



## 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. 3258/2018\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Tierri Amedzro (represented by counsel, Shane H. Brady and Haykaz Zoryan)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Tajikistan
<i>Date of communication:</i>	17 October 2018 (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 23 October 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	15 October 2021
<i>Subject matter:</i>	Unlawful detention; conviction with a fine and expulsion from the State party of a foreign national Jehovah's Witness for participating in a religious gathering
<i>Procedural issue:</i>	None
<i>Substantive issues:</i>	Arbitrary arrest and detention; non-refoulement; liberty of movement; freedom of religion; discrimination
<i>Articles of the Covenant:</i>	9, 12, 13, 18, 26 and 27
<i>Article of the Optional Protocol:</i>	5 (2) (b)

1.1 The author of the communication is Tierri Amedzro, a national of the Russian Federation born in 1988. On 16 October 2018, the Firdavsi District Court in Dushanbe issued a deportation order for him from Tajikistan to the Russian Federation. He claims that his rights under articles 9 (1), 13, read alone and in conjunction with articles 12, 18 (1) and (3), 26 and 27 of the Covenant, have been violated by Tajikistan on account of his detention,

\* Adopted by the Committee at its 133rd session (11 October–5 November 2021).

\*\* The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Marcia V.J. Kran, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

\*\*\* A joint opinion by Committee members Imeru Tamerat Yigezu and Gentian Zyberi (partially dissenting) and an individual opinion by Vasilka Sancin (partially dissenting) are annexed to the present Views.



arrest, administrative conviction, fine and deportation. The Optional Protocol entered into force for the State party on 4 April 1999. He is represented by counsel.

1.2 On 23 October 2018, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from deporting the author to the Russian Federation while his case was under consideration by the Committee.<sup>1</sup>

### **Facts as submitted by the author**

2.1 The author is a Russian national and a practising Jehovah's Witness. He has been living in Tajikistan on a valid residence permit since July 2017, residing in the city of Dushanbe.

2.2 The author explains that, on 11 October 2007, the Ministry of Culture of Tajikistan (succeeded by the Committee for Religious Affairs) unilaterally terminated the activities of the national legal entity of the Jehovah's Witnesses in Tajikistan, claiming that the Jehovah's Witnesses violated domestic legislation by sharing religious literature in public with interested persons. The author adds that Jehovah's Witnesses have therefore been forced to meet in secret in private homes to practise their faith.

2.3 On the evening of 4 October 2018, the author and 17 other Jehovah's Witnesses were peacefully meeting for worship at the home of R.N.D., in Dushanbe. The author reports that, shortly after their religious service had begun, a group of officers from the Tajikistan State Committee for National Security pounded on the door to the apartment, demanding entry. R.N.D. declined to open the door. The author states that the officers continued to pound on the door until the following morning, when the author and the other Jehovah's Witnesses, having no other choice, tried to leave the apartment shortly after 8 a.m. on 5 October 2018. The State Committee officers arrested 10 of them, including the author, and took them for interrogation at the headquarters of the State Committee the same day.

2.4 The author claims that, during the interrogation, he was threatened by officers of the State Committee for National Security. He alleges that the officers said that, because his religious activity was banned, they would be initiating legal proceedings against him to deport him to the Russian Federation, where he would be charged with religious extremism by the Federal Security Service. The author informs the Human Rights Committee that it was clear to him that the State Committee officers were working in collaboration with the migration police. After the interrogation, the State Committee insisted on searching the home at the address where the author was registered according to his residence card, to confirm that he lived there. The search was carried out that afternoon in the presence of the person with whom the author shared the apartment. After the search, late that day, the author was released, but the State Committee kept his passport and told his lawyers that he would be summoned for further interrogation in the following days.

2.5 On 9 October 2018, the head of the Directorate of the State Committee for National Security for the City of Dushanbe wrote to the chief of the Directorate of the Migration Service of the Ministry of Labour, Migration and Employment of Tajikistan for the City of Dushanbe and demanded that the migration service take action against the author and report back to the State Committee.

2.6 On 15 October 2018, the author was summoned to the migration police and charged with committing an offence under article 499 (1) of the Code of Administrative Violations for violating the rules of residence for foreign citizens. The migration police claimed that he was "temporarily residing" at the home of R.N.D. when the police raided her residence on 4–5 October 2018 and that he was not at his officially registered place of residence. No evidence was adduced to support that allegation. The author maintains that the allegation was an obvious pretext as, in its letter of 9 October 2018 to the migration authorities, the State Committee for National Security had accused him only of so-called illegal religious activity and not a violation of the rules of residence for foreign citizens. Moreover, the State

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<sup>1</sup> On 30 October 2018, the author was deported to Kazakhstan.

Committee had searched his home on the same day as his arrest (5 October 2018) and was clearly satisfied that he was in fact living at the address indicated on his residence permit.

2.7 On 16 October 2018, the author was taken to the Firdavsi District Court in Dushanbe for trial. A hearing was held, and the judge convicted the author under article 499 (1) of the Code of Administrative Violations, sentencing him to pay a fine of 80 times the monthly calculation index (4,000 somoni)<sup>2</sup> and ordering his deportation to the Russian Federation. The author claims that his testimony and the testimony of the homeowner, R.N.D., and two other witnesses confirming his actual address were summarily rejected by the Court because they were Jehovah's Witnesses.

2.8 On 17 October 2018, the author appealed the decision of the Firdavsi District Court before the Dushanbe City Court. That appeal was rejected on 24 October 2018.

2.9 On 30 October 2018, the author was deported from Tajikistan but was allowed to choose to be deported to Kazakhstan rather than to the Russian Federation. In this regard, the author notes that the State authorities appear to have complied in part with the Committee's letter requesting interim measures (not to deport him "to the Russian Federation") but failed to comply with the spirit of the interim measures, namely, not to deport him.

2.10 On 27 March 2019, the author filed an application for supervisory review to the Presidium of the Dushanbe City Court, a discretionary remedy under domestic law. That appeal was rejected on 10 April 2019.

### Complaint

3.1 The author claims that his rights under articles 9 (1), 13, read alone and in conjunction with article 12, 18 (1) and (3), 26 and 27 of the Covenant were violated by the State party by virtue of his arrest, detention, conviction, fine and deportation. In that connection, the author submits that the police provided no evidence to justify his arrest, which was arbitrary and without lawful necessity and that his detention was unlawful and discriminatory as he had been targeted because he was a foreign citizen and a Jehovah's Witness, in violation of article 9 of the Covenant.<sup>3</sup>

3.2 The author also claims that the State Committee for National Security ordered his prosecution because he was "a preacher (promoter) of the international religious organization 'Jehovah's Witnesses' and came to the city of Dushanbe in order to involve Republic of Tajikistan citizens in this organization", in violation of his right to practise his faith and meet for worship with his fellow believers under article 18 of the Covenant. The author also submits that the State party's actions were solely motivated by its discriminatory aim of preventing Jehovah's Witnesses from practising their religion, in violation of articles 26 and 27 of the Covenant.

3.3 The author further claims that he was expelled from the State party on the pretext that he had stayed overnight on one occasion at the home of R.N.D., with 17 of his fellow believers, while there is no such prohibition under domestic law, and, were there such a prohibition, it would impair the essence of the right to freedom of movement, in violation of article 13, read alone and in conjunction with article 12 of the Covenant.

3.4 The author requests the Committee to direct the State party: (a) to remove all restrictions, including those in laws, regulations or decrees of the State, on the right to freely associate for religious or other purposes; (b) to return to the author the SM 4,000 that he was ordered to pay as a fine under article 499 (1) of the Code of Administrative Violations; (c) to provide him with monetary compensation for the moral damages suffered as a result of his

<sup>2</sup> The equivalent of approximately 300 euros.

<sup>3</sup> The author refers to the Committee's case law in the case of *Toregozhina v. Kazakhstan* (CCPR/C/112/D/2137/2012), and European Court of Human Rights case law in the case of *Krupko and others v. Russia* (application No. 26587), judgment of 26 June 2014, where the Court found that police interrogation of a group of Jehovah's Witnesses constituted unlawful detention: "In these circumstances, the Court considers it established that there was an element of coercion which, notwithstanding the short duration of the detention, was indicative of a deprivation of liberty within the meaning of article 5 (1)".

detention, arrest, conviction and deportation; (d) to remove any and all adverse administrative or judicial sanctions against him that would inhibit his free entry to Tajikistan; and (e) to provide him with appropriate monetary compensation for the legal expenses and fees incurred in the domestic courts and the proceedings before the Committee.

#### **State party's observations on admissibility and the merits**

4.1 By note verbale of 2 August 2019, the State party submitted its observations on admissibility and the merits. It states that the charter of the Religious Community of Jehovah's Witnesses was registered by the Committee for Religious Affairs under the Government of Tajikistan on 15 January 1997 under No. 13. Subsequently, this religious community, by its activities, had systematically violated requirements of the current legislation of Tajikistan. In view of this, the Committee for Religious Affairs had issued an order for the Religious Community to remedy these violations of the law, which, regrettably, it had not done.

4.2 The Committee for Religious Affairs under the Government of Tajikistan sent an official letter, No. 271, dated 17 October 2000, ordering a review of point 2.2 of the Religious Community's charter, as it conflicted with the requirements of the legislation of Tajikistan. The Religious Community failed to react to the warning and continued its unlawful activity. The Committee for Religious Affairs therefore rendered decision No. 90, dated 11 September 2002, suspending the Religious Community's activity for three months for use of propaganda in public places and in citizens' homes.

4.3 The State party contends that members of the community continued their illegal activities and distributed booklets, literature and brochures in public places, to homes and in the street inciting fanaticism and extremism. According to the State party, all literature, brochures and audio and video cassettes distributed by the Jehovah's Witnesses religious organization encourage fanaticism and extremism and have a negative psychological influence on young people. The unlawful activity of the Religious Community of Jehovah's Witnesses of propagandizing their teachings and views and distributing their literature in public places and residential buildings annoyed people, and therefore many citizens of Tajikistan filed complaints against members of the community with law enforcement agencies and the authorized agency for religious affairs.

4.4 As a consequence of these circumstances, a three-month suspension and subsequent termination of the activity of the community were imposed in accordance with submission No. 913/3-05 of the Prosecutor General of Tajikistan, dated 27 July 2007, and decision No. 11/3 of the Tajikistan Ministry of Culture, dated 11 October 2007, under article 16 (2) of the Tajikistan Law on Religion and Religious Organizations. The charter of the Religious Community of Jehovah's Witnesses, registered by the Committee for Religious Affairs under the Government of Tajikistan on 15 January 1997 under No. 13, was revoked.

4.5 In this regard, members of the Religious Community of Jehovah's Witnesses turned to various courts, but the relevant judicial agencies refused to grant their requests. When considering the civil cases filed by members of the Religious Community of Jehovah's Witnesses, the courts concerned decided that there had been no violations of the civil and political rights of the community's members. The matter was considered under the legislation of Tajikistan. The judicial proceedings for the civil cases of the Religious Community of Jehovah's Witnesses were conducted in open court on the basis of the principles of adversarial proceedings and equality of arms; the decisions of the courts at all levels have entered into legal force.

4.6 Under article 42 of the Constitution of Tajikistan, the Government and all citizens of the State party must comply with and apply the Constitution and the laws and abide by judicial decisions that were lawfully rendered.

4.7 The State party notes that the arguments listed in the author's complaint are unfounded and do not correspond to the factual circumstances of the case. In particular, according to the State Committee for National Security of Tajikistan, the author was not arrested and his house was not raided, as indicated in his complaint. At the time, he was in the apartment of another follower of the Jehovah's Witnesses, R.N.D.

4.8 It further notes that the author was expelled from the country by court decision because he had violated the requirements of article 499 of the Code of Administrative Violations of Tajikistan and that its procedural decision is in no way connected to his attitude towards the Jehovah's Witnesses international religious organization. Despite all the author's attempts to challenge the legality of his deportation, the court's decision was upheld.

4.9 The State party submits that the activity of the Jehovah's Witnesses organization is banned in many countries – specifically, 30 countries – in particular, China, Egypt, the Lao People's Democratic Republic, the Russian Federation, Singapore and Viet Nam. Among the countries where the activity of this sect is prohibited are not only those that profess Islam, but also those that have followers of Buddhism, Christianity and other faiths. Members of the Religious Community of Jehovah's Witnesses characteristically consider Muslims their ideological opponents. In this connection, their preaching effectively leads to incitement of religious hatred and enmity. Analysis of the situation regarding this religious organization shows that friction between Muslims and Jehovah's Witnesses is nothing new, as Jehovah's Witnesses preach actively, challenging the truthfulness and correctness of the Qur'an. In their articles, they say that Islam has been the cause of wars and much death and destruction, and they also speak about the immorality of the religion because of, inter alia, polygamy and temporary marriages. In view of all the above facts, it is clear that the activity of Jehovah's Witnesses is directed against all world religions and therefore is extremely dangerous.

4.10 In addition, the State party maintains that the propagandistic literature of the Jehovah's Witnesses is dangerous in that it influences people both consciously and subconsciously, thus brainwashing them. Members of this sect pose as Orthodox Christians; an example of this occurred in 2018 in the city of Panjakent, where "Jehovists" called themselves "Orthodox" and organized protests against the construction of an Orthodox chapel in a Russian cemetery. The sect of Jehovah's Witnesses has existed since 1870, and, since the very beginning, the Jehovists have acted as an extremist sect, destroying family relationships and opposing State authorities.

4.11 In accordance with article 8, paragraph 5, of the Constitution of Tajikistan, the Ministry of Internal Affairs of Tajikistan believes that, in order to prevent incitement of hatred or enmity and degrading treatment of a person or a group of persons on the grounds of race, religion and membership in any social group, it is considered advisable to recognize the Religious Community of Jehovah's Witnesses as an extremist organization in Tajikistan.

4.12 The State party notes that a complaint is to be accepted for consideration by the Committee only after all domestic remedies have been exhausted. The State party contends that, in accordance with articles 183 and 184 of the Code of Procedure on Administrative Violations of Tajikistan, the author had the right to file an application for supervisory review in the Supreme Court of Tajikistan. The claimant did not avail himself of this right and thus has not exhausted all the necessary domestic remedies. In the light of the above, the State party concludes that the complaint was submitted to the Committee prematurely.

#### **Authors' comments on the State party's observations**

5.1 On 17 October 2019, the author submitted his comments on the State party's observations and provided factual clarifications regarding the State party's submission that the author was not arrested, that his house was not raided, as indicated in his complaint, and that at the time, the author was in the apartment of another follower, R.N.D.

5.2 The author maintains that, on the evening of 4 October 2018, he was gathered together with 18 of his fellow believers at the home of R.N.D. State Committee for National Security officers arrived and pounded on the door, demanding entrance. The group of Jehovah's Witnesses decided to remain in the home in the hope that the State Committee officers would leave. The next morning, at 8 a.m. on 5 October 2018, as they tried to exit the home, the author and nine of his fellow believers were detained by State Committee officers and taken to State Committee headquarters in Dushanbe for questioning, which, according to the Committee's case law amounts to an arrest under article 9 (1) of the Covenant. It is thus clear that the author was arrested by the State Committee for National Security on the morning of 5 October 2018 and remained in its custody until late that day. The State party is correct in

observing that his apartment was not raided by the State Committee for National Security; rather, it was searched by the police on the afternoon of 5 October 2018.

5.3 The author further contests the State party's assertions that "all literature, brochures and audio and video cassettes distributed by the Jehovah's Witnesses religious organization encourage fanaticism and extremism and have a negative psychological influence on young people" and that Jehovah's Witnesses "consider Muslims their ideological opponents" and that Jehovah's Witnesses are banned in some countries, "in particular, China, Egypt, the Lao People's Democratic Republic, the Russian Federation, Singapore and Viet Nama". According to the author, the first two allegations are false and discriminatory, while the third is misleading. Moreover, all three allegations are entirely irrelevant to his case.

5.4 First, Jehovah's Witnesses do not consider Muslims, or the followers of any other religion, to be their "ideological opponents". It is stated on their official website ([www.jw.org](http://www.jw.org)), that "We follow the Bible's advice to 'respect everyone' – regardless of their religious beliefs. (1 Peter 2:17, *Today's English Version*)".<sup>4</sup>

5.5 Second, the religious literature of Jehovah's Witnesses is Bible based and is distributed in millions of copies and in hundreds of languages worldwide. It is freely available for anyone to read on their official website. Their religious literature encourages readers to be model citizens. The Bible, the religious publications of Jehovah's Witnesses and the religious services of Jehovah's Witnesses are entirely peaceful and do not contain calls to violence or incite religious hatred or statements that are "gratuitously offensive".<sup>5</sup>

5.6 Third, the author notes that, while it is true that the religious activity of Jehovah's Witnesses is restricted in several countries, this is due to State intolerance and persecution.<sup>6</sup> In addition, Jehovah's Witnesses are legally recognized in most democratic countries worldwide, including countries with a Muslim majority such as Azerbaijan, Kazakhstan, Kyrgyzstan and Turkey. Their peaceful religious activity is consistent with fundamental human rights, as repeatedly confirmed by regional and international human rights bodies.

5.7 Thus, the author concludes that the situation of Jehovah's Witnesses in other countries cannot in any way justify the violation by Tajikistan of his rights under the Covenant. Much to the contrary, the case law of regional and international human rights bodies confirms that the religious activity of this peaceful religious minority is protected by fundamental human rights.

5.8 Concerning the admissibility and merits of the communication, the State party's only argument is its assertion that the author should have filed an application for supervisory review to the Presidium of the Supreme Court of Tajikistan under articles 183 and 184 of the Code of Administrative Violations. In this regard, however, the author points out the Committee's conclusion that "the filing of requests to a court for a supervisory review directed against court decisions that have entered into force and depend on the discretionary power of a judge constitutes an extraordinary remedy and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case".<sup>7</sup> The author maintains that the State party has failed to prove that an application for supervisory review to the Supreme Court of Tajikistan offered the complainant a reasonable prospect of success. Thus, the State party's objections to the admissibility of the communication should be dismissed.

5.9 Concerning the merits of the communication, the author also reiterates and relies on the arguments set out in his initial submission.

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<sup>4</sup> See [www.jw.org/en/jehovahs-witnesses/faq/tolerant-of-other-religions](http://www.jw.org/en/jehovahs-witnesses/faq/tolerant-of-other-religions).

<sup>5</sup> European Court of Human Rights, *Sürek v. Turkey* (No. 4) (application No. 24762/94), judgment of 8 July 1999, paras. 54 and 57–58.

<sup>6</sup> The author cites opinions of the Working Group on Arbitrary Detention in relation to the Russian Federation, in which it expressed concerns that Jehovah's Witnesses in the Russian Federation are the victims of "systemic and institutionalized persecution" (opinion No. 11/2019, para. 74); and about "a pattern of persecution of Jehovah's Witnesses" (opinion No. 34/2019, para. 65). The author also cites Council of Europe Committee of Ministers decision CM/Del/Dec(2019)1355/H46-19, 25 September 2019, para. 8.

<sup>7</sup> *S.P. v. Russian Federation* (CCPR/C/118/D/2152/2012), para. 11.5.

## 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 notes that the State party has challenged the admissibility of the communication on the grounds of non-exhaustion of domestic remedies under article 5 (2) (b) of the Optional Protocol, as the author had failed to file an application for supervisory review to the Presidium of the Supreme Court of Tajikistan under articles 183 and 184 of the Code of Administrative Violations. However, the Committee notes that the author had previously filed an application for supervisory review on 27 March 2019 to the Presidium of the Dushanbe City Court, which was rejected on 10 April 2019. The Committee also recalls its jurisprudence, according to which the filing of requests to a court for a supervisory review directed against court decisions that have entered into force and depend on the discretionary power of a judge constitutes an extraordinary remedy, and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.<sup>8</sup> In the present case, the Committee notes that the State party has not shown, in particular, whether and in how many cases petitions to the President of the Supreme Court for supervisory review procedures have been successful in cases concerning deportation of Jehovah's Witnesses or other religious minorities. Accordingly, the Committee considers that such remedy was ineffective as it had no prospect of success, and that it is therefore not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.<sup>9</sup>

6.4 The Committee considers that the author has sufficiently substantiated his claims in relation to his arrest, detention, conviction and deportation based on his religious beliefs, under articles 9 (1), 13, read in conjunction with article 12, 18 (1) and (3), 26 and 27 of the Covenant, for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

### *Considerations of the merits*

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

7.2 The Committee will first consider the author's claims under article 9 of the Covenant that, on 5 October 2018, from 8 a.m., while trying to leave the home of R.N.D., he was arrested with other fellow Jehovah's Witnesses by officers of the State Committee for National Security, taken to their headquarters for interrogation and held there until late that day, while his residence was searched in his absence, and threatened with legal proceedings against him and deportation to the Russian Federation with a request that the Federal Security Service of the Russian Federation initiate criminal proceedings against him on charges of religious "extremism". The Committee also notes that, although the State party argues that the author was not arrested and detained, the Firdavsi District Court established that the author was arrested for violating the rules of residence of foreign citizens.

<sup>8</sup> *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; *Protsko and Tolchin v. Belarus* (CCPR/C/109/D/1919-1920/2009), para. 6.5; *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3; *P.L. v. Belarus* (CCPR/C/102/D/1814/2008), para. 6.2; *E.Z. v. Kazakhstan* (CCPR/C/113/D/2021/2010), para. 7.3; *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; *Dorofeev v. Russian Federation* (CCPR/C/111/D/2041/2011), para. 9.6.; and *S.P. v. Russian Federation* (CCPR/C/118/D/2152/2012), para. 11.5.

<sup>9</sup> See also *Kostenko v. Russian Federation* (CCPR/C/115/D/2141/2012), para. 6.3.; and *S.P. v. Russian Federation* (CCPR/C/118/D/2152/2012), para. 11.5.

7.3 The Committee recalls its general comment No. 35 (2014) on liberty and security of person, in which it refers to the prohibitions on arbitrary and unlawful deprivation of liberty, that is, deprivation of liberty that is not imposed on such grounds and in accordance with such procedure as are established by law. It recalls that liberty of person concerns freedom from confinement of the body. Examples of deprivation of liberty include police custody, remand detention, imprisonment after conviction, house arrest, administrative detention and confinement to a restricted area of an airport, as well as being involuntarily transported.<sup>10</sup> The notion of “arbitrariness” must be interpreted to include elements of inappropriateness, injustice, lack of predictability and due process of law. Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19) and freedom of religion (art. 18).<sup>11</sup> The Committee also recalls that the term “arrest” refers to any apprehension of a person that commences a deprivation of liberty, and the term “detention” refers to the deprivation of liberty that begins with the arrest and continues in time from apprehension until release. Arrest within the meaning of article 9 need not involve a formal arrest as defined under domestic law.<sup>12</sup> Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21), freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17). Arrest or detention on discriminatory grounds in violation of article 2 (1), article 3 or article 26 is also in principle arbitrary.<sup>13</sup>

7.4 In the present case, the Committee notes that, according to the submissions by the parties, the author’s detention began as he was leaving the home of R.N.D. with other persons, continued at the headquarters of the State Committee for National Security and ended late the same day, after police completed their search of his apartment. The Committee recalls that, in order for an arrest to be in compliance with article 9 (1), it must not only be lawful, but also reasonable and necessary taking into account all the circumstances.<sup>14</sup> The Committee considers that the State party has failed to show why it was necessary to detain the author. In view of the circumstances as described, the Committee concludes that the State party violated the author’s rights under article 9 (1) of the Covenant.

7.5 In relation to the author’s claim under article 18 (1) and (3) of the Covenant, the Committee recalls its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, in which it states that article 18 does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice (para. 3). By contrast, the right to freedom to manifest one’s religion or beliefs may be subject to certain limitations, but only those prescribed by law and necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. Further, the right to freedom to manifest one’s beliefs in worship, observance, practice and teaching encompasses a broad range of acts, including those integral to the conduct by the religious group of its basic affairs, such as the freedom to choose religious leaders, priests, and teachers, and the freedom to establish seminaries or religious schools.<sup>15</sup>

7.6 The Committee must now address the question of whether the relevant limitations on the author’s right to manifest his religion are “necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others”, within the meaning of article 18 (3) of the Covenant. The Committee recalls that article 18 (3) is to be interpreted strictly, and that limitations may be applied only for those purposes for which they were prescribed and must be directly related to and proportionate to the specific need on which they are predicated. The Committee further recalls that, in interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed

<sup>10</sup> Human Rights Committee, general comment No. 35 (2014), paras. 3 and 5.

<sup>11</sup> *Ibid.*, paras. 12 and 17.

<sup>12</sup> *Ibid.*, para. 13.

<sup>13</sup> *Ibid.*, para. 17.

<sup>14</sup> See *Toregozhina v. Kazakhstan* (CCPR/C/112/D/2137/2012), para. 7.2.

<sup>15</sup> General comment No. 22 (1993), para. 4, and, inter alia, *Boodoo v. Trinidad and Tobago* (CCPR/C/74/D/721/1996), para. 6.6, and *Leven v. Kazakhstan* (CCPR/C/112/D/2131/2012), para. 9.2.



under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26.<sup>16</sup>

7.7 In the present case, the Committee notes that the author was allegedly charged, convicted, fined and expelled for violating the rules of residence of foreign citizens (Code of Administrative Violations, art. 499 (1)). However, in his letter to the Directorate of the Migration Service, the Director of the State Committee for National Security stated that the author, “a preacher (promoter) of the international religious organization ‘Jehovah’s Witnesses’” came to the city of Dushanbe in order to “involve Republic of Tajikistan citizens in this organization” and was detained and subjected to document inspection during the religious instruction of 21 people, also indicating that the activity of the international religious organization was suspended. Consistent with its general comment No. 22 (1993), the Committee considers that the above-mentioned activities form part of the author’s right to manifest his beliefs and that the conviction and sentence to a fine and deportation constitute limitations of that right.

7.8 The Committee notes that the State party has sought to justify the infringement of rights by claiming that the author violated the rules of residence for foreign citizens, and the procedural decision to expel him is in no way connected to his attitude towards the Jehovah’s Witnesses international religious organization. The evidence that the State party relied on was that he had stayed overnight on 4 October 2018 at the home of R.N.D., with other Jehovah’s Witnesses, thereby temporarily residing there. However, the Committee notes the author’s arguments that the courts ignored that this was because officers of the State Committee for National Security were waiting outside to arrest the persons who had peacefully gathered inside for worship, that domestic legislation does not prohibit foreigners from staying overnight at a home other than their registered place of residence, and therefore the interference was not prescribed by law.

7.9 The Committee reiterates that article 18 (1) of the Covenant protects the right of all members of a religious congregation, and not only citizens, to manifest their religion in community with others, in worship, observance, practice and teaching. The Committee concludes that the punishment imposed on the author, and in particular its harsh consequences for the author, who was deported from the State party, amount to a limitation of his right to manifest his religion under article 18 (1); and that the limitation, although prescribed by law, was not proportionate or justified. Additionally, the Committee observes that the State party has failed to justify such limitation as serving any legitimate purpose identified in article 18 (3); and that this sweeping limitation of the right to manifest religion is proportionate to any legitimate purpose that it might serve. The Committee therefore concludes that such limitation does not meet the requirements of article 18 (3), and that the author’s rights under article 18 (1) of the Covenant have been violated.

7.10 In the light of its finding that there has been a violation of article 18 of the Covenant, the Committee decides not to examine separately the author’s claims under article 13, read alone and in conjunction with article 12, and articles 26 and 27 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 by the State party of articles 9 (1) and 18 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, not to prevent the author’s return to the State party should he so wish, to return to him the fine that he was ordered to pay under article 499 (1) of the Code of Administrative Violations; and to provide him with adequate compensation for the moral damages suffered as a result of his detention, arrest, conviction and deportation, as well as compensation for the legal expenses and fees incurred in the domestic courts and the proceedings before the Committee. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

<sup>16</sup> See general comment No. 22 (1993), para. 8 and *Leven v. Kazakhstan*, para. 9.3.

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 remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

## Annex I

### **Joint opinion of Committee members Imeru Tamerat Yigezu and Gentian Zyberi (partially dissenting)**

1. We are in agreement with the Committee's view in this case. Our dissent concerns only part of the remedies, where the Committee has gone beyond what it can indicate as a remedy, in the absence of a finding of a violation under the Covenant. Thus, in paragraph 9, the Committee has indicated that, "the State party is obligated, inter alia, not to prevent the author's return to the State party should he so wish". This does not follow from the previous finding of the Committee, given that in paragraph 8 the Committee found that the facts before it disclose a violation by the State party of articles 9 (1) and 18 of the Covenant. No violation of article 13 was found in the case.
2. The standard remedy paragraph of the Committee usually reads: "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." This wording signifies that a finding of violation and the remedy indicated are closely connected, as the remedy indicated by the Committee is intended to address the violation.
3. The issue of the remedies and reparations has been addressed by the Committee in its guidelines on measures of reparation.<sup>1</sup> In 2005, the General Assembly provided important guidance through its Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. In paragraph 15 of the Basic Principles and Guidelines, the General Assembly provides that: "In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law." The form of reparation is closely linked to the violation by the State of its obligations under international law and aimed at adequately remedying a finding of violation by the adjudicatory mechanism before which a complaint has been brought.
4. While the author has requested as a remedy that the State party "remove any and all adverse administrative or judicial sanctions against him that would inhibit his free entry to Tajikistan" (para. 3.4), the Committee decided not to examine separately the author's claims under article 13, read alone and in conjunction with article 12 (para. 7.10).
5. Hence, having decided not to address article 13, which concerns the right to lawful stay of an alien in the territory of a State party to the Covenant, it is not possible for the Committee to indicate that the State party should not prevent the author's return to its territory, should he wish to return. Such a right to freely return to the territory of a State party to the Covenant cannot be inferred as falling under article 18, without more information.

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<sup>1</sup> Human Rights Committee, guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights (CCPR/C/158). See, inter alia, William A. Schabas, *Nowak's CCPR Commentary*, 3rd revised ed. (Kehl, Germany, N.P. Engel, 2019), pp. 63–75.

## Annex II

### **Individual opinion by Committee member Vasilka Sancin (partially dissenting)**

1. I fully join with the Committee in its finding that the author's rights under articles 9 (1) and 18 of the Covenant were violated. My partial dissent relates to the determination of the specific part of the remedy paragraph, namely the decision of the majority in paragraph 9 to indicate that "the State party is obligated, inter alia, not to prevent the author's return to the State party should he so wish".

2. I disagree with this part of the remedy paragraph for two reasons. First, and as a general remark, I share the opinion of Mr. Zyberi and Mr. Yigezu (who also wrote separately on this point), that a finding of a violation and the remedy indicated are inextricably connected, as the remedy indicated by the Committee is intended to address the violation established. Second, and just as importantly, I am of the opinion that there exists no general right for an alien<sup>1</sup> to obtain entry to another country (of which he is not a national) – without entering into the specificities of the situation of an asylum seeker, which is not the case at hand – and this is so regardless of any prior finding of a violation of any of the rights under the Covenant, and, consequently, there exists no obligation on the States parties not to prevent an alien from entering their territory, as decisions on admitting aliens to its territory remain a sovereign prerogative of any State.

3. Thus, despite the fact that the Committee decided not to examine separately the author's claims under article 13, read alone and in conjunction with article 12 (para. 7.10), I am convinced that, even if the Committee had found such a violation, the remedy of restitution of an alien to the State party's territory (emanating from the obligation as indicated not to prevent the author's return) would go beyond the scope of the obligations deriving from the articles of the Covenant and that such a remedy in fact contradicts the long-established rules of international law.

4. It is for these reasons, that I am convinced that the correct decision of the Committee on the remedy paragraph would have been to focus on adequate compensation and return of the fine and costs, but to omit completely what is, in my view, an erroneous reference to the "obligation not to prevent the author's return to the State party should he so wish".

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<sup>1</sup> The author is a national of the Russian Federation who brought claims against Tajikistan. On 30 October 2018, he was deported from Tajikistan but was allowed to choose to be deported to Kazakhstan rather than to the Russian Federation (para. 2.9).