



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. 2331/2014*, **

<i>Communication submitted by:</i>	Karima Sabirova and Bobir Sabirov (not represented by counsel)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Uzbekistan
<i>Date of communication:</i>	10 June 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 13 January 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	29 March 2019
<i>Subject matter:</i>	Illegal search of a private home and seizure of religious literature
<i>Procedural issue:</i>	Non-substantiation of the claims
<i>Substantive issues:</i>	Privacy, freedom of religion, fair trial, freedom of movement, arbitrary arrest/detention
<i>Articles of the Covenant:</i>	9, 12, 14, 17 and 18
<i>Article of the Optional Protocol:</i>	2

1. The authors are Karima Sabirova, born in 1957, and her son, Bobir Sabirov, born in 1981, both Uzbek citizens. They claim to be victims of violations by Uzbekistan of their rights under articles 9, 12, 14, 17 and 18 of the Covenant. The Optional Protocol entered into force for the State party on 28 December 1995.

The facts as submitted by the authors

2.1 On 22 May 2012, eight police officers of the Regional Department of the Ministry of the Interior dressed in civilian clothes forced themselves into Ms. Sabirova's apartment and

* Adopted by the Committee at its 125th session (4–29 March 2019).

** The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Christopher Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



searched it without presenting any authorization from a prosecutor or a court. Upon locating portraits of Sathya Sai Baba, esoteric and religious books, and a picture of Ms. Sabirova at an international voluntary medical camp of the Russian-speaking countries of the international service organization of Sathya Sai Baba, the officers accused the authors of membership in a “fictional” religious organization “Sri Sathya Sai Baba”.

2.2 Ms. Sabirova told the officers that she had brought the books and photographs from her trips to India, Kazakhstan and the Russian Federation, and that the Uzbek customs authorities had not objected to their importation. Furthermore, some of the books were published by an official Russian publishing house (Amrita Rus). On an unspecified date, the officers searched the apartment of Mr. Sabirov as well. He submitted that the religious and esoteric books found in his apartment belonged to his mother and that he had never used them.

2.3 On 31 May 2012, the Chilanzar district court found the authors guilty of an administrative violation under article 184-2 of the Code of Administrative Offences. The violation itself was based on article 19 of the law “On freedom of conscience and religious organizations in the Republic of Uzbekistan” which regulates the “creation, possession and dissemination of print, audio, video and photographic materials, contents of religious extremist, separatist and fundamentalist ideas”. The trial lasted only a few minutes and the authors had no opportunity to defend themselves during the hearing. The authors were each sentenced to a fine of one hundred times the minimum monthly wage, which at the time amounted to SUM6.292 million (approximately US\$2,800 for each of them).

2.4 The judgment of the court was based on the expert opinion of the Committee on Religious Affairs under the auspices of the Cabinet of Ministers of Uzbekistan, dated 23 May 2012. In his expert opinion, Mr. K.B., states that the confiscated literature does not contain any ideas of “religious extremism, separatism or fundamentalism”. The expert, however, concludes that since the religion in question is not “official” in Uzbekistan, the importation of such religious books, their dissemination and use are unlawful. Following the judgment of the court, the authors’ books, CDs, DVDs, brochures and other materials were destroyed.

2.5 On 7 June 2012, the authors filed an appeal at the Tashkent city court. On 12 July 2012, the Tashkent city court dismissed the appeal on the grounds that the authors’ guilt was proven, the administrative offence had been correctly determined and the sanction imposed was appropriate.

2.6 On 12 June 2012, the authors submitted an appeal to the president of the Tashkent city court for criminal matters. On 5 August 2012, the president of the court rejected the appeal.¹ On 23 July 2012, the authors filed an appeal at the Constitutional Court. On 1 August 2012, the Constitutional Court informed the authors that their appeal had been referred to the Supreme Court.

2.7 On 30 July 2012, the authors submitted a request for a supervisory judicial review to the President of the Collegium on Criminal Matters of the Supreme Court of Uzbekistan. On 28 August 2012, the Supreme Court rejected the request on the basis that the infraction had been correctly determined and the sanction imposed was appropriate and lawful.

2.8 On 18 September 2012 and 20 November 2012, the authors submitted requests for a supervisory judicial review to the Vice-President and President of the Supreme Court respectively. On 17 October 2012, the Court referred to its earlier decision of 28 August 2012. On 5 April 2013, the authors filed a complaint to the Presidium of the Supreme Court challenging the unlawful actions of judges of the district and city courts and the Supreme Court. On 3 May 2013, the Supreme Court rejected their complaint as unfounded.²

2.9 On 4, 7 and 14 June 2012, the authors submitted complaints to the prosecutor’s office of the Chilanzar District but no response was received. On 19 June 2012, on 2, 9, 11 and 30 July 2012 and on 13 November 2012, the authors submitted complaints to the Office of the Prosecutor of the city of Tashkent. On 24 August and 23 November 2012, the Office

¹ The document is not in the file.

² The document is not in the file.

of the Prosecutor rejected their complaints as unfounded. On 7 February 2013, the authors complained to the Office of the Prosecutor-General of Uzbekistan. On 2 March 2013, the Prosecutor-General rejected the complaint on the basis that since the infraction had been correctly determined and the sanction imposed was appropriate, there were no grounds to challenge the decisions of the courts.

2.10 On 12 and 22 March 2013 and 4 and 6 April 2013, the authors submitted complaints to the President of Uzbekistan about the inaction of the Office of the Prosecutor, the unlawful decisions of the judges of the district and city courts and the Supreme Court of Uzbekistan and the unlawful action of the Ministry of the Interior. On 3 May 2013, the authors were informed in a letter from the Supreme Court that their complaints to the President had been examined and that the Supreme Court had referred to its earlier decision in the same matter, dated 28 August 2012. The authors submit that they have exhausted all available and effective domestic remedies.

The complaint

3.1 The authors claim that the State party violated their rights under articles 9 and 17 by forcefully entering their homes, searching them and seizing books and other materials belonging to them.

3.2 Furthermore, the State party did not conduct a fair hearing, violating their rights under article 14. The whole process lasted only five minutes and the judge did not question the authors or witnesses.

3.3 The authors also claim that the State party violated their rights under article 18 by confiscating and destroying their religious literature and sentencing them to an administrative fine.

State party's observations on admissibility and the merits

4.1 By notes verbales of 5 December 2014 and 26 May 2015, the State party observed that the authors' complaints were "fictional" and "do not correspond to reality". By decision of the Chilanzar district court, the authors were sentenced to an administrative fine for violating article 184-2 of the Code of Administrative Offences. The religious materials that were confiscated following the authors' administrative conviction were destroyed. On 28 June and 12 July 2012, the authors' appeals were rejected.

4.2 The State party clarifies that on 31 May 2012, the duty unit of the Chilanzar police station received indications to the effect that Ms. Sabirova and her son possessed "illegal religious literature" in their private homes.³ The police searched Ms. Sabirova's apartment and found religious literature, which was seized and sent for "expert examination". It was ascertained, based on the documents of the court case, that the search was conducted based on an order.⁴ The Committee on Religious Affairs (under the auspices of the Cabinet of Ministers of Uzbekistan) issued its expert opinion on 23 May 2012. It stated that the religious articles in question were "related to the religious movement of Sathya Sai Baba" and that "the activities of this movement are prohibited in Uzbekistan".

4.3 While the State party guarantees equal treatment of all religions, it also requires them to follow the provisions of the applicable laws and regulations. Illegal religious activities are prohibited by law. A religious organization can be created by at least 100 people residing in Uzbekistan. The registration is granted by the Ministry of Justice of Uzbekistan. Teaching religion privately is prohibited by law. Only a registered religious organization can "produce, export, import and distribute" religious literature or any other information about religion. Any religious materials published abroad can only be imported into Uzbekistan after a special examination.

4.4 During the court hearing, Ms. Sabirova confirmed that some of the confiscated religious literature was brought by her from India and the Russian Federation and that she had purchased some of it on the Internet. The administrative judges considered the case

³ The source of this information is not clear.

⁴ The State party does not provide further details regarding the search order.

objectively, comprehensively and in accordance with the requirements of the Criminal Procedure Code. The Office of the Prosecutor-General found no reason to challenge the decisions of the court.

4.5 Ms. Sabirova was also prohibited from leaving Uzbekistan as she had not paid the fine that was imposed on her by the court. The court bailiff approached Ms. Sabirova several times at her home, requesting payment, but the author refused to pay. The efforts to secure the payment are ongoing.

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

5.1 Responding to the State party's observations, the authors submit that their complaints are not "fictional". The actions by the State party clearly violated several articles of the Constitution of Uzbekistan, such as articles 16, 18, 24, 25 among others, and relevant provisions of the Criminal Procedure Code, the Code of Administrative Offences, and the law on religions. The State party did not explain how it was able to initiate a case against the authors based on an anonymous tip on the telephone. The anonymous information was not properly recorded by the police, in violation of the requirements of article 329 of the Criminal Procedure Code.

5.2 The authors note that the State party claims that the search and seizure was conducted according to the Criminal Procedure Code. The authors opened their doors to a police officer, who claimed to be checking the passport information of the residents. Instead, eight plain clothes officers forced themselves into the authors' apartments, without identifying themselves or their purpose, or providing documents to justify the search. Some of the material that was seized is widely available on the Internet. Other materials, such as books, were purchased by Ms. Sabirova in India and the Russian Federation. The confiscation and destruction of books recalls the "dark Middle Ages". The Uzbek Constitution guarantees the right to seek and obtain information, as well as freedom of movement of persons. The authors claim that they never belonged to any religious organization, as the State party claims.

5.3 In addition, article 184-2 of the Code of Administrative Offences proscribes only the possession of illegal religious literature for the purpose of dissemination. The authors further claim that they never created a religious organization and possessing books on religion cannot be considered as such. Furthermore, in 2004, the same Ministry of Justice of Uzbekistan refused to register Sathya Sai Baba as a religious organization. In his expert examination, the expert himself said that the confiscated literature did not contain any threats, nor was it extremist or fundamentalist in nature.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

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 takes note of the authors' claim that they have exhausted all effective domestic remedies available to them. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b), of the Optional Protocol have been met.

6.4 The Committee has noted the authors' claims under articles 9, 12 and 14, of the Covenant. In the absence of further pertinent information on file, however, the Committee considers that the authors have failed to substantiate sufficiently, for purposes of admissibility, those allegations. Accordingly, it declares that part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 In the Committee's view, the authors have sufficiently substantiated, for the purposes of admissibility, their remaining claims under articles 17 and 18, declares them admissible and proceeds with consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee first notes the authors' claims under article 17 of the Covenant that eight police officers forced themselves into Ms. Sabirova's apartment and proceeded to search it, without providing any explanation or justification, such as a search warrant, for example. The Committee recalls its general comment No. 16 (1988) on the right to privacy, according to which searches "of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment" (para. 8). The State party argues that the search and seizure was authorized by an order, without providing a copy of the order or explaining why the order was not presented to the authors by the eight police officers, and without specifying which authority issued the order in question. Under these circumstances, the question before the Committee is not whether such interference has a legal basis in domestic law, but rather whether the application of domestic law in the present case was arbitrary under the Covenant, as 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 of each case.⁵

7.3 In that regard, the Committee notes that the State party does not dispute the authors' allegations that the eight police officers who intruded into their apartment did not present a search warrant or explain why the search and seizure were being conducted. The requirement to present a valid search warrant when searching someone's private residence is aimed at assuring the target of the search of its lawfulness and reasonableness in the particular circumstances, as required by the provisions of general comment No. 16. In considering the specific circumstances of the present communication, in particular the fact that the search was ordered for religious books and other materials, possession of which constitutes a manifestation of one's religion under article 18 (1), the Committee concludes that the State party's interference in the authors' privacy was unreasonable and that it thus constitutes an arbitrary interference in the authors' right to privacy, in violation of article 17 (1) of the Covenant.

7.4 The Committee further notes the authors claim under article 18 of the Covenant that by confiscating their personal books, CDs and other materials, and sentencing them to an administrative fine, the State party violated their right to freedom of religion, since the books mostly concerned the specific religious movement of Sathya Sai Baba. The State party claims that the authors violated article 184-2 of the Code of Administrative Offences, which prohibits the "illegal manufacturing, possession, bringing into the country or dissemination of materials of religious content".

7.5 The Committee refers to its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion. The right to freedom of thought, conscience and religion is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee recalls, however, that the freedom to manifest one's religion or beliefs is not absolute and may be subject to limitations, which are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, as set out in article 18 (3) of the Covenant. The Committee notes that the State party has not invoked any of the specific grounds for which the restriction imposed on the authors would in its view be necessary and referred only to part of the expert opinion of the Committee on Religious Affairs, stating that the religious articles in question were "related to the religious

⁵ See general comment No. 16, para. 4.

movement of Sathya Sai Baba” and that “the activities of this movement are prohibited in Uzbekistan” (para. 4.2 above). However, the State party has not contested the allegation by the authors that the same expert opinion also stated that the confiscated literature did not contain any ideas of “religious extremism, separatism or fundamentalism” (para. 2.4 above). Instead, the State party has sought to justify the sentencing of the authors and interference with their privacy and home owing to their failure to comply with the requirements of article 184-2 of the Code of Administrative Offences. In the circumstances of the present communication and in the absence of any proper justification provided by the State party on the application of the restriction imposed on the authors, the Committee concludes that the authors’ rights under article 18 (1) of the Covenant have been violated.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the rights of Ms. Sabirova and Mr. Sabirov under articles 17 (1) and 18 (1), of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, (a) to quash the authors’ administrative conviction and fine, and reimburse the cost of the administrative fine that was paid by them and any other relevant costs they incurred and (b) provide the authors with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

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 or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee’s Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.
