



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. 2928/2017*, **, ***

<i>Communication submitted by:</i>	Saladdin Mammadov, Rashad Niftaliyev and Sadagat Abbasova (represented by counsels, Daniel Gordon Pole and Petr Muzny)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Azerbaijan
<i>Date of communication:</i>	5 January 2017 (initial submission)
<i>Document reference:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 9 January 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	15 October 2020
<i>Subject matter:</i>	Arrest, detention and fine imposed on Jehovah's Witnesses for religious worship without prior official authorization
<i>Procedural issues:</i>	Admissibility – exhaustion of domestic remedies; admissibility – manifestly ill-founded
<i>Substantive issues:</i>	Arbitrary arrest – detention; arbitrary/unlawful interference; cultural rights; discrimination; freedom of assembly; freedom of association; freedom of thought, conscience or religion; freedom of opinion or expression; home
<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 and 5 (2) (b)

1. The authors of the communication are Saladdin Mammadov, Rashad Niftaliyev and Sadagat Abbasova. They are nationals of Azerbaijan and were born in 1961, 1987 and 1975,

* Adopted by the Committee at its 130th session (12 October–6 November 2020).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Bamariam Koita, Marcia V.J. Kran, David Moore, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Héléne Tigroudja, Andreas Zimmermann and Gentian Zyberi.

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



respectively. The authors claim that the State party has violated 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 Optional Protocol to the Covenant entered into force for Azerbaijan on 27 February 2002. The authors are represented by counsels.

Facts as presented by the authors

2.1 The authors are Jehovah's Witnesses and reside in the city of Ganja. Guided by their sincere Christian beliefs, they associate with each other for religious worship, study and discussion of holy books. None of the authors is a member of the Religious Community of Jehovah's Witnesses, an organization that is legally registered in Baku, in conformity with the national Law on Freedom of Religious Beliefs. The Government has refused to register the authors as a religious association.

2.2 On 12 October 2014, Mr. Mammadov hosted a peaceful religious discussion at his home for a group of approximately 25 individuals, including Mr. Niftaliyev and Ms. Abbasova. The meeting was interrupted when around 10 policemen entered Mr. Mammadov's home without a warrant or permission. They searched the home and all of the participants at the religious gathering, and confiscated personal property including copies of holy books. The raid caused distress to all of the participants and also caused Mr. Mammadov's elderly mother to faint. The police transported the participants to the police station and held them there for over six hours without food or drink. The police abusively ridiculed the participants' Christian beliefs and mocked their belief in God. The authors were released without charge.

2.3 However, on 14 October 2014, the police division of the Nizami district in Ganja served the authors with documents charging them with having held an unlawful religious meeting in violation of article 299.0.2 of the Code of Administrative Offences.¹ According to the charges, the authors were each required to pay a fine of 2,000 manats.² The authors immediately appealed the charges at the Nizami district court. On 6 November 2014, the district court convicted the authors and ordered them to pay the fines, reasoning that the meeting in Ganja had been an illegal religious ceremony because the authors as a group had not registered as a religious association in Ganja. The district court further reasoned that the police raid, while conducted without a warrant, had been permissible because, despite evidence to the contrary, unaccompanied minor children had been present and "religious ceremonies could impair their morals".

2.4 The authors then filed appeals at the Ganja Court of Appeal, arguing that the district court had erred by concluding that they had attended an unlawful religious meeting. The authors asserted that the meeting had been a peaceful religious gathering that had not endangered public security, order, health or morals or the rights and freedoms of others. The authors maintained that the Government had provided no evidence that the raid had been necessary or that any neighbours had been disturbed. They also invoked the Constitution and the Laws on Freedom of Religious Belief and on Freedom of Assembly. They described in detail how the police had violated their rights under the Covenant and the Universal Declaration of Human Rights.

2.5 On 28 November and 1 December 2014, the Ganja Court of Appeal dismissed the authors' appeals. The court reasoned that domestic legislative limitations on freedom of religion were "precise, attainable and prescribed by law" and that the meeting in question was unlawful because Jehovah's Witnesses were not locally registered. The court rejected the authors' argument that the warrantless entry and search of Mr. Mammadov's home by the police was unlawful. The court concluded that the actions of the police were permissible because the circumstances were urgent, given that children were present at the meeting

¹ According to a translation provided by the author, article 299.0.2 of the Code of Administrative Offences stated at the relevant time that "violation of the rules established by legislation regarding the organizing of and conducting of religious meetings, street processions, and other religious ceremonies ... entails a penalty in amount of 1,500–2,000 manats for natural persons and 7,000–8,000 manats for officials".

² The authors state that 2,000 manats was equivalent to approximately 2,004 euros, based on the official exchange rate at the relevant time.

without guardians, in violation of the Law on Freedom of Religious Beliefs. The court stated that “the police are allowed to restrict the right to privacy of premises in the course of implementation of urgent measures with a view to guaranteeing the rights and freedoms of other persons; to protect public order and preserve public safety”. The court also refused to classify the detention of the authors at the police station as an arrest, instead viewing it merely as an invitation to assist in a police investigation. The court stated specifically that: “Inviting a person suspected of committing an administrative violation to a police division for the purpose of investigation is a standard procedure. Inviting Saladdin Mammadov to the police division for the purpose of investigation and statement-taking cannot be regarded as a restriction of his freedom.”

2.6 The authors have exhausted all effective domestic remedies, as the cassation appeal procedure is not available to them. They have not submitted their complaint to any other international mechanism of investigation or settlement.

Complaint

3.1 The authors claim that by entering and searching Mr. Mammadov’s home and the authors themselves during a peaceful religious meeting and by arresting, detaining, convicting and fining them for holding the meeting, the State party violated 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.

Article 9 (1)

3.2 In violation of article 9 (1) of the Covenant, the authors were arbitrarily detained and deprived of their liberty when they were rounded up during an illegal raid on Mr. Mammadov’s private home and were compelled to accompany police agents to the police station, where they were detained for over six hours without food or water. Contrary to the conclusion of the domestic judges, this was not an “invitation” to assist police with an investigation. The authors had no choice but to accompany the police agents and were not free to leave at any time.

3.3 The domestic courts erroneously stated that the Law on Freedom of Religious Beliefs prohibits unaccompanied children from attending religious meetings and unregistered groups from holding meetings. In fact, the law prohibits neither of those acts. Even if such acts were unlawful, which they were not, the arrests were nonetheless arbitrary because they were inappropriate, unjust and unpredictable, and the State provided no evidence as to why they were necessary. The arbitrary detention of the authors for peaceful worship cannot be justified.

3.4 The arbitrary detention of the authors fits into a troubling pattern of similar cases where Jehovah’s Witnesses have been detained and/or harassed, as noted by the Working Group on Arbitrary Detention and the Human Rights Committee.³

Article 17 (1)

3.5 The police violated Mr. Mammadov’s right to privacy and the security of his home under article 17 (1) of the Covenant. The police officers entered his home without presenting a warrant or identification, searched his guests and his private bedrooms, and interrupted a religious discussion. The domestic courts justified the actions of the police by stating that the Law on Freedom of Religious Beliefs prohibits unauthorized religious meetings and that because unaccompanied children might have been present, the circumstances were such as to justify the actions of the police. The courts ignored the State party’s duty to protect individuals from arbitrary or unlawful interference with the privacy and sanctity of their own home. The domestic courts should have ruled that any government restrictions on the use of a private space must be demonstrably necessary, especially when the space is used for the free exercise of religion or expression.⁴ For the reasons pertaining to the authors’ claims

³ The authors cite paragraph 43 of opinion No. 42/2015 of the Working Group on Arbitrary Detention and CCPR/C/AZE/CO/4, paras. 32–33.

⁴ The authors cite *Lozenko v. Belarus* (CCPR/C/112/D/1929/2010), para. 7.7.

under articles 18 and 19 of the Covenant, the interference with Mr. Mammadov's home contrary to article 17 cannot be justified.

Article 18 (1) and (3)

3.6 The warrantless police raid and the fine imposed for holding a religious meeting violated the authors' rights under article 18 (1) and (3) of the Covenant. Freedom of religion necessarily incorporates the freedom to worship or assemble. The complainants were peacefully exercising that freedom individually and communally when they were interrupted by the police raid and arrested, and had their religious beliefs ridiculed and their religious literature confiscated.

3.7 The domestic courts erred in justifying the warrantless raid on the grounds that children were present at the meeting. In fact, the police could not have known whether children were present until after they had entered the premises. The courts completely rejected the authors' evidence that any children present were in the company of parents or guardians. In any case, the presence of accompanied or unaccompanied children at a religious meeting is not unlawful.

3.8 The domestic authorities maintained that because the authors were not members of a registered religious association, they did not have the right to assemble. However, legal registration is not a prerequisite for the exercise of collective religious rights. The Committee has only recognized restrictions on religious freedom if they are prescribed by law, necessary to protect the public and not applied so as to vitiate the rights in article 18 of the Covenant. By this measure, raiding a religious meeting and arresting, convicting and fining the authors cannot be justified as necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others. The actions of the police and the alleged requirement that religious associations be registered were disproportionate and did not meet the requirements of article 18 (3) of the Covenant.

3.9 The Ganja Court of Appeal justified the police conduct by interpreting article 1 (5) of the Law on Freedom of Religious Beliefs as prohibiting children from being present at religious services without a parent. But in fact, that law says no such thing and simply states that: "Parents or persons replacing them may bring up their children in accordance with their own religious beliefs and attitude toward religion upon mutual consent." Even if such a legislative restriction did exist, it would not be legitimate or valid.

3.10 The Court of Appeal also justified the actions of the police by reasoning that article 299.0.2 of the Code of Administrative Offences required religious associations to register with the Government and that the authors were not part of a registered religious association and therefore were not acting lawfully. The Court of Appeal rejected the authors' argument that the Constitution and the Law on Freedom of Religious Beliefs guarantee the right to religious worship together with others and that the Covenant and other international obligations override unjustified domestic restrictions on religion.

3.11 The actions of the police lacked a legitimate aim. The Court of Appeal reasoned that the morals of unaccompanied children might be corrupted at the meeting. The court also allowed the police to determine which religious believers were allowed to meet together for worship. However, in any free society, children may accompany parents to religious meetings. It is not the legitimate business of the police or the State party if a group decides to meet together for peaceful religious discussions.

3.12 The restriction on the authors' religious rights was not necessary. Assuming for the sake of argument that it might be necessary in a democratic society to prohibit children from attending religious meetings, raiding a home based on a speculative belief that children might be present hardly fills any pressing social need. The reality is that the police were simply attempting to justify conduct that they knew to be illegal. The resulting restriction on religious freedom runs contrary to the obligation of the State party to foster a tolerant, pluralistic, democratic society.

Article 19 (2) and (3)

3.13 The State party's actions interfered with the authors' right to seek, receive and impart information. The State party did not, as required by article 19 of the Covenant, meet the strict tests of necessity and proportionality to justify its interference for the reasons explained above. The meeting did not represent a threat to the public order and the fact that the participants attending the meeting did not belong to a registered religious association did not justify the disproportionate police response. The illegal raid, arrest and fine were excessive. By mocking the authors' God and their religious beliefs, the police officers revealed the true motives for their conduct.

Articles 21 and 22 (1) and (2)

3.14 The State party violated the authors' rights under articles 21 and 22 (1) and (2) of the Covenant by conducting a police raid on a peaceful religious service, unlawfully searching and seizing property, including religious publications, and prosecuting, convicting and fining the authors for violating administrative law by worshipping together.

3.15 The Court of Appeal concluded that the authors were not permitted to conduct religious activity because Jehovah's Witnesses were not locally registered. However, neither the Code of Administrative Offences nor the Law on Freedom of Religious Beliefs require a group of believers to be registered in order to exercise their religious rights. The finding of the Court of Appeal violated the authors' right under article 22 of the Covenant to associate with each other regardless of whether they were affiliated with a larger association elsewhere. Freedom of association permits individuals to act together in pursuit of collective goals, in this case to meet for worship.

Articles 26 and 27

3.16 The authors are a Christian minority in a predominantly Muslim country, and their rights under articles 26 and 27 of the Covenant were violated when (a) the Government refused to register them locally as a religious association; (b) denied them the rights that it grants to Jehovah's Witnesses registered elsewhere; and (c) subjected them to discriminatory abuse and insults when police officials denigrated their sincerely held religious beliefs.

Remedies

3.17 The authors request the Committee to direct the State party to provide an effective remedy by (a) removing all restrictions, including those set forth in domestic laws, regulations or decrees, on the authors' right to freely associate for religious or other purposes; (b) providing the authors with suitable monetary compensation for the moral damage suffered; (c) reversing any monetary penalty imposed and any monies paid returned with interest; and (d) reimbursing the authors' legal costs and fees.

State party's observations on the merits

4.1 In its observations dated 11 July 2017, the State party informed the Committee that on 14 October 2014, the Nizami district police department conducted an inquiry at the home of Mr. Mammadov. The State party confirms the allegations set forth by the authors, concerning the administrative offence of which they were convicted, the fines imposed on each of them and the appeals they filed.

4.2 The State party considers that the human rights and freedoms set forth in domestic legislation and in the respective articles of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) may be restricted. Human rights and freedoms, such as the right to profess any religion and to express and spread one's beliefs concerning religion, may be restricted for the purpose of protecting public safety, health, order and morals, or the rights and freedoms of others. These requirements are incorporated in article 1 of the Law on Freedom of Religious Beliefs and articles 8–11 of the European Convention on Human Rights. Furthermore, under article 18 (3) of the Covenant, the freedom to manifest one's religion or beliefs may be subject to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

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

5.1 In their comments dated 15 September 2017, the authors maintain that the State party provided no evidence to support its assertion that the interference with their rights under article 18 (1) of the Covenant was prescribed by law and was necessary. The State party did not refer to any evidence or findings in the decisions of the domestic courts that the authors' activities presented any risk to public safety, order or the fundamental rights and freedoms of others. The finding of the courts that the "presence of children in a religious ceremony may impair their morals and violate education and other rights" is at odds with previous assurances that the State party provided to Jehovah's Witnesses who had written to the Government following a threat by a local police chief to shut down religious meetings if children were present. In its reply, dated 22 June 2009, the Government replied that "parents or persons substituting for them may, on the basis of mutual consent, educate their children in accordance with their religious beliefs". Furthermore, the courts accepted the statement of Mr. Mammadov that no unaccompanied children had been present at the meeting. The courts relied upon the mistaken belief of the police to excuse the illegal raid. They also refused to consider the authors' argument that prohibiting accompanied children from attending a religious meeting was unconstitutional and impermissible under the Covenant. The Committee has recognized that freedom of religion includes the liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions. The State party may not exempt children from the right to freedom of religion. It is absurd to think that prohibiting children from attending religious meetings is necessary in a democratic society. That restriction does not serve a legitimate aim.

5.2 The State party has not sought to justify the infringement of the authors' rights, other than by citing a provision of domestic law. International law has long recognized that a State may not defend its violation of human rights obligations by asserting that the violation was allowed under domestic law.

5.3 The domestic courts imposed the maximum fine of 2,000 manats on each of the authors, one of whom is unemployed. That is a severe penalty. Such substantial fines create inequities by discriminating against the poor, for whom non-payment often results in imprisonment. International standards require that punishment be proportionate to the gravity of the offence and to the circumstances of the offender.

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 currently being examined under another procedure of international investigation or settlement.

6.3 The Committee observes that the State party has not contested the authors' argument that they exhausted all available domestic remedies, as required by article 5 (2) (b) of the Optional Protocol. The Committee notes that when filing unsuccessful appeals against their convictions to the Ganja Court of Appeal, the authors raised the substance of their allegations under articles 9, 17, 18, 19, 21, 26 and 27 of the Covenant. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining those claims. However, the information made available to the Committee does not allow it to conclude that the authors raised their claims under article 22 (1) and (2) of the Covenant before the domestic courts. Accordingly, the Committee finds the claims under article 22 (1) and (2) of the Covenant inadmissible under article 5 (2) (b) of the Optional Protocol.

6.4 With respect to the authors' claims under articles 26 and 27 of the Covenant, the Committee notes that the authors have not provided details of their request for registration as a religious association, nor of the verbal abuse to which they were subjected. The Committee

considers that these claims are therefore insufficiently substantiated for purposes of admissibility, and are 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 claims under articles 9 (1), 17 (1), 18 (1) and (3), 19 (2) and (3) and 21 of the Covenant. The Committee thus declares these claims admissible and proceeds to examine them on the merits.

Consideration of the merits

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

Article 17 (1)

7.2 The Committee notes Mr. Mammadov's claim that the State party violated his right to privacy and the security of his home under article 17 (1) of the Covenant by entering his home without presenting a warrant or identification, searching his guests and private bedrooms, and interrupting a peaceful religious discussion that posed no threat to the safety of others. 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.⁵ 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 Mr. Mammadov's assertion that the police officers did not present a warrant to enter or search his home, did not enter with his consent and did not identify the basis for the inspection they were conducting or the basis for their search of Mr. Mammadov's person and private bedrooms. The Committee considers that the State party, while referring to the unlawfulness of the religious meeting, has not set forth any arguments to demonstrate that the police conduct was not arbitrary. While the domestic courts justified the warrantless search and seizure by stating that the circumstances had been urgent because the morals of unaccompanied minors allegedly present at the meeting could have been impaired, the courts did not explain why the substance of the discussion or the activities conducted at the meeting threatened those morals. In addition, they did not explain how the police could have known about the presence of minors and the basis on which they gave weight to the declarations of the police officers that unaccompanied minors were present, when Mr. Mammadov had stated the contrary. The Committee recalls its jurisprudence, in which it has stated that for the purposes of article 17 of the Covenant, moral issues are not exclusively a matter of domestic concern.⁶

7.3 As to the reasonableness of 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 an abrupt intrusion into Mr. Mammadov's home with no prior warning. The Committee considers that the police raid was disproportionate to the threat of harm allegedly associated with the religious meeting and that other less intrusive measures could have been implemented instead. The Committee therefore considers that the warrantless raid on Mr. Mammadov's home was not a necessary or reasonable means to achieve the aim of protecting the morals of any unaccompanied children present at the meeting, or to achieve the aim of compliance with the law regarding the registration of religious associations. Consequently, the Committee concludes that the State party violated Mr. Mammadov's rights under article 17 (1) insofar as the police arbitrarily interfered with his home.⁷

⁵ See, inter alia, *Rojas Garcia v. Colombia* (CCPR/C/71/D/687/1996), para. 10.3.

⁶ *Toonen v. Australia* (CCPR/C/50/D/488/1992), para. 8.6.

⁷ In the light of this finding, the Committee does not deem it necessary to examine whether the State party violated Mr. Mammadov's right to privacy under article 17 of the Covenant.

Article 18 (1) and (3)

7.4 With respect to the authors' claim under article 18 (1) and (3) of the Covenant, the Committee recalls its general comment No. 22 (1993), according to which article 18 does not permit any limitation whatsoever on freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice (para. 3).⁸ 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. In the present case, the Committee notes the authors' arguments that the State party violated their rights under article 18 (1) of the Covenant by apprehending them during a private discussion of religious beliefs in Mr. Mammadov's home, taking them to the police station, where they were held for six hours, convicting them of an administrative offence and fining them 2,000 manats (approximately 2,004 euros) each. Not having been granted the status of a religious association with a legally designated address of worship, the authors were punished for conducting religious worship. Applying its general comment No. 22, in which it stated that the freedom to manifest religion or belief may be exercised either individually or in community with others and in public or private, the Committee considers that the authors' claims relate to their right to manifest their religious beliefs and that the arrest, detention, conviction and fine constitute limitations of that right (para. 4).

7.5 The Committee must address the issue of whether the limitations on the authors' right to manifest their religious beliefs were "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 according to its general comment No. 22, article 18 (3) is to be interpreted strictly and limitations on the freedom to manifest one's religion or beliefs may only be applied for those purposes for which they are prescribed, and must be directly related and proportionate to the specific need on which they are predicated (para. 8).⁹

7.6 In the present case, the limitations placed on the authors' right to manifest their religious beliefs stem from the requirement under article 299.0.2 of the Code of Administrative Offences that a religious association officially register with the Government in order to operate lawfully. The Committee notes that the State party has not specifically explained why the authors were punished for engaging in religious worship without having met the precondition of officially registering as a religious association. The Committee also notes that the State party has not provided any evidence indicating that the peaceful manifestation of the authors' religious beliefs in Mr. Mammadov's home threatened public safety, order, health or morals, or the fundamental rights and freedoms of others. The Committee further observes that the State party has not described any context, or provided any example, in which there was a specific and significant threat to public order and safety that would justify the blanket ban on religious worship outside of a registered religious organization. Even if the State party could demonstrate the existence of a specific and significant threat to public safety and order, it has failed to demonstrate that the registration requirement of article 299.0.2 of the Code of Administrative Offences was proportionate to that objective, in view of its considerable limitation on the act of religious worship. Furthermore, the State party has not attempted to demonstrate that the requirement was the least restrictive measure necessary to ensure the protection of the freedom of religion or belief. While the State party has noted that article 18 (3) of the Covenant permits certain restrictions on the right to manifest one's religion or beliefs in order to protect the fundamental rights and freedoms of others, the Committee observes that such protection requires that the specific fundamental rights that are affected and the persons so affected be identified. The Committee notes that article 18 (3) exceptions are to be interpreted strictly and not applied in the abstract. In the present case, the State party has not identified any specific fundamental rights or freedoms of others that were affected by the religious worship conducted by the authors in Mr. Mammadov's home. Accordingly, the Committee considers that the State party has not

⁸ See also *Bekmanov and Egemberdiev v. Kyrgyzstan* (CCPR/C/125/D/2312/2013), para. 7.2.

⁹ See also *Malakhovsky and Pikul v. Belarus* (CCPR/C/84/D/1207/2003), para. 7.3.

provided a sufficient basis for the limitations imposed to demonstrate that they were permissible within the meaning of article 18 (3) of the Covenant.

7.7 The Committee observes that during domestic proceeding, the Nizami district court in Ganja upheld the authors' convictions and fines on the ground that the activity of the community of Jehovah's Witnesses and the authors worshipping in Mr. Mammadov's home violated various requirements of the Law on Freedom of Religious Beliefs. Specifically, the district court cited the provision of the Law to the effect that religious associations may operate only after being officially registered and may only operate at the places of worship specified in the information presented for State registration as the legal address and after a religious minister has been appointed to the association by the religious centre or office. Separately, the district court considered that the presence of unaccompanied children at the meeting (an allegation denied by Mr. Mammadov) violated the provision of the Law that states that parents or persons replacing them may bring up their children in accordance with their own religious beliefs and attitudes towards religion by mutual consent. The Committee recalls 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.¹⁰ The Committee considers that the justifications provided by the district court do not demonstrate how the requirements to be legally registered as an association prior to conducting religious worship and prohibit the presence of unaccompanied minors at a religious meeting were proportionate measures necessary to serve a legitimate purpose within the meaning of article 18 (3) of the Covenant. The Committee notes that the district court did not advance any argument as to why it was necessary for the authors to first register with the Government before practicing their religion in community with others in a private home. The Committee concludes that the punishment imposed on the authors amounted to a limitation of their right to manifest their religion under article 18 (1) of the Covenant and that neither the domestic authorities nor the State party have demonstrated that the limitation represented a proportionate measure necessary to serve a legitimate purpose identified in article 18 (3) of the Covenant. Accordingly, the Committee concludes that by arresting, detaining, convicting and fining the authors for holding a religious meeting, the State party violated their rights under article 18 (1) of the Covenant.

Article 9 (1)

7.8 The Committee notes the authors' claim that the police arbitrarily took them to a police station and detained them for six hours. Noting the position of the domestic authorities that this incident did not represent a deprivation of liberty but a mere invitation to assist with an investigation, the Committee must first ascertain whether the authors were deprived of their liberty within the meaning of article 9 (1) of the Covenant. The Committee recalls paragraph 6 of its general comment No. 35 (2014), in which it stated that: "Deprivation of personal liberty is without free consent. Individuals who go voluntarily to a police station to participate in an investigation, and who know that they are free to leave at any time, are not being deprived of their liberty." In contrast, the Committee notes the authors' claim that they were not free to leave police custody during the relevant period. In the absence of information from the State party contesting this specific 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 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.

7.9 Noting that the authors claim to have been arrested and detained for six hours, the Committee refers to paragraph 13 of its general comment No. 35, in which it stated 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". The Committee therefore observes that article 9 of the Covenant does not require that detention last for a minimum duration in order to be arbitrary or unlawful. The Committee also recalls that arrest within the meaning of article 9 of the Covenant need not involve a formal arrest as defined under domestic

¹⁰ See, inter alia, *Leven v. Kazakhstan* (CCPR/C/112/D/2131/2012), para. 9.4.

law.¹¹ Accordingly, the Committee considers that the authors were arrested and detained within the meaning of article 9 of the Covenant.

7.10 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, the Committee must next assess whether the authors' arrest and detention were arbitrary or unlawful.¹² The Committee recalls that protection against arbitrary detention is to be applied broadly and that the "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.¹³ The Committee also recalls that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of religion.¹⁴ The Committee notes the authors' allegation that Jehovah's Witnesses face a pattern of harassment by the State party's authorities and that in their specific case the police officers did not inform them of the charges against them on the day of their arrest and detention. The Committee therefore considers that the actions of the police lacked appropriateness, predictability and regard for due process guarantees. Further, referring to its findings in paragraph 7.6 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.

7.11 In the light of its findings, the Committee does not deem it necessary to examine whether the same facts constitute a violation of articles 19 or 21 of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of each of the authors' rights under articles 9 (1) and 18 (1) and Mr. Mammadov's rights under article 17 (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 rights under the Covenant have been violated. Accordingly, the State party is obligated to, inter alia, provide the authors with adequate compensation, including reimbursement for the fines imposed and for court fees related to the cases in question. 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 or not 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 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.

¹¹ General comment No. 35, para. 13.

¹² Ibid., para. 10.

¹³ See, inter alia, *Formonov v. Uzbekistan* (CCPR/C/122/D/2577/2015), para. 9.3.

¹⁴ General comment No. 35, para. 17.

Annex

Individual opinion of Committee member José Manuel Santos Pais (partially dissenting)

1. I concur with the conclusion reached in the present Views that the State party violated each of the authors' rights under article 18 (1) and Mr. Mammadov's rights under article 17 (1) of the Covenant. I fail to agree, however, with the conclusion of a violation of article 9 (1) of the Covenant.
2. The Committee justified this conclusion by referring to the fact that police officers did not inform the authors of the charges against them on the day of their arrest and detention and therefore considered that the actions of the police lacked appropriateness, predictability and regard for due process guarantees. Further, the authors' arrest and detention constituted punishment for the legitimate exercise of their right to manifest their religious beliefs. Although I understand this reasoning by the majority of the Committee, I do not think it matches the facts in the present case.
3. The rationale behind the conclusion of the Committee is that there was an entry into Mr. Mammadov's home by police officers without a warrant or permission, the transportation of those participating in the religious meeting to the police station was forceful, the authors should have been informed of the charges against them and they were not free to leave the police station and were therefore subject to arrest.
4. I consider, however, that such reasoning by the majority of the Committee entails in itself a vice of *petitio principii*.
5. The domestic authorities considered that in the present case the police had conducted an inquiry at the home of Mr. Mammadov (para. 4.1 above). This is not, however, a criminal case but an administrative procedure and so cannot technically refer to charges against the authors or the need to inform them of such charges.
6. The authors were suspected of holding an unlawful religious meeting, since none of them was a member of the Religious Community of Jehovah's Witnesses, an organization legally registered in Baku in conformity with the national Law on Freedom of Religious Beliefs, and the Government refused to register the authors as a religious association in Ganja. The district court held, in its decision of 6 November 2014, that the police raid, while conducted without a warrant, had been permissible because, despite evidence to the contrary, unaccompanied minor children had been present and "religious ceremonies could impair their morals".
7. There is therefore a lawful motive for the intervention of the police, even if the Committee considers in the end that the restrictions imposed on the authors' rights under article 18 (1) were not proportionate (para 7.7 above).
8. There is also a lawful motive for the transportation of the authors to the police station since they were suspected of having violated the law and were taken in *flagrante delicto*. In many jurisdictions, that entails the need for suspects to accompany police officers for identification and the drafting of all the necessary protocols that will allow the courts to try the case.
9. As for holding the authors for over six hours in the police station (para 2.2 above), the group in which the authors participated amounted to 25 people and protocols of the suspected events had to be drafted and eventually signed by all of them, which averages a protocol drawn up every 15 minutes. At the same time, by taking notice of those protocols, the authors were *ipso facto* informed of the reasons for the police intervention.
10. The total time period for holding the authors in the police station seems therefore perfectly reasonable under the circumstances, at least for someone with some experience of police work, and the argument that the authors were not informed of the reasons for having been taken into the police station simply cannot stand.

11. There is finally the question of whether holding the authors in the police station is to be considered an arrest or, as the State party claims, an invitation to assist the investigation.

12. It should be expected of any law-abiding citizen that he or she assist investigations led by law enforcement officers, particularly if they are caught 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 crimes, without necessarily constituting arbitrary or unlawful deprivation of liberty. If someone is summoned to a court or to a police station, he or she is not arrested or detained, but remains at the disposal of the authorities until he or she has met the goal for which he or she was summoned.

13. As the domestic court stated: “Inviting a person suspected of committing an administrative violation to a police division for the purpose of investigation is a standard procedure. Inviting Saladdin Mammadov to the police division for the purpose of investigation and statement taking cannot be regarded as a restriction of his freedom” (para. 2.5 above).

14. That is what happened in the present case, where the authors were free to leave the police station once the necessary protocols were drawn up and signed by at least some of them.

15. Those protocols later allowed the district court to consider that the authors had violated article 299.0.2 of the Code of Administrative Offences and to order them to pay fines (para. 2.3 above).

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