



# 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. 2952/2017\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Matanat Baliyar Gizi Gurbanova and Saadat Baliyar Gizi Muradhasilova (represented by counsel, Daniel Pole and Petr Muzny)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Azerbaijan
<i>Date of communication:</i>	7 February 2017 (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 15 February 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	16 March 2021
<i>Subject matter:</i>	Arrest, detention and fine for participation in religious activity of Jehovah's Witnesses
<i>Procedural issue:</i>	Admissibility – manifestly ill-founded
<i>Substantive issues:</i>	Arbitrary arrest and detention; discrimination; freedom of expression; freedom of religion; minorities – right to enjoy one's own culture
<i>Articles of the Covenant:</i>	9 (1), 18 (1) and (2), 19 (1) and (2), 26 and 27
<i>Article of the Optional Protocol:</i>	2

1. The authors of the communication are Matanat Baliyar Gizi Gurbanova and Saadat Baliyar Gizi Muradhasilova, nationals of Azerbaijan born in 1963 and 1966, respectively. They claim that the State party has violated their rights under articles 9 (1), 18 (1) and (2), 19 (1) and (2), 26 and 27 of the Covenant. The Optional Protocol entered into force for the State party on 27 February 2002. The authors are represented by counsel.

\* Adopted by the Committee at its 131st session (1–26 March 2021).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, 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 Photini Pazartzis, José Manuel Santos Pais and Gentian Zyberi (partially dissenting) is annexed to the present Views.



**Facts as submitted by the authors**

2.1 The authors are sisters and live in Zagatala District. They belong to Jehovah's Witnesses, a Christian denomination whose members preach publicly. Jehovah's Witnesses represent a religious minority in Azerbaijan, whose population is predominantly Muslim. The authors are not members of the Religious Community of Jehovah's Witnesses, which is a registered religious organization whose legal address is in Baku. The authors acted in their individual capacities in the events surrounding the present matter.

2.2 On 9 November 2014, the authors had a short, pleasant conversation about religion with an individual whom they had met on the street. The individual invited the authors into her home. After conversing with her there, the authors left the home.<sup>1</sup> The authors were then arrested on the street by officers of the Zagatala District police station, who had come to the home upon receipt of an anonymous tip. The police took the authors to the police station, where they were detained for four hours. The police informed the authors that they were under investigation for distribution of illegal publications. The police subjected the authors to verbal abuse,<sup>2</sup> scolded them and told them to read the Qur'an. The authors' written materials were confiscated and were sent to the State Committee for Work with Religious Associations.<sup>3</sup> The authors were released but were ordered to return to the police station the following day. This continued for several days until they were finally charged with an administrative violation.

2.3 The police then discovered that they had acted in error by seizing the authors' written materials – including the Holy Bible – which were not illegal, but rather had been approved by the State Committee for Work with Religious Associations. Accordingly, on 29 December 2014, the case against the authors was suspended. On the same date, the authors filed complaints against the Zagatala District police station before the Zagatala District Court, seeking damages for the arrests, detention and charges. On an unspecified date, their complaints were dismissed.<sup>4</sup>

2.4 After the two-month limitation period permissible by law had expired,<sup>5</sup> the police charged the authors with carrying out religious activity outside of a registered address. This was a violation of former article 299.0.4 of the Code of Administrative Offences, which was in force until 1 March 2016.<sup>6</sup> The proceedings recommenced on 22 April 2015 against Ms. Muradhasilova, and on 1 May 2015 against Ms. Gurbanova.<sup>7</sup>

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<sup>1</sup> According to the decisions of the Zagatala District Court, the authors stated to the police that at approximately 2.10 p.m., they had spoken about Jehovah God to an individual who then invited them into the house. The authors told the police that they did not belong to any sect and did not know whether Jehovah's Witnesses was a registered organization. They stated that no one had forced them to speak to citizens about God's beautiful purpose and peace on earth.

<sup>2</sup> Details of the verbal abuse are not provided.

<sup>3</sup> According to the translated decision of the Shaki Court of Appeal, the materials confiscated from the authors were a book entitled *Holy Scriptures* and a brochure on the Bible and the key to a happy family life.

<sup>4</sup> According to the State party, the authors' complaints were dismissed on 12 January 2015.

<sup>5</sup> The authors state that article 36.1 of the former Code of Administrative Offences, which was in force until 1 March 2016, required administrative penalties to be imposed no later than two months from the alleged administrative violation.

<sup>6</sup> According to the translation provided by the authors, article 299 of the Code of Administrative Offences stated: "Violation of order of establishment and activity of religious structures i.e. [...] Article 299.0.4. Carrying out of activities by religious associations in places outside the registered legal address."

<sup>7</sup> According to his decision dated 15 December 2014, the Police Lieutenant of Zagatala refused to initiate a criminal case against the authors for distribution of illegal publications; and referred the authors to the Zagatala District police station and the Public Prosecutor's office for violations of article 299.0.4 of the Code of Administrative Offences for carrying out religious activity outside of a registered address. The Police Lieutenant stated that although the authors had violated article 299.0.4, he refused to initiate a criminal case against the authors because they had not violated article 167 (2) of the Criminal Code, relating to illegal production, import, sale or distribution of religious literature, items or other material of religious content.

2.5 On 15 May 2015, the Zagatala District Court found the authors guilty of having violated article 299.0.4 of the Code of Administrative Offences, and ordered each of them to pay a heavy fine of 1,500 Azerbaijan manats, equivalent to approximately 1,255 euros based on the official exchange rate of the Central Bank of the Republic of Azerbaijan at the time.<sup>8</sup> The authors were unemployed, and the annual per capita income in Azerbaijan was 10,597 manats. Although the authors were not members of the Religious Community of Jehovah's Witnesses, the domestic courts considered that domestic law prohibited religious associations from conducting any religious activity outside of a legally registered address, and that the authors had violated the law by expressing their religious beliefs outside of such an address.

2.6 During domestic court proceedings, the authors invoked their right to manifest their religious beliefs. On 23 June 2015, the authors appealed their convictions before the Criminal Board of the Shaki Court of Appeal.<sup>9</sup> On 15 July 2015, the Court of Appeal dismissed the appeals.<sup>10</sup> The authors maintain that no further domestic remedy is available to them.

### Complaint

3.1 The authors claim that by arresting, detaining, charging and fining them for carrying out religious activity outside of a registered address, the State party violated their rights under articles 9 (1), 18 (1) and (2), 19 (1) and (2), 26 and 27 of the Covenant.

3.2 In violation of article 9 (1) of the Covenant, the police arrested the authors for having a conversation about religion at a home that was not the legal address of a registered religious organization, and detained them for over four hours. The police only released the authors on the condition that they return to the police station, which they did over the next two days. Thus, for more than three days, the authors were deprived of liberty and were kept under police authority and control. They did not voluntarily participate in an investigation and were not free to leave.

3.3 The authors' arrest was unlawful. Under article 9 (1) of the Covenant, an arrest or detention is arbitrary if it constitutes punishment for the legitimate exercise of rights guaranteed by the Covenant. Such an arrest or detention is arbitrary even when authorized by domestic law, if the law itself is defective. In the present case, the underlying purpose of the arrests was to punish the authors and hinder their free exercise of religion and expression. This purpose was revealed when the police harassed them during their detention, including by scolding them for not having permission to preach and by telling them to read the Qur'an.

3.4 The detention of the authors cannot be justified, because the State party had no legitimate reason to interfere with their activities. The authorities provided no evidence as to why it was necessary to detain the authors on three separate days at the police station. The authors were peacefully exercising freedoms guaranteed by the Covenant.

3.5 The State party violated the authors' rights under articles 18 (1) and (2) of the Covenant by arresting them for discussing and thereby manifesting their religious beliefs; intimidating and encouraging them, while holding them in police custody, to abandon their

<sup>8</sup> The District Court considered that the authors had "violated the rules of religious associations' activity, operated in Zagatala District, that is outside of the legal address of the registration of the Religious Community of Jehovah's Witnesses, of which they are members, and by their propaganda of the aforementioned religious sect violated rules prescribed by law on organizing and conducting of religious ceremonies without the appropriate permission of the State Committee for Work with Religious Associations of the Azerbaijan Republic". They had therefore violated article 299.0.4 of the Code of Administrative Offences, under which operating outside of the legal address of registration of the religious association entails administrative liability.

<sup>9</sup> In their appeals, the authors invoked the right to liberty and security of the person, the right to fair trial, freedom of religion, freedom of opinion and expression, the right to protection from unjustified discrimination based on religion, and the right to peaceful enjoyment of possessions. They also specifically invoked articles 7, 9–10, 17–19, 26 and 27 of the Covenant. Regarding article 27 of the Covenant, they argued that religious minorities have the right to practise their own religion.

<sup>10</sup> The Court of Appeal stated that the authors had operated outside the legal address of the Religious Community of Jehovah's Witnesses, of which they were members, and had therefore violated article 299.0.4 of the Code of Administrative Offences.

religious beliefs and adopt the Islamic faith; and sanctioning the expression of religious beliefs outside of registered addresses.

3.6 A State's authority to limit religious activity to registered addresses of religious associations must be assessed in the light of the consequences that arise for individuals who share the association's beliefs. In the present case, the consequences for the authors were their arrest, intimidation by police, multiple prosecutions, convictions and heavy fines. Moreover, the State party's action was not prescribed by law, because the courts should have construed the law in question to prevent violations of fundamental human rights and freedoms. In addition, the State party's action had no legitimate aim. There was no evidence that the authors had in any way threatened public order, and no argument was given as to why it was necessary in a democratic society to prohibit religious activity outside of a registered legal address.

3.7 The State party violated the authors' rights under articles 19 (1) and (2) of the Covenant by misapplying the Code of Administrative Offences and prohibiting the expression of the authors' religious beliefs outside of an association's registered address. The consequences of this restriction are far-reaching and implicate the rights of all nationals of Azerbaijan to impart and receive ideas. The State party would in effect criminalize any speech by members of any religion if that speech were expressed outside of a specific address. Expression of religious ideas through the Internet, radio and television, or calls to prayer, would be illegal.

3.8 The interference with the authors' rights under article 19 of the Covenant was not necessary or proportionate. The authors' activities posed no threat to public order. An anonymous tip to the police about the authors does not justify their prosecution. On the contrary, the police have a duty to protect individuals belonging to minorities from acts of intolerance. In addition, the interference was not prescribed by law, did not pursue a legitimate aim, and was not necessary in a democratic society, for the aforementioned reasons.

3.9 By denying the authors' right to profess and practise their own religion, the police violated the authors' rights under articles 26 and 27 of the Covenant. Freedom of religion and expression may not be limited to a particular geographic location. In order to restrict the religious activity of a minority religious community, the authors were punished for their minority religious association. When a religious minority is deprived of the right to communicate and express beliefs unhindered, that minority cannot effectively exist.

3.10 Indeed, the State party has demonstrated intolerance of Jehovah's Witnesses in various ways. Police have conducted raids of religious meetings of Jehovah's Witnesses, and the authorities have censored their religious publications.

#### **State party's observations on the merits<sup>11</sup>**

4.1 In its observations dated 24 October 2017, the State party considers that because of the geographical position and history of Azerbaijan, and because of the ethnic composition of its population, people of various religious faiths, including heathenism, Zoroastrianism, Judaism, Christianity and Islam, have coexisted side by side in the country. Strong levels of tolerance have always existed among the country's ethnic and religious groups. Indeed, tolerance is the predominant feature of individuals living in the State party's territory. Every year since 1995, the International Day of Tolerance has been celebrated on 16 November. Baku hosts the annual World Forum on Intercultural Dialogue. Christian churches, Jewish synagogues, and many other Christian and Jewish educational institutions operate freely in the country. The State party provides them with all necessary support. One of the policy priorities for the Government of Azerbaijan is to preserve and promote tolerance, at both the local and international levels. This is demonstrated by the attitude of the Government towards people of different religious faiths, by the nature of the domestic legal system, and by the actions of the Government in restoring religious and historical monuments and in organizing international conferences on the issue of tolerance.

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<sup>11</sup> The State party did not expressly address the admissibility of the communication.

4.2 Approximately 96 per cent of the population of Azerbaijan is Muslim; the remaining 4 per cent are members of other religions, including the Christian, Jewish, Baha'ist and Krishnaite faiths. Virtually all forms of Christianity are represented in the country. More than 2,000 mosques, 13 churches and 7 synagogues operate in Azerbaijan, and more than 650 religious communities have been registered.

4.3 With respect to relevant domestic law, article 1 of the Law on Freedom of Religion provides in relevant part that freedom of religion is to be subject only to such limitations as are necessary in the interests of State and public safety, for the protection of the rights and freedoms compliant with international commitments of Azerbaijan. According to article 5 of the Law, religion and religious communities are to be separate from the State, and are to all be equal before the law. Article 22 of the Law provides that religious organizations may only function after their registration by the relevant executive authority, their entry in the State registry of religious organizations, and their appointment of a religious minister at the place of worship listed as the organization's legal address. Article 299.0.4 of the Code of Administrative Offences, which was in force at the relevant time, provides that the operation of a religious organization outside of its registered legal address is punishable by a fine of 1,500 to 2,000 manats.

4.4 On 9 November 2014, the authors violated the rules of conduct for religious organizations by operating outside of the registered legal address of the Jehovah's Witnesses religious community. The community's legal address was located in Baku, while the authors operated in the city of Zagatala.

4.5 On 15 December 2014, the Inquiry Group of the Zagatala District police station decided to open a case against the authors. On 26 December 2014, officers of the Zagatala District police station drafted administrative offence protocols for the authors, and sent the protocols to the Zagatala District Court for consideration. On 26 and 29 December 2014, respectively, Ms. Muradhasilova and Ms. Gurbanova filed complaints before the Zagatala District Court, requesting to cancel the decision of the Inquiry Group of the Zagatala District police station. On the same dates, the District Court suspended the processing of the administrative offence cases against the authors. On 12 January 2015, the Zagatala District Court dismissed both complaints and upheld the decision of the Inquiry Group dated 15 December 2014. On 8 April 2015, the Shaki Court of Appeal rejected the authors' appeal, and confirmed the decision of the District Court.

4.6 Pursuant to decisions of the Zagatala District Court dated 22 April and 1 May 2015, processing of the administrative offence cases against the authors resumed. On 15 May 2015, the same court found the authors guilty of violating article 299.0.4 of the Code of Administrative Offences, which had been in force until 1 March 2016. The authors were each fined 1,500 manats. On 15 July 2015, the Shaki Court of Appeal dismissed the authors' appeals.

4.7 With respect to the authors' claim under article 18 of the Covenant, the administrative sanctions against the authors constituted a permissible limitation on their exercise of the right to freedom of religion. Under article 18 (3) of the Covenant, limitations on that right are not permissible unless they are prescribed by law, and are necessary in a democratic society to protect public safety, order, health or morals or fundamental rights and freedoms of others. In the present case, the interference in question was prescribed by law, namely, article 299.0.4 of the Code of Administrative Offences. The authors were aware of that law, which was accessible to them. The limitation contained in that provision was articulated with sufficient precision so as to enable the authors to foresee the consequences of their actions.

4.8 Furthermore, the limitation was proportionate to the legitimate aim of protecting the public order, the co-existence of different groups<sup>12</sup> and the rights and freedoms of others. The legal address of the Jehovah's Witnesses organization was in Baku, approximately 450 kilometres away from Zagatala, where the authors were operating.

<sup>12</sup> The exact language used by the State party is "the preservation of the conditions of 'living together'".

4.9 In addition, the limitation was necessary in a democratic society. Individuals have the freedom to hold or not hold religious beliefs, and to practise or not practise religion.<sup>13</sup> Many of the “views” of Jehovah’s Witnesses contain disparaging statements directed against Christian and Jewish communities, who form an integral part of society in Azerbaijan. It was therefore necessary to protect individuals of other religions and beliefs from insulting expressions by Jehovah’s Witnesses outside of their place of worship. In democratic societies where people of several religious faiths coexist, limitations on freedom to manifest one’s religion or beliefs may be necessary in order to reconcile the interests of the various groups, and to ensure that everyone’s beliefs are respected. This follows from articles 2 and 18 (3) of the Covenant. The State party’s role is to act as the neutral and impartial organizer of the exercise of various religions, not to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed. This duty requires the State party not to remove the cause of tension by eliminating pluralism, but rather to ensure mutual tolerance between opposing groups.<sup>14</sup> Pluralism, tolerance and broadmindedness are hallmarks of a democratic society. Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail. A balance must be achieved to ensure the fair treatment of people from minorities and to avoid any abuse of a dominant position. Where the rights and freedoms of others are themselves protected by the Covenant, it must be accepted that the need to protect them may lead States parties to restrict other rights or freedoms that are also set forth in the Covenant. It is precisely this constant search for a balance between the fundamental rights of each individual that constitutes the foundation of a democratic society.

4.10 The State party’s authorities are better placed than an international court to evaluate local needs and conditions. In policy matters where opinions within a democratic society may reasonably differ widely, the role of the domestic policymaker should be given special weight.<sup>15</sup> This is the case, in particular, where questions concerning the relationship between the State and religions are at stake. Thus, with respect to article 18 of the Covenant, the State should be afforded a wide margin of appreciation in deciding whether and to what extent it is necessary to limit the right to manifest one’s religion or beliefs. In *Şahin v. Turkey*, the European Court of Human Rights considered that such a wide margin of appreciation applies when evaluating regulation of the wearing of religious symbols in educational institutions.<sup>16</sup> The Court considered that it was not possible to discern throughout Europe a uniform conception of the significance of religion in society, and that the meaning or impact of the public expression of a religious belief differed depending on time and context. The Court observed that as a result, the rules in that sphere would vary from one country to another, according to national traditions and the requirements imposed by the need to protect the rights and freedoms of others and to maintain public order. The Court concluded that the choice of the extent and form of such rules must inevitably be left, up to a point, to the State party concerned.

4.11 The State party also refers to *Otto-Preminger-Institut v. Austria*, in which the European Court of Human Rights decided that the Austrian authorities had acted legitimately by ensuring religious peace in a region, and preventing some individuals from feeling that they were the object of attacks on their religious beliefs in an unwarranted and offensive manner.<sup>17</sup> The Court considered that it was for the domestic authorities, who were better placed than an international judge, to assess the need for such a measure in the light of the local situation.

4.12 Preservation of religious peace and prevention of any discrimination against particular religions or religious groups or any attacks on religious beliefs of others are core functions

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<sup>13</sup> The State party cites European Court of Human Rights, *Kokkinakis v. Greece*, application No. 14307/88, judgment of 25 May 1993, para. 31.

<sup>14</sup> The State party cites, inter alia, European Court of Human Rights, *Serif v. Greece*, application No. 38178/97, judgment of 14 December 1999, para. 53.

<sup>15</sup> The State party cites European Court of Human Rights, *S.A.S. v. France*, application No. 43835/11, judgment of 1 July 2014, para. 129.

<sup>16</sup> The State party cites European Court of Human Rights, *Şahin v. Turkey*, application No. 44774/98, judgment of 10 November 2005.

<sup>17</sup> *Otto-Preminger-Institut v. Austria*, application No. 13470/87, judgment of 20 September 1994.

of the State. In the State party's territory, members of many religions and ethnic groups live together. It should also be taken into account that one of the authors did not fulfil her obligations under the judgment of the domestic courts, and did not pay the required fine.

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

5.1 In comments dated 21 November 2018, the authors maintain that certain basic allegations contained in their complaint were not contested by the State party in its observations. The State party's assertion that the views of Jehovah's Witnesses feature disparaging expressions directed at Christian and Jewish communities is false and is not supported by any evidence provided by the State party. In fact, the religious literature seized from the authors had been reviewed and approved by the State Committee for Work with Religious Associations. Thus, there is no evidence that the literature contained any disparaging expressions. Likewise, there is no evidence that the authors themselves made any disparaging statements against any religious community. The State party's bald assertion against Jehovah's Witnesses is itself a manifestation of religious intolerance. Jehovah's Witnesses are guided by the Biblical principle to honour people of all sorts; they follow the command of Jesus Christ to love one's neighbour as oneself. They thus endeavour to show neighbourly love and deep respect towards people of all races, nationalities and religions.

5.2 The State party's statement that the authors were holding religious assembly is incorrect and is unsupported by any factual evidence. The authors merely engaged in a peaceful, private conversation about their religious beliefs with an individual who had invited them into her home. A private conversation between three people cannot be construed as "religious assembly". The authors were simply following the command of Jesus Christ to share good news from the Bible about the Kingdom of God.

5.3 The State party's assertion that it has a tolerant attitude towards religious minorities is contradicted by the observations of international organizations in recent years. In a 2011 report, the European Commission against Racism and Intolerance noted the State party's discriminatory religious intolerance and heavy-handed police treatment of minority unregistered religions, including Jehovah's Witnesses.<sup>18</sup> The Committee itself has expressed concern about allegations of interference in religious activities and harassment of members of religious groups, including Jehovah's Witnesses, and the increase in arrests, detentions and administrative or criminal sanctions against them.<sup>19</sup>

5.4 The State party did not respond to the authors' claims under articles 9, 19, 26 or 27 of the Covenant. With respect to article 18 of the Covenant, the State party failed to explain how the authors, who are not members of the religious association registered in Baku, could have foreseen that article 299.0.4 of the Code of Administrative Offences might apply to their private religious conversation in Zagatala. The State party's claim that the authors were aware of that provision is incorrect. The wording of the provision makes clear that it is aimed at registered legal entities and not at individuals' personal expressions of religious belief. According to the State party's interpretation, every national of Azerbaijan who expresses his personal religious views in private conversations would be punishable under the provision, unless their conversation took place at the legal address of a registered religious association. If individuals belong to a religion that does not have a registered legal address in Azerbaijan, those individuals would not be permitted to share their religious views. Such an interpretation is contrary to the very essence of articles 18 and 19 of the Covenant. It is undisputed that the authors are not members of a religious legal entity. They were not acting on behalf of a registered religious community, but rather were engaged in conversations on religious topics in their personal capacities. It follows that article 299.0.4 of the Code of Administrative Offences was not formulated with sufficient precision to enable the authors to foresee that they would be punished for talking about their religious beliefs in private. Thus, the measure in question was not prescribed by law.

<sup>18</sup> The authors cite European Commission against Racism and Intolerance, "Report on Azerbaijan, fourth monitoring cycle", 31 May 2011, paras. 15–17 and 68–71.

<sup>19</sup> The authors cite [CCPR/C/AZE/CO/4](#), para. 32.

5.5 Moreover, the measure lacked a legitimate aim. The authors were punished for engaging in a purely private and peaceful conversation. The State party does not explain how the authors' private conversation jeopardized public order, or how the conversation required the protection of the rights and freedoms of others. The State party's assertion that the views of Jehovah's Witnesses contain disparaging expressions is false and does not appear anywhere in the judgments of the domestic courts, or in the material provided by the State party. Contrary to its assertions, the State party has indeed assessed the legitimacy of the authors' religious beliefs and the way in which they expressed them. The State party prosecuted and convicted the authors simply because they manifested their religious beliefs outside of a place of worship. This demonstrates gross intolerance towards minority religions.

5.6 In addition, punishment of the authors for their peaceful religious conversation was not necessary in a democratic society. It is difficult to comprehend how a prohibition against expression of personal religious beliefs outside of a place of worship can be compatible with the democratic principles of pluralism, tolerance and broad-mindedness. Although the State party cites the judgment of the European Court of Human Rights in *Kokkinakis v. Greece*, a factually similar case, the Court's reasoning in that case contradicts the State party's position. Furthermore, the exorbitant fines imposed were disproportionate and indicate the hostile attitude of the domestic courts towards the authors.

5.7 Regarding the State party's assertion that one of the authors did not pay the fine, on 9 September 2016, Ms. Gurbanova paid 50 manats toward the fine, and could not afford to pay more. On 31 March 2017, the Zagatala District Court replaced the remainder of her fine with a sentence of 200 hours of public service, which she completed.<sup>20</sup> Ms. Muradhasilova has not paid her fine because she is financially unable to do so. Nonetheless, the judgment against her is enforceable, and at any moment, the judicial executioner could request the court to punish her for her failure to pay. This could result in her imprisonment, pursuant to the Code of Administrative Offences.

5.8 When invoking its margin of appreciation, the State party fails to recognize that the issue at stake involves the circumstances under which a State party may interfere with a private religious conversation. The State party convicted and punished the authors for sharing minority religious views, while also rebuking the third individual who willingly participated in the conversation. Under such circumstances, the State party should be afforded a narrow margin of appreciation.

## **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 any other procedure of international investigation or settlement.

6.3 The Committee notes that the State party does not dispute the authors' assertion that they have exhausted all available domestic remedies, as required by article 5 (2) (b) of the Optional Protocol. The Committee notes that when the authors unsuccessfully appealed their convictions to the Court of Appeal, they raised the substance of their allegations under the Covenant. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

6.4 With respect to the authors' claims under articles 26 and 27 of the Covenant, the Committee considers that the authors have not provided sufficient information in support of these claims, for the purposes of admissibility, in particular with respect to any differential

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<sup>20</sup> Ms. Gurbanova provided a translation of a certificate issued by the Zagatala Utilities Company, dated 8 August 2017, indicating that she had completed her community service requirement. She also provided a document indicating that she paid 50 manats to the Government.



treatment they experienced in comparison with individuals belonging to other religions and engaging in the same activity. 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 The Committee notes that the State party has not contested the admissibility of the present communication, and considers that the authors have sufficiently substantiated the remaining claims under articles 9 (1), 18 (1) and (2) and 19 (1) and (2) for the purposes of admissibility. Accordingly, the Committee 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 submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 With respect to the authors' claim under article 18 (1) and (2) of the Covenant, the Committee recalls its general comment No. 22, according to which 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. The freedom to manifest religion or belief may be exercised either individually or in community with others and in public or private.<sup>21</sup> Moreover, 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.<sup>22</sup>

7.3 In the present case, the Committee notes the authors' argument that the State party violated their right to manifest their religious beliefs under article 18 (1) and (2) of the Covenant, by arresting them for discussing and expressing their religious beliefs during a private conversation in the home of another individual; and by sanctioning the expression of religious belief outside of the registered legal addresses of religious organizations under former article 299.0.4 of the Code of Administrative Offences. The Committee takes note of the State party's position that this provision sought to further the legitimate aim of protecting public order and ensuring the harmonious coexistence of different religious groups in the country. The Committee also notes the State party's argument that the limitation on conducting religious activity outside of registered places of worship is necessary in a democratic society, because many of the views of Jehovah's Witnesses contain statements disparaging Christian and Jewish communities, who form an integral part of society in Azerbaijan. The Committee notes the State party's position that it was necessary to protect individuals belonging to other religions from insulting expressions by Jehovah's Witnesses outside of their place of worship, to ensure that everyone's beliefs were respected.

7.4 The Committee observes that the State party does not provide any evidence indicating that the peaceful manifestation of the authors' religious beliefs has in any way disrupted social stability in its territory. The Committee also notes the authors' assertion that materials distributed by Jehovah's Witnesses do not contain disparaging statements towards Christian and Jewish communities. The Committee further notes that the State party did not provide any evidence that the authors, or Jehovah's Witnesses in general, have made disparaging statements, or distributed material containing such statements, towards individuals of other religious faiths. The Committee notes that the decisions of the District Court, which convicted the authors of the administrative violation, did not disclose or refer to any disparaging or hostile statements made by the authors during their religious discussion, or contained in the material they distributed. The Committee also notes that according to the documents provided to it, the police recognized that the religious literature confiscated from the authors on the day of their arrest had been reviewed and authorized for distribution by the relevant domestic authority. The Committee observes that while the State party has

<sup>21</sup> Human Rights Committee, general comment No. 22, para. 4. See also *Bekmanov et al. v. Kyrgyzstan* (CCPR/C/125/D/2312/2013), para. 7.2.

<sup>22</sup> Human Rights Committee, general comment No. 22, para. 8.

referred to the need to preserve peace and harmony in a multi-religious society, it has not referred to any specific circumstances where the authors' actions could have created or exacerbated serious interreligious tensions or an atmosphere of hostility and hatred between religious communities in Azerbaijan, such that those actions could have represented a threat to public safety, order, health or morals within the meaning of article 18 (3) of the Covenant.

7.5 In addition, the Committee notes that the State party has not indicated any specific concerns surrounding the individual who invited the authors into her home to discuss their faith. The Committee notes, for example, that there is no indication that the individual objected to the authors' entry or religious speech, was unable to reason on her own, or had a relationship or dependency or hierarchy with the authors such that she might have felt coerced, pressured, or unduly influenced by the manifestation of their religious beliefs.<sup>23</sup>

7.6 The Committee further considers that even if the State party could demonstrate that the authors' activity represented a specific and significant threat to public safety and order, it has failed to demonstrate that its actions were proportionate to preserving public safety and order. Specifically, the Committee considers that the conviction of the authors, and the fine imposed on each of them by the courts – equivalent to approximately 1,255 euros – considerably limited their ability to manifest their religious beliefs. Nor has the State party attempted to demonstrate that the actions of the police and the domestic courts were the least restrictive measures necessary to ensure the protection of the freedom of religion or belief. 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, charging and fining the authors for engaging in a religious discussion, the State party violated their rights under article 18 (1) of the Covenant.

7.7 Subsequently, the Committee notes the authors' claim that because they were having a conversation about religion at a home that was not a registered legal address, the police took them to a police station and detained them for four hours. The Committee also notes the authors' claims that they were required to return to the police station on each of the next two days. The Committee takes note of a personal statement provided by one of the authors during the domestic proceedings, stating that the authors were asked to sign a statement before leaving the police station in the early evening on the day of their arrest, and were instructed to return the next day. On the following day the authors were required to sign yet another statement, and it was not until they returned on the third day they were told by a police officer that their actions might result in criminal charges and would likely result in an administrative fine. The Committee takes note of the authors' statement that they did not voluntarily participate in an investigation and were not free to leave on any of the occasions when they were at the police station.

7.8 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 its general comment No. 35 (2014), in which it stated that deprivation of personal liberty was without free consent. It further stated that individuals who went voluntarily to a police station to participate in an investigation, and who knew that they were free to leave at any time, were not being deprived of their liberty.<sup>24</sup> In contrast, the Committee notes the authors' claim that they did not freely accompany the police to the police station and were not free to leave police custody for four hours, during which time they were scolded and told to read the Qur'an. Although they were released that night, they were required to return to the police station over the next two days, though they were not charged with a violation. In the absence of information from the State party indicating a well-founded, justified basis for taking the authors into police custody and holding them at the police station for four hours, and confirming that the authors could have freely decided not to accompany the police officers

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<sup>23</sup> With respect to proselytizing within the context of freedom of religion, see [A/60/399](#), para. 67. See also *Larissis et al v. Greece*, applications Nos. 140/1996/759/958-960, European Court of Human Rights, judgment of 24 February 1998.

<sup>24</sup> Human Rights Committee, general comment No. 35, para. 6.

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 four hours, the Committee refers to 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 occupy 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 law.<sup>25</sup> 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,<sup>26</sup> the Committee must next assess whether the authors’ arrest and detention were arbitrary or unlawful. The Committee recalls that the 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.<sup>27</sup> The Committee also recalls that arrest or detention as punishment for the legitimate exercise of the rights guaranteed by the Covenant, including freedom of religion, is arbitrary.<sup>28</sup> The Committee notes the authors’ uncontested allegations that they were told at the police station that they were under investigation for distribution of illegal publications; that they were released from detention on the condition that they report to the police station for the next two days; and that the police officers brought them before a judge and charged them with an administrative violation two days after their release. The Committee also recalls that while the authors’ religious literature was confiscated upon their arrest, the criminal case against them was suspended after the police determined that the allegedly illegal publications had in fact been approved by the relevant domestic authority. In these circumstances, which indicate uncertainty as to the legal justification for the authors’ arrest and detention, the Committee considers that the actions of the police lacked appropriateness, predictability and regard for due process guarantees. 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 article 19 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 the authors’ rights under 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 rights under the Covenant have been violated. Accordingly, the State party is obligated, *inter alia*, to provide the authors with adequate compensation, including reimbursement for the portion of the fine paid by Ms. Gurbanova, cancellation of the fines for both authors, and reimbursement 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.

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

<sup>25</sup> *Ibid.*, para. 13.

<sup>26</sup> *Ibid.*, para. 10.

<sup>27</sup> See, *inter alia*, *Formonov v. Uzbekistan* (CCPR/C/122/D/2577/2015), para. 9.3.

<sup>28</sup> Human Rights Committee, general comment No. 35, para. 17.

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

### **Joint opinion of Committee members Photini Pazartzis, José Manuel Santos Pais and Gentian Zyberi (partially dissenting)**

1. We concur with the conclusion reached in the present Views, that the State party has indeed violated the authors' rights under article 18 (1) of the Covenant. However, we cannot agree with the conclusion of a violation of article 9 (1).
2. The Committee justified this violation by accepting the authors' claim that they were arrested and detained for 4 hours on 9 November 2014 and further required to return to the police station on the next two days. The Committee considered that the authors were therefore deprived of their liberty and that the actions of the police lacked appropriateness, predictability and regard for due process guarantees. Although we understand this reasoning by the majority of the Committee, it does not seem to match the facts in the present case.
3. The rationale behind the conclusion of the Committee is that, since the authors had a conversation about religion at a home that was not a registered legal address, the police forcefully took them to a police station and detained them. Since they apparently were not free to leave the police station, the authors were therefore subject to arbitrary arrest. Such reasoning by the majority of the Committee entails, however, in itself a vice of *petitio principii*, since the main reason for finding a violation of article 9 is the direct consequence of finding a violation of article 18.
4. Domestic authorities conducted an inquiry in the present case, upon receipt of an anonymous tip (para. 2.2). However, this was not a criminal case (see footnote 9), but rather, an administrative procedure (para. 4.5). As the State party notes (para. 4.4), the authors violated the rules of conduct for religious organizations by operating outside of the registered legal address of the Jehovah's Witnesses religious community, located in Baku, in conformity with the national Law on Freedom of Religious Beliefs, while the authors operated in the city of Zagatala and were not members of the said religious community, as they themselves acknowledge (para 2.1, and footnote 1). Therefore, the authors were suspected of carrying out a religious activity outside of a registered address (para. 2.4) and were ultimately found to have violated the law by expressing their religious beliefs outside of such an address (paras. 2.5 and 4.4, and footnote 10). Therefore, we have a *prima facie* lawful motive for the intervention of the police, even if the Committee rightly concluded that the restrictions imposed on the authors' rights under article 18 (1) were not proportionate (para. 7.6).
5. We also have 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, as it were, in *flagrante delicto*. In many jurisdictions, this situation entails the need for suspects to accompany police officers for identification and drafting of all the necessary legal documentation that will later allow the courts to try the case, if need be.
6. As for holding the authors for a few hours in the police station in the afternoon when they were brought into police custody, written protocols of the suspected events had to be drafted and signed by them, as at least one of the authors confirms (para. 7.7). The drafting of such written administrative offence protocols (para. 4.5) was essential for the protection of the authors' rights, since by taking notice of these protocols, the authors were *ipso facto* informed of the reasons behind the police intervention, aware of their status in the proceedings and therefore also able to begin preparing their defence. Moreover, the limited time period for holding the authors in the police station – considerably less than 4 hours – seems reasonable under the circumstances, considering that police work can be time-consuming.
7. The authors signed another statement the next day, and on the third day, they were duly informed that they would face an administrative offence and possibly be subject to an administrative fine. The authors were, however, free to come to the police station and to depart from it. Their situation was thus not different from the situation of any other citizen cooperating with the police, for instance, as a witness, a victim or a defendant.

8. Law-abiding citizens are generally expected to assist investigations led by law enforcement officers, particularly if they are caught in what can be considered to be in flagrante delicto. Police investigations may, and often do, involve routine questioning of individuals at police stations in order to ascertain facts and address allegations of violations or crimes, without this necessarily constituting arbitrary or unlawful deprivation of liberty. If someone is summoned to a court or to a police station, that person is not necessarily arrested or detained, but remains at the disposal of the authorities until the goal for which he or she was summoned has been met. That is what happened in the present case, where the authors were free to leave the police station once the necessary legal documents were drafted and signed.

9. In our view, it has not been demonstrated that these investigative actions of the police imposed undue restrictions on the authors' rights or went beyond what was reasonably necessary to ascertain whether a violation of domestic law had taken place. Therefore, the said actions were not arbitrary. We would therefore have concluded that the State party did not violate the authors' rights under article 9 (1) of the Covenant.

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