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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3061/2017*, **

Communication submitted by:	Jaarey Suleymanova and Gulnaz Israfilova (represented by counsel, Daniel Pole and Petr Muzny)
Alleged victims:	The authors
State party:	Azerbaijan
Date of communication:	26 July 2017 (initial submission)
Document reference:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 4 December 2017 (not issued in document form)
Date of adoption of Views:	18 October 2021
Subject matter:	Administrative conviction and related fine for religious activity of Jehovah's Witnesses
Procedural issues:	Admissibility – exhaustion of domestic remedies; admissibility – manifestly ill-founded; admissibility – *ratione materiae*
Substantive issues:	Criminal charges; defence – preparation of; discrimination; discrimination on the ground of religion; fair trial; fair trial – legal assistance; freedom of expression; freedom of religion; freedom of thought, conscience or religion; minorities – right to enjoy one's own culture; presumption of innocence
Articles of the Covenant:	14 (1), (2), (3) (a), (b), (d), (e) and (g), 18 (1), 19 (1) and (2), 26 and 27
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

* Adopted by the Committee at its 133rd session (11 October–5 November 2021).

** 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, Furuya Shuichi, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

1. The authors of the communication are Jaarey Suleymanova and Gulnaz Israfilova, nationals of Azerbaijan born in 1995 and 1977, respectively. They claim that the State party has violated their rights under articles 14 (1), (2), (3) (a), (b), (d), (e) and (g), 18 (1), 19 (1) and (2), 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 counsel.

Facts as submitted by the authors

2.1 The authors are Jehovah's Witnesses, a Christian denomination whose members are known for their preaching activities. Jehovah's Witnesses are a religious minority in Azerbaijan, where the population is predominantly Muslim. Although the authors belong to the Jehovah's Witnesses faith, they are not members of the Religious Community of Jehovah's Witnesses, a religious organization that is officially registered with the Government and whose legal address is in Baku. At all times material to the present communication, the authors acted in their personal capacities.

2.2 On 15 November 2016, the authors met an acquaintance who invited them to enter her home, where they had a pleasant, informal conversation about religion. On 16 November 2016, the authors were summoned to the police station, where they were held by the police for four hours without an explanation. The authors were told to report back the following day.

2.3 On 17 November 2016, they the authors were again held by the police for several hours without an explanation and were then taken to appear before the Goranboy District Court, without being informed of the charges against them. The authors had no opportunity to consult legal counsel or prepare a defence. On the same day, the District Court issued a decision in which each of the authors was convicted of violating article 515.0.4 of the Code of Administrative Offences,[1] by operating a religious association outside of a registered legal address. The District Court observed that article 12 of the Law on Freedom of Religious Beliefs prohibits religious organizations from operating outside of their legal addresses[2] and fined each of the authors the maximum amount of 2,000 manats (approximately equivalent to €1,094 at the time in question).

2.4 The proceedings before the District Court amounted to a biased show trial. Without introducing the case or the parties, and without stating the charges against the authors, the District Court judge began by asking the members of the public who were present in the courtroom for their opinion of women engaging in preaching, and whether those present would want their wives to preach. Without arraigning them, the judge interrogated the authors, demanding that they tell him who had given them the right to preach. When Ms. Suleymanova answered that she preached about God because it was written in the Holy Scriptures, the judge replied, "I couldn't care less about your Bible!" The trial judge then berated a local municipal official, demanding, "What kind of representative of the executive power are you if you do not know that Jehovah's Witnesses have been in the district for 13 to 14 days?" When the official tried to explain himself, the judge became angry and ordered him to be reprimanded. The judge then asked one of the prosecution witnesses whether he wanted to change his religion. Next, when one of the defence witnesses stated that he did not find anything wrong in reading the Holy Scriptures, the judge demanded, "How can you be sure? Maybe these women are Armenian spies? Why do you let them into your home?" When that witness's phone began to ring, the judge sentenced him to 24 hours' detention. The judge also examined the religious publications that the police had seized from the authors. Although the stamp of the State Committee for Work with Religious Associations was clearly affixed to the publications, thereby establishing that they had been imported with State approval, the judge directed the court clerk to record that the publications were illegal.

[1] Article 515.0.4 of the Code of Administrative Offences provided at the time in question that operation of a religious association outside of the legal address of its registration entailed a penalty in the amount of 1,500–2,000 manats for natural persons, and 7,000–8,000 manats for officials.

[2] Article 12 of the Law on Freedom of Religious Beliefs provides that all religious communities may operate only after being registered with the relevant executive authority and entered in the State register of religious communities. Religious communities can function only in places of worship, specified as a legal address in the data submitted for the State registration, after the appointment of a religious figure in these religious communities by religious centres and institutions.

2.5 The authors each filed an appeal against the decision of the District Court before the Ganja Court of Appeal. On 5 January 2017, the Court of Appeal dismissed the authors' appeals in a joint decision, deeming them clearly unfounded.

2.6 Since the court proceedings, Ms. Suleymanova has experienced anxiety and has found it difficult to find employment. Ms. Israfilova has serious health problems, and the stress caused by the court proceedings has adversely affected her health. She also lacks permanent employment.

2.7 The authors maintain that no further domestic remedy is available to them, and that they have not submitted the same matter for consideration to another international body of investigation or settlement.

Complaint

3.1 The authors claim that, by charging, convicting and fining them for operating a religious association outside of a registered legal address, the State party violated their rights under articles 14 (1), (2), (3) (a), (b), (d), (e) and (g), 18 (1), 19 (1) and (2), 26 and 27 of the Covenant.

3.2 In violation of article 14 of the Covenant, the authors' trial was neither fair nor impartial. The authors were not given notice of the charges against them and were hustled into court without an opportunity to prepare their defence or obtain legal advice. The presiding judge of the Goranboy District Court criticized the authors' religion in the courtroom. He aggressively interrogated the authors and the witnesses and encouraged the public in the courtroom to reflect his personal biases against the authors. His demeaning and mocking comments about the authors' religion, and his accusations that the authors were Armenian spies, demonstrated that he had predetermined the outcome of the case. That violated the authors' right to the presumption of innocence. The judge also refused to question the version of events advanced by the police and to examine the violation of the authors' religious rights.

3.3 The authors were not members of a religious association and therefore could not have violated article 515.0.4 of the Code of Administrative Offences. While the offences were administrative, the authors were punished by an egregious and disproportionate monetary fine. The proceedings must be regarded as penal in nature because of their purpose, character and severity. The purpose of the trial was to punish the authors on account of their religion, and to prevent and deter the religious activity of the authors and others with similar religious beliefs. For Ms. Israfilova, the amount of the fine represents over 30 months of income. The authors could not reasonably have been expected to be able to pay those amounts. Such substantial fines discriminate against the poor, for whom non-payment often results in imprisonment.[3] The authors request that their case be examined from the perspective that the Committee applied in *Osiyuk v. Belarus*.[4]

3.4 Instead of investigating the authors' allegations of bias by the District Court, the Ganja Court of Appeal dismissed those allegations as "not confirmed". The Court of Appeal did not properly review the actions of the District Court and instead simply reiterated the provisions of domestic law without examining the facts.

3.5 The State party violated the authors' rights under article 18 of the Covenant by prosecuting and convicting them for having discussed their religious beliefs in a private home. The State party's authorities rendered it an offence to practise religion outside of the legal address of a religious association. No legitimate interpretation of the law justifies such a conclusion, but even if such an interpretation were possible under domestic law, the authors are not members of any registered legal religious association. Their conduct was in exercise of their individual freedom of religion.

[3] The authors provide personal statements describing their inability to pay the full amount of the fine.

[4] CCPR/C/96/D/1311/2004.

3.6 The State party's authorities also seized religious publications that had been officially approved for importation and, during the trial, declared those publications to be illegal. The right to freedom of religion includes the freedom to disseminate publications.

3.7 The authors' conviction and the State party's interference with the authors' freedom to peacefully manifest their religious beliefs was not lawful, necessary or in pursuit of a legitimate aim. Despite the authors' request, the Ganja Court of Appeal did not explain the conformity of domestic law with the Constitution and the Covenant. The aim of the State party's actions was not to compel registration under the Law on Freedom of Religious Belief, but to punish the authors for their peaceful religious worship. The State has not explained why it is necessary to prohibit religious worship outside of a registered legal address or penalize the authors for their religious activity.

3.8 The State party erroneously considers that, because domestic law requires a religious organization to register under a legal address, religious expression is limited to that location. Such an interpretation is incompatible with article 19 of the Covenant.

3.9 If domestic law were erroneously interpreted to prohibit expression of beliefs outside of a registered address, then by extension, any speech by individuals of any religion would be unlawful outside of a specific address. Expression over the Internet, radio, television or public calls to prayer would be unlawful. As discussed above, the restriction on the authors' freedom of expression was unlawful, lacked a legitimate aim and was not necessary in a democratic society.

3.10 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 conduct of the trial and the demeaning attitude of the judge towards the authors' religious beliefs were both discriminatory. The Ganja Court of Appeal did not remedy the discrimination, thus forsaking the crucial role of the judiciary to protect minorities.

3.11 The domestic courts applied domestic law in such a way as to provide differential treatment to members and non-members of registered religious associations. The authors' individual rights were therefore conditioned on whether other members of their religion had registered with the State. This constituted unequal and discriminatory treatment. The District Court considered that article 12 of the Law on Freedom of Religious Belief prohibits a religious association from conducting religious activity outside of its legal address. For Jehovah's Witnesses, any religious activity, including simply expressing personal religious beliefs, outside of this address is viewed as illegal. The State does not apply the same standard to majority religions.

3.12 The authors request declaratory relief; the removal of all restrictions on their rights to freely worship and express or manifest religious beliefs anywhere in the State party's territory and, in particular, any limitation relating to the registered address of legal entities; the provision of suitable monetary compensation for moral damages suffered on account of the actions of the police and the courts; an investigation into and sanctions for the actions of the trial judge for his biased and humiliating comments and his conduct of the court proceedings against the authors; the reversal of the fines imposed (taking accrued interest into account); and compensation for the legal costs and fees incurred by the authors during domestic proceedings.

State party's observations on admissibility and the merits

4.1 In its submission dated 26 July 2017, the State party considers that, as a result of the historic and ongoing coexistence of various Christian denominations in its territory, the main characteristic of its people is tolerance. Every year on 16 November, the State party commemorates the International Day for Tolerance. Churches, synagogues and numerous Christian and Jewish religious educational institutions function freely without any obstacles, and with State support. The main goal of religious policy in Azerbaijan consists of preserving, developing, stimulating and promoting at the local and international levels the traditions of tolerance inherent in the people of Azerbaijan.

4.2 Approximately 96 per cent of the State party's population is Muslim, while 4 per cent belong to other religions, including Christianity and Judaism. Approximately 60–65 per cent of Muslims in the State party are Shia, while the remainder are Sunni. Almost all denominations of Christianity are represented in the country. Over 2,000 mosques, 13 churches and 7 synagogues operate in Azerbaijan. More than 650 religious communities have been registered in Azerbaijan.

4.3 The State party organizes numerous events aimed at promoting tolerance, multiculturalism and interfaith and intercultural dialogue. Over the past 10 years, Azerbaijan has hosted numerous international and regional conferences, forums and symposiums on those topics, including the World Forum on Intercultural Dialogue.

4.4 The State party provides factual information obtained from the authors' personal statements to the police, witness testimony and court proceeding minutes. As stated in the explanation given on 3 November 2016 by the authors' acquaintance, A, who lived in Garadaghli village, in Goranboy District, Ms. Suleymanova had called A's wife and asked to visit the couple. Later that day, Ms. Suleymanova came to stay at their home, and Ms. Israfilova also came to stay a few days later. When A asked about the purpose of their visit, the authors stated that it was to distribute literature on the Jehovah's Witnesses in the village. During their stay with the couple, both the authors left the house early each morning, to talk to people in the street, preach door to door and distribute books and magazines about the Jehovah's Witnesses.

4.5 On 16 November 2016, the representative of Garadaghli village sent a letter to the Goranboy District Police Station, alleging that two unidentified individuals were unlawfully conducting a religious propaganda campaign among the population of the village. He requested the police to take relevant legal measures against them.

4.6 On the same date, the authors were both asked to go to the Goranboy District Police Station. They explained their activities to a police officer, who drafted an administrative offence report charging the authors, under article 515.0.4 of the Code of Administrative Offences, with operating a religious community outside of the legal address of its registration. The authors refused to sign the document. They were then permitted to leave the police station.

4.7 On 17 November 2017, Goranboy District Court found that the authors had violated article 515.0.4 of the Code of Administrative Offences and fined them 2,000 manats each. During the court hearing, both authors confirmed that the purpose of their visit to the village was to spread propaganda concerning the religious views of Jehovah's Witnesses, in order to attract more adherents to the denomination. In particular, Ms. Israfilova stated that some individuals did not accept the authors' ideas, while others listened patiently and understood them and others hesitated. The authors' main purpose, according to Ms. Israfilova, was to draw those who were hesitant over to their side, and sow doubt in the minds of those who were firm in their beliefs.

4.8 The State party emphasizes that, during court proceedings, Ms. Suleymanova stated that, although the law prohibited her from conducting religious propaganda campaigns outside of the place of registration, she did not regret her actions because the work she was doing was righteous.

4.9 On 14 December 2016, the authors filed an appeal against the decision of the Goranboy District Court, arguing that they had not been engaged in unlawful activities and had been arrested without legitimate cause. On 5 January 2017, the Ganja Court of Appeal dismissed their appeals, reasoning that "it was established at the court hearing that Jaarey Suleymanova and Gulnaz Israfilova operated outside of the registered legal address of the religious community in Baku." The Court of Appeal further held that, while the authors had attempted to portray their actions as an act of worship and interpreted them as a manifestation of their beliefs, they were operating outside of the registered legal address of a religious community, in violation of article 515.0.4 of the Code of Administrative Offences. The State party recalls the text of article 515.0.4 of the Code of Administrative Offences and article 12 of the Law on Freedom of Religious Belief (see para. 2.3).

4.10 Article 1 of the Law on Freedom of Religious Belief also provides that, "Everyone has the right either on their own, or together with others to practise any religion and express or spread his or her belief regarding his or her attitude towards religion. It is not permitted to hinder anyone from confessing religion, taking part in liturgies, making religious rites and rituals and studying religion. No one can be forced to express (demonstrate) their religious convictions, fulfil religious rituals or participate in religious rituals. It is prohibited to propagandize religions or a religious way of life with the use of violence or intimidation with the threat of the use of violence and also with the aim of sowing racial, national, religious and social hostility and enmity. It is forbidden to spread and propagate religions (religious factions) that demean human dignity and contradict principles of humanity. Freedom of religion can be restrained only in cases provided for by law and important in a democratic society, for the benefit of public security, namely, guaranteeing public order, the protection of the health or morals or rights and freedoms of other individuals. Foreigners and persons without citizenship shall be prohibited from conducting religious propaganda campaigns."

4.11 The authors' claims under article 14 of the Covenant are inadmissible because they are not substantiated by any concrete evidence. The authors' claims were carefully considered by the domestic courts. Nothing suggests that the conclusion reached by the domestic courts was unreasonable.

4.12 In addition, the communication lacks merit. The authors presented no proof to the Court of Appeal or the Committee that the trial judge was biased against them. The Court of Appeal found that the District Court had noted the authors' allegations that they had been pressured by civilians, police officers and the judge and had concluded that none of those allegations was confirmed. There are no ascertainable facts that might raise doubts regarding the impartiality of the District Court judge. It is clearly untrue that the judge refused to question the version of events advanced by the police. The case materials indicate that the judge thoroughly cross-examined the police officers, the authors and the witnesses, and issued his verdict only after all the circumstances of the case had been objectively and comprehensively examined. The offence and court proceedings were administrative in nature and thus involved a lesser degree of social danger (and thus a lesser degree of scrutiny) than proceedings of a criminal nature.

4.13 The court proceedings were fair. Before issuing its decision dated 17 November 2016, the District Court issued two preliminary decisions. In one of those decisions, the Court summoned the authors and witnesses to the hearing, which was set to take place on 17 November 2016 at 10.30 a.m. In the other preliminary decision, it stated that the District Court had assigned a lawyer to the authors at the expense of the State, in accordance with article 66.3 of the Code of Administrative Offences, which provides that, when persons in administrative detention are unable to hire a lawyer owing to their financial situation, legal assistance shall be provided at State expense. Under article 52 of the Code of Administrative Offences, the authors had a right to submit motions on any matter, for example concerning the alleged non-provision of notice of the charges or the alleged lack of opportunity to prepare a defence or obtain legal advice. The authors did not submit any motions or raise any alleged violations before the District Court.

4.14 The rights to manifest religious beliefs and exercise free expression under articles 18 and 19 of the Covenant are not absolute. In the present case, the interference with the authors' rights was lawful, because it was based on article 12 of the law on Freedom of Religious Belief and article 515.0.4 of the Code of Administrative Offences. The authors were well aware of those provisions, which were accessible and sufficiently precise as to enable the authors to foresee the consequences of their actions. The authors knew that the provisions applied to them. All of this is evident from the minutes of the proceedings before the District Court, during which Ms. Suleymanova stated that, although the law prohibited her from carrying out religious propaganda campaigns outside of a registered legal address, she did not regret her actions because her work was righteous.

4.15 The interference in question was also in pursuit of the legitimate aim of protecting public order. Attempted coups d'état and military interventions have recently occurred in regions near Azerbaijan, and this environment has made it necessary for the State party's authorities to apply stricter measures in the sphere of freedom of religion and freedom of expression, in order to protect public order.

4.16 The interference was also necessary in a democratic society. Article 18 of the Covenant does not provide for protection for 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 that is dictated by one's religion or beliefs. In the case of *Kokkinakis v. Greece* before the European Court of Human Rights, it was argued that, in democratic societies in which several religions coexist, it may be necessary to place limitations on the freedom to manifest one's religion or beliefs in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected.[5] The Court and the Committee have frequently emphasized the State's role as the neutral and impartial organizer of the exercise of various religions, faiths and beliefs and have stated that that role is conducive to public order, religious harmony and tolerance in a democratic society. The State's duty of neutrality and impartiality is incompatible with any power on the part of the State to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed, and this duty requires the State to ensure mutual tolerance between opposing groups.[6] Accordingly, the role of the State in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that competing groups tolerate each other.[7]

4.17 Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair treatment of people from minorities and avoids any abuse of a dominant position.[8] Where the rights and freedoms of others are protected by the Covenant, the need to protect them may lead States parties to restrict other rights or freedoms that are also set forth in the Covenant. It is precisely this constant search for a balance between the fundamental rights of each individual that constitutes the foundation of a democratic society.

4.18 The State party's authorities are better placed than an international court to evaluate local needs and conditions. In policy matters where opinions within a democratic society may reasonably differ widely, the role of the domestic policymaker should be given special weight.[9] That is the case, in particular, where questions concerning the relationship between the State and religion are at stake. Thus, with respect to article 18 of the Covenant, the State should be afforded a wide margin of appreciation in deciding whether and to what extent it is necessary to limit the right to manifest one's religion or beliefs. In *Şahin v. Turkey*, the European Court of Human Rights considered that such a wide margin of appreciation applies when evaluating regulation of the wearing of religious symbols in educational institutions.[10] The Court referred to its prior jurisprudence in *Otto-Preminger-Institut v. Austria*, in which it decided that Austria had acted legitimately by ensuring religious peace in a region, and preventing some individuals from feeling that they were the object of attacks on their religious beliefs in an unwarranted and offensive manner.[11] In *Sahin v. Turkey*, the Court considered that it is not possible to discern throughout Europe a uniform conception of the significance of religion in society, and that the meaning or impact of the public expression of a religious belief differs depending on time and context. The Court observed that, as a result, the rules in that sphere would vary from one country to another, according to national traditions and the requirements imposed by the need to protect the rights and freedoms of others and to maintain public order. The Court concluded that the choice of the extent and form of such rules must inevitably be left, up to a point, to the State party concerned. Similar principles govern the application of article 19 of the Covenant.

[5] The State party cites European Court of Human Rights, *Kokkinakis v. Greece*, Application No. 14307/88, Judgment of 25 May 1993, para. 33.

[6] The State party cites, for example, European Court of Human Rights, *Şahin v. Turkey*, Application No. 44774/98, Judgment of 10 November 2005.

[7] The State party cites, for example, European Court of Human Rights, *Serif v. Greece*, Application No. 38178/97, Judgment of 14 December 1999, para. 53.

[8] The State party cites, for example, European Court of Human Rights, *Young, James and Webster v. the United Kingdom*, Application No. 7601/76 and 7806/77, Judgment of 13 August 1981, para. 63.

[9] The State party cites European Court of Human Rights, *S.A.S. v. France*, Application No. 43835/11, Judgment of 1 July 2014, para. 129.

[10] The State party again cites European Court of Human Rights, *Şahin v. Turkey*.

[11] *Otto-Preminger-Institut v. Austria*, Application No. 13470/87, Judgment of 20 September 1994.

4.19 It was proven before the domestic courts that the authors were in fact operating on behalf of the religious community of which they were members. This is evident from the explanations that the authors provided at the police station and during proceedings before the District Court and Court of Appeal. It is also evident from the explanations provided by the witnesses. The authors' case is not the first case involving Jehovah's Witnesses operating in Azerbaijan, either before the Committee or the European Court of Human Rights. A simple look into the authors' applications reveals that they have all been prepared by the same individual or group of individuals. That indicates that the authors are in fact part of a religious community and operated outside of the registered legal address of that religious community. Thus, article 515.0.4 of the Code of Administrative Offences applied to them.

4.20 The State party did not place a blanket ban on the propagation of religious views. Rather, it excluded only those actions that violate the law. In such circumstances, the authorities had sufficient reason to intervene in response to the authors' actions under the provisions of domestic law. Those measures were within the State party's margin of appreciation under articles 18 and 19 of the Covenant and were proportionate to the aim of protecting public order. The impugned restriction may thus be regarded as necessary in a democratic society, under articles 18 and 19 of the Covenant.

4.21 The State party did not violate the authors' rights under articles 26 or 27 of the Covenant. The State party refers in this respect to its arguments concerning articles 14, 18 and 19 of the Covenant, and considers that the authors failed to demonstrate that they had been subjected to discrimination on the basis of their religion. Article 12 of the Law on Freedom of Religious Belief and article 515.0.4 of the Code of Administrative Offences are equally applicable to all. The authors' allegations with regard to discrimination are based on vague statements and are not supported by any reliable evidence. Their allegations were not proven before the domestic courts. The authors did not indicate any difference in the treatment of religious groups by the State party's authorities. Moreover, there are many other cases before international courts, in particular the European Court of Human Rights, which address interference with the rights of religious communities other than Jehovah's Witnesses.

Authors' comments on the State party's observations on admissibility and the merits

5.1 In comments dated 15 September 2017, the authors maintain that the communication is admissible and well founded. The State party did not dispute in its observations the biased and discriminatory conduct and expressions of the District Court judge, or the peaceful nature of the conversation between the authors and their acquaintance.

5.2 The State party pejoratively referred to the authors' religious discussions as propaganda, which is defined as information, especially of a biased or misleading nature, that is used to promote a political cause or point of view. It is clearly inappropriate to apply that term to the authors' sincerely held religious beliefs and the expression of those beliefs.

5.3 Regarding article 14 of the Covenant, the State party failed to address or deny the authors' concrete allegations. The Court of Appeal ignored the evidence of the conduct of the trial judge, which gives rise to doubts as to his impartiality.

5.4 The State party claimed that the District Court judge questioned the police version of events and claims that the authors' allegations to the contrary are "an untrue statement". However, the evidence contradicts this claim. In eight separate statements in its decision, the District Court referred to the authors' religion as a sect. It described a conversation about a religious topic as "propaganda about the righteousness and advantages of this sect". By using such pejorative terms, the District Court demonstrated its bias against the authors' religion.

5.5 Moreover, the District Court and the Court of Appeal ignored the authors' evidence that they were sharing their religious beliefs in their personal capacity. The authors were not members of or associated with the legal entity registered by the Jehovah's Witnesses in Azerbaijan. Thus, article 515.0.4 of the Code of Administrative Offences did not apply to them.

5.6 Finally, the District Court demonstrated its bias when it punished a witness who testified in favour of the authors by arresting and detaining him for 24 hours on the ground that his phone had rung in the courtroom.

5.7 The State party's claim that the hearing was fair because the District Court appointed a public defender for the authors and issued an order summoning witnesses to the hearing is incorrect and disingenuous. The authors were immediately transported to the District Court upon their return to the police station on 17 November 2016. If the District Court had issued those two orders, which the authors dispute, the orders would have simply been a formality to establish a pretence of due process.

5.8 Regarding articles 18 and 19 of the Covenant, the State party provided no basis for its assertion that the interference with the authors' rights was lawful. The State party did not explain its position that the authors knew that article 515.0.4 of the Code of Administrative Offences applied to them. That provision applies only to registered legal entities and does not prohibit the expression of personal religious beliefs. If it did, all religious discussions between private persons would be prohibited throughout Azerbaijan except at the registered address of a registered religious organization. Such an interpretation would strike at the essence of articles 18 and 19 of the Covenant. Thus, article 515.0.4 of the Code of Administrative Offences is not a sufficient legal basis to limit the rights under articles 18 and 19 of the Covenant.

5.9 The purpose of the interference was to exercise religious intolerance, which is not a legitimate aim. The State party labelled the authors' activity as propaganda simply because it disagreed with the beliefs that the authors espoused. It is not the State party's role to evaluate the legitimacy of religious beliefs.

5.10 The interference was not necessary in a democratic society. While the State party cited the judgment of the European Court of Human Rights in *Kokkinakis v. Greece*, that judgment favours the authors. The Court upheld the freedom of a Jehovah's Witness adherent to publicly share his religious views. In the present case, the State party interfered in and punished a private religious conversation between individuals. Such direct and overwhelming interference with personal, private religious worship should not be excused by enlarging the margin of appreciation.

5.11 Regarding articles 26 and 27 of the Covenant, the authors refer to their arguments under articles 14, 18 and 19 of the Covenant, and further submit that the discrimination to which they were subjected is part of a pattern, as the State party has increasingly targeted Jehovah's Witnesses. Numerous communications before the Committee and other international bodies attest to that pattern.[12] The discrimination against the authors victimized members of a minority religion who, by definition, were vulnerable to the majority. Members of minorities look to States for protection from the tyranny of prevailing opinions and feelings, and from the tendency of society to impose its own ideas and practices. The State party's actions were motivated by its disapproval of the authors' religion. The State party has not provided evidence that it has similarly targeted individuals belonging to the majority religion of Islam on account of personal discussions of their faith. The State party applies its legislation, which is facially neutral, in a discriminatory manner. The European Commission against Racism and Intolerance of the Council of Europe has noted the State party's discriminatory religious intolerance and heavy-handed police treatment towards members of minority, unregistered religions.[13]

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.

[12] The authors cite, for example, *Aliyev et al. v. Azerbaijan* (CCPR/C/131/D/2805/2016).

[13] The authors cite European Commission against Racism and Intolerance, report on Azerbaijan (fourth monitoring cycle), 31 May 2011, paras. 15–17 and 68–71.

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 observes that the State party has not expressly contested the authors' argument that they had exhausted all available domestic remedies, as required under article 5 (2) (b) of the Optional Protocol. However, the Committee notes the State party's assertion that the authors failed to exercise their right under article 52 of the Code of Administrative Offences to submit motions on any matter before the District Court, for example, concerning the alleged non-provision of notice of the charges against them, or the alleged lack of opportunity to prepare a defence or obtain legal advice. The Committee notes that the authors claim to have been ushered directly from the police station to the courtroom without notice of the charges or an opportunity to consult with legal counsel. The Committee observes that the material before it does not indicate that the authors were informed of their right to submit the aforementioned motions. Accordingly, because the motion-filing procedure was not clearly available to the authors, the Committee considers that, in the particular circumstances of the present case, the authors were not required to exhaust that domestic remedy for the purpose of article 5 (2) (b) of the Optional Protocol.

6.4 The Committee notes that, when filing unsuccessful appeals of their convictions to the Ganja Court of Appeal, the authors expressly invoked articles 18, 19, 26 and 27 of the Covenant, and raised the substance of their allegations under article 14 (1), (2), (3) (a), (b) and (d) 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 14 (3) (e) or (g) of the Covenant before the domestic courts. Thus, the Committee finds the authors' claims under article 14 (3) (e) and (g) of the Covenant inadmissible under article 5 (2) (b) of the Optional Protocol.

6.5 With respect to the authors' claims under article 14 (2), (3) (a), (b) and (d) of the Covenant, the Committee observes that the authors were accused of an administrative offence, while article 14 (2) and (3) of the Covenant sets forth protections in cases regarding the determination of criminal charges against individuals. However, the Committee recalls that, although criminal charges relate in principle to acts declared to be punishable under domestic criminal law, the concept of a "criminal charge" must be understood within the meaning of the Covenant, independently of the categorizations employed by the domestic legal systems of States parties.[14] Such an interpretation is intended to avert situations that are incompatible with the object and purpose of the Covenant, whereby the imposition of punishment is transferred to administrative authorities in order to avoid application of the fair trial guarantees under article 14 of the Covenant.[15] The Committee further recalls that the notion of a criminal charge may therefore extend to sanctions that, regardless of their qualification under domestic law, must be regarded as penal in nature because of their purpose, character or severity.[16] The Committee notes that, in the present case, although the authors were not arrested at the scene of the events in question, they were asked to report to the police station on two occasions without being informed of the charges against them. On the second occasion, the authors waited at the police station for four hours and were then taken directly to the District Court, which proceeded to convict them of an administrative offence and sanctioned them with the maximum monetary fine permitted under article 515.0.4 of the Code of Administrative Offences (2,000 manats, approximately equivalent to €1,094 at the time in question). The Committee notes the authors' assertion that the amount of the fine represented over 30 months of income for Ms. Israfilova. The Committee further observes that there is no indication that the purpose of the penalty was to provide pecuniary reparation or compensation for any harm caused. The Committee considers that the administrative

[14] General comment No. 32 (2007), para. 15; *Sadykov v. Kazakhstan* (CCPR/C/129/D/2456/2014), para. 6.6; *Osiyuk v. Belarus*, para. 7.3; *Insenova v. Kazakhstan* (CCPR/C/126/D/2542/2015-CCPR/C/126/D/2543/2015), para. 8.5; *Zhagiparov v. Kazakhstan* (CCPR/C/124/D/2441/2014), para. 13.7; *Rybchenko v. Belarus* (CCPR/C/124/D/2266/2013), para. 8.10; and *V.P. v. Belarus* (CCPR/C/122/D/2166/2012), para. 7.5.

[15] *Osiyuk v. Belarus*, para. 7.3.

[16] *Sadykov v. Kazakhstan*, para. 6.6.

penalty was aimed at sanctioning the authors for their actions and deterring them from future similar actions – objectives analogous to the general goals of criminal law. The Committee further notes the general character of the administrative sanction, which related to the infringement of a law that was directed not towards a specific group possessing a special status in the manner, for example, of disciplinary law, but towards anyone in the general population who, in an individual capacity, conducted religious activity outside of a registered legal address. In a manner similar to criminal law, the administrative law in question proscribed conduct of a certain kind and made the resultant requirements subject to a determination of guilt and a punitive sanction. Given the punitive and deterrent purpose, general character and significant severity of the sanctions against the authors, the Committee considers that the authors' claims fall within the scope *ratione materiae* of articles 14 (2), (3) (a), (b) and (d) of the Covenant, such that article 3 of the Optional Protocol does not constitute an obstacle to their admissibility.

6.6 The Committee notes the State party's argument that the authors' claims under article 14 of the Covenant are inadmissible because they are insufficiently substantiated. The Committee observes that the authors have not specified any evidence or arguments essential to their defence that they would have submitted for the trial had they been given the opportunity, nor have they specified any evidence to which they were denied access. The information available to the Committee does not indicate that the authors asserted before police or judicial officers a right to be assigned counsel or confer with counsel of their own choosing. Accordingly, the Committee considers that the authors' claims under article 14 (3) (b) and (d) are insufficiently substantiated and are therefore inadmissible under article 2 of the Optional Protocol.

6.7 The Committee also notes the authors' claim under article 18 (1) of the Covenant that the District Court judge violated their right to religious freedom by seizing religious publications that had been approved by the State party's authorities for importation. In the absence of further information, the Committee considers that the authors have not sufficiently substantiated this aspect of their claim under article 18 (1) of the Covenant and thus declares it inadmissible under article 2 of the Optional Protocol.

6.8 However, the Committee considers that the authors have sufficiently substantiated their remaining claims under articles 14 (1), (2) and (3) (a), 18 (1), 19 (1) and (2), 26 and 27 of the Covenant for the purpose of admissibility. Accordingly, the Committee declares those claims admissible and proceeds to examine them on the merits.

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 The Committee notes that according to the authors, the domestic courts did not assess their cases fairly or impartially, and the District Court judge presumed their guilt, in violation of their rights under articles 14 (1) and (2), respectively. The Committee recalls that, with respect to article 14 (1) of the Covenant, it is generally for the courts of States parties to the Covenant to evaluate both the facts and evidence, and the application of domestic legislation in the case in question, unless it is shown that their evaluation was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality.[17] The Committee notes that the District Court did not explain the basis for finding that the authors were members of a registered religious association, such that the terms of article 515.0.4 of the Code of Administrative Offences applied to them. The Committee also considers that, while the Ganja Court of Appeal cited various provisions of domestic laws in concluding that the actions of the State party's authorities were appropriate and lawful, it did not enter into a meaningful analysis of the various factors involved in determining the permissibility of the restrictions on the authors' right to manifest their religious beliefs. The Committee observes that, while the State party asserts that it was proven before the domestic courts that the authors were in fact operating

[17] General comment No. 32 (2007), para. 26; see also *Tyvanchuk et al. v. Belarus* (CCPR/C/122/D/2201/2012), para. 6.6.

on behalf of a registered religious association, it has not provided persuasive evidence of this. In this regard, the Committee considers that the sole fact that the authors are represented by the same individual as other Jehovah's Witnesses who have submitted similar communications or complaints does not demonstrate that the authors belonged to a registered religious organization.

7.3 The Committee also considers that, apart from generally asserting that the trial was fair, the State party has not addressed the authors' specific allegations – raised both in their appeal before the Ganja Court of Appeal and in the present communication – concerning concrete instances of unfair conduct by the District Court judge (see para. 2.4). Those instances include solicitation of the views of members of the public in the courtroom regarding women engaging in preaching, failure to allow the authors to enter a plea, contemptuous language directed towards the authors' religion, and the criticism of a defence witness – the authors' host in Goranboy – for having allowed the authors to enter his home. The Committee notes that, while the decision of the District Court, provided by the authors, contains summaries of witness testimony, the State party has not provided trial transcripts that would reveal the conduct of the judge. The Committee must give due weight to the authors' allegations, to the extent that they are properly substantiated, in the absence of contrary evidence from the State party,[18] and considers that the facts before it indicate that the District Court judge did not act in an impartial way. In the light of the aforementioned circumstances, the Committee considers that the State party violated the authors' rights to be heard by a fair and impartial tribunal under article 14 (1) of the Covenant. In the light of that finding, the Committee does not deem it necessary to examine the authors' claims under article 14 (2) of the Covenant.

7.4 The Committee also notes that the authors invoke article 14 (3) (a) of the Covenant and assert that they did not receive notice of the charges either at the police station or during the District Court hearing, and were taken directly from the police station to the courtroom on 17 November 2016. The Committee notes the State party's position that it issued two preliminary decisions containing the date and time of the authors' scheduled hearing before the District Court, and assigning to the authors a lawyer at the expense of the State, in accordance with domestic law. However, the Committee notes that the State party did not submit evidence demonstrating that the authors were promptly notified of the charges. In the absence of any evidence of such notification, the Committee must give due weight to the authors' assertion that they were not promptly notified of the charges against them. Thus, the Committee considers that the information before it reveals a violation of the authors' rights under article 14 (3) (a) of the Covenant.

7.5 With respect to the authors' claim under article 18 (1) of the Covenant, the Committee recalls its general comment No. 22 (1993), according to which 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. The freedom to manifest religion or belief may be exercised either individually or in community with others and in public or private.[19] Moreover, article 18 (3) is to be interpreted strictly, and limitations on the freedom to manifest one's religion or beliefs may be applied only for those purposes for which they were prescribed, and must be directly related and proportionate to the specific need on which they are predicated.[20]

7.6 In the present case, the Committee notes the authors' argument that the State party violated their right to manifest their religious beliefs under article 18 (1) of the Covenant, by convicting and fining them for expressing their religious beliefs during private conversations at the homes of other individuals, and by sanctioning the expression of religious belief outside of the registered legal addresses of religious associations under article 515.0.4 of the Code of Administrative Offences. The Committee takes note of the State party's position that the

[18] See, for example, *Boimurodov v. Tajikistan* (CCPR/C/85/D/1042/2001), para. 7.2.

[19] General comment No. 22 (1993), para. 4; see also *Bekmanov and Egemberdiev v. Kyrgyzstan* (CCPR/C/125/D/2312/2013), para. 7.2.

[20] General comment No. 22 (1993), para. 8. See also *Mammadov et al. v. Azerbaijan* (CCPR/C/130/D/2928/2017), para. 7.4.

application of the latter provision to the authors was lawful and necessary in a democratic society, in order to further the legitimate aim of protecting public order and ensuring the harmonious coexistence of different religious groups in the country.

7.7 The Committee observes that the State party does not provide any evidence indicating that the peaceful manifestation of the authors' religious beliefs has in any way disrupted social stability in its territory. The Committee further notes that the State party did not provide any evidence that the authors, or Jehovah's Witnesses in general, have engaged in activities or espoused views that could be considered to adversely impact public order or safety. The Committee notes that the decisions of the District Court, which convicted the authors of the administrative violation, did not disclose or refer to any harmful statements made by the authors during their religious discussions in Goranboy. The Committee observes that the State party has not referred to any specific circumstances where the authors' actions could have created or exacerbated serious interreligious tensions or an atmosphere of hostility and hatred between religious communities in Azerbaijan, such that those actions could have represented a threat to public safety, order, health or morals within the meaning of article 18 (3) of the Covenant.

7.8 In addition, the Committee notes that the State party has not indicated any specific concerns surrounding the individuals with whom the authors discussed their religious faith. The Committee notes, for example, that there is no indication that the authors ignored objections by those individuals or were otherwise aggressive or hostile, or that those individuals were unable to reason on their own, or had a relationship of dependency or hierarchy with the authors or a situation of vulnerability such that they might have felt coerced, pressured or unduly influenced by the manifestation of the authors' religious beliefs.[21]

7.9 The Committee further considers that, even if the State party could demonstrate that the authors' activity represented a specific and significant threat to public safety and order, it has failed to demonstrate that its actions were proportionate to preserving public safety and order. Specifically, the Committee considers that the conviction of the authors, and the significant fine imposed on each of them by the courts (approximately equivalent to €1,049), considerably limited their ability to manifest their religious beliefs. Nor has the State party attempted to demonstrate that the actions of the police and the domestic courts were the least restrictive measures necessary to ensure the protection of the freedom of religion or belief. 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 convicting and fining the authors for engaging in religious discussions, the State party violated their rights under article 18 (1) of the Covenant.

7.10 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 (1), 19 (2), 26 or 27 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 the rights of each of the authors under articles 14 (1) and (3) (a) 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 Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to 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

[21] See *Gurbanova and Muradhasilova v. Azerbaijan* (CCPR/C/131/D/2952/2017), para. 7.5.

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 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 to have them widely disseminated in the official languages of the State party.