|  |  |  |  |
| --- | --- | --- | --- |
|  | United Nations | CCPR/C/130/D/2661/2015 | |
| _unlogo | **International Covenant on Civil and Political Rights**  Advance unedited version | | Distr.: General  26 March 2021  Original: English |

**Human Rights Committee**

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2661/2015[[1]](#footnote-2)\*,[[2]](#footnote-3)\*\*

*Communication submitted by:* Polat Bekzhan, Leon Weaver Jr., and Helmut Echtle (represented by counsels, Shane H. Brady and Haykaz Zoryan)

*Alleged victims:* The author

*State party:* Kazakhstan

*Date of communication:* 27 March 2015 (initial submission)

*Document references:* Decision taken pursuant to rule 92 of the Committee’s rules of procedure, transmitted to the State party on 30 October 2015 (not issued in document form)

*Date of adoption of Views:* 30 October 2020

*Subject matter:* Censorship of (refusal to import) religious publications

*Procedural issues:* Exhaustion of domestic remedies; victim status; *actio popularis*

*Substantive issues:* Freedom of thought, conscience and religion; freedom of expression; protection of minorities

*Articles of the Covenant:* 18 (1) and (3), 19 (2) and (3) and 27

*Articles of the Optional Protocol:* 1, 2, 3, 5 (2) (b)

1. The authors of the communication are Mr. Polat Bekzhan, Mr. Leon Weaver Jr. and Mr. Helmut Echtle, born in 1953, 1938 and 1938, respectively. The authors, respectively, are nationals of Kazakhstan, the United States of America and Germany. They claim to be victims of violations by Kazakhstan of their rights under articles 18(1) and (3), 19 (2) and (3) and 27, of the International Covenant on Civil and Political Rights. They further claim that they are bringing the communication on behalf of all 17,500 Jehovah’s Witnesses in Kazakhstan[[3]](#footnote-4) and argue that the State party has violated their rights under article 18 (1) and 27 of the Covenant. The authors are represented by counsel, Mr. Shane H. Brady and Mr. Haykaz Zoryan.

Facts as submitted by the authors

2.1 The authors are Jehovah’s Witnesses and each of them is an authorized representative of one of three religious organisations who provide Bibles and other religious literature to Jehovah’s Witnesses in Kazakhstan. Mr. Bekzhan imports literature of Jehovah’s Witnesses to Kazakhstan, Mr. Weaver Jr., publishes literature used by Jehovah’s Witnesses in their worship and Mr. Echtle prints and ships literature to Kazakhstan where more than 17,500 Jehovah’s Witnesses live and 30,000 persons attend their religious meetings.

2.2 On 11 October 2011, the State party adopted the Law on Religious Activity and Religious Associations, No. 483-IV (2011 Religion Law). Under article 9 (3) of the law, a registered religious organisation may import religious literature for its use and the use of its members only after ‘receiving a positive conclusion of the religious expert examination. Article 6 (1) (4) of the law stipulates that the authorised agency conducts the religious expert examination with the exception of materials intended for personal use. The procedure for conducting a religious expert examination is established by the Government.

2.3 The authors claim that although it is not expressly stipulated in the Religion Law of 2011, the Agency for Religious Affairs (ARA) has the responsibility to approve importation of all religious literature used by registered religious organisations into Kazakhstan. According to article 4 (3) of Government Order No. 209 of 7 February 2012, ‘On the Guidelines for Conducting a Religious Expert Examination’, all imported literature used by religious organisations is subject to an expert examination. The purpose of conducting such an examination is to establish whether the religious literature corresponds to the norms of the Kazakh Constitution and legislation. The authors submit that the 2011 Religion Law does not provide any criteria specifying how the religious expert examination approves or refuses approval to a religious organisation wishing to import religious information material.

2.4 The use of religious literature that is not authorised by the ARA is punishable under article 375 (1) of the Code of Administrative Violations, which stipulates that infringement, ‘*shall incur a warning or a fine on the director of the religious association in the amount up to 20 times the monthly calculation index and on a legal entity up to 100 times the monthly calculation index with the suspension of activity for up to six months or a ban on the activity, or without such*’.

2.5 In September, November and December 2012, the Religious Centre of Jehovah’s Witnesses requested authorization to import ten religious publications. However, the import was refused by ARA, which relied on the findings of the religious expert examination. The authors appealed the decision to the Chairman of ARA. On 31 January 2013, their appeal was rejected. The Chairman of ARA stated that the publications were to be banned since they contained ideas that, ‘*discourage secular education*’, ‘*can cause family breakup*’ and ‘*its teachings are superior and rejects the fundamental teachings of traditional Christianity*’. Further, he recommended that the authors edit the content of the publications.

2.6 In May 2013, the authors filed an application to the Astana Specialized Inter-district Economic Court challenging the decisions of ARA. On 3 July 2013, the Court dismissed the authors’ application, finding that the disputed decisions by ARA were made in accordance with the law, that there had been no violation of the rights and freedoms of the authors, and that the religious expert examination was conducted ‘in strict observance with the law’. Further, the Court noted that the publications in question could be corrected and resubmitted for an expert study and therefore found that no hindrance of or limitation on the distribution of the religious literature had taken place.

2.7 An appeal was lodged by the authors to the Appeals Chamber of the Astana City Court, which upheld the 3 July 2013 decision on 27 August 2013. A further appeal was filed with the Cassation Chamber of the Astana City Court, which upheld the ruling on 6 May 2014. Subsequently, the authors filed a motion for supervisory review to the Supreme Court, which was dismissed on 4 September 2014.

The Complaint

3.1 The authors claim that the decisions made by the Agency for Religious Affairs (ARA) refusing the importation of ten religious publications into the State party, to be used for religious worship of Jehovah’s Witnesses, amount to violations of their rights under article 18 (1) and (3), 19 (2) and (3) and article 27 of the Covenant.

3.2 The authors claim that imposing a restriction or ban on the ‘circulation, distribution or sale’ of a book interferes with the right to freedom of expression and that such a restriction on a religious publication interferes with the freedom of religion.[[4]](#footnote-5) The decisions of ARA refusing permission to import the religious publications in question have thereby interfered with the rights of the authors and of all Jehovah’s Witnesses as a religious minority in the State party. Further, they claim that such interference does not fall under the limitations prescribed by article 18 (3), as all passages in the religious publications to which ARA objects are mere statements of the religious beliefs of Jehovah’s Witnesses.[[5]](#footnote-6) Therefore, the ARA’s interference with their right to freedom of religion cannot be justified[[6]](#footnote-7) since it does not pursue a legitimate aim and is not necessary[[7]](#footnote-8) in a democratic society.[[8]](#footnote-9)

State party’s observations on admissibility

4.1 By note verbale of 29 December 2015, the State party submits that the authors dispute the decision of 3 July 2013 of the Astana Specialized Inter-district Economic Court, which denied the claim of the regional religious association, Christian Centre of Jehovah’s Witnesses; Watch tower [sic] Bible and Tract Society of New York, Inc.; and Wachtturm Bibel- und Traktat-Gesellschaft der Zeugen Jehovas, e. V. against the State party’s Agency for Religious Affairs. The authors requested that the expert conclusions in connection with the denial of importation of the November 2012 issue of Awake! in Russian and the brochure Examining the Scriptures Daily - 2013 in Russian and Kazakh; the issue of The Watchtower in Russian and Kazakh of 15 March 2013; the October - December 2012 issue of The Watchtower in Kazakh; the issue of The Watchtower of 15 January 2013 in Russian and Kazakh; and the issue of The Watchtower of 15 February 2013 in Russian and Kazakh be declared unlawful, and that this violation be remedied. In the authors’ opinion, the State party violated Mr. Bekzhan’s rights that are guaranteed by the Covenant.

4.2 The State party recalls that according to article 3 of the Optional Protocol to the Covenant and rule 96 of the Rules of procedure of the Committee, the Committee can declare any communication inadmissible if it has been filed anonymously, that is, if it is not signed by the author or if the representative does not have proper authorization. Rule 96 (a) of the Rules of procedure of the Committee establishes that, with a view to reaching a decision on the admissibility of a communication, the Committee shall ascertain that the communication is not anonymous and that it emanates from an individual, or individuals, subject to the jurisdiction of a State party to the Optional Protocol to the Covenant.

4.3 The State party contends that neither the attorney, nor the foreign religious associations in whose name the communication was also submitted, are under its jurisdiction, since the counsel is not a citizen of Kazakhstan and the religious associations are not registered in the State party. Additionally, these associations are not parties in legal relations concerning import of religious informational materials to the territory of the State party. Pursuant to article 9(3) of the Religious Law, only registered religious associations can be such parties—in this case the regional religious association, Christian Centre of Jehovah’s Witnesses.

4.4 By virtue of rule 96 (b) of the Rules of procedure of the Committee, with a view to reaching a decision on the admissibility of a communication, the Committee shall ascertain that the communication was submitted by an individual who claims to be a victim of a violation by that State party of any of the rights set forth in the Covenant, or was submitted by that individual’s representative. A communication submitted by a representative may be accepted when the individual in question is unable to submit it personally.

4.5 According to the State party, the communication does not contain information about the reasons why the authors-representatives of the religious associations, these religious associations themselves, members of Mr. Bekzhan’s family, or all 17,500 Jehovah’s Witnesses in the State party were unable to submit the communication to the Committee personally. Moreover, in order for the Committee to consider claims of a group of individuals about alleged breaches of their rights under the Covenant, a communication to the Committee must be submitted either by the group itself on its own behalf or through a representative to whom authorization is provided for these purposes.[[9]](#footnote-10)

4.6 The State party maintains that the communication does not contain information to the effect that members of Mr. Bekzhan’s family or the 17,500 Jehovah’s Witnesses in the State party commissioned anyone to submit a complaint or to represent them before the Committee. Moreover, the claim does not state whether the founding documents of the 59 local religious associations of Jehovah’s Witnesses registered in the State party (charters that define the mutual rights and obligations of the religious associations, of their administrative agencies, and of their members) authorize anyone, including Mr. Bekzhan (the director of the regional religious association), to submit an application to the Committee on their behalf.

4.7 According to the State party, under articles 2 and 5 of the Optional Protocol and rule 96 (f) of the Rules of procedure, the Committee can declare a communication inadmissible if all available domestic remedies were not exhausted. The decision of 3 July 2013 of the Astana Specialized Interdistrict Economic Court denied the claim of the regional religious association, Christian Centre of Jehovah’s Witnesses; Watch tower [sic] Bible and Tract Society of New York, Inc.; and Wachtturm Bibel- und Traktat-Gesellschaft der Zeugen Jehovas, e. V. against the State party’s Agency for Religious Affairs. The claim requested that the expert conclusions in connection with the denial of import of the religious literature in Russian and Kazakh be declared unlawful, and that this violation be remedied. On 27 August 2013, the Court of the City of Astana upheld the lower court decision. The ruling of the Court of Cassation of the City of Astana of 6 May 2014 upheld the said judicial acts. The ruling of the Supervisory Chamber for Civil and Administrative Cases of the Supreme Court of 4 September 2014 refused to initiate supervisory proceedings.

4.8 Moreover, the regional religious association, did not submit a request according to the procedure and within the time period provided for by Articles 385 and 388 of the Civil Procedural Code (in force when the judicial decisions were rendered) to the Prosecutor General for a protest for a supervisory review to be filed with the Supreme Court against said judicial act. Essentially, the regional religious association, in failing to submit a request within the legally established time period and voluntarily denying itself effective means of legal protection, put itself in a position of abusing the right to submit a communication to the Committee. In addition, the claim did not provide sufficient arguments showing that it would be a futile and ineffective means of legal protection for the regional religious association to submit such a request to the Prosecutor General.[[10]](#footnote-11)

4.9 Therefore, the State party submits that the communication is to be declared inadmissible under articles 1 and 3 of the Optional Protocol and Rule 96 (a) and (b) of the Rules of procedure of the Committee.

Author’s comments on the State party’s observations on the admissibility

5.1 On 5 January 2016, the authors reiterated that their communication concerns the censorship of religious publications under the State party’s 2011 Religion Law. At the suggestion of the State party, they requested the Committee to temporarily suspend its consideration to permit the parties to explore the possibility of reaching a settlement. The Committee, acting through its Special Rapporteur on new Communications and Interim measures, decided that the consideration of the communication be suspended until 18 July 2016. [[11]](#footnote-12)

5.2 On 18 July 2016, the authors indicated that the issue at stake has not been resolved and requested that the Committee resume its consideration of the case. They challenge the State party’s assertion that the communication is inadmissible because it was not submitted “personally” by the individual complainants Mr. Bekzhan, Mr. Weaver Jr., and Mr. Echtle. Rule 96 (b) states that “[n]ormally, the communication should be submitted by the individual personally or by that individual’s representative”. The three individual authors have authorized two lawyers as their representatives in the proceedings before the Committee. The communication therefore fully complies with the Committee’s rules.

5.3 The authors further disagree with the State party’s assertion that the communication is inadmissible because neither Mr. Weaver nor Mr. Echtle are Kazakh citizens and are therefore not subject to its jurisdiction. These authors are members of the board of directors of two foreign religious entities of Jehovah’s Witnesses in the United States of America and Germany that publishes and prints the religious literature of Jehovah’s Witnesses and then ships it to the State party for use by individual Jehovah’s Witnesses in their family and congregation study.

5.4 The State party’s courts accepted that these two foreign legal entities were adversely affected by the authorities’ decisions refusing import of that religious literature and had standing to appeal those decisions in court. The violation of rights occurred in the State party by its authorities and therefore the second and third author have standing to challenge the violation of their rights before the Committee.

5.5 In any event, the State party does not dispute the first author’s standing to bring this communication as a Kazakh citizen. He directly participated in all domestic proceedings and his standing to challenge the actions of the State party was never questioned in the domestic courts.

5.6 Finally, the authors rebut the State party’s assertion that the communication is inadmissible because they did not file a motion with the Prosecutor General requesting that he protest the case to the Supreme Court and reiterate that they appealed directly to the Supreme Court and their application for leave to appeal was dismissed. In this regard, they refer to the Committee’s jurisprudence, according to which a motion to a Prosecutor General requesting that it submit a supervisory protest to a Supreme Court is not an effective remedy.[[12]](#footnote-13) Furthermore, in this case the Supreme Court had already refused leave to appeal. The authors have thus exhausted all available and effective domestic remedies.

5.7 Additionally, the authors recall that the Committee agreed to temporarily suspend for a period of six months the communication based on the request by the State party that the three authors submit motions to the Prosecutor General to protest their case to the Supreme Court. The authors did so. However, at the end of that six month period, the Prosecutor General's office did not protest the case to the Supreme Court and took no decision on the case.

State party’s observations on the merits

6.1 By Note verbale of 2 May 2016, the State party submitted its observations on the merits. It states that under Article 9 of the Law on Religious Activity and Religious Associations (‘the Law’), informational material with religious content may be imported into the State party only by registered religious associations after receiving a positive conclusion of a religious expert examination. According to Article 4(6) of the Law, and the Guidelines for Conducting a Religious Expert Examination, confirmed by ruling No. 1311 of the Government of 15 October 2012, the performance of religious expert examinations is cared for by the Agency for Religious Affairs.

6.2 The Christian Centre requested the Agency for Religious Affairs to perform a religious expert examination and provided copies of the magazines *Awake!* and *The Watchtower* as well as of the brochure *Examining the Scriptures Daily 2013* in Kazakh and Russian. Seventy-nine materials were submitted, out of which thirty-nine received positive conclusions. Twenty-three materials were returned at the request of the Christian Centre of Jehovah’s Witnesses without examination. Seven were being studied. Ten publications received a negative conclusion denying import into the State party: the November 2012 issue of *Awake!* magazine (in Russian); the 15 January 2013, 15 February 2013 and 15 March 2013 issues of *The Watchtower* (in Russian and Kazakh); the October–December 2012 issue of *The Watchtower* in Kazakh; and the brochure *Examining the Scriptures Daily*—*2013* (in Russian and Kazakh).

6.3 According to the religious expert examination, the ten negatively assessed publications contain calls to incite social and religious discord; ideas on the superiority of one’s own religion, promoting the forming of a negative attitude toward other religions; ideas promoting the break-up of family relationships; and ideas that create a negative attitude toward political organizations as well as toward traditional and world religions, with propaganda of the desirability and necessity of destroying all religions.

6.4 In court, the Christian Centre disputed the results of the expert examination and stated that the state agency was infringing on freedom of religion. The Specialized Inter-district Economic Court of the City of Astana by its 3 July 2013 decision denied the claim of the Regional Religious Association ‘Christian Centre of Jehovah’s Witnesses’ against the Agency for Religious Affairs to declare unlawful the expert conclusion denying import of the religious journalistic publications and to require that the violation be remedied. In its 27 August 2013 ruling the appellate chamber for civil and administrative cases of the Astana City Court upheld this decision. The appellate court’s ruling was upheld on 6 May 2014 by the Cassation Court of the city of Astana. In its 4 September 2014 ruling, the Supreme Court refused to initiate supervisory review proceedings.

6.5 As to the merits, the State party submits that as established during judicial proceedings, as a result of religious expert studies signs of incitement of social and religious discord were discovered in the content of said magazines and booklet. According to article 20 (2) of the Covenant, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. The State party refers to General Comment No. 22 of the Committee establishing that no manifestation of religion or belief may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.[[13]](#footnote-14)

6.6 The State party refers to the limitations set up by articles 18(3) and 19(3) of the Covenant. Based on the Siracusa principles on the limitation and derogation provisions in the Covenant, the expression ‘public order’ as used in the Covenant may be defined as the sum of rules which ensures the functioning of society or the set of fundamental principles on which a society is founded. Respect for human rights is part of the public order. Legal conditions are ensured in the State party for realising, protecting and respecting the rights and freedoms of each person when manifesting religion or belief, including by the prohibition of discrimination on the basis of attitude toward religion.

6.7 The State party, in strict conformity with its obligations under articles 18(3), 19(3) and 20(2) of the Covenant, has enshrined in domestic legislation the relevant norms prohibiting propaganda of religious hatred and enmity, including under penalty of criminal prosecution. For example, according to the provisions of the Law on Counteracting Extremism, incitement of religious enmity or discord is a form of extremism (Article 1) and, pursuant to the Law on National Security (Article 6(1)(8)), it constitutes one of the primary threats to national security. Article 12 of the Law on Counteracting Extremism prohibits the use on the territory of the State party of networks or communication tools to carry out extremism, as well as the import, production, preparation and/or distribution of extremist materials. Natural persons may incur criminal accountability for violation of these legal norms (Article 174 of the Criminal Code), while organisations may be declared extremist and banned by a court. In this regard, performing a religious expert examination as prescribed by the Religion Law (articles 6 and 9(3)) has the objective of preventing the import and dissemination of religious literature and other religious informational materials that advocate religious hatred and enmity. Thus, a religious expert examination prevents any potential opportunity for importing and distributing materials that advocate hatred and enmity on religious grounds, including toward followers of the community of Jehovah’s Witnesses themselves.

6.8 Moreover, in regard to the individual publications of Jehovah’s Witnesses under consideration, the State party applied necessary, proportionate and minimal restrictive measures; their import was simply not permitted. Additionally, although there were legal grounds, the State party did not initiate proceedings in court to declare the publications of Jehovah’s Witnesses to be extremist material and to prohibit their distribution, including distribution by means of the Internet or other communication networks. Currently, followers of the community of Jehovah’s Witnesses on the territory of the State party can read and use these publications, which can be freely accessed on the Internet.

6.9 According to article 9(3) of the Religion Law, followers of the community of Jehovah’s Witnesses have the opportunity to import the publications but for their personal use. Moreover, denying import of these individual publications, being proportionate, necessary and minimal, in no way hindered the followers of Jehovah’s Witnesses from manifesting their religion or from freely seeking, receiving and imparting information and ideas of all kinds. Therefore, the rights of believers enshrined in Articles 18 and 19 of the Covenant were not violated; the denial of import into the State party of 10 copies of publications of the religious association ‘Christian Centre of Jehovah’s Witnesses’ is based on law and was motivated by implementation of article 20(2) of the Covenant regarding the prohibition on advocacy of religious hatred and enmity.

6.10 As to the alleged violation of article 27 of the Covenant (since the authorised agency for religious affairs denied import of the publications listed earlier), the State party maintains that the religious association of Jehovah’s Witnesses has never been denied the right to practise their religion together with other members of the same group. The denial of import of the ten publications has been erroneously and groundlessly presented as a denial by the State of the realisation of the right to profess a religion. As not disputed by the authors, there are now in the State party over 17 000 followers of the religious association ‘Jehovah’s Witnesses’, they freely use their religious literature, their community has 55 buildings of worship and they are united in 59 registered local religious associations and 1 regional religious association, which carry out their activity autonomously and independently. Therefore, in the State party, the rights of Jehovah’s Witnesses are being realised in conformity with the provisions of article 27 of the Covenant.

6.11 The State party considers the counsel’s assertion that its Religion Law ‘contravenes the international human rights obligations of Kazakhstan’ to be unacceptable, groundless and erroneous and in excess of his authority as a lawyer. The Law was adopted taking into account the opinion of representatives of the main religious communities in the State party, international legal documents and international practice in the sphere of freedom of religion; it does not contravene them. For example, article 3 (10) of this Law, which prohibits the creation and activity of religious associations whose goals and activity are aimed at inciting religious enmity and discord, is in complete harmony with article 20 (2) of the Covenant. Moreover, information on the compliance of this Law with the Covenant and other international legal documents is set forth in detail in the comments of the State party on the report of the UN Special Rapporteur on freedom of religion or belief.[[14]](#footnote-15)

6.12 The examples of case law of the European Court of Human Rights (ECHR) referred to by the authors and the recommendations of the Parliamentary Assembly of the Council of Europe (PACE) are inappropriate and not applicable to the State party, such as for the consideration by the Committee of this communication. First, the State party is not a party to the Convention on the Protection of Human Rights and Fundamental Freedoms. It is not a member of the Council of Europe and by force of the peremptory provisions of article 26 of the Vienna Convention on the Law of Treaties dated 23 May 1969, did not assume the obligations of it. Second, the Covenant and the Optional Protocol to the Covenant do not contain provisions allowing for the citing of decisions of other convention bodies for the protection of human rights and freedoms during the consideration of individual communications within the framework of other international organisations. In view of article 2(1) of the Covenant, article 1 of the Optional Protocol to the Covenant and para. 3 of General Comment No. 31 of the Committee dated 29 March 2004, decisions by the ECHR and PACE do not create and cannot create international legal obligations for the State party, including the use of such for the purpose under discussion.

6.13 In the State party’s opinion, the authors inappropriately cited judgment No. 1 of the Constitutional Council of 11 February 2009. This judgment was rendered in connection with an assessment of whether the Law on Amendments and Additions to Certain Legislative Acts Regarding Freedom of Worship and Religious Associations[[15]](#footnote-16) complies with the Constitution. The Constitutional Council found the Law to be not in compliance with the Constitution. In accordance with Article 74(1) of the Constitution, the Constitutional Council ruled that the Law should not be signed and enacted. Therefore, judgment No. 1 of the Constitutional Council is not related and does not apply to the Law on Religious Activity and Religious Associations.

6.14 The State party interprets the authors’ conclusion such as the right to freedom of religion is absolute and cannot be limited and challenges it. In General Comment No. 22 the Committee emphasised that article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. That article does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19(1) of the Covenant. Based on this as well as on article 18(3) of the Covenant, freedom to manifest religion or beliefs and the rights in article 19(3) of the Covenant may be limited by law only for the protection of public order and the fundamental rights and freedoms of others. In this connection the State party notes that the Constitution and the laws do not contain and do not allow any kind of limitations on freedom of thought and conscience, on freedom to have or to adopt a religion or beliefs of one’s choice, that is, everyone has the right to subscribe or not to subscribe to any religion.

6.15 The Religion Law, being based on the Constitution and not contravening the provisions of the Covenant, determines the procedure for realisation of the right to manifest religion, including importation of religious literature or religious information material. Moreover, an institute of religious expert examinations in combination with the norm in article 9(3) of the Religious Law does not affect the realisation of everyone’s right to the freedom to have or adopt a religion or belief of one’s choice, which fully complies with the requirements of article 18(2) of the Covenant.

6.16 The institute of religious expert examinations is not an instrument of censorship and discrimination for limiting the activity of the community of Jehovah’s Witnesses in the State party. According to article 20(1) of the Constitution, censorship is prohibited in the State party. The decision of the authorised agency, based on the religious expert examination, has affected only ten copies of publications of Jehovah’s Witnesses; their content had signs of propaganda of religious intolerance and enmity. Most of the publications of Jehovah’s Witnesses, after undergoing a religious expert examination and receiving a positive conclusion, are imported and distributed in the State party without hindrance. For example, in 2014 a religious expert examination was conducted on 99 religious informational materials of Jehovah’s Witnesses, of which only 13 (*13%*) of the materials were given a negative expert conclusion; in 2015, of 64 religious informational materials of Jehovah’s Witnesses a negative expert conclusion was issued regarding 6 (*10%*) of the materials. The State party submits that the communication should be rejected because it is inadmissible and groundless.

Author’s comments on the State party’s observations

7.1 On 19 September 2016, the authors noted that the State party does not dispute any of the facts set out in the complaint, including: (a) that the 2011 Religion Law does not provide any criteria the Agency of Religious Affairs (“ARA”, now the “Committee of Religious Affairs”) must follow when deciding whether to reject a religious organisation’s request to import religious literature; (b) that a religious organisation is prohibited from importing religious literature into the State party without ARA’s approval and (c) the facts of this particular case.

7.2 The State party also does not dispute the religious belief of Jehovah’s Witnesses[[16]](#footnote-17) to which ARA objected and the blatant errors ARA made when mischaracterizing those beliefs, which proves further the hazards of a state-sanctioned inquiry into the legitimacy of religious believes.

7.3 The authors maintain that neither of the State party objections to the reference to the jurisprudence of the European Court of Human Rights (ECHR) and the 11 February 2009 judgment of the Constitutional Council has any merit. The jurisprudence of the ECHR, although not binding on the State party, is persuasive authority when interpreting similar rights and freedoms guaranteed by the Covenant. The 11 February 2009 judgment of the Constitutional Council interprets the constitutional right to freedom of religion and the prohibition against arbitrary State action and is obviously relevant in showing that even under domestic law, ARA’s decisions and actions were unlawful.

7.4 The “reasons” given by the State party for prohibiting the import of the religious publications in questions do not satisfy the requirements of article 18 (3) and article 19 (2) of the Covenant. Nothing in the religious publications of Jehovah’s Witnesses contains calls to violence or incitement to religious hatred. This is self-evident from the content of those publications and the fact those same publications have been peacefully used and distributed by Jehovah's Witnesses worldwide in tens of millions of copies.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

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 notes the State party’s claim that neither the counsel, nor the foreign religious associations in whose name the communication was also submitted, are under its jurisdiction, and that these religious associations are not parties in legal relations concerning import of religious informational materials to its territory, and therefore lack status to submit a communication before the Committee. In this regard, the Committee also notes the authors’ argument to the effect that the violation of rights occurred in the State party by its authorities and therefore the second and third author, although not Kazakh citizens, have standing to challenge the violation of their rights before the Committee. The Committee further notes that the second and third authors are members of the board of directors of two foreign religious entities of Jehovah’s Witnesses that publishe, print and ship to the State party the religious literature for use by Jehovah’s Witnesses. The State party’s courts accepted that these two foreign legal entities were adversely affected by the authorities’ decisions refusing permission to import the religious literature and so had standing to appeal the refusal that has affected the exercise of their rights in the State party before the domestic courts. For these reasons the Committee finds that the authors have demonstrated that they have been directly affected by the refusal of import of religious literature by the State party and that they were subject to the jurisdiction of the State party.[[17]](#footnote-18) Furthermore, the Committee notes the State party’s assertion that the communication is inadmissible because it was not submitted “personally” by the individual authors. The Committee, however, observes that the three individual authors have duly authorized two professional lawyers as their representatives in the proceedings before the Committee. The Committee notes in this regard that the State party has not disputed the first author’s standing to bring the communication as a Kazakh citizen. Accordingly, the Committee concludes it is not precluded by article 1 of the Optional Protocol from considering the communication.

8.4 The Committee further notes the State party’s argumentation to the effect that the authors’ claim on behalf of all Jehovah’s Witnesses on its territory amounts to an *actio popularis*. The Committee also notes that the authors do not provide authorizations from the 17,500 Jehovah’s Witnesses in the State party to act on their behalf, nor do the authors explain the reasons why they can represent these persons. Accordingly, and in the absence of further pertinent information on file, the Committee concludes that this part of the communication is inadmissible under articles 1 and 3 of the Optional Protocol.

8.5 The Committee further notes the authors’ claim that all available domestic remedies have been exhausted. It also notes the State party’s observation that the authors have not requested the Prosecutor General to initiate supervisory review proceedings before the Supreme Court and have thus failed to exhaust domestic remedies. In this regard, the Committee notes that the authors appealed directly to the Supreme Court for a supervisory review but their application was dismissed. The Committee also recalls its jurisprudence, according to which a petition for supervisory review to a Prosecutor’s Office, dependent on the discretionary power of the prosecutor to review court decisions that have taken effect, does not constitute a remedy which has to be exhausted for the purposes of article 5 (2) (b), of the Optional Protocol. [[18]](#footnote-19) Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

8.6 The Committee notes the authors’ claims under article 27 of the Covenant that the decisions by the State party’s authorities denying permission to import the ten religious publications have denied members of the religious minority the right to profess and practice their own religion as this religious literature was crucial to the regular religious worship of Jehovah’s Witnesses in the State party. The Committee further notes the State party’s observations that out of seventy-nine materials submitted for expert examination, thirty-nine of them received positive conclusions, twenty-three were returned at the request of the Christian Centre of Jehovah’s Witnesses without an expert examination having been performed, seven materials were being studied and ten publications received a negative conclusion denying their import. It also notes the State party’s submission that the religious association of Jehovah’s Witnesses has never been denied the right to practise their religion together with other members of the group, and as not disputed by the authors, there are over 17,000 followers of the religious association ‘Jehovah’s Witnesses’ in the State party, they freely use their religious literature, their community has 55 buildings of worship, and they are united in 59 registered local religious associations and one regional religious association. In light of the above considerations, and in the absence of any further information or explanations, the Committee concludes that the authors’ claim under article 27 of the Covenant is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

8.7 The Committee considers that the remaining claims of the authors under articles 18 and 19 of the Covenant have been sufficiently substantiated for the purposes of admissibility. Accordingly, it declares them admissible and proceeds with their consideration on the merits.

Consideration of the merits

9.1 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.

9.2 In relation to the authors’ claim under article 18 (1) of the Covenant, the Committee recalls that the freedom to manifest one’s beliefs in worship, observance, practice and teaching encompasses a broad range of acts, including those integral to the conduct by the religious group of its basic affairs, such as the freedom to choose religious leaders, priests, and teachers, and the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.[[19]](#footnote-20) Furthermore, under article 18 (3) of the Covenant, the freedom to manifest one’s religion or beliefs is not absolute but 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 that the authors were not allowed to import religious publications. Such a restriction interferes with the right to freedom of religion. Consistent with its general comment No. 22, the Committee considers that the freedom to prepare and distribute religious texts or publications forms part of the authors’ right to manifest their beliefs and that the refusal to permit the importation of the religious publications constitutes a limitation of that right.

9.3 The Committee must decide whether the limitation on the authors’ right to manifest their religion was “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 its general comment No. 22, which states that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified therein, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security.[[20]](#footnote-21) The Committee further recalls that, in interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26.[[21]](#footnote-22)

9.4 The Committee notes that the State party advanced detailed arguments as to why it was necessary, for the purposes of article 18 (3), to refuse the import of the religious publications in question, notably that these publications according to ARA contained ideas that, ‘discourage secular education’, ‘can cause family breakup’ and ‘its teachings are superior and reject the fundamental teachings of traditional Christianity’ as well as propagate religious hatred and enmity. The Committee notes that the State party alleges that the ten publications contain calls to incite social and religious discord; ideas on the superiority of one’s own religion that promote a negative attitude toward other religions; ideas promoting the break-up of family relationships; and ideas that create a negative attitude toward political organizations and world religions.

9.5 The Committee also notes the authors’ contentions that the 2011 Religion Law provides no criteria for the Agency of Religious Affairs (now the “Committee of Religious Affairs”) to follow when deciding whether to reject a religious organisation’s request to import religious literature, and that a religious organisation is prohibited from importing religious literature into the State party without ARA’s approval. It also notes the authors’ submission that the State party did not dispute the religious belief of Jehovah’s Witnesses to which ARA objected and the errors ARA made when mischaracterizing those beliefs, which proves further the hazards of a state-sanctioned inquiry into the legitimacy of religious believes. It further takes note of the authors’ arguments that the “reasons” given by the State party for prohibiting the import of the religious publications in question do not satisfy the requirements of article 18 (3) and article 19 (2) of the Covenant because, they claim, the religious publications of Jehovah’s Witnesses contain no calls to violence or incitement to religious hatred, and those same publications have been peacefully used and distributed by Jehovah's Witnesses worldwide.

9.6 The Committee reiterates that article 18(3) of the Covenant must be strictly interpreted; limitations on article 18 (1) of the Covenant must be prescribed by law, 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.[[22]](#footnote-23) The Committee observes that the authors have sufficiently substantiated the interference with their rights and, therefore, the burden of proof has shifted to the State party to justify the limitation imposed.[[23]](#footnote-24) Further, the Committee recalls that when a State party invokes a ground in order to restrict freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.[[24]](#footnote-25) In the present case, the Committee notes the authors’ claim that the Religion Law of 2011 does not prescribe criteria on which the expert examination of religious literature is based. The reasons given for disapproving the importation of some of the authors’ publications suggest there is ample room for disapproval for arbitrary or other prohibited reasons, such as disagreement by the State or other religions with the religious principles expressed in the literature. Furthermore, religious freedom is particularly necessary to protect the rights of those who adhere to unpopular beliefs. The importation ban that the 2011 Law may produce is also problematic in light of Article 19, which guarantees “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers.” In addition, the Committee notes that in the present case, the State party has failed to substantiate its responses to authors’ claims or provide any examples to show how the prohibited publications threaten any of the interests protected by article 18(3). The Committee further notes that since the very publications are freely accessible on the internet and can be imported for personal use, as claimed by the State party, it is difficult to sustain that it was necessary to prohibit their importation by the authors. In these circumstances, the Committee finds that the limitation has not been shown to serve any legitimate purpose identified in article 18 (3); and nor has the State party shown that this limitation of the right to manifest religion is proportionate to a legitimate purpose that it might serve. The Committee accordingly considers that the State party failed to justify the restrictions on the manifestation of the authors’ religion, and concludes that the refusal of permission to import the religious publications in question is contrary to the freedom to manifest one’s religion, and it therefore amounts to a violation of the authors’ rights under article 18 (1) of the Covenant.

9.7 In the light of its finding, the Committee will not independently examine the authors’ claims under article 19 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 authors’ rights under article 18 (1) 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, (a) remove the restrictions on the right of the authors to import the ten religious publications; (b) take appropriate steps to provide the authors with adequate compensation, including for legal expenses and fees; and (c) review its legislation, regulations and practices with a view to ensuring that the rights under article 18 of the Covenant may be fully enjoyed in the State party. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

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 and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or 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 present Views. The State party is also requested to publish the present Views and to disseminate them widely in the official languages of the State party.

1. \* Adopted by the Committee at its 130 th session (12 October–6 November 2020). [↑](#footnote-ref-2)
2. \*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Schuichi Furuya, Christoph Heyns, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, and Gentian Zyberi.Pursuant to rule 108 (1) (a) of the Committee’s rules of procedure, Andreas Zimmermann and David Moore did not participate in the examination of the communication. [↑](#footnote-ref-3)
3. The authors refer to the Committee’s jurisprudence in *Howard v. Canada*, communication No. 879/1999, para. 8.3. and *Lubicon Lake Band v. Canada*, communication No. 167/1984, paras. 2.2, 29.1, 31.1 and 32. [Note of the Secretariat: The communication does not provide authorization of the 17,500 Jehovah’s Witnesses. Nor the authors explain the reasons why they can represent these persons.] [↑](#footnote-ref-4)
4. Cf. The European Court of Human Rights, Kuznetsov and Others v. Russia, no. 184/02, January 2011, para. 57. [↑](#footnote-ref-5)
5. The authors refer to General Comment No. 22, para. 3 and Atasoy v.Turkey, communication No. 1853/2008 and 1854/2008, views adopted on 29 March 2012, para. 10.4. [↑](#footnote-ref-6)
6. Cf. Leven v. Kazakhstan, communication No. 2131/2012, views adopted on 5 January 2015, para. 9.3. [↑](#footnote-ref-7)
7. Cf. Malakhovsky et al. v. Belarus, communication No. 1207/2003, para. 7.6, and Leven v. Kazakhstan, communication No. 2131/2012, para. 9.3. [↑](#footnote-ref-8)
8. Cf. Turchenyak et al. v. Belarus, communication No. 1948/2010, paras. 7.7 and 7.8. [↑](#footnote-ref-9)
9. The State party refers to General Comment No. 31, para.9 and relevant jurisprudence of the Committee: (communications Howard *v. Canada*, (CCPR/C/84/D/879/1999), para. 8.3. The Committee noted regarding the inadmissibility, that the communication could be understood to have been brought on behalf of other individuals or groups of individuals; however, the author had provided neither authorization by such persons nor any arguments to the effect that he would be in the position to represent before the Committee other persons without their authorization. The Committee found the communication inadmissible under article 1 of the Optional Protocol, to the extent it could be understood to have been submitted on behalf of persons other than the author personally. See also communication No. 167/1984, Views adopted on 26 March 1990, para. 32.1. [↑](#footnote-ref-10)
10. For example, the Committee declared inadmissible communication No. 220/1987 dated 8 November 1989 (37th session) T. K. v. France, holding that “[m]ere doubts on the part of the applicant regarding the effectiveness of a particular remedy will not absolve him or her from the obligation to try it.” [↑](#footnote-ref-11)
11. The State party, however, submitted its observations on the merits dated 28 April 2016 by a Note verbal of 2 May 2016. [↑](#footnote-ref-12)
12. Communication No. 836/1998, Gelazauskas v. Lithuania, Views adopted on 17 March 2003, para. 7.2; communication No. 1100/2002, Bandajevsky v. Belarus, Views adopted 28 March 2006, para. 10.13; and communications Nos. 623-627/1995, Domukovsky et al. v. Georgia, Views adopted on 6 April 1998, para. 18.11. [↑](#footnote-ref-13)
13. General Comment No.22, para. 7. Cf. General Comment No. 11, para. 2: these required prohibitions are fully compatible with the right of freedom of expression as contained in article 19, the exercise of which carries with it special duties and responsibilities. Moreover, the Committee noted that for Article 20 of the Covenant to become fully effective there ought to be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation. [↑](#footnote-ref-14)
14. Professor Heiner Bielefeldt (document UN A/HRC/28/66/Add.3 dated 27 January 2015). [↑](#footnote-ref-15)
15. Adopted by the Parliament of the Republic of Kazakhstan on 26 November 2008 and submitted for signature to the President of the Republic of Kazakhstan on 2 December 2008. [↑](#footnote-ref-16)
16. As described and explained in the initial communication. [↑](#footnote-ref-17)
17. See General Comment No. 31 on The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (CCPR/C/21/Rev.1/Add.13), para.10 [↑](#footnote-ref-18)
18. Communication No. 1873/2009, *Alekseev v. the Russian Federation*, Views adopted on 25 October 2013, at para 8.4. [↑](#footnote-ref-19)
19. See general comment No. 22, para. 4, and, for example, communication No. 721/1996,  
    Boodoo v. Trinidad and Tobago, Views adopted on 2 April 2002, at para. 6.6. [↑](#footnote-ref-20)
20. See general comment No. 22, para.8. [↑](#footnote-ref-21)
21. See general comment No. 22, para. 8. [↑](#footnote-ref-22)
22. General Comment No. 22, para 8. [↑](#footnote-ref-23)
23. General Comment No. 34, para 27. [↑](#footnote-ref-24)
24. General Comment No. 34, para 35. [↑](#footnote-ref-25)