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**Human Rights Committee**

 Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communications Nos. 3025/2017 and 3037/2017[[1]](#footnote-2)\*,[[2]](#footnote-3)\*\*

*Communications submitted by:* Lilya Mullina, Yuliya Mullina and Vera Lukmanova (represented by counsels, Shane H. Brady and Haykaz Zoryan), Chinni Nazarova, Feruza Mamatova, Gulnor Rizzaeva, and Gulsara Imamova (represented by the same counsel)

*Alleged victims:* The authors

*State party:* Uzbekistan

*Dates of communications:* 26 July 2017 (communication No. 3025/2017); 20 March 2017 (communication No. 3037/2017) (initial submissions)

*Document references:* Decisions taken pursuant to rule 92 of the Committee’s rules of procedure, transmitted to the State party on 28 September 2017 (communication No. 3025/2017); 10 November 2017 (communication No. 3037/2017)

*Date of adoption of Views:* 19 July 2023

*Subject matter:* Jehovah's Witnesses administrative conviction of unlawful religious activity; arbitrary arrest and illegal detention; seizure and destruction of their religious literature

*Procedural issue:* Exhaustion of domestic remedies; substantiation of claims

*Substantive issues:* Right to liberty and security of person; interference with privacy, family, home of correspondence; right to freedom of thought, conscience and religion; freedom of expression freedom of assembly; freedom of association

*Articles of the Covenant:* 9, 17, 18, 19, 21 and 22

*Articles of the Optional Protocol:*

1.1 The authors of the communications are Lilya Mullina, Yuliya Mullina and Vera Lukmanova (communication No. 3025/2017) and Chinni Nazarova, Feruza Mamatova, Gulnor Rizzaeva, and Gulsara Imamova (communication No. 3037/2017). The authors are nationals of Uzbekistan born in 1962, 1989, 1941, 1959, 1976, 1953 and 1964, respectively. They claim that the State party has violated their rights under articles 9 (1)[[3]](#footnote-4), 17 (1), 18 (1) and (3), 19 (2) and (3), 21 (1) and (2) and 22 (1) and (2) of the Covenant. The Optional Protocol entered into force for Uzbekistan on 28 December 1995. The authors in both communications are represented by counsel.

1.2 On 19 July 2023, pursuant to rule 97 (3) of the Committee’s rules of procedure, the Committee decided to join communications 3025/2017 and 3037/2017 submitted by two different authors for a joint decision, in view of substantial factual and legal similarity.

 Facts as submitted by the authors

2.1 The authors in both communications submit that they are Jehovah’s Witnesses. As such they were subjected to administrative conviction of unlawful religious activities, their homes were searched and their religious literature seized and destroyed. Some were arbitrary arrested and illegally detained. Their respective appeals lodged before the domestic courts against the decisions of the local authorities were rejected.

2.2 The facts relevant to each individual communication are summarized below.

 Communication No. 3025/2017, Lilya Mullina et al. v Uzbekistan

2.3 Lilya Mullina is the daughter of Vera Lukmanova and the mother of Yuliya Mullina. They all live in the same home in Tashkent, Uzbekistan. On 17 February 2014, the police demanded to enter their home without a valid search warrant or other authorization, claiming that it was necessary in order to conduct a “passport check”. Once the police gained entry to the home, they proceeded to search the home unlawfully and to seize religious publications published by Jehovah’s Witnesses.

2.4 The authors were charged with a violation of the Code of Administrative Responsibility (CAR) for “illegal storage of religious literature for the purpose of distribution”. On 20 February 2014, they were tried and convicted by the Sergeliyskiy District Court for Criminal Cases. The court summarily ruled that they were guilty because they were in possession of literature of Jehovah’s Witnesses, which was claimed to be “unlawful” solely because Jehovah’s Witnesses are not registered in the city of Tashkent. The court relied on a report of the Committee of Religious Affairs, which asserted that the literature of Jehovah’s Witnesses may not be used or stored in private homes and may only be used at the place of worship of Jehovah’s Witnesses in Chirchik, the sole registered religious organisation of Jehovah’s Witnesses in Uzbekistan. The Sergeliyskiy District Court sentenced Lilya Mullina and Yuliya Mullina to a fine of 2,883,150 Uzbekistani som (UZS) each (approximately 955 euros (EUR)) and Vera Lukmanova to a fine of UZS 961,050 (approximately EUR 318). The court also ordered that the literature seized should be destroyed and that their computer be handed over to the State.

2.5 On 24 March 2014, the authors’ appeal was summarily rejected by the Tashkent City Court for Criminal Cases. On 15 January 2016, the authors filed a motion with the Prosecutor General of Uzbekistan, requesting him to exercise his discretionary authority and to protest their cases to the Supreme Court. On 22 January 2016, their application was referred by the Prosecutor General’s Office to the Tashkent Regional Prosecutor for “consideration of its merits”. The authors note that more than one year had passed since this referral without any decision having been made as to their application. They further note that under article 315 of the CAR they cannot appeal their conviction to the Supreme Court of Uzbekistan.

 Communication No. 3037/2017, Chinni Nazarova et al. v. Uzbekistan

2.6 On 5 June 2014, as small group of Jehovah’s Witnesses were together in the home of Ms. Nazarova in Karshi to read and study the Bible and afterwards to enjoy a social visit. The police entered the home without permission, searched each person and confiscated personal property. The police transported the authors to the police station, where they were detained for about two hours. They were subsequently charged with an offence under the Code of Administrative Responsibility (CAR) as Jehovah’s Witnesses do not have a registered religious organisation in the Kashkadarya Region.

2.7 On 18 August 2014, the authors were tried and convicted by the Karshi City Court for Criminal Cases. The court ruled that Ms. Nazarova and Ms. Mamatova were “active members of the illegal non-Islamic religious sect ‘[Jehovah’s] Witnesses’ and which did not register with the Ministry of Justice of the Kashkadarya Region”. The Court further ruled that Ms. Nazarova and Ms. Mamatova had engaged in “unlawful religious activity in their homes”, had engaged in religious study with Ms. Rizzaeva and Ms. Imamova and had “unlawfully stored” religious literature of Jehovah’s Witnesses. The Court ordered the authors to pay combined fines of 27,080,000 Uzbek Som (approximately 6,690 euros). The authors note that this fine is equivalent to a total of 220 monthly minimum wage payments in Uzbekistan.[[4]](#footnote-5) The Court further ordered that the Bibles and most of the other religious literature seized from the authors in the police raid should be destroyed.[[5]](#footnote-6)

2.8 On 12 September 2014, the authors’ appeal was summarily rejected by the Chairman of the Karshi City Court for Criminal Cases. On 15 January 2016, the authors filed a motion with the Prosecutor General of Uzbekistan, requesting him to exercise his discretionary authority and to protest their cases to the Supreme Court. On 29 January 2016, this application was referred to the Kashkadarya Regional Prosecutor for “consideration of its merits” by the Deputy Regional Prosecutor. The authors note that more than one year has passed since this referral without any decision having been made as to their application. They further note that under article 315 of the CAR they cannot appeal their conviction to the Supreme Court of Uzbekistan.

 **Complaint**

3.1 The authors in communication No. 3037/2017 claim that in violation of their rights under article 9 of the Covenant, the police arrested and detained them at the police station for about two hours and that the arrest and detention were arbitrary and illegal as the underlying purpose was not to investigate, but to intimidate and coerce them from exercising their freedom of belief, assembly and association. They claim that the police provided no evidence to the domestic courts as to why it was necessary to detain them at the police station. The authors further claim that the sole reason for the police raid, their apprehension and their subsequent administrative conviction was that they were reading and studying the Bible and were in possession of copies of it and some other religious literature published by Jehovah’s Witnesses.

3.2 The authors in both communications claim that the State party breached their rights under article 17 of the Covenant. The authors in communication 3025/2017 note that under article 17 of the Covenant and under the Constitution of Uzbekistan they are entitled to the privacy and the security of their home and their personal belongings. They argue that the police used the ruse of a “passport check” to demand entry into their home and note that the police provided no justification why a passport check was necessary for citizens of Uzbekistan. Once the police gained entry into the home they changed their alleged initial purpose for entering the home into an entirely different one, namely, the search of the home to find alleged illegal religious literature. The authors argue that it is evident that the real purpose of the police was to target the authors’ peaceful activity amounting to an unlawful interference of their right to privacy. The authors in communication 3037/2017 claim that the police raid and the subsequent search and seizure of their belongings interfered with their right to privacy and security of the home and their personal belongings and that there was no justification for this interference. They note that the right to gather peacefully as a small group for association (including religious association) is protected by article 29 of the Constitution and articles 18 and 19 of the Covenant; they argue that these fundamental rights are inviolable and cannot be made subject to whether individual believers are members of a locally registered religious organisation.

3.3 The authors also argue that the police raid and administrative convictions were based solely on the faulty premise that because Jehovah’s Witnesses are not registered in Tashkent and in the Kashkadarya region (communication 3025/2017 and communication 3047/2017, respectively), they do not have the right to assemble and to possess copies of religious literature published by Jehovah’s Witnesses. The authors note the Committee’s jurisprudence according to which legal registration is not a prerequisite to the exercise of fundamental human rights. Accordingly, the authors argue that the police search of their home, seizure of their personal belongings and the subsequent administrative conviction and fine have interfered with their rights guaranteed by article 18 (1) of the Covenant.

3.4 The authors note that they were convicted under the CAR because it was alleged that they had stored religious literature of Jehovah’s Witnesses in their home with the goal of distributing the material. They note that the trial court reached this conclusion although there was no evidence that they had intended to distribute that literature and that in any event, even if they had intended to distribute the religious literature, such peaceful actions are protected by article 19 (2) of the Covenant. They claim that their prosecution and conviction based on the State party’s allegation that it is illegal to distribute religious literature of Jehovah’s Witnesses without State approval has interfered with their right to seek, receive and impart information. In communication 3037/2017, the authors claim that they were convicted of an administrative offence solely because they were studying the Bible and were in possession of copies of it and other religious literature of Jehovah’s Witnesses. In sum, the State party has therefore interfered with all the authors’ right to freely seek, receive and impart information in violation of their rights under article 19 of the Covenant.

3.5 The authors further claim that the State party authorities have also violated their right to peaceful assembly and freedom of association. They note that the Special Rapporteur on freedom of religion or belief has observed that “registration does not constitute a precondition for practising one’s religion or belief”[[6]](#footnote-7). They argue that the enjoyment of freedom of religion or belief does not depend on any acts of State approval or administrative registration. They note that the sole justification given for the police raid and their administrative convictions was that Jehovah’s Witnesses are not registered in in Tashkent (communication 3025/2017) and in the Kashkadarya region (communication 3037/2017) and that consequently their religious activity was considered to be “illegal”, in violation of their rights under articles 21 and 22 of the Covenant.

 State party’s observations on admissibility and the merits

4.1 By notes verbales of 20 April 2021[[7]](#footnote-8), and 15 February 2018[[8]](#footnote-9), the State party submitted its observations on admissibility and merits of the communications. On 13 February 2022, the State party also submitted additional observations in response to the authors’ comments.[[9]](#footnote-10) In its observations, the State party does not challenge the admissibility of the communications.[[10]](#footnote-11)

4.2 In what concerns the merits of the communications, the State party argues that the authors’ claims in both communications are unfounded and that the courts correctly classified the charges against them. The State submits that all the authors are followers of the Christian religious denomination “Jehovah’s Witnesses”, an unofficial non-Islamic religious sect, which is represented in Uzbekistan by only one religious organization officially registered in the town of Chirchik in Tashkent Region.[[11]](#footnote-12) The State party admits that the specific organization has not committed violations of current legislation, however it is responsible for the violations committed by its members in other regions of Uzbekistan. Often when illegal religious meetings were organized, the names of the representatives of the Chirchik community of “Jehovah’s Witnesses” were mentioned, although the directors of the religious organization do not admit this. Earlier, the organization was also registered in the town of Fergana. However, the members of this organization have repeatedly conducted missionary activity among minors without the consent of their parents, and educational activities involving children. Justice and law enforcement agencies received complaints from citizens, parents. The activity of the organization was terminated.

4.3 The State party submits that Jehovah’s Witnesses have official registration that allows carrying legal religious activities only in the town of Chirchik on the specific address. Even though the official registration provides a basis for legitimate religious activity only at the above mentioned address, the followers deliberately try to conduct their illegal religious activity in almost all regional centers and major cities, including in the capital Tashkent[[12]](#footnote-13) and the city of Karchi.[[13]](#footnote-14) These violations are documented by the local law enforcement agencies in accordance with the established procedure.[[14]](#footnote-15)

4.4 The State party further argues that with the consent of the occupants, inspections of the premises where they (the authors) reside was carried out in the presence of attesting witnesses in accordance with all the procedural norms of law. The inspections revealed prohibited religious materials, which were seized as physical evidence and included in the case materials.

4.5 In accordance with the law, the banned religious materials seized were sent to the Committee on Religious Affairs under the Cabinet of Ministers, for an expert study to be conducted in accordance with the established procedure. Then the collected materials and physical evidence were sent to the respective District Court for Criminal Cases for consideration of the case on the merits.

4.6 The State party challenges that the authors practice individually the teachings of Jehovah’s Witnesses. It argues that even though in their appeal the authors state that they practice the religious teachings of “Jehovah’s Witnesses” individually, they are all organized into certain “groups” that are formed based on their location and conduct their activities under the supervision of their “overseers” – “the elders”. Given that the illegal activity of the authors adversely affects the socio-spiritual sphere of society and is the root cause of different kind of conflicts that arise among people, in particular within some families, their activity outside the Chirchik community is considered to be destructive and corruptive to society. The State party affirms that this understanding fully reflects the norms of international law.[[15]](#footnote-16) The State party fully supports the rulings of the Sergeliyskiy District Court for Criminal Cases of the city of Tashkent (communication 3025/2017) and Karshi City Court for Criminal Cases of the Kashkadarya Region (communication 3037/2017) by which the authors were found guilty of committing administrative violations (engaging in illegal religious activity, such as unlawful production or storage with the aim of distribution of materials with religious content) and imposed administrative penalties in the form of fine[[16]](#footnote-17) under the Code of Administrative Responsibility (CAR). The State party also affirms that the religious content of the literature and leaflets seized was confirmed by the conclusion of the Committee for Religious Affairs under the Cabinet of Ministers.

 Authors’ comments on the State party’s observations

5.1 On 19 August 2021[[17]](#footnote-18), and 24 July 2018[[18]](#footnote-19), the authors submitted their comments on the State party’s observations. They maintain that the State party does not raise any new facts or arguments and merely repeat the conclusions of the domestic courts. In essence, the State party claims that the State authorities were justified in raiding in authors’ home, seizing their peaceful religious literature and then imposing massive administrative fines on the authors simply because Jehovah’s Witnesses do not have legal registration in the city of Tashkent and in the city of Karshi and the Karshi Region.

5.2 The authors therefore rely on their respective written communications, which establish that the actions of the State authorities have violated multiple provisions of the Covenant and that those violations cannot be justified.

**State party’s additional observations**

6.1 In response to the authors’ comments, on 11 February 2022 the State party in communication no. 3025/2017 argues, that in the home of the authors the law enforcement authorities have not undertaken a search/raid, but simply an examination/inspection/check/visit. It submits that such practices are used in the USA, for instance, plain view exception or consent search. It is possible to conduct a search without a search warrant, yet the rule is to have a “probable cause”, or lower standard known as “reasonable suspicion”.

6.2 The State party also maintains that the restriction of illegal religious activity is in compliance with the Covenant as it aims to protect public safety and order.

 Issues and proceedings before the Committee

 Consideration of admissibility

7.1 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.

7.2 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.

7.3 The Committee notes that in the present case, the authors have exhausted all available domestic remedies, and that the State party has not contested the admissibility of the communications. Therefore, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

7.4 The Committee finally notes that the authors have sufficiently substantiated their claims under articles 9, 17, 18, 19, 21 and 22 of the Covenant, for the purposes of admissibility, and proceeds with their consideration of the merits.

 Considerations of the merits

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

8.2 The Committee first considers the authors’ claims under article 9 of the Covenant[[19]](#footnote-20) that, on 5 June 2014, while the authors were reading and studying the Bible at the home of Ms Nazarova, the police entered the home without permission, searched each person, confiscated personal property, apprehended the authors and transported them to the police station, where they were detained for about two hours. The Committee also notes that, the State party has not provided any explanation as to the authors arrest and detention.

8.3 The Committee recalls its general comment No. 35 (2014) on liberty and security of person, in which it refers to the prohibitions on arbitrary and unlawful deprivation of liberty, that is, deprivation of liberty that is not imposed on such grounds and in accordance with such procedure as are established by law. It recalls that liberty of person concerns freedom from confinement of the body. Examples of deprivation of liberty include police custody, remand detention, imprisonment after conviction, house arrest, administrative detention, and confinement to a restricted area of an airport, as well as being involuntarily transported.[[20]](#footnote-21) The notion of “arbitrariness” must be interpreted to include elements of inappropriateness, injustice, lack of predictability and due process of law. The Committee also recalls that the term “arrest” refers to any apprehension of a person that commences a deprivation of liberty, and the term “detention” refers to the deprivation of liberty that begins with the arrest and continues in time from apprehension until release. Arrest within the meaning of article 9 need not involve a formal arrest as defined under domestic law.[[21]](#footnote-22) Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21), freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17). Arrest or detention on discriminatory grounds in violation of article 2 (1), article 3 or article 26 is also in principle arbitrary.[[22]](#footnote-23)

8.4 In the present case, the Committee notes that, according to the submissions by the parties, the authors’ detention began at the house of Ms Nazarova, continued at the police station and ended around two hours later, while the police also completed a search of the apartment. The Committee recalls that, in order for an arrest to be in compliance with article 9 (1), it must not only be lawful, but also reasonable and necessary taking into account all the circumstances.[[23]](#footnote-24) The Committee considers that the State party has failed to show why it was necessary to detain the authors. In view of the circumstances as described, the Committee concludes that the State party violated the authors’ rights under article 9 (1) of the Covenant.

8.5 The Committee notes the authors’[[24]](#footnote-25) claim that the State party violated their right to privacy and the security of their homes under article 17 (1) of the Covenant by entering their home without presenting a valid search warrant or identification, searching their homes, confiscating religious literature, and interrupting a peaceful religious discussion that posed no threat to the safety of others. It further notes the authors[[25]](#footnote-26)’ affirmation that the police demanded to enter their home, claiming that it was necessary to conduct a “passport check”, yet once it gained entry to the home, the police proceeded to search the home unlawfully and to seize religious publications. It also notes the State party’s argument that the police entries into the authors’ homes have not been unlawful or arbitrary, as those were not searches, but simply inspections of the premises where the authors reside, carried out with the consent of the occupants, in the presence of attesting witnesses in accordance with all the procedural norms of the law. While refraining from examining the legality of the raid, the Committee recalls that under article 17 of the Covenant, it is necessary for any interference in the home to be both lawful and not arbitrary.[[26]](#footnote-27) The Committee recalls, in accordance with paragraph 1 of its general comment No. 16 (1988), that the concept of arbitrariness in article 17 is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee notes that the State party has not contested the authors’ assertion that the police officers did not present a warrant to enter or search their homes and did not identify the basis for the inspection they were conducting or the basis for their seizure of the personal religious books. The Committee considers that the State party, while referring to the unlawfulness of the possession of religious literature and holding of religious meeting, has not set forth any arguments to demonstrate that the police conduct was not arbitrary.

8.6 As to the actions of the police, the Committee considers that the State party has not explained why the police considered the circumstances so urgent as to justify entering the authors’ homes. The Committee considers that the police’s search of the authors’ homes was disproportionate to the threat of harm allegedly associated with the possession of religious literature and the religious meeting and that other less intrusive measures could have been implemented instead. The Committee therefore considers that the warrantless search of the authors’ homes and confiscation of their computers and religious books was not a necessary or reasonable means to achieve the aim of compliance with the law regarding the registration of religious associations. Consequently, the Committee concludes that the State party violated the authors’ rights under article 17 (1) insofar as the police arbitrarily interfered with their homes and their privacy.

8.7 In relation to the authors’ claims under article 18 (1) and (3) of the Covenant, the Committee recalls its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, in which it states that article 18 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 (para. 3). By contrast, the right to freedom to manifest one’s religion or beliefs may be subject to certain limitations, but only those prescribed by law and necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. Further, the right to 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.[[27]](#footnote-28)

8.8 The Committee must now address the question of whether the relevant limitations on the author’s right to manifest his religion are “necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others”, within the meaning of article 18 (3) of the Covenant. The Committee recalls that article 18 (3) is to be interpreted strictly, and that limitations may be applied only for those purposes for which they were prescribed and must be directly related to and proportionate to the specific need on which they are predicated. 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.[[28]](#footnote-29)

8.9 In the present cases, the Committee notes that the authors were charged, convicted, and fined for illegal religious activity and the imposed administrative penalty under Article 184 (communication 3025/2017) and under Articles 184 and 240 (communication 3037/2017) of the Code od Administrative Responsibility (CAR) in the form of a fine, which amount varied for the different authors from 30 times the minimum wage to 10 times the minimum wage payments (communication 3025/2017) and from 60 minimum wage payments to 50 minimum wage payments (communication 3037/2017). Consistent with its general comment No. 22 (1993), the Committee considers that the above-mentioned activities form part of the authors’ right to manifest their beliefs and that the convictions and sentences to a fine constitute limitations of that right.

8.10 The Committee also notes the State party argument that the authors’ Jehovah’s Witnesses are not registered in the city of Tashkent, the Karshi town and the Kashkadarya region, so they do not have the right to congregate and possess/store religious literature published by the Jehovah’s Witnesses. The Committee, however, reiterates that article 18 (1) of the Covenant protects the right of all members of a religious congregation, to manifest their religion in community with others, in worship, observance, practice and teaching. The Committee concludes that the punishment imposed on the authors, and in particular the high amount of the fines, amount to a limitation of their right to manifest their religion under article 18 (1). The Committee observes that the limitation, although prescribed by law, was not proportionate. Additionally, the Committee observes that the State party has failed to justify such limitation as serving any legitimate purpose identified in article 18 (3). The State party has also failed to justify that this limitation of the right to manifest religion is proportionate to any legitimate purpose that it might serve. The Committee therefore concludes that such limitation does not meet the requirements of article 18 (3), and that the authors’ rights under article 18 (1) of the Covenant have been violated.

8.11 The Committee further notes the authors’ claims that their rights to freedom of expression and to freedom of association have been restricted in violation of articles 19 (2) and 22 of the Covenant, as their religious activity was considered to be “illegal”, in violation of their rights under articles 19 and 22 of the Covenant, because Jehovah’s Witnesses are not registered in Tashkent (communication 3025/2017) and in the Kashkadarya region (communication 3037/2017). Thus, the authors were sanctioned for simply having religious literature at home or organising social visits in their private homes of a peaceful nature in order to practice their beliefs as Jehovah’s Witnesses, the detailed information on which is specified in paras. 2.1 to 2.8 above. It also notes the authors’ argument that the authorities failed to explain why the restrictions imposed on their rights were necessary in the interests of national security or public safety, public order, the protection of public health, morals or the rights and freedoms of others, as required, respectively, by article 19 (3), and article 22 (2) of the Covenant.

8.12 Thus the next issue before the Committee is whether the raids of the police in the authors’ homes, the seizure and destruction of their religious literature and their fining with sole justification that the Jehovah’s Witnesses are not registered in Tashkent and Karshi respectively unreasonably restricted the authors’ right to freedom of expression and freedom of association under articles 19 and 22 of the Covenant. In accordance with articles 19 (3) and 22 (2) of the Covenant, any restriction on the above-mentioned rights must cumulatively meet the following conditions: (a) it must be provided for by law; (b) may only be imposed for one of the purposes set out expressly; and (c) must be “necessary in a democratic society” for achieving one of these purposes. The reference to “democratic society” in the context of article 22 indicates, in the Committee’s opinion, that the existence and operation of associations, including those which peacefully promote ideas not necessarily favorably viewed by the government or the majority of the population, is a cornerstone of any society.[[29]](#footnote-30)

8.13 The Committee recalls its general comment No. 34 (2011) on freedoms of opinion and expression, in which it stated, inter alia, that the freedom of expression is essential for any society and constitutes a foundation stone for every free and democratic society.[[30]](#footnote-31) It notes that article 19 (3) of the Convention allows for certain restrictions on the freedom of expression, including the freedom to impart information and ideas, only to the extent that those restrictions are provided for by law and only if they are necessary (a) for respect of the rights or reputation of others; or (b) for the protection of national security or public order (*ordre public*), or of public health or morals. Finally, any restriction on freedom of expression must not be overbroad in nature – that is, it must be the least intrusive among the measures that might achieve the relevant protective function and proportionate to the interest being protected.[[31]](#footnote-32) The Committee recalls that the onus is on the State party to demonstrate that the restrictions on the authors’ rights under article 19 of the Covenant were necessary and proportionate.[[32]](#footnote-33)

8.14 In the present cases, in light of the information available on files, the police demanded entry to the authors’ home without a valid search warrant or other authorization, claiming that it was necessary in order to conduct a “passport check” and once gaining access proceeded to search the home unlawfully and to seize religious publications published by Jehovah’s Witnesses (com 3025/2017) and arrested and detained the authors for about two hours (com 3037/2017). The Committee takes note of the State party general argument that Jehovah’s Witnesses have official registration that allows carrying legal religious activities only in the town of Chirchik on their specific address and that despite the fact that the official registration provides a basis for legitimate religious activity only at the above mentioned address, the followers deliberately try to conduct their illegal religious activity in almost all regional centers and major cities, including in the capital Tashkent and the city of Karchi. The Committee, however, considers that the State party’s practice of police raids, searches of private homes, seizure and destruction of religious literature of Jehovah’s Witnesses do not meet the standards of necessity and proportionality and article 19 and 22 of the Covenant.

8.15 In the absence of further explanations from the State party, the facts also reveal that the police entered the author’s house without the necessary judicial authorization, and that the described intervention of the police resulted in an unjustified restriction of the right to peaceful assembly and, thus, these facts constitute violations of the authors’ rights under article and 21 of the Covenant.

9. 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 articles 9, 17 18, 19, 21 and 22 of the Covenant.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to provide the authors with adequate compensation, including reimbursement of any legal costs they have incurred. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

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

1. \* Adopted by the Committee at its 138th session (26 June – 28 July 2023). [↑](#footnote-ref-2)
2. \*\* The following members of the Committee participated in the examination of the communication: [Tania María Abdo Rocholl,](https://www.ohchr.org/Documents/HRBodies/CCPR/Membership/CV_ABDO_ROCHOLL.docx) Farid Ahmadov, 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 [↑](#footnote-ref-3)
3. Only in relation to communication No. 3037/2017. [↑](#footnote-ref-4)
4. Based on the official minimum wage, it would take one person more than 18 years to earn that amount. [↑](#footnote-ref-5)
5. All together 26 pieces of literature and 41 leaflets printed with a computer. [↑](#footnote-ref-6)
6. A/65/207, 29 July 2010, para. 22. [↑](#footnote-ref-7)
7. In relation to communication no. 3025/2017. [↑](#footnote-ref-8)
8. In relation to communication no. 3037/2017. [↑](#footnote-ref-9)
9. In relation to communication no. 3025/2017. [↑](#footnote-ref-10)
10. However, in its additional (rejoinder) observations in relation to communication no. 3025/2017, the State party concludes that the Committee should find it inadmissible as there are no convincing evidence that the authors’ rights were violated. [↑](#footnote-ref-11)
11. The State party provides the exact address: Tashkent Region, g. Chirchik, ul. Yusupova, dom 50. [↑](#footnote-ref-12)
12. In relation to communication no. 3025/2017. [↑](#footnote-ref-13)
13. In relation to communication no. 3037/2017. [↑](#footnote-ref-14)
14. The State party provides an example in which a special group of representatives of law enforcement agencies was established to verify the report of the Directorate of Internal Affairs of the Sergeliyskiy District of the city of Tashkent regarding illegal storage of religious material of the religious organisation. [↑](#footnote-ref-15)
15. The State party refers to Article 29(2) of the UDHR (1948). [↑](#footnote-ref-16)
16. The highest of which reached 60 minimum wage payments (Ms Chinni Nazarova, 3037/2027) [↑](#footnote-ref-17)
17. Comments in relation to the SP’s observations in communication no. 3025/2017. [↑](#footnote-ref-18)
18. Comments in relation to the SP’s observations on communication no. 3037/2017. [↑](#footnote-ref-19)
19. In relation to communication no. 3037/2017 [↑](#footnote-ref-20)
20. Human Rights Committee, general comment No. 35 (2014), paras. 3 and 5. [↑](#footnote-ref-21)
21. Ibid., para. 13. [↑](#footnote-ref-22)
22. Ibid., para. 17. [↑](#footnote-ref-23)
23. See *Toregozhina v. Kazakhstan* (CCPR/C/112/D/2137/2012), para. 7.2. and *Amedzro v. Tajikistan* (CCPR/C/133/D/3258/2018), para. 7.4. [↑](#footnote-ref-24)
24. All the authors of communication 3025/2017 and author C. Nazarova of communication 3037/2017. [↑](#footnote-ref-25)
25. All authors of communication 3025/2017. [↑](#footnote-ref-26)
26. See, inter alia, *Rojas Garcia v. Colombia* (CCPR/C/71/D/687/1996), para. 10.3. [↑](#footnote-ref-27)
27. General comment No. 22 (1993), para. 4, and, inter alia, *Boodoo v. Trinidad and Tobago* (CCPR/C/74/D/721/1996), para. 6.6, and *Leven v. Kazakhstan* (CCPR/C/112/D/2131/2012), para. 9.2. [↑](#footnote-ref-28)
28. See general comment No. 22 (1993), para. 8 and *Leven v. Kazakhstan*, (CCPR/C/112/D/2131/2012), para. 9.3. [↑](#footnote-ref-29)
29. See, e.g. *Zvozskov et al.* v. *Belarus* (CCPR/C/88/D/1039/2001), para 7.2. [↑](#footnote-ref-30)
30. General comment No. 34 (2011) on the freedoms of opinion and expression, para. 2. [↑](#footnote-ref-31)
31. Ibid., para. 34. [↑](#footnote-ref-32)
32. *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3. [↑](#footnote-ref-33)