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**Human Rights Committee**

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2832/2016[[1]](#footnote-1)\*,[[2]](#footnote-2)\*\*,[[3]](#footnote-3)\*\*\*

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| *Communication submitted by:* | Irada Huseynova, Elgiz Aliyev, Elyar Bakirov, Anar Huseynov and Asif Dzhafarov (represented by counsel, Daniel Gordon Pole and Petre Muzny, acting as counsel) |
| *Alleged victims:* | The authors |
| *State party:* | Azerbaijan |
| *Date of communication:* | 13 September 2016 (initial submission) |
| *Document references:* | Decision taken pursuant to rule 97 of the Committee’s rules of procedure (now rule 92), transmitted to the State party on 2 November 2016 (not issued in document form) |
| *Date of adoption of Views:* | 14 July 2023 |
| *Subject matter:* | Arbitrary arrest and detention; home search; fine imposed on Jehovah’s Witnesses for religious worship without official registration as a religious association. |
| *Procedural issues:* | Exhaustion of domestic remedies; level of substantiation of claims |
| *Substantive issues:* | Arbitrary arrest and detention; discrimination; freedom of religion; freedom of peaceful assembly; freedom of expression |
| *Articles of the Covenant:* | 9 (1), 17 (1), 18 (1), (3), 19 (2), (3), 21, 22 (1) and (2), 26 and 27 |
| *Articles of the Optional Protocol:* | 2, 3 and 5 (2) (b) |

1. The authors of the communication are Irada Huseynova, born on 24 December 1974, Elgiz Aliyev, born on 29 April 1983, Elyar Bakirov, born on 6 January 1985, Anar Huseynov, born on 11 September 1986, all nationals of Azerbaijan, and Asif Dzhafarov, a Ukrainian national born on 20 January 1957. They claim that the State party has violated their rights under articles 9 (1), 18 (1) and (3), 19 (2) and (3), 21, 22 (1) and (2), 26 and 27 of the Covenant and Ms. Huseynova’s rights under article 17 (1) of the Covenant. The Optional Protocol entered into force for Azerbaijan on 27 November 2001. The authors are represented by counsels.

Facts as presented by the author

2.1 The authors are all Jehovah’s Witnesses and associate together for the religious worship, study and discussion of holy books according to their Christian belief. On 11 January 2014, a group of 36 people gathered at Ms. Huseynova’s home in Ganja for religious discussion. During the meeting, the police entered the author’s home without permission, searched each person and seized personal property, including holy books. The authors were taken into custody and to the police station where they were held for over 7 hours during which they were denied food and drinks. Children and elderly people among the group were also denied food. The police told the authors that “it was not their problem” that the children were hungry and mocked their faith by telling them to “read the Koran”. They were brought before a trial court that evening to convict them immediately. After strong objections from them, the judge adjourned the trial to 23 January 2014.

2.2 On 23 January 2014, the authors filed motions attaching statements to terminate the proceedings against them, proving that their gathering had been peaceful. These were rejected and the authors were convicted by the Kapaz District Court for attending an unauthorized religious meeting under article 299.0.2 of the Code of Administrative Offences (CAO) and fined 1,800 AZN.[[4]](#footnote-4) Although the complainants met for religious purposes, they were not members of the legal entity of Jehovah’s Witnesses registered in Baku. The author’s claimed before the Court that they had applied to be registered as an association in Ganja, but this had been refused. They claimed that their meeting was an act of religious worship and that it is the custom for Jehovah’s Witnesses to meet in Kingdom Halls or private homes. The trial judge nevertheless considered it to be a “religious activity” for which the authors had not obtained the appropriate official permission.

2.3 Ms. Huseynova was unable to pay the full amount of the fine and was jailed on two occasions each time for three days, the same for Mr. Bakirov who was jailed for ten days.

2.4 The authors appealed their conviction before the Court of Appeal of Ganja, relying on the Constitution of Azerbaijan, the Law on Freedom of Religious Belief and the Law on Freedom of Assembly. The authors also detailed how their rights under the Covenant and the Universal Declaration of Human Rights had been violated. In their appeal, the authors claimed that their meeting was peaceful, not prohibited by any domestic law, that it did not endanger public order, and that the State had not provided any evidence to prove that it was necessary to raid the home.

2.5 The Court of Appeal dismissed all the authors’ appeals and ruled that the restrictions to the freedom of religion were “precise, attainable, and prescribed by law”, thus confirming the first instance decision. The Court of Appeal also dismissed, as completely without ground, and without providing further analysis, the authors’ claims regarding the unlawful entry and search of a private home.

2.6 As all the authors’ appeals were dismissed, they claim to have no further domestic remedies available.

Complaint

3.1 The authors claim that their convictions under the CAO violate their rights under articles 9 (1), 17 (1), 18 (1) and (3), 19 (2) and (3), 26 and 27 of the Covenant.

3.2 The authors claim that all those who were meeting at Ms. Huseynova’s home, including children, elderly persons, and persons with disability, were ordered and forced to go to the police station where they were detained for over seven hours. The authors were not free to leave at any time and claim that the conduct of the police met the definition of “arrest” as set out by the Committee.[[5]](#footnote-5) At the police station, some parents were not given permission by the police to get food for their children. The authors claim that their arrest was illegal, as its purpose was not investigatory but to intimidate and coerce them from exercising their freedom of belief, assembly and association. The abusive speech by the police against the authors’ beliefs during their detention is evidence of this. Although the courts ruled that the Religion Law allowed for the police to investigate the authors’ meeting because it was illegal, the authors claim that this is wrong, as such meetings are not prohibited under the law. The authors insist that, even though an arrest or detention may be authorized by domestic law, it nonetheless can be arbitrary.[[6]](#footnote-6) The authors further claim that the police did not prove before the domestic courts that their arrest and detention was necessary, as they were peacefully exercising their freedom of religion, association, and assembly. The authors point to a judgement of the European Court of Human Rights and an Opinion of the Working Group on Arbitrary Detention, which have highlighted the unnecessary and disproportionate character of the detention of Jehovah’s Witnesses peacefully exercising their freedom of religion and belief.[[7]](#footnote-7) The authors therefore claim that their arrest and detention was arbitrary and violated their rights under article 9 (1) of the Covenant.

3.3 The authors claim a violation by the State party of their rights under articles 18 (1) and (3) of the Covenant, due to the courts’ decision regarding the lawfulness of the police raid without a warrant and the fact the authors were fined – and jailed in the case of two authors – for holding a religious meeting. The authors claim that during their arrest, they were subjected to abuse[[8]](#footnote-8) and coercion and personal religious literature was confiscated. The authors reiterate that, despite the courts’ assessment, they were not required to obtain permission to organize a religious gathering. Their conviction cannot be justified as necessary to “protect public safety, order, health or morals, or the fundamental rights and freedoms of others”, under the standard set out under article 18 (3). The authors highlight that the Committee has already found the requirement for registration prior to the exercise of the freedom of religion as a disproportionate limitation to the rights protected under article 18 (1) and thus incompatible with the requirements under article 18 (3). Although the courts relied on the domestic laws to justify the police actions, the authors claim that they failed to consider the inconformity of such laws with the Covenant, and thus favoured the rule *by* law rather than the rule *of* law. The authors claim that the police’s raid in a non-urgent situation did not pursue a legitimate aim and that the courts expressly justified the discriminatory nature of the police’s conduct by referring to the “reaction of the public” as “appropriate”. Finally, the authors claim that the State party did not provide any argument as to why it was necessary, for the purposes of article 18 (3), to prohibit their peaceful religious service or to convict, fine and jail them.

3.4 The authors claim that the State party violated their rights under article 19 (2) and (3), in light of the recognition by the Committee that the freedom of expression includes “teaching, and religious discourse”.[[9]](#footnote-9) They claim that the State party interfered with their right to seek, receive and impart information, relying *mutatis mutandis* on their arguments regarding their claims raised under article 18 of the Covenant. They reiterate that their meeting in a private home for peaceful religious teaching and discourse did not represent any threat to public order and that the State party is unable to justify that its interference met the strict tests of necessity and proportionality. The authors rely on the Committee’s jurisprudence to claim that the fact they were not part of a locally registered religious association did not justify the police action. The admission by the Court of Appeal that it approved the police raid because it reflected public prejudices against the authors’ religion is very troubling. The authors further claim that the police’s conduct was completely disproportionate and that their arrest, the fines, and jail terms were excessive. They claim that the true motives of the police’s conduct are revealed by the religious abuse which they subjected all detained persons to.

3.5 The authors claim the courts’ justification for the police investigation, raid, their detention, and conviction on the grounds that they were not a locally registered group, is a violation of their rights to freedom of peaceful assembly and association protected under articles 21 and 22 of the Covenant. They claim that the illegal differentiation between a registered and an unregistered religious association underpinned the State party’s conduct, which the Committee has found to consist in a violation of the right to freedom of religion. The authors reiterate that both the Religion Law and CAO do not require a group of believers to be registered to worship together.

3.6 As an unincorporated group of Jehovah’s Witnesses who worship outside Baku and who have been denied registration as a religious association, the authors claim they are even not allowed the same rights as Jehovah’s Witnesses registered elsewhere in the country. They claim to have been subjected to discriminatory abuse and insults by State authorities that denigrated their religious beliefs (see *supra* para. 2.1). The authors claim that they were victimized as a members of a minority religion, and that the Court of Appeal tolerated discrimination by stating it believed that “the reaction of the public” toward them was “appropriate and in accordance with the law”. The authors rely *mutatis mutandis* on their claims under articles 9, 17, 18, 19, 21 and 22 to substantiate their claims of a violation by the State party of articles 26 and 27 of the Covenant.

3.7 Ms. Huseynova claims that the State party violated the privacy and security of her home guaranteed under article 17 (1) of the Covenant, as the police entered her home without permission, warrant or identification. The author contests the domestic courts’ assessment that the interference with her home was prescribed by the Religion Law. For the reasons set out in relation to the authors’ claims under articles 18 and 19, the author claims that the State party’s interference with her home was arbitrary and unlawful.

3.8 The authors request the Committee to urge the State party to provide them with an effective remedy, which includes: (a) the removal of all restrictions, including laws, regulations and decrees, on the authors’ right to freely associate for religious purposes; (b) monetary compensation for the moral damages suffered as a result of the unlawful actions of the Ganja City Kapaz Police; (c) monetary compensation to Ms. Huseynova and Mr. Bakirov for their unlawful incarceration; (d) the reversal of any monetary penalty imposed and return with interest of any money paid, and; (e) suitable monetary compensation for the legal expenses and fees incurred during the domestic proceedings and proceedings before the Committee.

State party’s observations on admissibility and the merits

4.1 In a note verbale dated 28 September 2022, the State party submitted its observations on the admissibility and the merits of the communication.

4.2 With regard to the facts presented in the communication, the State party clarifies that the police intervened in a religious ceremony and invited the authors to the police station on the account that their religious meeting contravened the Law on Freedom of Religious Beliefs and thus constituted an offence under article 299.0.2 of the Code of Administrative Offences (COA). Once the authors had provided explanations and the police had conducted the administrative protocols, the authors left the police station. The City Kapaz District Court found that the authors had violated article 299.0.2 of the COA, which was confirmed on appeal by the Ganja Court of Appeal.

4.3 On the admissibility of the communication, the State party submits that the authors have only exhausted the domestic remedies with regard to the administrative offences they committed and that the cases before domestic courts did not concern the alleged violations of their rights. The authors should have lodged separate complaints before domestic courts and authorities, such as the Prosecutor’s Office, in relation, for example, to the allegations of violations of their rights to liberty, home, freedom of expression and freedom of association. The State party highlights that the authors’ appeals against the first instance decisions cannot be considered sufficient for the exhaustion of domestic remedies in respect to their claims under articles 9 (1), 17 (1), 18 (1) and (3), 19 (2) and (3), 21, 22 (1) and (2), 26 and 27 of the Covenant, as these are not separate complaints. The scope of the decisions in the appeals procedure was not the alleged violations of the authors’ rights, but the administrative offences they had committed. In addition, the State party submits that the outcome of the appeals procedure under the COA could not provide a remedy for the alleged violation of the authors’ rights. These could only be expected to remedy the imposed fines but would not effectively remedy the alleged breaches of the authors’ rights under the Covenant. The State party therefore submits that, by failing to raise before domestic courts their claims under articles 9 (1), 17 (1), 19 (2) and (3), 21, 22 (1) and (2), 26 and 27 of the Covenant, these claims by the authors should be declared inadmissible under article 5 (2) of the Optional Protocol.

4.4 With regard to the authors’ claims under articles 26 and 27 of the Covenant, the State party submits that these should be declared inadmissible for lack of substantiation, as the authors failed to provide details about their request for registration as a religious association, or about the verbal abuse they claim to have been subjected to.

4.5 On the merits of the communication, the State party firstly submits that the authors were not arrested or detained. It refutes the authors’ allegations and submits that they were not taken by force to the police station but were merely invited to the police station for their explanations and to compile relevant documents. As the authors were suspected of holding an unlawful religious meeting contrary to the requirements of the Law on Freedom of Religious Beliefs, there was a lawful motive for the police’s intervention. The need for the authors, as suspects of a violation of the law in *flagrante delicto*, to accompany the police to the station for identification and the drafting of protocols would be necessary for the courts to examine the case.[[10]](#footnote-10) As to the fact that the authors were held over 7 hours in the police station, the State party submits that this seems perfectly reasonable considering that protocols for all 36 participants of the meeting had to be drafted, which therefore resulted in a protocol prepared every 12 minutes. The State party argues that inviting a suspect of an administrative violation to a police division for the purposes of an investigation cannot amount to an arrest, detention, or restriction of their freedom.[[11]](#footnote-11) It further adds that the authors failed to provide evidence in support of their allegations that they were detained at the police station without food and water and that they were subject to abusive and discriminatory speech by the police. The State party therefore submits that has been no violation of article 9 of the Covenant.

4.6 The State party submits that the right to freedom to manifest one’s religion or beliefs is not absolute and may be subject to certain limitations foreseen under article 18 (3). It submits that, the interference by domestic authorities with the authors’ freedom to manifest their religion or beliefs, in the present case, constituted such a limitation of the exercise of their rights protected under article 18 of the Covenant, which was based on article 12 of the Law on Freedom of Religious Beliefs and article 299.02 of the COA. The State party submits that the authors ought to have been aware of these provisions of the legislation, which were accessible and included limitations formulated with sufficient precision to enable the authors to foresee the consequences of a given action. On the requirement for the limitation to pursue a legitimate aim, the State party submits that the interference in the present case pursued the legitimate aim of the protection of public order and fundamental rights and freedoms of others. The State party also submits that the impugned limitation was necessary in a democratic society. It relies on the *Kokkinakis* judgement of the European Court of Human Rights, which argued that in democratic societies where several religions coexist within the same population, it may be necessary to place limitations on the freedom to manifest one’s religion or beliefs to reconcile the interests of various groups and ensure that everyone’s beliefs are respected.[[12]](#footnote-12) The State’s role as a neutral and impartial organiser of the exercise of various religions, faiths and beliefs is conducive to public order, religious harmony and tolerance in democratic society. The State party submits that pluralism, tolerance, and broadmindedness are hallmarks of a democratic society, which entails dialogue and a spirit of compromise necessary for the concessions on the part of individuals or groups of individuals required to maintain and promote the ideals and values of a democratic society. This constant balance between the fundamental rights of each individual constitutes the foundation of a democratic society.[[13]](#footnote-13)

4.7 The State party emphasizes that particular weight should be given to domestic policy-makers, who are in principle better placed than an international court to evaluate local needs and conditions, in particular regarding questions concerning the relationship between the State and religions. In principle, it should be afforded a wide margin of appreciation in determining whether and to what extent a limitation of the rights under article 18 of the Covenant are necessary. It refers to judgements of the European Court of Human Rights pointing out that the rules governing this sphere would differ from one country to another in light of the differences in the meaning or impact of the public expression of a religious belief according to context and time.[[14]](#footnote-14) In the present case, the State party submits that, based on the provisions of the national legislation, they had sufficient reasons to intervene with the authors’ actions and that such limitation was proportionate to the aims pursued in regard to the broad margin of appreciation afforded to it in such cases. It adds that the limitation was thus necessary in a democratic society and that there was no violation of article 18.

4.8 The State party rejects that there was an interference or limitation of rights under article 19 and submits that the authors’ claims under articles 19 (2) and (3) of the Covenant rely *mutatis mutandis* on those under article 18 and do not raise any separate issues. The authors were fined for committing an administrative offence, which has nothing to do with what they expressed, said, or published or their right to freedom of expression.

4.9 With regard to the authors’ claims under article 21 of the Covenant, the State party refers to its observations in respect to the authors’ claims under article 18 (*supra* paras. 4.7-4.8) and submits that the interference was in conformity with the law and was necessary in a democratic society, in the interests of public order and the protection of the rights and freedoms of others.

4.10 The State party submits that there was no interference with the authors’ right to freedom of association protected under article 22 of the Covenant. In response to the authors’ claim that their religious ceremony was considered unlawful due to the non-registration of their association, the State party submits that this is not the subject matter of the communication, but rather the administrative offences they committed. Furthermore, it submits that their claim that the authorities refused to register their association because of their religious beliefs is unsubstantiated, as the authorities have registered an association with the same religious beliefs in Baku.

4.11 The State party submits that the authors rely *mutatis mutandis* on all their other claims to substantiate their claims under articles 26 and 27 of the Covenant and have failed to demonstrate that they suffered discrimination on the basis of their religion. It submits that Article 12 of the Law on Freedom of Religious Beliefs and article 299.02 of the COA are equally applicable to all without any discrimination. The authors’ claims are based on vague statements and do not demonstrate a difference of treatment in comparison with other groups or persons in an analogous position. The State party further submits that the Religious Community of Jehovah’s Witnesses in Azerbaijan have around 3000 followers who do not face impediment for their operation. Regular meetings and a positive dialogue exist between national authorities and the Religious Community of Jehovah’s Witnesses, illustrated by the frequent visits to Azerbaijan, meetings with government officials and the repeated letters of appreciation by the President of the European Association of Jehovah’s Witnesses sent to the State party for the support to Jehovah’s Witnesses in the country. The State party submits that Jehovah’s Witnesses are regularly provided with financial aid from the Propagation of Moral Values Foundation under the State Committee of Religious Associations. It relies on its observations on the authors’ claims under articles 9, 17, 18, 19, 21 and 22 of the Covenant to submit that no violation of articles 26 and 27 of the Covenant took place.

4.12 With regard to the authors’ claims under article 17 (1) of the Covenant, the State party submits that there is no evidence that the police officers entered Ms. Huseynova’s home. They simply invited the authors to the police station, which could have been done in front of the door of her house without necessarily entering inside. The State party nonetheless submits that entering the author’s home would not have been unlawful or arbitrary, as article 24 of the Law on Police provides for limitations to the right to the inviolability of home when urgent measures are taken to protect the rights and freedoms of other persons and ensure public order and safety. The State party submits that the alleged interference in the present case was for such purposes and that there was therefore no violation of the authors’ rights under article 17 (1).

Author’s comments on the State party’s observations

5.1 On 27 January 2023, the authors submitted comments on the State party’s observations. Although the authors note that the State party does not dispute the facts of their communication, they consider that it nonetheless misrepresents some facts. Contrary to the State party’s observations, none of the authors were members of the Religious Community of Jehovah’s Witnesses, which was the legal entity registered in Baku. They also dispute that they were “invited” to the police station and maintain that they were taken there against their will. The State party’s observations also omit to mention the fact that, on 11 January 2014, the authors were not released to return to their homes but were taken to Ganja City Kapaz District Court for an evening hearing. In addition, the State party failed to mention that two of the authors were jailed for their failure to pay the court fines in full.

5.2 With regard to the State party’s argument that the authors’ claims are inadmissible because they failed to lodge separate complaints before the domestic courts of Prosecutor’s office, the authors refer to the Committee’s Views regarding a similar communication, which rejected this same argument.[[15]](#footnote-15) The authors raised, both before the trial and appeals court, the substance of all their claims under the Covenant. They argue that their claims should not be deemed inadmissible simply because the domestic courts failed to consider them. The Ganja Court of Appeal did rule on the authors’ human rights claim pertaining to the violation of their right to freedom of thought, conscience and religion, and there was, therefore, no reason for it not to rule on their other claims. The authors also argue that once the district and appeal courts convicted and sentenced them, it was unrealistic to expect that another first instance court would rule on the unlawfulness of such convictions, as all relevant evidence and arguments had been submitted to both courts. Filing more additional complaints would not have remedied their situation but incurred in further costs and delays in domestic proceedings. To illustrate the futility of filing additional administrative or civil lawsuits, the authors refer to a case regarding similar facts and claims lodged before the European Court of Human Rights.[[16]](#footnote-16) In this case, the applicants raised their human rights claims in the administrative offence proceedings and also filed a civil claim for compensation before a district court, which, found no evidence of any violation of their rights essentially because it had found them guilty of administrative violations. Subsequent appeal judgements of both the Court of Appeal and Supreme Court concluded the same. The authors, therefore, maintain that they have exhausted available effective domestic remedies in relation to all the claims raised in their communication.

5.3 On the substantiation of their claims under articles 26 and 27 of the Covenant, the authors argue that their unsuccessful applications for registration as a religious association in Ganja was an undisputed fact before domestic proceedings, held by the Ganja City Kapaz District Court, which explains why they provided limited detail in their communication on this matter. The authors further allege that their communication provides details of the verbal abuse they suffered from the police, which denigrated their minority Christian faith. They therefore reiterate that their claims under articles 26 and 27 are sufficiently substantiated and admissible.

5.4 On the merits of their claims under article 9 (1) of the Covenant, the authors reiterate that the evidence shows that they were forcibly transported to the police station and had to remain there until they were released by the police, only after they were taken to the Ganja City Kapaz District Court. The authors’ statements during domestic proceedings describe how the entire group was ordered to go to the police station, including the children, and that the police did not grant exceptions for a pregnant woman or relative of Ms. Huseynova who could barely walk. They asked the police several times if they could continue and conclude their religious meeting, but they were not given permission. In their statements, the authors also describe how the police officers were not concerned with the fact that the children present at the police station were thirsty, hungry, and suffered of great stress because of the detention. They reiterate that their arrest was illegal and that the police harassed them for their lawful and peaceful participation in a religious gathering, for which there was no legitimate basis to commence an investigation. The humiliating treatment and derogatory speech by the police suggest that their arrest was aimed at refraining them from exercising their freedom of religion. The authors further argue that the undisputed fact that police officers confiscated Bibles and other religious material without issuing any protocols consists in a police raid rather than a routine identification check.

5.5 The authors note that the State party’s arguments rely *mutatis mutandis* on a dissenting opinion in the Committee’s Views regarding communication No. 2928/2017, which overlooks the fact that the Committee found a violation of article 9 (1) on almost the same facts as the present case. The authors add that the facts presented in their communication fit a pattern in the State party which the Committee and the European Court of Human Rights have consistently found to constitute arbitrary arrest and detention.[[17]](#footnote-17) Finally, the authors reject the State party’s submission that they did not adduce evidence of being deprived of food and water and subjected to abusive and discriminatory speech whilst in detention. The authors submit that they outlined their personal experience in their witness statements and that they could not be expected to produce additional probatory material, such as CCTV footage from the police station, taking account that the State party has not adduced any counter evidence.

5.6 On the merits of the claims under article 17, the authors submit that all their written statements confirm that the police entered Ms. Huseynova’s home. This was never disputed during the trial or appeal and the State party has not provided any evidence suggesting the contrary. The authors also reject the State party’s justification of the warrantless entry of Ms. Huseynova’s home on the basis of article 24 of the Law on Police, as none of the limited circumstances set out in the law applied in this case: there was no urgency, no danger to the public, and no threat to the rights and freedoms of others. Neither the State party’s observations nor the Administrative Violation Protocol refer to any victims or specify whose rights or freedoms were affected and required protection. The authors reiterate that their religious service was conducted in private and in a peaceful manner without there existing evidence or allegations that it endangered public order and safety. Furthermore, any alleged offence under article 299.02 of the COA was not criminal.

5.7 The authors observe that the State party admits that the police’s raid of their religious meetings amounted to an interference with their rights protected under article 18 of the Covenant. Although the State party argues that the limitations to the authors’ right to manifest their religious beliefs stem from the requirements under article 12 of the Law on Freedom of Religious Beliefs that a religious association should officially register in order to lawfully operate, the authors allege that it has not specifically explained that engaging in religious worship is conditioned by such a requirement. The authors claim that the State party did not provide evidence or describe any context or example of how the authors’ peaceful manifestation posed a specific threat to public safety, order, health, morals, or the fundamental rights and freedoms of others, which would justify the blanket ban on the religious worship of an unregistered religious organization. Even if it had done so, the authors contend that the State party failed to demonstrate the proportionately of the registration requirement under article 12 of the Law on Freedom of Religious Beliefs in light of its considerable limitation to religious worship or that such a requirement was the least restrictive measure to protect the freedom of religion or belief. The State party also failed to specifically identify, as per article 18 (3) of the Covenant, the fundamental rights and persons affected justifying the restrictions to the right to manifest one’s religion or beliefs. The authors also claim that the State party did not demonstrate why the requirement to be legally registered as an association prior to conducting religious worship was necessary to serve a legitimate purpose within the meaning of article 18 (3). They maintain that, by arresting, detaining, and sanctioning them for holding a religious meeting, the State party violated their rights under article 18 (1) of the Covenant.

5.8 The authors reject the State party’s submission that their administrative fines have nothing to do with their right to freedom of expression under article 19 of the Covenant. They reiterate that the State party interfered with their right to seek, receive, and impart information and that article 19 (2) covers “teaching and religious discourse”.

5.9 The authors maintain that it was an undisputed fact during the trial proceedings that the Jehovah’s Witnesses had attempted several times to obtain registration in Ganja but failed. The authors never alleged that the refusal to register their association was due to their religious beliefs. Their applications have not been answered and they do not know the authorities’ reasons for refusal. As the only registered religious association of Jehovah’s Witnesses is in Baku, the authors submit that it would be absurd to expect them to travel to there, as the only way to lawfully assemble for worship in Azerbaijan.

5.10 Although article 12 of the Law on Freedom of Religious Beliefs and the CAO apply equally to all citizens, the authors argue that, in practice, discrimination exists due to the overwhelming number of registered Muslim religious associations (938) versus only one for Jehovah’s Witnesses. This means that the vast majority of citizens who worship will never be at risk of violating the CAO, while, in comparison, nothing prevents the authorities from continuing to prosecute Jehovah’s Witnesses outside of Baku under the current law as interpreted by the State arty. Furthermore, the State party’s observations on the merits of the claims under articles 26 and 27 of the Covenant ignore the discriminatory motivation behind the police actions and that religious intolerance was the basis for the authors’ arrest, harassment, and conviction. The authors reiterate that their religious books were confiscated without the State party proving that it posed any threat to public safety, order, health or morals the fundamental rights and freedoms of others. The fact the State party’s authorities and the courts decided to ignore such evidence does not mean that it does not exist. The authors point to the inconsistencies of the State party’s argument, which seems to argue that if it violates the rights of other religious groups, it is therefore not discriminating against the authors.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

6.3 The Committee observes that the State party has contested the authors’ argument that they exhausted all available domestic remedies, as required by article 5 (2) (b) of the Optional Protocol. According to the State party, the authors should have launched separate proceedings, such as a complaint to the Prosecutor’s Office, or judicial proceedings, and that their appeal against the first instance decisions only concerned their administrative fines and are insufficient for the exhaustion of domestic remedies with regard to the alleged violations of their rights under articles 9 (1), 17 (1), 18 (1) and (3), 19 (2) and (3), 21, 22 (1) and (2), 26 and 27 of the Covenant. The Committee also notes the State party’s argument that the authors’ claims brought under articles 26 and 27 are not sufficiently substantiated and should be declared inadmissible under article 2 of the Optional Protocol.

6.4 The Committee notes, however, the authors’ claim that there are no further effective domestic remedies available to them as they appealed against their convictions before the Ganja Court of Appeal, and these were all dismissed. It notes the authors’ claim that filing separate complaints would have been futile and incurred in further costs and delays once they had already been convicted by the first instance and appeal court. It also notes that, during the trial and appeal proceedings, the authors raised the substance of their allegations brought to the Committee under articles 9 (1), 17 (1), 18 (1) and (3), 19 (2) and (3), 21, 26 and 27 of the Covenant. Moreover, the Committee recalls that article 5 (2) (b) of the Optional Protocol, by referring to “all available domestic remedies”, refers in the first place to judicial remedies.[[18]](#footnote-18) Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining those claims. However, the information made available to the Committee does not allow it to conclude that the authors raised their claims under article 22 (1) and (2) of the Covenant before the domestic courts. Accordingly, the Committee finds the claims under article 22 (1) and (2) of the Covenant inadmissible under article 5 (2) (b) of the Optional Protocol.

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

6.6 The Committee considers that the authors have sufficiently substantiated, for the purposes of admissibility, their claims under articles 9 (1), 17 (1), 18 (1) and (3), 19 (2) and (3) and 21 of the Covenant. The Committee thus declares these claims admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, as required under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the authors’ claim that the State party has violated their rights under article 18 (1) of the Covenant by apprehending them during a private religious gathering in the home of one of them, taking them to the police station, where they were held for over seven hours, and convicting them of an administrative offence in the form of penalty fines and imprisonment of two of them for their inability to pay the fines. The Committee observes that the authors were sanctioned for conducting religious activity without official permission, as they had not been granted the status of a religious association in the city of Ganja. The Committee also notes the State party’s argument that the limitations placed on the authors’ right to manifest their religious beliefs were prescribed under article 12 of the Law on Freedom of Religious Beliefs, requiring that a religious association has to officially register in order to operate lawfully. The Committee further notes the State party’s assertion that particular weight and a wide margin of appreciation should be given to domestic policy-makers in determining the extent of a limitation of the rights under article 18 which a necessary in a democratic society.

7.3 The Committee, recalling its general comment No. 22 (1993), must address the issue of whether the said limitations on the authors’ freedom to manifest their religious beliefs were prescribed by law and 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 freedom to manifest religion or belief may be exercised either individually or in community with others and in public or private. 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.

7.4 In the present case, despite arguing that the interference with the authors’ rights under article 18 pursued the legitimate aim of the protection of public order and fundamental rights and freedoms of others, the Committee notes that the State party has not identified any specific fundamental rights or freedoms of others that were affected by the religious worship conducted by the authors in Ms. Huseynova’s home. Nor has the State party attempted to demonstrate that the registration requirement was the least restrictive measure necessary to ensure the protection of the freedom of religion or belief. Accordingly, the Committee considers that the State party has not provided a sufficient basis for the limitations imposed, so as to demonstrate that they were permissible within the meaning of article 18 (3) of the Covenant.

7.5 The Committee observes that, during the domestic proceedings, the Kapaz District Court convicted the authors on the ground that they had organized and participated in religious activity at Ms. Huseynova’s home in violation of the requirements of the Law on Freedom of Religious Beliefs. It further observes that the Court of Appeal of Ganja upheld their conviction by ruling that the restrictions to their freedom of religion were “precise, attainable, and prescribed by law”. However, the Committee considers that the justifications provided by the courts are of an abstract nature and do not demonstrate how the requirements to be legally registered as an association prior to conducting religious worship were proportionate measures necessary to serve a legitimate purpose within the meaning of article 18 (3) of the Covenant. The Committee, therefore, considers that the punishment imposed on the authors amounted to an impermissible limitation of their rights to manifest his religion under article 18 (1) of the Covenant. Accordingly, the Committee concludes that, by convicting and fining the authors for organizing and holding religious services, the State party violated their rights under article 18 (1) of the Covenant.

7.6 The Committee notes the authors’ claim under article 9 of the Covenant, that the police’s conduct amounted to an arrest, as they were ordered by force to go to the police station and detained for over seven hours without being free to leave at any time. It also notes the State party’s position, that this incident was not constitutive of a deprivation of liberty but that the authors merely invited to the police station for their explanations and in order to compile relevant documents. The Committee must, therefore, first ascertain whether the authors were deprived of their liberty within the meaning of article 9 (1) of the Covenant. The Committee recalls its general comment No. 35 (2014), in paragraph 6 of which it stated that “deprivation of personal liberty is without free consent. Individuals who go voluntarily to a police station to participate in an investigation, and who know that they are free to leave at any time, are not being deprived of their liberty”. The Committee notes the authors’ claim that they were not free to leave police custody during the relevant period. It also notes that the State party has not provided any specific information contesting this allegation and indicating that the authors could have freely decided not to accompany the police officers to the police station or, once there, could have left at any time without facing adverse consequences. The Committee further notes the statements made by each of the authors to the Kapaz District Court and to the Ganja Court of Appeal, describing how the police officers did not allow them to conclude their religious meeting, ordered them to open the gate to Ms. Huseynova’s home, and that once in the police station they “were under the oversight of the guards” that ordered them to sit down when they asked for food or water for the elderly and children among the group.[[19]](#footnote-19) It also observes that, neither the decisions of the domestic courts nor the State party’s observation have provided any substantive information or evidence contesting these allegations. The Committee concludes that the authors were coerced into accompanying the police to the station and remaining there until their release, and were therefore deprived of their liberty.

7.7 Recalling that, under article 9 (1) of the Covenant, deprivation of liberty must not be arbitrary, and must be carried out with respect for the rule of law,[[20]](#footnote-20) the Committee must next assess whether the authors’ arrest and detention were arbitrary or unlawful. The Committee recalls that protection against arbitrary detention is to be applied broadly, and that the “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.[[21]](#footnote-21) The Committee also recalls that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant, including freedom of religion, is arbitrary.[[22]](#footnote-22) The Committee notes the authors’ allegations that Jehovah’s Witnesses face a pattern of harassment by the State party’s authorities, and that in their specific case, the purpose of their arrest was not investigatory but to intimidate and coerce them from exercising their freedom of belief, assembly and association, which is suggested by the abusive speech from the police officers against the authors’ beliefs during their detention. It also notes the allegation that the police entered one of the authors’ home and confiscated objects without a warrant and without clearly informing the authors of the charges brought against them. Further, referring to its findings in paragraph 7.5 above, the Committee considers that the authors’ arrest and detention constituted punishment for the legitimate exercise of their right to manifest their religious beliefs. The Committee therefore concludes that the authors were arbitrarily arrested and detained in violation of their rights under article 9 (1) of the Covenant.

7.8 In the light of its finding that there has been a violation of articles 18 and 9 of the Covenant, the Committee does not deem it necessary to examine whether the same facts constitute a violation of articles 19 and 21, of the Covenant and of article 17 (1) for Ms. Huseynova.

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

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author 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 to, inter alia, provide the authors with adequate compensation, including for the legal expenses incurred by them, and for the incarceration of Ms. Huseynova and Mr. Bakirov, and restitution of the administrative fines paid. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by reviewing its domestic legislation, regulations and/or practices with a view to ensuring that the rights under the Covenant may be fully enjoyed in the State party.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant 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 and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee’s Views. The State party is also requested to publish the present Views and disseminate them broadly in the official language of the State party.

Annex

Individual Opinion by Committee member José Santos Pais (partially dissenting)

1. While I fully concur with the conclusion that the State party has violated the authors’ rights under article 18 (1) and (3) of the Covenant, I disagree with the conclusion of a violation of article 9 (1).

2. The Committee considered that the authors, all Jehovah’s Witnesses, were arbitrarily arrested and detained for over 7 hours on 11 January 2014, as punishment for the legitimate exercise of their right to manifest their religious beliefs (para 7.7). Although understanding this reasoning, I think the facts can also be interpreted differently.

3. The rationale behind the conclusion of the Committee is that the authors, belonging to a group of 36 people having met at Ms. Huseynova’s home in Ganja, not a registered legal address, for a religious discussion, were coerced into accompanying the police to a police station. Since they allegedly were not free to leave the police station, the authors were therefore subject to arbitrary arrest and detention. Such reasoning by the Committee seems however to entail a vice of *petitio principii*, since the main reason for finding a violation of article 9 is the direct consequence of previously finding a violation of article 18 of the Covenant.

4. As the State party refers (paras 4.2, 4.5), the police intervened in an unlawful religious ceremony and invited the authors, suspects of a violation of the law in *flagrante delicto*, to the police station on the account that their religious meeting contravened the Law on Freedom of Religious Beliefs and thus constituted an offence under article 299.0.2 of the Code of Administrative Offences (COA). Once the authors had provided explanations and the police had conducted the necessary administrative protocols, the authors were able to leave the police station. Although the authors were held over 7 hours in the police station, such delay seems reasonable considering that protocols for all 36 participants of the meeting had to be drafted, which therefore resulted in a protocol prepared every 12 minutes.

5. The authors were convicted for attending a “*religious activity*” for which they had not obtained the appropriate official permission since they were not members of the legal entity of Jehovah’s Witnesses registered in Baku (para 2.2) and they had not been granted the status of a religious association in the city of Ganja. We have therefore a *prima facie* lawful motive for the intervention of the police, even if the Committee rightly concluded that the restrictions imposed on the authors’ rights were neither proportionate nor served a legitimate purpose within the meaning of article 18(3) and their punishment amounted therefore to an impermissible limitation of their rights to manifest their religion (para 7.5).

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

7. As for holding the authors for a few hours in the police station, written protocols of the suspected events had to be drafted and signed by them. Drafting of such protocols was important for the protection of the authors’ rights, since by taking notice of these protocols the authors were *ipso facto* informed of the reasons behind police intervention, aware of their status in the proceedings and therefore also able to begin preparing their defence. Moreover, the period for holding the authors in the police station – 7 hours - seems reasonable under the circumstances, considering the group was composed of 36 persons.

8. Law-abiding citizens are generally expected to assist investigations led by law enforcement officers, particularly if they are caught in what can be considered as in *flagrante delicto*. Police investigations may involve, and often do, routine questioning of individuals at police stations to ascertain facts and address allegations of violations or offences, without this necessarily constituting arbitrary or unlawful deprivation of liberty. If someone is summoned to a court or to a police station, that person is not necessarily arrested nor detained, but remains at the disposal of the authorities until the goal for which he or she was summoned has been met.

That is what happened in the present case, where the authors were free to leave the police station once the necessary legal documents were concluded and signed.

9. In my view, it has not been demonstrated that these investigative actions of the police imposed undue restrictions on the authors’ rights or went beyond what was reasonably necessary to ascertain whether a violation of domestic law had taken place. Therefore, the said actions were not arbitrary.

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

1. \* Adopted by the Committee at its 138th session (26 June – 26 July 2023). [↑](#footnote-ref-1)
2. \*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Laurence R. Helfer, Carlos Gómez Martínez, Bacre Waly Ndiaye, Marcia V.J. Kran, Hernán Quezada Cabrera, José Manuel Santos Pais, Chongrok Soh, Tijana Surlan, Kobauyah Tchamdja Kpatcha, Koji Teraya, Hélène Tigroudja and Imeru Tamerat Yigezu. Pursuant to rule 108 of the Committee’s rules of procedure, Farid Ahmadov did not participate in the examination of the communication. [↑](#footnote-ref-2)
3. \*\*\* The text of an individual opinion by Committee member José Santos Pais, (partially dissenting) is annexed to the present Views. [↑](#footnote-ref-3)
4. 1,800 manats is equivalent to approximately 964 euros, based on the current official exchange rate. [↑](#footnote-ref-4)
5. General Comment No. 35, para 13. [↑](#footnote-ref-5)
6. Ibid, para. 12. [↑](#footnote-ref-6)
7. ECHR, *Kupko et al. v. Russia*, (Application No. 26587/07); UN Working Group on Arbitrary Detention, Opinion 42/2015. [↑](#footnote-ref-7)
8. The authors claim that the police told them to “read the Koran” and “be Muslims”. [↑](#footnote-ref-8)
9. General Comment No. 34, para. 11. [↑](#footnote-ref-9)
10. The State party refers to the Individual Opinion of Committee member Jose Manuel Santos Pais in the Views adopted regarding Communication No. 2928/2017, *Mammadov et al. v. Azerbaijan*, paras. 4-5. [↑](#footnote-ref-10)
11. Ibid, para. 7. [↑](#footnote-ref-11)
12. ECHR, Kokkinakis v. Greece (Application No. 14307/88). [↑](#footnote-ref-12)
13. ECHR, Chassagnou and et al. v. France; Sahin v. Türkiye. [↑](#footnote-ref-13)
14. ECHR, Sahin v. Türkiye; Dahlab v. Switzerland (Application No. 42393/98). [↑](#footnote-ref-14)
15. *Mursalov et al. v. Azerbaijan*, CCPR/C/136/D/3153/2018. [↑](#footnote-ref-15)
16. ECHR, Valiyev et al. v. Azerbaijan, (Applications Nos. 58265/09, 7526/10, 73346/10, 7928/11 and 16785/11). [↑](#footnote-ref-16)
17. *Mursalov et al. v. Azerbaijan*, CCPR/C/136/D/3153/2018; *Aliyev et al. v. Azerbaijan*, CCPR/C/131/D/2805/2016; *Gurbanova and Muradhasilova v. Azerbaijan*, CCPR/C/131/D/2952/2017, ECHR, Nasirov et al. v. Azerbaijan (Application No. 58717/10). [↑](#footnote-ref-17)
18. Human Rights Committee, *R.T. v. France*, communication No. 262/1987, para. 7.4; *Schmidl v. Czech Republic* ([CCPR/C/92/D/1515/2006](http://undocs.org/en/CCPR/C/92/D/1515/2006)), para. 6.2; and *Staderini and De Lucia v. Italy* ([CCPR/C/127/D/2656/2015](http://undocs.org/en/CCPR/C/127/D/2656/2015)), para. 8.3. [↑](#footnote-ref-18)
19. For example, Statement from Huseynova Irada Ziraddin to the Ganja Kapaz District Court on 23 January 2014. [↑](#footnote-ref-19)
20. General comment No. 35 (2014), para. 10. [↑](#footnote-ref-20)
21. *Formonov v. Uzbekistan* ([CCPR/C/122/D/2577/2015](http://undocs.org/en/CCPR/C/122/D/2577/2015)), para. 9.3. [↑](#footnote-ref-21)
22. General comment No. 35 (2014), para. 17. [↑](#footnote-ref-22)