ombudsman of Azerbaijan.

4.3 The State party further notes that the authors have failed to submit any evidence in support of their claims about unlawful interference by the police in their private apartments before the Committee or the domestic authorities. The State party notes that any claim must be supported by “substantiating material”, otherwise it becomes merely an allegation, and in this communication no such “material” has been provided by the authors. Therefore, the State party submits that this claim has not been properly substantiated and shall be declared inadmissible.

4.4 With regard to Mr. Kvaratskhelia’s claim under article 13, the State party notes that Mr. Kvartaskhelia was officially presented with a copy of the court decision against him on 6 July 2015, and he was aware of the statutory limit for submitting an appeal against his conviction. However, he lodged his appeal only on 25 November 2015, thus missing the deadline set by the law. Therefore, the State party submits that this claim shall be deemed inadmissible due to failure to exhaust domestic remedies.

4.5 With regard to the authors’ claim under article 9 of the Covenant, the State party submits that the authors did not bring complaints before the national authorities on account of interference with their right to liberty and security. Therefore, they have not demonstrated that they have exhausted all available domestic remedies. The State party also submits that the authors were never detained or arrested, as they were invited to the police station only to provide testimony in relation to the administrative charges against them. Their stay at the police station for five hours was caused by the high number of people there. Accordingly, the State party submits that the authors’ claim under article 9 is manifestly ill-founded.

4.6 With regard to the authors’ claim under article 19 of the Covenant, the State party submits that this claim has not been raised before the domestic courts, thus shall be deemed inadmissible due to non-exhaustion of domestic remedies. The authors should have pursued other available domestic remedies before submitting a claim before the Committee, such as a complaint to the Prosecutor’s office or the Ombudsman.

4.7 With regard to the authors’ claims under articles 26 and 27 of the Covenant, the State party submits that they also shall be deemed inadmissible due to non-exhaustion, similar to the claims above. Additionally, the State party submits that the claims are manifestly ill-founded, and the authors have not sufficiently substantiated them to be regarded as victims. The State party notes that the authors have been charged with offences, which are equally applicable to any religious group without any discrimination. The authors’ allegations are based on vague statements, without any reliable evidence, as they do not identify any other religious groups that have been treated differently from Jehovah’s Witnesses in a similar situation. The State party submits that there are a number of cases before other international bodies, such as the European Court of Human Rights, concerning interference with religious meetings held by religious communities other than Jehovah’s Witnesses in violation of the law in Azerbaijan.

4.8 Finally, the State party draws the Committee’s attention to the fact all of the authors, except for Mr. Kvartaskhelia, received only administrative warnings, while article 299.0.2 of the CAO envisioned fines of up to 2,000 Azerbaijani manats. Moreover, their administrative offence records have been annulled after one year, and at the time of submission of their communication, the authors were considered to have no administrative offence record. Therefore, the State party submits that the communication is manifestly ill-founded and shall be declared inadmissible.

#### **Author’s comments on the State party’s observations**

5.1 On 31 July 2018, the authors submitted their comments to the State party’s observations on admissibility. The authors reject the State party’s view that the jurisdiction of the domestic courts is restricted to only the issues the police raise, and thus the authors were obligated to turn elsewhere for protection of their constitutional and Covenant rights. They note that each of them raised the issue of violation of his right to the privacy and security of his home during court proceedings and in their appeals. Both, Mr. Mursalov and Mr. Kvartaskhelia, should have been entitled to the privacy and security of their homes, however, the police entered both residences without permission, identification or warrant. When the authors brought up these violations before the domestic courts with first hand eyewitness statements to substantiate the interference, the courts refused to address the violation of article 17 of the Covenant.

5.2 With regard to the State party’s claim of non-exhaustion of domestic remedies under article 13, the authors reject the State party’s claim that Mr. Kvartaskhelia was “aware” of the time limit

for submission of the appeal. They refer to the text of Mr. Kvartaskhelia's appeal, where he argues that he was expelled from the country before the court decision even entered its legal force, thus depriving him of his right to appeal, and that he received a copy of the court decision by mail only four months after he was expelled.

5.3 The authors reject the State party's claim that the police "invited" them to the police station to offer their testimony, and submit that all of them were detained and forcibly transported by the police to the station. They refer to their statements where they claimed that the police demanded that all participants of the religious gathering went to the police station.

5.4 With regard to the State party's claim of non-exhaustion of domestic remedies under article 19, the authors refer to their statements before the district and appeal courts, where they have repeatedly identified factual basis for violations of their rights under article 19. In addition, Mr. Mursalov and Mr. Kvartaskhelia, in their written motions to the district court and to the court of appeals, specifically pleaded violations of article 19.

5.5 With regard to the claims under articles 26 and 27, the authors submit that when they were detained at the police station, the police made religiously intolerant comments and specifically asked them as to their religious beliefs. They further submit that the State party's argument that there are a number of cases before other international bodies, concerning interference with religious meetings held by religious communities other than Jehovah's Witnesses, does not mean that the State party is not discriminating against them. According to them, the State party ignores the discriminatory motivation behind the police actions and admits the religious intolerance in its submission when it notes "that the proceedings of administrative nature against the authors were related to their participation at the religious meeting".

5.6 As to the fact that all authors, except for Mr. Kvartaskhelia, received only warnings, the authors submit that their rights under the Covenant were still violated under each of the claimed articles of the Covenant because they were detained, harassed, and their peaceful religious worship was unlawfully disrupted.

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

6.1 By note verbale of 13 September 2018, the State party submitted its observations on the merits. It provides general background concerning the situation of freedom of religion, statistical data and the relevant domestic law.

6.2 As to the alleged violation of the authors' rights under article 9 of the Covenant, the State party submits that the authors were "invited to the police station" to give explanations. The State party admits that they were "briefly deprived of their liberty" and "released some hours later". The State party contends that the deprivation of liberty was not arbitrary. It further argues that the duration of the detention was caused due to the large number of individuals from whom explanations had to be taken.

6.3 The State party admits that the search of the homes of the first and sixth authors amounted to an interference with rights under article 17 of the Covenant, yet argues that the apartments in question did not constitute their "homes". It submits that the first and sixth authors failed to prove that the apartments they were living in were their "homes" within the meaning of article 17 of the Covenant. The State party states that the first and sixth authors each had to prove that they had longstanding ties to their residence or that "they rented the apartment or shared its rent with others on legal basis". It refuses to consider the apartment in question as the first author's "home" and asserts that the first and sixth authors failed to submit any evidence that the apartments searched by the police constituted their "homes".

6.4 The State party submits that the searches were conducted in accordance with articles 177, 236 and 242 of the Criminal Procedure Code (CPC) in the interest of public safety, for the prevention of disorder. It argues that the search was necessary because the police had a "reasonable suspicion" the authors were engaged in "unlawful activities". The State party adds that authors' neighbors "showed that a lot of people was visiting them" and that "it was suspected that the literature distributed by them was of radical nature giving rise to intolerance and enmity between representatives of different confessions".

6.5 Furthermore, the State party contends that the interference with the authors' rights under articles 18 and 19 is justified as being prescribed by law under article 12 of the Law on Freedom

of Religious Beliefs (Religion Law), submitting that this law had a legitimate aim that was necessary in a democratic society. The State party reminds that article 18 does not protect every act motivated or inspired by religion or belief and does not always guarantee the right to behave in the public sphere in a manner dictated by one's religion or beliefs. It refers to the ECtHR case *Kokkinakis v Greece*<sup>2</sup> arguing that in democratic societies, in which several religions coexist within the same population, it may be necessary to place limitations on freedom to manifest one's religion or beliefs in order to reconcile the interests of the various groups and emphasising the State's role as the neutral and impartial organizer of the exercise of various religions, faiths and beliefs. The State party argues that it should be allowed a broad margin of appreciation, affirming that this is necessary because of political developments geographically close to Azerbaijan. The State party thus claims instability in surrounding States as a legitimate reason for the limitations in the Religion Law for fear of political instability or preventing "*coups d'état* and military interventions". It maintains applying "stricter measures in the sphere of freedom of religion and freedom of expression to protect public order". It asks the Committee to consider that it is in principle "better placed than an international court to evaluate local needs and conditions". It submits that all the authors had to do was register and then they could worship.

6.6 With regard to the expulsion of the sixth author, the State party cites case law and submits that expulsion of aliens is justified "only in a proper defense of the country from some danger anticipated or actual", "for the purpose of preserving public order", or where the person is "dangerous to the welfare of the country". It asserts that the sixth author was deported for violating article 300.0.4 of the CAO, which forbids "religious propaganda carried out by foreigners" and that the article was accessible and formulated with sufficient precision to enable the sixth author to foresee consequences of his actions.

6.7 The State party submits that its limitation on foreigners carrying out religious propaganda was enacted to address "numerous attempts of radical religious movements to disseminate their views among the population". It refers to "numerous cases of violent attacks on places of worship by representatives of untraditional for Azerbaijan religious movements" and "Azerbaijanis joining religious terrorist organizations abroad". It states that the sixth author was expelled because he "attended the meeting to disseminate his religious views among other locals in violation of Azerbaijan's legislation" and affirms that he was afforded procedural guarantees throughout the deportation process.

6.8 The State party explains that in accordance with article 130.1 of the CAO, a complaint against a decision in an administrative offence case may be lodged within ten days from the day its copy was officially presented as prescribed by article 57 of the CAO. It argues that the sixth author duly received the decision on 6 July 2015, signing the relevant slip, and moreover, was present at the hearing before the first instance court. However, the State party states that the sixth author filed his appeal only on 25 November 2015 and therefore missed the procedural deadline for lodging an appeal.

6.9 The State party recalls that as per established jurisprudence, the Committee is not competent to act as an appellate instance and it is not for the Committee to substitute its views for the judgement of the domestic courts on the evaluation of facts and evidence in a case, unless the evaluation is manifestly arbitrary or amounts to denial of justice. The State party argues that there has been no violation of rights under article 13 of the Covenant.

6.10 With regard to the alleged discrimination under articles 26 and 27 of the Covenant, the State party asserts that "article 299.0.2 and article 300.0.4 of the CAO is [sic] equally applicable to all without discrimination". The State party objects to the authors' discrimination claims submitting that they are based on vague statements, without any reliable evidence, which could not be provided before the national courts. The State party affirms that the authors did not suffer discrimination as they did not point to other religious groups in a similar situation and/or any difference in treatment of the religious groups by the public authorities.

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<sup>2</sup> *Kokkinakis v Greece* (25 May 1993, para 33, Series A no. 260-A).

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

7.1 On 14 January 2019, the authors submitted their comments to the State party's observations. They note that the State party does not dispute the facts as set out in the communication and ask the Committee to accept the facts as uncontroverted.

7.2 They maintain that the State party observations under article 9 are contradictory. It is obvious from the facts that the authors were deprived of their liberty. If the authors were "released" by the police, it logically flows that they were not free to leave until they were "released". Likewise, the State party argues that the duration of the detention "was caused due to the large number of individuals from whom explanations . . . had to be taken". Implicit in the State party's argument is the fact that the authors could not leave without first giving statements to the police. In plain words, they were deprived of their liberty. They were not "merely invited" to the police station.

7.3 In relation to the violation of article 17 of the Covenant, the authors argue that the search of their homes was arbitrary and unlawful. The State party misconstrues the meaning of "home" in an attempt to ignore the undisputed evidence before the courts. The concept of 'home' within the meaning of article 17 of the Covenant "is not limited to those which are lawfully occupied or which have been lawfully established".<sup>3</sup> Whether the apartments in question constituted the first and sixth authors' "homes", attracting the protection of article 17 of the Covenant, "will depend on the factual circumstances". In this case, although the State party refuses to consider the apartment in question as the first author's "home", it has failed to indicate what other premises could have been his "home."<sup>4</sup> Likewise, although the sixth author was a visitor to Azerbaijan, he had been in the country for almost three months, and there was never any suggestion that another residence in Azerbaijan was his "home." The authors question why did the police search it, if the apartment in question was not the sixth author's "home".

7.4 The authors challenge the State party assertion that they failed to submit evidence that the apartments searched by the police constituted their "homes". In his statement at trial, the first author wrote: "The officers invaded my home without permission . . . and without any explanations they intruded into my home thus violating several of my rights" and "they conducted a search in my house, searched wardrobes, looked through our personal belongings, and even searched in the underwear closet." The police never challenged or disputed the fact that it was the first author's "home". In fact, the police confirmed that there was a "search of the house belonging to" the first author and that the first author "gathered Jehovah's Witnesses at the address where he resides and conducted a religious ceremony". At trial, a police officer testified that the first author "organized a religious event at the place belonging to him and where he is currently residing". Neither the trial court nor the appeal court disputed the fact that the apartment constituted the first author's "home". Even if assuming that the Committee were to conclude that the apartments in question did not constitute the first and sixth authors' "homes", there can be no question there was an interference with those authors' privacy within the meaning of article 17 of the Covenant.

7.5 Contrary to the State party's submissions that the searches were conducted in accordance with the Criminal Procedure Code (CPC), the interference was arbitrary and unlawful. Although the police treated the first and sixth authors like criminals, they were never charged with criminal offences. The police charged them under the Code of Administrative Offences (CAO). Under the CAO, the police have no authority to enter a residential home for the purpose of search and seizure. Even if the CPC were applicable, there was no evidence in the case materials that the police had obtained a prior court order to conduct the searches. The authors contend that the allegation against them did not amount to a criminal offence requiring a warrantless search.

7.6 According to the authors, the State party has failed to explain whose public safety was in jeopardy or what disorder would be prevented by the police forcibly entering the authors' homes and searching them. As to the neighbors statements, there is no record of any complaints about visits or visitors to the author's home. Furthermore, it is disturbing to think that in a democratic society merely having a number of visitors to one's home could create a "reasonable suspicion" of "unlawful activities". Likewise, there is no record of anyone complaining about the authors'

<sup>3</sup> ECHR, Prokopovich v. Russia, no. 58255/00, ECHR 2004-XI (extracts), para. 36; ECHR Sargsyan v. Azerbaijan [GC], no. 40167/06, ECHR 2015. para. 253.

<sup>4</sup> Prokopovich v. Russia, cited above, para. 38.

religious literature. The Garadagh District Police Department refused to initiate criminal cases against the authors because “the samples of religious publications taken from the address did not contain incitement directed at dividing the territorial integrity of the State, or any calls for conducting illegal pickets or rallies to disturb public order by arousing national, social, or religious hatred”.

7.7 The authors further note that the State party admits there was an interference with their rights under articles 18 and 19 of that Covenant, yet attempts to justify it as being prescribed by law (the Religion Law), that has a legitimate aim necessary in a democratic society. They alleged that the State party failed to answer their submissions that the Religion Law violates the Covenant, as well as the Constitution of Azerbaijan. A law that is imprecise, is unconstitutional and violates a State’s international commitments cannot be considered to be “prescribed by law” under the Covenant.

7.8 The State party gives neither specifics nor any causal connection between the alleged external political instability in surrounding States as a legitimate reason for the limitations in the Religion Law and a requirement that the authors register before being allowed to worship freely with one another. Jehovah’s Witnesses are known to be “a religious group committed to pacifism”.<sup>5</sup> They have been present worldwide for more than a hundred years. Far from causing any instability or incitement to hatred, they have regularly been the object of persecution precisely for holding a neutral stand in political and military affairs. Hence, prohibiting the peaceful, private religious discussion of the authors in a private home is far removed from any speculative State fear of political instability.

7.9 The authors challenge the State party attempt to misconstrue the seminal European Court of Human Rights (ECHR) decision in *Kokkinakis*, applying it to justify limitations on freedom of religion. According to the authors, it has wrongly reiterated the discredited submission of the Greek government that limitations on religious activity are necessary because otherwise, “major unrest would be caused that would probably disturb the social peace”.<sup>6</sup> The ECHR soundly rejected this submission.

7.10 The authors point out that the State party ignores that a State lacks competence to make decisions in the religious sphere. Rather, this very incapacity and the need to strictly limit State power render the Committee better placed to evaluate the effect of applying the Religion Law. Finally, the State party admits that it imposes registration as a precondition to exercising religious freedom, an action that this Committee has established is “disproportionate and so does not meet the requirements of article 18”.<sup>7</sup>

7.11 With regard to the expulsion of the sixth author, the authors note that there is no evidence that he posed any danger to the welfare of the country or disturbed public order. The sixth author was arrested, detained, found guilty of an administrative offence and deported for allegedly violating article 300.0.4 of the CAO, which forbids “religious propaganda carried out by foreigners”. Nowhere in the legislation of the State party is the term “religious propaganda” defined or explained. The English term “propaganda” is not a legal expression but rather a plain English word. It has developed a double meaning. “Propaganda” as used in the CAO is an English word translated from the original Azerbaijani. The Azerbaijani word used in the CAO article 300.0.4 is “təbliğət” and is of Arabic origin. Similar to the English word, it derives from a root meaning “spreading”. The English word “propaganda” is derived from Latin and has an agricultural root, as in spreading seed, and like the Azerbaijani term, it has a broad meaning that can either be positive or negative. For example, the Azerbaijani term can be used to refer to political campaigns (siyasi təbliğət kampaniyası) or to encourage the reading of books. It is incorporated in the name of a centre for conferences, book presentations, and a bookstore (“Azərkitab” Kitab Təbliğət Mərkəzi). It is commonly used to describe the introduction or advertising of a new culture to other people. For example, there is the National Tourism Publicity Bureau (Milli Turizm Təbliğət Bürosu). Thus, article 300.0.4 purports to outlaw even the introduction by a foreigner of religious aspects of a new culture to another person. This broad

<sup>5</sup> ECHR, *Thlimmenos v. Greece* [GC], no. 34369/97, ECHR 2000-IV, para. 42.

<sup>6</sup> ECHR, *Kokkinakis v. Greece*, 25 May 1993, Series A, no. 260-A, para. 46.

<sup>7</sup> Communication No. 1207/2003, *Malakhovsky and Pikul v. Belarus*, Views adopted on 23 August 2005, para. 7.6.

application prohibits any activity, regardless of how innocent, if it is religious and communicated by a foreigner. The State party has broadly construed the term “propaganda” to encompass conduct that was clearly lawful. In this case, the sixth author was punished for merely attending a peaceful religious service of Jehovah’s Witnesses held in a private home.

7.12 The word “propaganda” can also have a pejorative connotation. For example, the ECHR reviewed the provisions of the Criminal Code of Turkey, which prohibited “harmful propaganda”. In two cases the ECHR noted that the domestic law had defined the term with detailed criteria that exhaustively listed conduct that could result in an offence. In both cases, however, the ECHR found that although the impugned law was prescribed and legitimate, it was disproportionate to the offences, since neither case involved incitement to violence. In a third case, the dissolution of a political party that had advanced “propaganda based on racial differences and aimed at destroying the constitutional order” was ruled to violate the Convention. In contrast, Article 300.0.4 of the CAO contains no criteria at all, let alone “exhaustive” criteria, and the sixth author’s conduct was peaceful, non-violent and nonpolitical.

7.13 The authors recall that the ECHR in its analysis referred to a line of cases establishing a qualitative requirement in any statute so that an individual can foresee when an offence would be committed. This principle was the basis for the decision in *Kokkinakis*,<sup>8</sup> in which the ECHR considered the term “proselytism”, which like “propaganda” can encompass lawful as well as improper conduct. Because the Greek courts did not limit application of the domestic law so that it would prohibit only improper conduct, the ECHR found a violation of article 9 of the Convention. The domestic courts in this case similarly refused to limit the application of Article 300.0.4 of the CAO.

7.14 The sixth author was manifesting his sincerely held personal religious beliefs at a private religious service. There is no evidence that he was involved in disseminating discriminatory statements. There is no evidence either that or any of Jehovah’s Witnesses in Azerbaijan for that matter, has engaged in or incited violence. Neither is there any evidence that any of Jehovah’s Witnesses in Azerbaijan have joined religious terrorist organizations abroad. While Jehovah’s Witnesses are a Christian minority in Azerbaijan, they are not a “radical religious movement”. The State has registered Jehovah’s Witnesses in Baku since 1999.

7.15 Moreover, the sixth author disputes that he received the Garadagh District Court’s decision on 6 July 2015. The court’s verdict was announced orally that day, but the sixth author was not given a copy of the court’s written decision. He never signed any “receipt slip” to acknowledge receipt of the written decision. The Government has failed to produce a copy of the purported “receipt slip” or any other proof that the sixth author received a copy of the court’s decision before 10 November 2015, when he received it in the post. On the other hand, the sixth author wrote the Garadagh District Court on 20 October 2015 to request a copy of the decision, clearly stating that he had not yet received it. On 27 October 2015, the District Court wrote the sixth author to provide him with a copy of its 6 July 2015 decision. The District Court did not dispute the sixth author’s allegation he had not received the decision already. Neither did the District Court refer to the sixth author’s signing of any “receipt slip”. The first mention of the sixth author signing a “receipt slip” was not until the Baku Court of Appeal’s 18 April 2016 decision, by which time there was no domestic remedy to challenge the Court of Appeal’s finding. The sixth author reiterates that he did not receive the Court of Appeal’s decision until 30 December 2016 – eight months later – and only after repeatedly asking for it.

7.16 The authors further challenge the State party’s affirmation that that “article 299.0.2 and article 300.0.4 of the CAO . . . is [sic] equally applicable to all without any discrimination”. This ignores the reality that legislation, facially neutral, can nevertheless be applied discriminatorily. The State discriminates against individuals and among religious groups by treating groups with State registration differently from groups and individuals without registration. It is easier for religious majorities favoured by the State to obtain registration. According to article 12 of the

<sup>8</sup> *Öztürk v. Turkey* [GC], no. 22479/93, ECHR 1999-VI, paras. 29 and 71; *Başkaya and Okçuoğlu v. Turkey* [GC], nos. 23536/94 and 22408/94, ECHR 1999-IV, 27, 64 and 67; and *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, ECHR 1999-VIII, paras. 14 and 47.

Religion Law, in order for a religious community to apply for State registration, it must have a minimum of 50 founders. A group of 49 worshippers is denied registration and the State privileges that it provides.

7.17 The authors contend that the State party attempts to reverse the onus of proof and disregards that the domestic courts were presented with unchallenged evidence but failed in their judicial duty to consider it. Neither the State authorities nor the courts chose to disprove the authors' evidence before the national courts or to adduce any evidence to the contrary. The State therefore is estopped from denying the ample evidence provided in the Communication.

7.18 The State party has discriminated against the authors in comparison with adherents of the majority Muslim religion in Azerbaijan. In comparison to those who adhere to mainstream Islam, the authors were subjected to discriminatory treatment as confirmed by the following evidence, which has not been challenged by the State party. The authors were subjected to terror and indignity when more than 20 police officers forced their way into the first author's private home simply because the authors were meeting to read and study the Bible. Police ordered everyone not to move, started video-recording them, and searched them, confiscating their personal property, including cash, electronic devices, religious literature and copies of the Holy Scriptures. Police ordered all, including the elderly and young children, to go with them to the police station, where they were held for more than five hours. The authors were humiliated – made to feel like dangerous criminals. At the police station, the authors were at times forced to stand outside in the cold, finally being released in the early hours of the morning. The authors were subjected to humiliating remarks about their faith. Police officers asked the authors why they did not worship in Islam or read the Koran; officers tried to convince the authors that "Islam is the last religion and the right one". "To try to convince one's neighbour" about the truthfulness of one's faith is protected by freedom of religion. However, "what would in the civilian world be seen as an innocuous exchange of ideas which the recipient is free to accept or reject, may, within the confines of military life, be viewed as a form of harassment or the application of undue pressure in abuse of power".<sup>9</sup> In the present case, the authors had been detained by the police and were clearly under the control and authority of the police. The humiliating remarks of the police, acting in their official capacity, cannot be shielded by the right to freedom of expression. Instead, in the context of the facts of this case their humiliating remarks constitute "application of undue pressure in abuse of power". The authors were found guilty of offences and given administrative warnings. Members of the majority Muslim religion in Azerbaijan are not subjected to such punitive actions, designed to threaten and coerce them into abandoning their faith.

7.19 The authors recall that State-sponsored acts of religious intolerance and discrimination directed toward Jehovah's Witnesses are the subject of numerous separate communications pending before the Committee. As a result, the Committee is concerned "about the reported interference in religious activities, and harassment of members of religious groups, including Jehovah's Witnesses, and the increase in arrests, detention and administrative or criminal sanctions against them".<sup>10</sup>

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

### *Consideration of admissibility*

8.1 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.

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<sup>9</sup> ECHR, *Larissis and Others v. Greece*, 24 February 1998, Reports of Judgments and Decisions 1998-I, paras. 51 and 54.

<sup>10</sup> Human Rights Committee, Concluding observations on the fourth periodic report of Azerbaijan, CCPR/C/AZE/CO/4, 16 November 2016, para. 32. The Committee called on Azerbaijan to "guarantee the effective exercise of freedom of religion and belief in practice and refrain from any action that may restrict such freedom beyond the narrowly construed restrictions permitted under article 18 of the Covenant". (Ibid, para. 33)

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

8.3 The Committee observes that the State party has contested the authors' argument that they exhausted all available domestic remedies, as required by article 5 (2) (b) of the Optional Protocol. According to the State party, the authors should have launched separate proceedings with regards to the alleged violation under articles 17 and 19, such as a complaint to the Prosecutors Office, Ombudsman or judicial proceedings, while in relation to article 13 the sixth author should have appealed his administrative expulsion within the prescribed deadline. The Committee also notes the State party's argument that the authors' claims brought under articles 9, 26 and 27 are not sufficiently substantiated and manifestly ill-founded.

8.4 The Committee notes, however, that the authors claim that there are no further effective domestic remedies available to them as they filed several separate appeals to the Baku Court of Appeal and these were rejected on 6 August 2015, 18 August 2015, and 18 April 2016. It also notes that when the authors unsuccessfully appealed their convictions to the Court of Appeal, they raised the substance of all their allegations under the Covenant. Moreover, the Committee recalls that article 5 (2) (b) of the Optional Protocol, by referring to "all available domestic remedies", refers in the first place to judicial remedies.<sup>11</sup> Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

8.5 With respect to the sixth author's claims under article 13 of the Covenant, the Committee considers that the court of appeal's rejection of his complaint on procedural grounds ignored his uncontroverted evidence that he did not receive the trial decision until 10 November 2015 (for months after the decision was rendered) and that he had appealed promptly. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining this part of the communication.

8.6 The Committee considers that the authors have sufficiently substantiated, for the purposes of admissibility, their claims under articles 9 (1), 13, 17 (1), 18 (1) and (3), 19 (2) and (3), 26 and 27 of the Covenant. The Committee thus declares these claims admissible and proceeds to examine them on the merits.

#### *Considerations of the merits*

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

9.2 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>12</sup> 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. 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 religious discussion in the first author's home; taking them to the police station, where they were held for over five hours; and convicting them of an administrative offense in the form of administrative warnings. The authors were sanctioned for conducting religious worship outside of a legally recognized address, since they were not granted the status of a religious association with a legally designated address. Applying its general comment No. 22, in which it stated that the freedom to manifest religion or belief may be exercised either individually or in community with others and

<sup>11</sup> See *R.T.v. France*, communication No. 262/1987, para. 7.4; and *Schmidl v. Czech Republic* (CCPR/C/92/D/1515/2006), para. 6.2. and *Mario Staderini and Michele De Lucia v Italy* (CCPR/C/127/D/2656/2015), para. 8.3.

<sup>12</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. and *Rashad Niftaliyev et al v. Azerbaijan* (CCPR/C/134/D/3094/2018), para. 9.4.

in public or private, the Committee considers that the authors' claims relate to their right to manifest their religious beliefs, and that the arrest, detention, conviction constitute limitations of that right.<sup>13</sup>

9.3 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>14</sup>

9.4 In the present case, the limitations placed on the authors' right to manifest their religious beliefs stem from the requirement set out in article 12 of the Law on Freedom of Religious Beliefs that a religious association have to officially register in order to lawfully operate. The Committee notes that the State party has not specifically explained engaging in religious worship is conditioned by officially registering as a religious association. The Committee also notes that the State party has not provided evidence indicating that the peaceful manifestation of the authors' religious beliefs in the first author's home threatened public safety, order, health, or morals, or the fundamental rights and freedoms of others. The Committee further observes that the State party has not described any context, or provided any example, in which there was a specific and significant threat to public order and safety that would justify the blanket ban on religious worship outside of a registered religious organization. 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 registration requirement of article 12 of the Law on Freedom of Religious Beliefs was proportionate to that objective, in view of its considerable limitation on the act of religious worship. Nor has the State party attempted to demonstrate that the requirement was the least restrictive measure necessary to ensure the protection of the freedom of religion or belief. While the State party has noted that article 18 (3) of the Covenant permits certain restrictions on the right to manifest one's religion or beliefs in order to protect the fundamental rights and freedoms of others, the Committee observes that such protection requires identifying which specific fundamental rights are affected, and the persons so affected. The Committee notes that article 18 (3) exceptions are to be interpreted strictly and not applied in the abstract. In the present case, the State party has not identified any specific fundamental rights or freedoms of others that were affected by the religious worship conducted by the authors in the first author's home. Accordingly, the Committee 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.<sup>15</sup>

9.5 The Committee observes that during domestic proceedings, the Garadagh District Court and the Baku Court of Appeal upheld the authors' convictions on the ground that the activity of the community of Jehovah's Witnesses and the authors worshipping in the first author's home violated various requirements of the Law on Freedom of Religious Beliefs. Specifically, the State party cited the provision of the Law stating that religious associations may operate only after being officially registered, and may operate at places of worship specified in the information presented for State registration as the legal address. 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>16</sup> The Committee considers that the justifications provided by the State party do not demonstrate how the requirements to be legally registered as an association prior to conducting religious worship were proportionate measures necessary to serve a legitimate purpose within the meaning of article 18 (3) of the Covenant. The Committee notes that the State party did not advance any argument as to why it was necessary for the authors to first register with the Government before practicing their religion

<sup>13</sup> General comment No. 22 (CCPR/C/21/Rev.1/Add.4), para. 4.

<sup>14</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.

<sup>15</sup> See, *Mammadov, Niftaliyev and Abbasova v. Azerbaijan* (CCPR/C/129/D/2928/2017), para. 7.5. and *Rashad Niftaliyev et al v. Azerbaijan* (CCPR/C/134/D/3094/2018), para. 9.6.

<sup>16</sup> See, inter alia, *Leven v. Kazakhstan* (CCPR/C/112/D/2131/2012), para. 9.4. and *Rashad Niftaliyev et al v. Azerbaijan* (CCPR/C/134/D/3094/2018), para. 9.7.

in a community in a private home. 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 has 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, and sanctioning the authors with an administrative warning for holding the religious meeting, the State party violated their rights under article 18 (1) of the Covenant.

9.6 With regard to the sixth author, the Committee observes that article 18 (1) of the Covenant protects the right of all members of a religious congregation, and not only citizens, to manifest their religion in community with others, in worship, observance, practice and teaching. The Committee concludes that the punishment imposed on the sixth author, and in particular its harsh consequences for the author, who was expelled from the State party, amount to a limitation of his right to manifest his religion under article 18 (1); and that the limitation, although prescribed by law, was not proportionate or justified. Additionally, the Committee observes that the State party has failed to justify such limitation as serving any legitimate purpose identified in article 18 (3); and that this sweeping limitation of the right to manifest religion is proportionate to any legitimate purpose that it might serve.<sup>17</sup> The Committee therefore concludes that such limitation does not meet the requirements of article 18 (3), and that the sixth author's rights under article 18 (1) of the Covenant have been violated.

9.7 The Committee notes the authors' claim that the police arbitrarily took them to a police station and detained them for five hours. Noting the position of the domestic authorities that this incident did not represent a deprivation of liberty but a mere invitation to take explanations and compile the documents, 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>18</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 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.

9.8 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>19</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>20</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>21</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 officers did not inform the authors of the charges against them at the time of their arrest and apprehension. 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 paragraph 9.5 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.

<sup>17</sup> See, inter alia, *Amedzro v Tajikistan* (CCPR/C/133/D/3258/2018), para. 7.9.

<sup>18</sup> CCPR/C/GC/35 (2014), para. 6.

<sup>19</sup> CCPR/C/GC/35, para. 10.

<sup>20</sup> See, inter alia, *Formonov v. Uzbekistan* (CCPR/C/122/D/2577/2015), para. 9.3.

<sup>21</sup> CCPR/C/GC/35, para. 17.

9.9 In the light of its finding that there has been a violation of articles 18 and 9 of the Covenant, the Committee decides not to examine separately the authors' claims under articles 17, 19, 26 and 27 of the Covenant and the sixth author's claim under article 13 of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the rights of each of the authors under articles 9 (1) and 18 (1) and (3) of the Covenant.

11. 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 for any legal expenses incurred by them. 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.

12. 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 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.

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