



International Covenant on Civil and Political Rights

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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*, **, ***

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

* Adopted by the Committee at its 138th session (26 June–26 July 2023).

** 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, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, 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.

*** An individual opinion by Committee member José Manuel Santos Pais (partially dissenting) is annexed to the present Views.



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 national of Ukraine 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, additionally, Ms. Huseynova's rights under article 17 (1) of the Covenant. The Optional Protocol entered into force for Azerbaijan on 27 February 2002. The authors are represented by counsel.

Facts as presented by the authors

2.1 The authors are Jehovah's Witnesses and meet together for religious worship, study and discussion of holy books in accordance with 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 without permission, searched each person and seized personal property, including holy books. The authors were taken into custody and held at the police station for more than seven hours, during which time they were denied food and drink. Children and older persons among the group were also denied food. The police officers told the authors that it was not their problem that the children were hungry, and mocked their faith by telling them to read the Qur'an. The authors were brought before a trial court that evening to convict them immediately. After strong objections from the authors, the judge adjourned the trial to 23 January 2014.

2.2 On 23 January 2014, the authors filed motions to terminate the proceedings against them, attaching statements that proved that their gathering had been peaceful. The motions were rejected and the authors were convicted by Kapaz District Court under article 299.0.2 of the Code of Administrative Offences for having attended an unauthorized religious meeting, and fined 1,800 manats each.¹ Although the authors had met for religious purposes, they were not members of the legal entity of Jehovah's Witnesses registered in Baku. The authors claimed before the court that they had applied to be registered as an association in Ganja, but that their application had been refused. They claimed that their meeting was an act of religious worship and that it was the custom for Jehovah's Witnesses to meet in a Kingdom Hall or private home. The trial judge nevertheless considered the meeting to be a "religious activity" for which the authors had not obtained the appropriate official permission.

2.3 Ms. Huseynova and Mr. Bakirov were unable to pay the full amount of the fine. Ms. Huseynova was jailed on two occasions, each time for three days, and Mr. Bakirov was jailed for 10 days.

2.4 The authors appealed their conviction before Ganja Court of Appeal, on the basis of the Constitution, the Act on Freedom of Religious Belief and the Act 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 had been peaceful, was not prohibited by any domestic law and had not endangered public order, and that the State had provided no evidence to prove that it had been necessary to raid the home.

2.5 Ganja Court of Appeal dismissed the authors' appeals and ruled that the restrictions on 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 grounds, and without providing further analysis, the authors' claims regarding the unlawful entry and search of a private home.

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

¹ 1,800 manats is equivalent to approximately 964 euros, according to the current official exchange rate.

Complaint

3.1 The authors claim that their convictions under the Code of Administrative Offences 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, older persons and persons with disabilities, were forced to go to the police station, where they were detained for more than 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.² At the police station, some parents were refused permission by the police to get food for their children. The authors claim that their arrest was illegal, because its purpose was not investigatory but intended to intimidate them and coerce them into not exercising their freedom of belief, assembly and association, as evidenced by the abusive speech by the police officers against the authors' beliefs during their detention. Although the courts ruled that the Act on Freedom of Religious Belief allowed for the police to investigate the authors' meeting because it was illegal, the authors claim that this ruling is wrong, as such meetings are not prohibited by law. The authors insist that an arrest or detention may be authorized by domestic law and nonetheless be arbitrary.³ The authors further claim that the police did not prove before the domestic courts that their arrest and detention were necessary, as they were peacefully exercising their freedom of religion, assembly and association. The authors point to a judgment 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.⁴ 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 article 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 that the authors were fined – and two of the authors jailed – for holding a religious meeting. The authors claim that, during their arrest, they were subjected to abuse⁵ 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 being necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, in accordance with the standard set out under article 18 (3). The authors stress that the Committee has already found that a requirement for registration prior to the exercise of the freedom of religion is a disproportionate limitation of the rights protected under article 18 (1), and is thus incompatible with the requirements under article 18 (3). The authors claim that, although the courts relied on domestic laws to justify the police's actions, they failed to consider the inconformity of such laws with the Covenant, and thus favoured rule by law over 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". Lastly, the authors claim that the State party provided no arguments 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) of the Covenant, in the light of the recognition by the Committee that the freedom of expression includes teaching and religious discourse.⁶ They claim, relying *mutatis mutandis* on their arguments regarding their claims raised under article 18 of the Covenant, that the State party interfered with their right to seek, receive and impart information. They reiterate that their meeting in a private home for peaceful religious teaching and discourse did not

² General comment No. 35 (2014), para 13.

³ *Ibid.*, para. 12.

⁴ European Court of Human Rights, *Krupko and others v. Russia*, Application No. 26587/07, Judgment, 26 June 2014; and Working Group on Arbitrary Detention, opinion No. 42/2015.

⁵ The authors claim that the police told them to "read the Qur'an" and "be Muslims".

⁶ General comment No. 34 (2011), para. 11.

represent any threat to public order and that the State party is unable to justify its interference as meeting the strict tests of necessity and proportionality. The authors claim that, as the Committee has found in its jurisprudence, the fact that they were not part of a locally registered religious association did not justify the police's actions. The admission by Ganja Court of Appeal that it supported 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 the arrest, fines and jail terms were excessive. The authors claim that the true motives of the police's conduct are revealed by the religious abuse to which they subjected all of the detained persons.

3.5 The authors claim that the justification by the courts of the police investigation and raid, their detention, and their conviction on the grounds that they were not a locally registered group constitute 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 already found to consist in a violation of the right to freedom of religion. The authors reiterate that neither the Act on Freedom of Religious Belief nor the Code of Administrative Offences requires a group of believers to be registered in order to worship together.

3.6 The authors claim that as an unincorporated group of Jehovah's Witnesses who worship outside Baku and who have been denied registration as a religious association, they are not even allowed the same rights as Jehovah's Witnesses registered elsewhere in the State party. They claim to have been subjected to discriminatory abuse and insults by State authorities that denigrated their religious beliefs (see para. 2.1 above). The authors claim that they were victimized as members of a minority religion, and that Ganja Court of Appeal tolerated the discrimination to which they were subjected by stating that "the reaction of the public" towards them had been "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 assessment by the domestic courts that the interference with her home was prescribed by the Act on Freedom of Religious Belief. For the reasons set out in relation to the authors' claims under articles 18 and 19, she claims that the State party's interference with her home was arbitrary and unlawful.

3.8 The authors request that the Committee urge the State party to provide them with an effective remedy, to include the following: (a) the removal of all restrictions, including laws, regulations and decrees, on the authors' right to freedom of association for religious purposes; (b) monetary compensation for the moral damages suffered as a result of the unlawful actions of the police; (c) monetary compensation to Ms. Huseynova and Mr. Bakirov for their unlawful incarceration; (d) the reversal of any monetary penalty imposed and the return with interest of any money paid; and (e) suitable monetary compensation for the legal expenses and fees incurred during the domestic proceedings and the 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 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 grounds that their religious meeting contravened the Act on Freedom of Religious Belief and thus constituted an offence under article 299.0.2 of the Code of Administrative Offences. Once the authors had provided explanations and the police had completed the necessary administrative protocols, the authors left the police station. Kapaz District Court found that the authors had violated article 299.0.2 of the Code of Administrative Offences, which was confirmed on appeal by Ganja Court of Appeal.

4.3 On admissibility, the State party submits that the authors have exhausted the domestic remedies only with regard to the administrative offences that they committed, and that the

cases before the domestic courts did not concern the alleged violations of their rights. The authors should have lodged separate complaints with the domestic courts and authorities, such as the Prosecutor General's Office, in relation, for example, to the alleged violations of their rights concerning liberty, home, freedom of expression and freedom of association. The State party stresses that the authors' appeals against the first-instance decisions cannot be considered sufficient for the exhaustion of domestic remedies in respect of 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 those appeals did not constitute separate complaints. The scope of the decisions under the appeals procedure was not the alleged violations of the authors' rights, but the administrative offences that they had committed. In addition, the State party submits that the appeals procedure under the Code of Administrative Offences could not provide a remedy for the alleged violations of the authors' rights under the Covenant, and could only be expected to remedy the imposed fines. The State party therefore submits that, since the authors failed to raise their claims under articles 9 (1), 17 (1), 19 (2) and (3), 21, 22 (1) and (2), 26 and 27 of the Covenant before the domestic courts, these claims should be declared inadmissible under article 5 (2) (b) 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 they 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 to which they claim to have been subjected.

4.5 On the merits of the communication, the State party first 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 merely invited to the police station so that they could provide explanations and the relevant documents could be compiled. As the authors were suspected of holding an unlawful religious meeting, contrary to the requirements of the Act on Freedom of Religious Belief, there was a lawful motive for the police's intervention. It would be necessary in terms of the courts' examination of the case for the authors, as suspects of a violation of the law found in flagrante delicto, to accompany the police to the station for identification and the drafting of protocols.⁷ As to the fact that the authors were held for more than 7 hours in the police station, the State party submits that this period of time seems perfectly reasonable considering that protocols for all 36 participants of the meeting had to be drafted, meaning that a protocol was prepared every 12 minutes. The State party argues that inviting a suspect of an administrative violation to a police station for the purposes of an investigation cannot amount to an arrest, detention or restriction of their freedom.⁸ It further adds that the authors failed to provide evidence in support of their allegations that they had been detained at the police station without food or water and that they were subjected to abusive and discriminatory speech by the police. The State party therefore submits that there has been no violation of article 9 of the Covenant.

4.6 The State party submits that the freedom to manifest one's religion or beliefs is not absolute and may be subject to certain limitations, as foreseen under article 18 (3) of the Covenant. It submits that, in the present case, the interference by the domestic authorities with the authors' freedom to manifest their religion or beliefs constituted such a limitation, on the basis of article 12 of the Act on Freedom of Religious Belief and article 299.0.2 of the Code of Administrative Offences. The State party submits that the authors ought to have been aware of these provisions, which are accessible and include limitations formulated with sufficient precision to enable the authors to foresee the consequences of a given action. On the requirement for the limitation to have a legitimate aim, the State party submits that the interference in the present case had the legitimate aim of the protection of public order and the fundamental rights and freedoms of others. The State party also submits that the impugned limitation was necessary in a democratic society. It refers to the judgment of the European Court of Human Rights in *Kokkinakis v. Greece*, in which the Court recognized that in democratic societies, in which several religions coexisted within one and the same population, it might be necessary to place limitations on the freedom to manifest one's

⁷ The State party refers to the individual opinion of Committee member José Manuel Santos Pais (partially dissenting) in *Mammadov et al. v. Azerbaijan* (CCPR/C/130/D/2928/2017, annex), paras. 4 and 5.

⁸ *Ibid.*, para. 7.

religion or beliefs in order to reconcile the interests of various groups and ensure that everyone's beliefs were respected.⁹ The State's role as a neutral and impartial organizer 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 broad-mindedness are hallmarks of a democratic society, which must be based on dialogue and a spirit of compromise necessarily entailing concessions on the part of individuals or groups of individuals which are justified in order 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.¹⁰

4.7 The State party emphasizes that particular weight should be given to domestic policymakers, 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 limitations of the rights under article 18 of the Covenant are necessary. It refers to judgments of the European Court of Human Rights in which the Court pointed out that the rules governing that sphere varied from one country to another in the light of the differences in the meaning or impact of the public expression of a religious belief according to context and time.¹¹ In the present case, the State party submits that, on the basis of the provisions of national legislation, the authorities had sufficient reasons to intervene with the authors' actions and that that 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 the claim that there was any interference or limitation of rights under article 19 of the Covenant and submits that the authors' claims under article 19 (2) and (3), for which they rely *mutatis mutandis* on those under article 18, do not raise any separate issues. The authors were fined for committing an administrative offence, which has nothing to do with what they expressed or published or with 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 of the authors' claims under article 18 (see paras. 4.6 and 4.7 above) 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, as protected under article 22 of the Covenant. In response to the authors' claim that their religious ceremony was considered unlawful because their association was not registered, the State party submits that the subject matter of the communication is not this claim, but rather the administrative offences that the authors committed. Furthermore, the State party submits that the authors' 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, relying *mutatis mutandis* on all their other claims to substantiate their claims under articles 26 and 27 of the Covenant, have failed to demonstrate that they suffered discrimination on the basis of their religion. It submits that article 12 of the Act on Freedom of Religious Belief and article 299.0.2 of the Code of Administrative Offences are equally applicable to all, without any discrimination. The authors' claims are based on vague statements and do not demonstrate a difference in 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

⁹ See European Court of Human Rights, *Kokkinakis v. Greece*, Application No. 14307/88, Judgment, 25 May 1993.

¹⁰ See European Court of Human Rights, *Chassagnou and others v. France*, Applications No. 25088/94, No. 28331/95 and No. 28443/95, Judgment, 29 April 1999; and *Leyla Şahin v. Turkey*, Application No. 44774/98, Judgment, 10 November 2005.

¹¹ European Court of Human Rights, *Leyla Şahin v. Turkey*; and *Dahlab v. Switzerland*, Application No. 42393/98, Decision on Admissibility, 15 February 2001.

has approximately 3,000 followers who do not face impediments to their operation. There are regular meetings and a positive dialogue between national authorities and the Religious Community of Jehovah's Witnesses, illustrated by frequent visits to Azerbaijan, meetings with government officials and the repeated letters of appreciation sent by the President of the European Association of Jehovah's Witnesses to the State party in support of Jehovah's Witnesses in the country. The State party submits that Jehovah's Witnesses are regularly provided with financial aid from the Fund for the Promotion of Moral Values, which operates under the State Committee for Work with Religious Organizations. Relying *mutatis mutandis* on its observations on the authors' claims under articles 9, 17, 18, 19, 21 and 22 of the Covenant, the State party submits that there was no violation of articles 26 and 27.

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 at 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 Police Act provides for limitations to the right to inviolability of the home in the context of urgent measures being taken to protect the rights and freedoms of other persons and to 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).

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

5.1 On 27 January 2023, the authors submitted comments on the State party's observations on admissibility and the merits. 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 is a member of the Religious Community of Jehovah's Witnesses, which is 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 the authors were not released from the police station to return to their homes, but were brought before 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 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 with the domestic courts or the Prosecutor General's Office, the authors refer to the Committee's Views concerning a similar communication, in which the Committee rejected this argument.¹² The authors raised the substance of all their claims under the Covenant before both the trial court and the appeal court. They argue that their claims should not be deemed inadmissible simply because the domestic courts failed to consider them. 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 court and the appeal court had 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 further complaints would not have remedied their situation, but would have incurred further costs and delays in domestic proceedings. The authors, therefore, maintain that they have exhausted available and 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 during domestic proceedings before 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 to which they were subjected by the police, which denigrated their minority Christian faith. They

¹² *Mursalov et al. v. Azerbaijan* (CCPR/C/136/D/3153/2018).

therefore reiterate that their claims under articles 26 and 27 have been sufficiently substantiated and are 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, and only after they were taken to Kapaz District Court. The authors' statements during the domestic proceedings describe how the entire group, including the children, was ordered to go to the police station, and that the police did not grant exceptions for a pregnant woman or for a 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 denied 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 and hungry and were suffering great stress because of the detention. The authors 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 the authors' arrest was aimed at preventing 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 a warrant shows that the operation constituted a police raid rather than a routine identification check.

5.5 The authors note that the State party, in its arguments, relies *mutatis mutandis* on a dissenting opinion in the Committee's Views in *Mammadov et al. v. Azerbaijan*, overlooking the fact that the Committee found a violation of article 9 (1) with regard to 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 that the Committee and the European Court of Human Rights have consistently found to constitute arbitrary arrest and detention.¹³ Lastly, the authors reject the State party's submission that they failed to provide evidence of having been deprived of food and water and subjected to abusive and discriminatory speech while 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 evidence, such as closed-circuit television footage from the police station, given that the State party has not provided 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 claim 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 into Ms. Huseynova's home on the basis of article 24 of the Police Act, as none of the limited circumstances set out in that legislation 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 evidence or allegations that it endangered public order and safety. Furthermore, any alleged offence under article 299.0.2 of the Code of Administrative Offences was not criminal.

5.7 The authors observe that the State party admits that the raid by the police of their religious meeting amounted to interference with their rights protected under article 18 of the Covenant. Although the State party argues that the limitations to the authors' freedom to manifest their religious beliefs stem from the requirements under article 12 of the Act on Freedom of Religious Belief that a religious association should be officially registered in order to operate lawfully, 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 as to how the

¹³ See *Mursalov et al. v. Azerbaijan*, *Aliyev et al. v. Azerbaijan* (CCPR/C/131/D/2805/2016) and *Gurbanova and Muradhasilova v. Azerbaijan* (CCPR/C/131/D/2952/2017); and European Court of Human Rights, *Nasirov and others v. Azerbaijan*, Application No. 58717/10, Judgment, 20 February 2020.

authors' peaceful manifestation posed a specific threat to public safety, order, health or morals or to the fundamental rights and freedoms of others, which would justify the blanket ban on religious worship by an unregistered religious organization. Even if it had done so, the authors contend that the State party failed to demonstrate the proportionality of the registration requirement under article 12 of the Act on Freedom of Religious Belief in the light of its considerable limitation of religious worship, or to show that such a requirement was the least restrictive measure necessary to protect the freedom of religion or belief. The State party also failed to specifically identify, in accordance with article 18 (3) of the Covenant, the fundamental rights and persons affected that would justify the restrictions on 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, but failed, to obtain registration in Ganja. 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. The authors submit that it would be absurd to expect them to travel to Baku, the location of the only registered religious association of Jehovah's Witnesses in Azerbaijan, as the only way to lawfully assemble for worship in the country.

5.10 Although article 12 of the Act on Freedom of Religious Belief and the Code of Administrative Offences apply equally to all citizens, the authors argue that, in practice, discrimination exists, given that there is an overwhelming number of registered Muslim religious associations (938) versus only one for Jehovah's Witnesses. Consequently, the vast majority of citizens who worship will never be at risk of violating the Code of Administrative Offences, while, in contrast, nothing prevents the authorities from continuing to prosecute Jehovah's Witnesses outside of Baku under the current law as interpreted by the State party. 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's actions and the fact that religious intolerance was the basis for the authors' arrest, harassment and conviction. The authors reiterate that their religious books were confiscated without proof that they posed any threat to public safety, order, health or morals or the fundamental rights and freedoms of others. The fact the State party's authorities and the courts decided to ignore such evidence of discrimination does not mean that it does not exist. The authors point to inconsistencies in the State party's argument, seeming to hold 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 lodged separate complaints with the domestic courts and authorities, such as the Prosecutor General's Office, and that their appeals against the first-instance decisions concerned their administrative fines only and

cannot be considered sufficient 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 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 Ganja Court of Appeal and their appeals were all dismissed. It notes the authors' claim that filing separate complaints would have been futile and incurred in further costs and delays, since they had already been convicted by the first-instance and appeal courts. 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.¹⁴ 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 authors' 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 failed to provide sufficient details concerning their arguments, in particular with respect to any differential treatment that they experienced in comparison with individuals belonging to other religions and engaging in the same activity. Accordingly, the Committee considers that the authors' claims under articles 26 and 27 are 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. It therefore 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 at Ms. Huseynova's home, taking them to the police station, where they were held for more than seven hours, and convicting them of an administrative offence for which they were fined, and two of them imprisoned 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 Act on Freedom of Religious Belief, under which a religious association must be officially registered 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 whether and to what extent limitations of the rights under article 18 are 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 were necessary to protect public safety, order, health or morals

¹⁴ Human Rights Committee, *R.T. v. France*, communication No. 262/1987, para. 7.4; *Schmidl v. Czech Republic* (CCPR/C/92/D/1515/2006), para. 6.2; and *Staderini and De Lucia v. Italy* (CCPR/C/127/D/2656/2015), para. 8.3.

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 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.¹⁵

7.4 In the present case, the Committee notes that the State party, despite arguing that the interference with the authors' rights under article 18 had the legitimate aim of protecting public order and the fundamental rights and freedoms of others, 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 under article 12 of the Act on Freedom of Religious Belief 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, Kapaz District Court convicted the authors on the grounds that their organization of and participation in religious activity at Ms. Huseynova's home violated the requirements of the Act on Freedom of Religious Belief. It further observes that Ganja Court of Appeal upheld their conviction by ruling that the restrictions on 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 concludes that the punishment imposed on the authors amounted to an impermissible limitation of their rights to manifest their 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 arrest, as they were ordered by force to go to the police station and detained for more than seven hours, during which time they were not free to leave at any time. It also notes the State party's position that this incident did not constitute deprivation of liberty, but that the authors were merely invited to the police station so that they could provide explanations and the relevant documents could be compiled. The Committee, therefore, must first ascertain whether the authors were deprived of their liberty within the meaning of article 9 (1) of the Covenant. As the Committee noted in paragraph 6 of its general comment No. 35 (2014), deprivation of personal liberty is without free consent, and 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 Kapaz District Court and to Ganja Court of Appeal, in which they described how the police officers did not allow them to conclude their religious meeting and ordered them to open the gate to Ms. Huseynova's home, and asserted that, once in the police station, they were "under the oversight of the guards", who ordered them to sit down when they asked for food and water for the older persons and children in the group.¹⁶ The Committee also observes that neither the decisions of the domestic courts nor the State party's observations provide any substantive information or evidence contesting these allegations.

¹⁵ General comment No. 22 (1993), paras. 4 and 8.

¹⁶ For example, the statement by Ms. Huseynova to the Kapaz District Court on 23 January 2014.

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,¹⁷ 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 "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.¹⁸ 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.¹⁹ The Committee notes the authors' allegations that Jehovah's Witnesses face a pattern of harassment by the State party's authorities, and that in the authors' specific case, the purpose of their arrest was not investigatory but to intended to intimidate them and coerce them into not exercising their freedom of belief, assembly and association, as evidenced by the abusive speech by the police officers against the authors' beliefs during their detention. It also notes the allegation that the police entered Ms. Huseynova's home and confiscated objects without a warrant and without clearly informing the authors of the charges 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 9 and 18 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 in the case of 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 the authors' rights under articles 9 (1) and 18 (1) and (3).

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to provide the authors with adequate compensation, including for any legal expenses incurred by them and for the incarceration of Ms. Huseynova and Mr. Bakirov, and with restitution for 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 to have them widely disseminated in the official language of the State party.

¹⁷ General comment No. 35 (2014), para. 10.

¹⁸ *Formonov v. Uzbekistan* (CCPR/C/122/D/2577/2015), para. 9.3.

¹⁹ General comment No. 35 (2014), para. 17.

Annex

Individual opinion of Committee member José Manuel 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 concluded that the authors, all Jehovah's Witnesses, were arbitrarily arrested and detained for more than seven hours on 11 January 2014, as punishment for the legitimate exercise of their right to manifest their religious beliefs (para. 7.7). Although I understand this reasoning, I believe that the facts can also be interpreted differently.
3. The rationale behind the conclusion of the Committee is that the authors, forming part of a group of 36 people who had met at Ms. Huseynova's home in Ganja – not a registered legal address – for a religious discussion, were coerced into accompanying the police to the police station. Since they were allegedly 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 of the Covenant is the direct consequence of having found a violation of article 18.
4. As noted by the State party (paras. 4.2 and 4.5), the police intervened in an unlawful religious ceremony and invited the authors, as suspects of a violation of the law found in *flagrante delicto*, to the police station on the grounds that their religious meeting contravened the Act on Freedom of Religious Belief and thus constituted an offence under article 299.0.2 of the Code of Administrative Offences. Once the authors had provided explanations and the police had completed the necessary administrative protocols, the authors left the police station. Although the authors were held for more than seven hours in the police station, that delay seems reasonable considering that protocols for all 36 participants of the meeting had to be drafted, meaning that a protocol was prepared every 12 minutes.
5. The authors were convicted for having attended a religious activity for which they had not obtained the appropriate official permission, given that 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. There is 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 not proportionate measures necessary to serve a legitimate purpose within the meaning of article 18 (3) of the Covenant and that their punishment therefore amounted to an impermissible limitation of their rights to manifest their religion under article 18 (1) (para. 7.5).
6. There is also 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 for the drafting of all necessary legal documentation that will later allow courts to try 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. The 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 the police intervention, aware of their status in the proceedings and therefore also able to begin preparing their defence. Moreover, the length of time for which the authors were held in the police station – seven hours – seems reasonable under the circumstances, given that the group comprised 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 in order to ascertain facts and address allegations of violations or offences,

without 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 or detained, but remains at the disposal of the authorities until the goal for which the summons was issued 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 had been drafted 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.
