



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. 2661/2015*, **

<i>Communication submitted by:</i>	Polat Bekzhan, Leon Weaver Jr. and Helmut Echte (represented by counsel, Shane H. Brady and Haykaz Zoryan)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Kazakhstan
<i>Date of communication:</i>	27 March 2015 (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 30 October 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	30 October 2020
<i>Subject matter:</i>	Refusal to allow importation of religious publications
<i>Procedural issues:</i>	Exhaustion of domestic remedies; victim status; <i>actio popularis</i>
<i>Substantive issues:</i>	Freedom of thought, conscience and religion; freedom of expression; protection of minorities
<i>Articles of the Covenant:</i>	18 (1) and (3), 19 (2) and (3) and 27
<i>Articles of the Optional Protocol:</i>	1, 2, 3 and 5 (2) (b)

1. The authors of the communication are Polat Bekzhan, a national of Kazakhstan born in 1953, Leon Weaver Jr., a national of the United States of America born in 1938, and Helmut Echte, a national of Germany born in 1938. They claim that the State party has violated their rights under articles 18 (1) and (3), 19 (2) and (3) and 27 of the Covenant. They further claim that they are bringing the communication on behalf of all 17,500 Jehovah's

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

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Christof Heyns, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja and Gentian Zyberi. Pursuant to rule 108 of the Committee's rules of procedure, David H. Moore and Andreas Zimmermann did not participate in the examination of the communication.



Witnesses in Kazakhstan¹ and argue that the State party has violated the rights of those persons under articles 18 (1) and 27 of the Covenant. The authors are represented by counsel.

Facts as submitted by the authors

2.1 The authors are Jehovah's Witnesses and each of them is an authorized representative of one of three religious organizations that provide Bibles and other religious literature to Jehovah's Witnesses in the State party. Mr. Bekzhan imports Jehovah's Witnesses literature into Kazakhstan, Mr. Weaver Jr., publishes literature used by Jehovah's Witnesses in their worship and Mr. Echtle prints and ships literature to the State party, where more than 17,500 Jehovah's Witnesses live and 30,000 persons attend their religious meetings.

2.2 On 11 October 2011, the State party adopted the Law on Religious Activity and Religious Associations, No. 483-IV. Under article 9 (3) of the Law, a registered religious organization may import religious literature for its use and the use of its members only after the literature has been positively assessed following a religious expert examination. Article 6 (1) (4) of the Law stipulates that the authorized agency conducts a religious expert examination of such literature, except in the case of materials intended for personal use, according to a procedure established by the Government.

2.3 The authors claim that, although it is not expressly specified in the Law on Religious Activity and Religious Associations, the Agency for Religious Affairs is responsible for approving the importation into Kazakhstan of all religious literature used by registered religious organizations. According to article 4 (3) of government order No. 209 of 7 February 2012 on the guidelines for religious expert examinations, all imported literature used by religious organizations is subject to an examination, the purpose of which is to establish whether the literature concerned complies with the Constitution and legislation of Kazakhstan. The authors submit that the 2011 Law does not provide any criteria for the approval or refusal of permission for a religious organization to import materials containing religious information.

2.4 The use of religious literature that is not authorized by the Agency for Religious Affairs is punishable under article 375 (1) of the Code of Administrative Offences, which stipulates that infringement will incur a warning or a fine, with or without the suspension of the association's activity.

2.5 In September, November and December 2012, the Christian Centre of Jehovah's Witnesses in Kazakhstan requested authorization for the importation of 10 religious publications. However, the Agency for Religious Affairs refused the request on the basis of the findings of the religious expert examination. The authors appealed the decision to the Chair of the Agency. On 31 January 2013, their appeal was rejected. The Chair of the Agency stated that the publications would be banned because they contained ideas that discouraged secular education, could cause family break-up, pruned the superiority of the religion over traditional Christianity and rejected the fundamental teachings of traditional Christianity. He recommended that the authors edit the content of the publications.

2.6 In May 2013, the authors filed an application with the Astana Specialized Inter-District Economic Court challenging the Agency's decisions. On 3 July 2013, the Court dismissed the authors' application, finding that the disputed decisions were in accordance with the law, that there had been no violation of the authors' rights and freedoms and that the religious expert examination had been conducted in strict compliance with the law. The Court further noted that the publications in question could be corrected and resubmitted for an expert examination and therefore found that the distribution of the religious literature had been neither hindered nor restricted.

2.7 The authors lodged an appeal with the Appeals Chamber of the Astana City Court, which upheld the 3 July 2013 decision on 27 August 2013. A further appeal was filed with the Cassation Chamber of the Astana City Court, which upheld the ruling on 6 May 2014.

¹ The authors refer to the Committee's jurisprudence in *Howard v. Canada* (CCPR/C/84/D/879/1999), para. 8.3, and *Lubicon Lake Band v. Canada*, communication No. 167/1984, paras. 2.2, 29.1, 31.1 and 32.

Subsequently, the authors filed a motion for supervisory review to the Supreme Court, which dismissed the motion on 4 September 2014.

Complaint

3.1 The authors claim that the decisions made by the Agency for Religious Affairs refusing to permit the importation into the State party of 10 religious publications to be used for religious worship by Jehovah's Witnesses amount to violations of their rights under articles 18 (1) and (3), 19 (2) and (3) and 27 of the Covenant.

3.2 The authors claim that imposing a restriction or ban on the circulation, distribution or sale of a book interferes with the right to freedom of expression and that such a restriction on a religious publication interferes with the freedom of religion.² The decisions of the Agency for Religious Affairs refusing permission for the importation of the religious publications in question thereby interfered with the rights of the authors and of all Jehovah's Witnesses as a religious minority in the State party. Furthermore, the authors claim that such interference does not fall under the limitations prescribed by article 18 (3) of the Covenant, as all passages in the religious publications to which the Agency objects are mere statements of the religious beliefs of Jehovah's Witnesses. Therefore, the Agency's interference with their right to freedom of religion cannot be justified since it does not pursue a legitimate aim and is not necessary in a democratic society.³

State party's observations on admissibility

4.1 In a note verbale dated 29 December 2015, the State party submits that the authors dispute the decision of 3 July 2013 of the Astana Specialized Inter-District Economic Court, which rejected the claim submitted by the Christian Centre of Jehovah's Witnesses regional religious association, the Watchtower Bible and Tract Society of New York, Inc., and Wachturm Bibel- und Traktat-Gesellschaft der Zeugen Jehovas, e. V. against the State party's Agency for Religious Affairs. The authors requested that the expert conclusions refusing permission for the importation of the November 2012 issue of the publication *Awake!* (in Russian), the brochure *Examining the Scriptures Daily – 2013* (in Russian and Kazakh), the 15 March 2013 issue of *The Watchtower* (in Russian and in Kazakh), the October–December 2012 issue of *The Watchtower* (in Kazakh), the 15 January 2013 issue of *The Watchtower* (in Russian and in Kazakh) and the 15 February 2013 issue of *The Watchtower* (in Russian and in Kazakh) be declared unlawful and that this violation of their rights be remedied. In the authors' opinion, the State party violated Mr. Bekzhan's rights guaranteed under the Covenant.

4.2 The State party recalls that, pursuant to article 3 of the Optional Protocol to the Covenant and rule 99 of its rules of procedure, the Committee can declare any communication inadmissible if it has been filed anonymously, that is, if it is not signed by the author or if the representative does not have proper authorization. Rule 99 (a) of the rules of procedure establishes that, with a view to reaching a decision on the admissibility of a communication, the Committee shall ascertain that the communication is not anonymous and that it emanates from an individual, or individuals, subject to the jurisdiction of a State party to the Optional Protocol.

4.3 The State party contends that neither the counsel, nor the foreign religious associations in whose name the communication was also submitted, fall under its jurisdiction, since the counsel is not a citizen of Kazakhstan and the religious associations are not registered in the State party. Additionally, the associations are not parties in legal relations concerning the importation of materials containing religious information into the territory of the State party. Pursuant to article 9 (3) of the 2011 Law on Religious Activity and Religious Associations,

² European Court of Human Rights, *Kuznetsov and others v. Russia*, Application No. 184/02, Judgment of 11 January 2007, para. 57.

³ The authors refer to the Committee's general comment No. 22 (1993), para. 3, *Atasoy v. Turkey* (CCPR/C/104/D/1853-1854/2008), para. 10.4, *Leven v. Kazakhstan* (CCPR/C/112/D/2131/2012), para. 9.3, *Malakhovsky and Pikul v. Belarus* (CCPR/C/84/D/1207/2003), para. 7.6, *Leven v. Kazakhstan*, para. 9.3, and *Turchenyak et al. v. Belarus* (CCPR/C/108/D/1948/2010), paras. 7.7–7.8.

only registered religious associations – in this case the Christian Centre of Jehovah’s Witnesses regional religious association – can be such parties.

4.4 The State party observes that, by virtue of rule 99 (b) of the Committee’s rules of procedure, with a view to reaching a decision on the admissibility of a communication, the Committee shall ascertain that the communication was submitted by an individual who claims to be a victim of a violation by that State party of any of the rights set forth in the Covenant or by that individual’s representative. A communication submitted by a representative may be accepted when the individual in question is unable to submit it personally.

4.5 According to the State party, the communication does not contain any information indicating why the authors, as representatives of the religious associations, those religious associations themselves, members of Mr. Bekzhan’s family or all 17,500 Jehovah’s Witnesses in the State party were unable to submit the communication to the Committee personally. Moreover, in order for the Committee to consider claims from a group of individuals concerning alleged breaches of their rights under the Covenant, a communication to the Committee must be submitted either by the group itself on its own behalf or through a representative to whom authorization is provided for these purposes.⁴

4.6 The State party maintains that the communication does not contain information to the effect that members of Mr. Bekzhan’s family or the 17,500 Jehovah’s Witnesses in the State party commissioned anyone to submit a complaint or to represent them before the Committee. Moreover, the claim does not state whether the founding documents of the 59 local religious associations of Jehovah’s Witnesses registered in the State party (charters that define the mutual rights and obligations of the religious associations, of their administrative agencies, and of their members) authorize anyone, including Mr. Bekzhan (the director of the regional religious association), to submit an application to the Committee on their behalf.

4.7 According to the State party, under articles 2 and 5 of the Optional Protocol and rule 96 (f) of the rules of procedure, the Committee can declare a communication inadmissible if all available domestic remedies were not exhausted. The decision of 3 July 2013 of the Astana Specialized Inter-District Economic Court rejected the claim submitted by the Christian Centre of Jehovah’s Witnesses regional religious association, Watchtower Bible and Tract Society of New York, Inc., and Wachturm Bibel- und Traktat-Gesellschaft der Zeugen Jehovas, e. V. against the State party’s Agency for Religious Affairs. The claim requested that the expert conclusions refusing permission to import religious literature in the Russian and Kazakh languages be declared unlawful and that this violation of rights be remedied. On 27 August 2013, the Astana City Court upheld the decision of the lower court. The ruling of 6 May 2014 of the Cassation Chamber of the Astana City Court upheld those judicial decisions. By ruling of 4 September 2014, the Supervisory Chamber for Civil and Administrative Cases of the Supreme Court refused to initiate supervisory proceedings.

4.8 Moreover, the regional religious association did not follow the procedure for the submission of requests or respect the time period provided for under articles 385 and 388 of the Code of Civil Procedure (in force when the judicial decisions were rendered) when applying to the Prosecutor General for a supervisory review to be filed with the Supreme Court against the court decision. Essentially, in failing to submit a request within the legally established time period and thus voluntarily denying itself effective means of legal protection, the regional religious association put itself in a position whereby it abused the right to submit a communication to the Committee. In addition, the claim did not provide sufficient arguments showing that it would be a futile and ineffective means of legal protection for the regional religious association to submit such a request to the Prosecutor General.

4.9 Therefore, the State party submits that the communication is inadmissible under articles 1 and 3 of the Optional Protocol and rule 99 (a) and (b) of the Committee’s rules of procedure.

⁴ The State party refers to the Committee’s general comment No. 31 (2004), para. 9, *Howard v. Canada*, para. 8.3, and *Lubicon Lake Band v. Canada*, para. 32.1.

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

5.1 On 5 January 2016, the authors reiterated that their communication concerns the censorship of religious publications under the State party's 2011 Law on Religious Activity and Religious Associations. At the suggestion of the State party, they requested the Committee to temporarily suspend its consideration to permit the parties to explore the possibility of reaching a settlement. The Committee, acting through its Special Rapporteur on new communications and interim measures, decided that the consideration of the communication be suspended until 18 July 2016.⁵

5.2 On 18 July 2016, the authors indicated that the issue at stake had not been resolved and asked the Committee to resume its consideration of the case. They challenge the State party's assertion that the communication is inadmissible because it was not submitted "personally" by the individual complainants. Rule 99 (b) states that "normally, the communication should be submitted by the individual personally or by that individual's representative". The three individual authors have authorized two lawyers to act as their representatives in the proceedings before the Committee. The communication therefore fully complies with the Committee's rules.

5.3 The authors further disagree with the State party's assertion that the communication is inadmissible because neither Mr. Weaver nor Mr. Echtele are Kazakh citizens and are therefore not subject to its jurisdiction. These authors are members of the boards of directors of two foreign religious entities of Jehovah's Witnesses, in the United States of America and Germany, that publish and print the religious literature of Jehovah's Witnesses and then ship it to the State party for use by individual Jehovah's Witnesses for study in the context of their family or their congregation.

5.4 The State party's courts accepted that these two foreign legal entities were adversely affected by the authorities' decisions refusing to permit the importation of that religious literature and had standing to appeal those decisions in court. The violation of rights occurred in the State party and was committed by its authorities; therefore the second and the third author have standing to challenge the violation of their rights before the Committee.

5.5 In any event, the State party does not dispute the first author's standing to bring the communication as a Kazakh citizen. He participated directly in all domestic proceedings and his standing to challenge the actions of the State party was never questioned in the domestic courts.

5.6 Moreover, the authors rebut the State party's assertion that the communication is inadmissible because they did not file a motion with the Office of the Prosecutor General requesting that it protest the case to the Supreme Court. They reiterate that they appealed directly to the Supreme Court and that their application for leave to appeal was dismissed. In this regard, they refer to the Committee's jurisprudence, according to which a motion to the Office of the Prosecutor General requesting that it submit a supervisory protest to a Supreme Court is not an effective remedy.⁶ Furthermore, in this case, the Supreme Court had already refused leave to appeal. The authors have thus exhausted all available and effective domestic remedies.

5.7 Additionally, the authors recall that the Committee agreed to the temporary suspension of the communication for a period of six months, based on the request by the State party that the three authors submit motions to the Office of the Prosecutor General to call on it to protest to the Supreme Court against the decisions in their case. The authors did so. However, at the end of that six-month period, the Prosecutor General's Office did not protest to the Supreme Court and took no decision on the case.

⁵ The State party, however, submitted its observations on the merits dated 28 April 2016 in a note verbale dated 2 May 2016.

⁶ *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998), para. 7.2; *Bandajevsky v. Belarus* (CCPR/C/86/D/1100/2002), para. 10.13; and *Domukovsky et al. v. Georgia* (CCPR/C/62/D/623/1995, 624/1995, 626/1995 and 627/1995), para. 18.11.

State party's observations on the merits

6.1 In a note verbale dated 2 May 2016, the State party submitted its observations on the merits. It notes that, under article 9 of the 2011 Law on Religious Activity and Religious Associations, informational material with religious content may be imported into the State party only by registered religious associations after having been given a positive assessment in a religious expert examination. According to article 4 (6) of the Law and the guidelines for conducting a religious expert examination, confirmed by government ruling No. 1311 of 15 October 2012, the responsibility for religious expert examinations falls under the Agency for Religious Affairs.

6.2 The Christian Centre of Jehovah's Witnesses requested the Agency for Religious Affairs to carry out a religious expert examination and provided copies of the magazines *Awake!* and *The Watchtower* and the brochure *Examining the Scriptures Daily – 2013* in Kazakh and in Russian. The outcomes of the examinations of 39 of the 79 informational materials were positive; 23 were returned without examination on the request of the Christian Centre; 7 were being examined. Negative assessments were issued and importation permission denied in respect of 10 informational materials: the November 2012 issue of *Awake!* magazine (in Russian); the 15 January 2013, 15 February 2013 and 15 March 2013 issues of *The Watchtower* (in Russian and in Kazakh); the October–December 2012 issue of *The Watchtower* in Kazakh; and the brochure *Examining the Scriptures Daily – 2013* (in Russian and in Kazakh).

6.3 According to the religious expert examination, the 10 publications that were rejected contained calls for incitement to social and religious discord, ideas proning the superiority of the religion concerned over other religions, promoting the break-up of family relationships and encouraging the formation of negative attitudes towards political organizations, other religions and traditional and world religions, and propaganda for the desirability and necessity of destroying all religions.

6.4 In court, the Christian Centre disputed the results of the expert examination and asserted that the Agency's decisions infringed the freedom of religion. In a decision of 3 July 2013, the Specialized Inter-District Economic Court of the City of Astana rejected a request by the Christian Centre of Jehovah's Witnesses regional religious association to declare unlawful the expert assessment of the Agency for Religious Affairs refusing permission for the importation of the publications and to order that the violation be remedied. In a ruling of 27 August 2013, the appellate chamber for civil and administrative cases of the Astana City Court upheld this decision. That ruling was upheld on 6 May 2014 by the Cassation Chamber of the Astana City Court. The Supreme Court, in a ruling of 4 September 2014, refused to initiate supervisory review proceedings.

6.5 As to the merits, the State party submits that, as established during the judicial proceedings, the religious expert examinations found signs of incitement to social and religious discord in the content of the magazines and booklet concerned. Pursuant to article 20 (2) of the Covenant, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. The State party refers to general comment No. 22 (1993), in which the Committee established that no manifestation of religion or belief may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (para. 7).⁷

6.6 The State party refers to the limitations provided for under articles 18 (3) and 19 (3) of the Covenant. Based on the Siracusa Principles on the Limitation and Derogation Provisions in the Covenant, the expression "public order" as used in the Covenant may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which a society is founded. Respect for human rights is part of public order.

⁷ Note also that, in its general comment No. 11 (1983), the Committee indicated that these required prohibitions are fully compatible with the right of freedom of expression as contained in article 19, the exercise of which carries with it special duties and responsibilities. For article 20 to become fully effective there ought to be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation (para. 2).

Legal conditions are ensured in the State party for realizing, protecting and respecting the rights and freedoms of each person when manifesting religion or belief, including by prohibiting discrimination on the basis of attitude towards religion.

6.7 The State party, in strict conformity with its obligations under articles 18 (3), 19 (3) and 20 (2) of the Covenant, has enshrined in domestic legislation norms prohibiting the promotion of religious hatred and enmity, including under penalty of criminal prosecution. For example, according to the provisions of the Law on Counteracting Extremism, incitement to religious enmity or discord is a form of extremism (art. 1) and, under the Law on National Security, it constitutes one of the primary threats to national security (art. 6 (1) (8)). The Law on Counteracting Extremism prohibits the use on the territory of the State party of networks or communication tools to carry out extremism, as well as the importation, production, preparation and/or distribution of extremist materials (art. 12). The Criminal Code provides that natural persons may incur criminal accountability for violation of these legal norms (art. 174), while organizations involved may be declared extremist and banned by a court. In this regard, the religious expert examination prescribed in articles 6 and 9 (3) of the 2011 Law on Religious Activity and Religious Associations has the objective of preventing the importation and dissemination of religious literature and other materials containing religious information that advocate religious hatred and enmity. A religious expert examination thus prevents any potential opportunity for importing and distributing materials that advocate hatred and enmity on religious grounds, including towards followers of the community of Jehovah's Witnesses themselves.

6.8 The measures that the State party applied in respect of the Jehovah's Witnesses publications concerned were necessary, proportionate and minimally restrictive; their importation was simply not permitted. Additionally, although there were legal grounds to do so, the State party did not initiate proceedings in court to declare the Jehovah's Witnesses publications to be extremist and to prohibit their distribution, including on the Internet or using other communication networks. Currently, followers of the community of Jehovah's Witnesses on the territory of the State party can read and use these publications, which can be freely accessed on the Internet.

6.9 According to article 9 (3) of the 2011 Law, followers of the community of Jehovah's Witnesses have the opportunity to import the publications for their personal use. Moreover, as it was proportionate, necessary and minimal, the refusal to allow the importation of these individual publications in no way hindered the followers of Jehovah's Witnesses from manifesting their religion or from freely seeking, receiving and imparting information and ideas of all kinds. Therefore, the rights of believers enshrined in articles 18 and 19 of the Covenant were not violated; the refusal to permit the importation into the State party by the Christian Centre of Jehovah's Witnesses religious association of copies of 10 publications is based on law and complies with article 20 (2) of the Covenant regarding the prohibition of advocacy of religious hatred and enmity.

6.10 As to the alleged violation of article 27 of the Covenant allegedly resulting from the refusal by the Agency for Religious Affairs to permit the importation of the publications in question, the State party maintains that the members of the Jehovah's Witnesses religious association have never been denied their right to practise their religion together with other members of the group. The refusal to permit the importation of the 10 publications has been erroneously and groundlessly presented as a denial by the State of the realization of the right to profess a religion. It is not disputed by the authors that there are now over 17,000 followers of the Jehovah's Witnesses religious association in the State party, they use their religious literature freely, their community has 55 houses of worship and they are united in 59 registered local religious associations and 1 regional religious association, which carry out their activities autonomously and independently. Therefore, in the State party, the rights of Jehovah's Witnesses are being realized in conformity with the provisions of article 27 of the Covenant.

6.11 The State party considers the counsel's assertion that the 2011 Law on Religious Activity and Religious Associations "contravenes the international human rights obligations of Kazakhstan" to be unacceptable, groundless and erroneous and that it exceeds his authority as a lawyer. The Law was adopted taking into account the opinion of representatives of the main religious communities in the State party, international legal documents and

international practice in the sphere of freedom of religion; it does not contravene the State party's obligations. For example, article 3 (10) of the Law, which prohibits the creation and activity of religious associations whose goals and activities are aimed at inciting religious enmity and discord, is in complete harmony with article 20 (2) of the Covenant. Moreover, information on the compliance of this Law with the Covenant and other international legal documents is set forth in detail in the comments of the State party on the report of the Special Rapporteur on freedom of religion or belief.⁸

6.12 The examples of case law of the European Court of Human Rights and the recommendations of the Parliamentary Assembly of the Council of Europe referred to by the authors are inappropriate and not applicable to the State party, including for the consideration by the Committee of the present communication. First, the State party is not a party to the Convention for the Protection of Human Rights and Fundamental Freedoms. It is not a member of the Council of Europe and, by force of the peremptory provisions of article 26 of the Vienna Convention on the Law of Treaties dated 23 May 1969, did not assume the obligations related to it. Second, the Covenant and its Optional Protocol do not contain provisions allowing for the citing of decisions of other bodies for the protection of human rights and freedoms during the consideration of individual communications. In view of article 2 (1) of the Covenant, article 1 of the Optional Protocol to the Covenant and paragraph 3 of the Committee's general comment No. 31 (2004), decisions of the European Court of Human Rights and the Parliamentary Assembly of the Council of Europe do not and cannot create international legal obligations for the State party. This is also pertinent in the present context.

6.13 In the State party's opinion, the authors inappropriately cited judgment No. 1 of the Constitutional Council of 11 February 2009. This judgment was rendered in connection with an assessment of whether the Law on Amendments and Additions to Certain Legislative Acts Regarding Freedom of Worship and Religious Associations⁹ complied with the Constitution. The Constitutional Council found the Law not to be in compliance with the Constitution. In accordance with article 74 (1) of the Constitution, the Constitutional Council ruled that the Law should not be signed and enacted. Therefore, judgment No. 1 of the Constitutional Council is not relevant to the present communication and does not apply to the 2011 Law on Religious Activity and Religious Associations.

6.14 The State party interprets the authors' conclusion as asserting that the right to freedom of religion is absolute and cannot be limited, and challenges it. In its general comment No. 22 (1993), the Committee emphasized that article 18 of the Covenant distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. The article 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. Those freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19 (1) of the Covenant. Based on this and on article 18 (3) of the Covenant, the freedom to manifest religion or beliefs and the rights provided for in article 19 (3) of the Covenant may be limited by law only for the protection of public order and the fundamental rights and freedoms of others. In this connection, the State party notes that the Constitution and the laws do not contain or allow any kind of limitation on freedom of thought and conscience and freedom to have or to adopt a religion or beliefs of one's choice; that is, everyone has the right to subscribe or not to subscribe to any religion.

6.15 The 2011 Law on Religious Activity and Religious Associations, being based on the Constitution and not contravening the provisions of the Covenant, determines the procedure for realization of the right to manifest religion, including the importation of religious literature or material containing religious information. Moreover, the institution of religious expert examinations in combination with the norm laid out in article 9 (3) of the 2011 Law does not affect the realization of the right to freedom to have or to adopt a religion or belief of one's choice, which fully complies with the requirements of article 18 (2) of the Covenant.

⁸ A/HRC/28/66/Add.3.

⁹ Adopted by the Parliament of Kazakhstan on 26 November 2008 and submitted for signature to the President of Kazakhstan on 2 December 2008.

6.16 The institution of religious expert examinations is not an instrument of censorship and discrimination for limiting the activity of the community of Jehovah's Witnesses in the State party. According to article 20 (1) of the Constitution, censorship is prohibited in the State party. The decision of the authorized agency, based on the outcome of the religious expert examination, has affected only 10 of the Jehovah's Witnesses publications; their content contained signs of propaganda for religious intolerance and enmity. Most Jehovah's Witnesses' publications, after undergoing a religious expert examination and receiving a positive assessment, are imported and distributed in the State party without hindrance. For example, in 2014, a religious expert examination was conducted on 99 Jehovah's Witnesses' publications containing religious information, of which only 13 (13 per cent) were assessed negatively; in 2015, a negative assessment was issued in respect of 6 (10 per cent) of 64 Jehovah's Witnesses' publications containing religious information. The State party submits that the communication should be rejected because it is inadmissible and groundless.

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

7.1 On 19 September 2016, the authors noted that the State party did not dispute any of the facts set out in the complaint, including: (a) that the 2011 Law on Religious Activity and Religious Associations does not provide any criteria to be followed by the Agency for Religious Affairs (now the Committee on Religious Affairs) when deciding whether to reject a religious organization's request to import religious literature; (b) that a religious organization is prohibited from importing religious literature into the State party without the Agency's approval; and (c) the facts of the case.

7.2 The State party also does not dispute the religious beliefs of Jehovah's Witnesses,¹⁰ to which the Agency objected, and the blatant errors that the Agency made in mischaracterizing those beliefs, which further proves the hazards of a State-sanctioned inquiry into the legitimacy of religious beliefs.

7.3 The authors maintain that neither of the State party's objections to the references to the jurisprudence of the European Court of Human Rights and to the 11 February 2009 judgment of the Constitutional Council has any merit. The jurisprudence of the European Court of Human Rights, although not binding on the State party, is a persuasive authority when interpreting similar rights and freedoms guaranteed by the Covenant. The Constitutional Council judgment interprets the constitutional right to freedom of religion and the prohibition against arbitrary State action and is obviously relevant in showing that, even under domestic law, the decisions and actions of the Agency for Religious Affairs were unlawful.

7.4 The alleged reasons given by the State party for prohibiting the importation of the religious publications in question do not satisfy the requirements of articles 18 (3) and 19 (2) of the Covenant. Nothing in the religious publications contains calls to violence or incitement to religious hatred. This is self-evident from the content of the publications and the fact that tens of millions of copies of those same publications have been peacefully used and distributed by Jehovah's Witnesses worldwide.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

8.2 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.

8.3 The Committee notes the State party's claim that neither the counsel nor the foreign religious associations in whose name the communication was also submitted fall under its

¹⁰ As described and explained in the initial communication.

jurisdiction, that those religious associations are not parties in legal relations concerning the importation of materials containing religious information into its territory and that they therefore lack status to submit a communication before the Committee. In this regard, the Committee also notes the authors' argument to the effect that the violation of rights occurred in the State party and was committed by its authorities and therefore the second and third author, although not Kazakh citizens, have standing to challenge the violation of their rights before the Committee. The Committee further notes that the second and third authors are members of the boards of directors of two foreign religious entities of Jehovah's Witnesses that publish, print and ship to the State party religious literature for use by Jehovah's Witnesses. Furthermore, it notes that the State party's courts accepted that those two foreign legal entities were adversely affected by the authorities' decisions refusing permission to import the religious literature and so had standing to appeal the refusal that has affected the exercise of their rights in the State party before the domestic courts. For these reasons, the Committee finds that the authors have demonstrated that they were directly affected by the refusal of the State party to allow the importation of religious literature and that they were subject to the jurisdiction of the State party.¹¹ The Committee notes the State party's assertion that the communication is inadmissible because it was not submitted personally by the individual authors. Nevertheless, the Committee observes that the three individual authors have duly authorized two professional lawyers to act as their representatives in the proceedings before the Committee. The Committee notes in this regard that the State party has not disputed the first author's standing to bring the communication as a Kazakh citizen. Accordingly, the Committee considers that it is not precluded by article 1 of the Optional Protocol from examining the communication.

8.4 The Committee also notes the State party's argument that the authors' claim on behalf of all Jehovah's Witnesses on its territory amounts to an *actio popularis*. The Committee further notes that the authors do not provide authorizations from the 17,500 Jehovah's Witnesses in the State party to act on their behalf, nor do the authors explain the reasons why they can represent these persons. Accordingly, and in the absence of further pertinent information on file, the Committee concludes that this part of the communication is inadmissible under articles 1 and 3 of the Optional Protocol.

8.5 The Committee notes the authors' claim that all available domestic remedies have been exhausted. It also notes the State party's observation that the authors have not requested the Office of the Prosecutor General to initiate supervisory review proceedings before the Supreme Court and have thus failed to exhaust domestic remedies. In this regard, the Committee notes that the authors appealed directly to the Supreme Court for a supervisory review, but their application was dismissed. In addition, the Committee recalls its jurisprudence, according to which a petition for supervisory review to a Prosecutor's Office, dependent on the discretionary power of the prosecutor to review court decisions that have taken effect, does not constitute a remedy which has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.¹² Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

8.6 The Committee notes the authors' claims under article 27 of the Covenant that the decisions by the State party's authorities refusing permission for the importation of the 10 religious publications have denied members of the religious minority the right to profess and practise their own religion, as the religious literature in question was crucial to the regular religious worship of Jehovah's Witnesses in the State party. The Committee also notes the State party's observations that, of the 79 publications submitted for expert examination, 39 were assessed positively, 23 were returned at the request of the Christian Centre of Jehovah's Witnesses without an expert examination having been performed, 7 were being examined and 10 publications were assessed negatively and permission for their importation denied. It further notes the State party's submission that the members of the Jehovah's Witnesses religious association have never been denied the right to practise their religion together with other members of the group and, as is not disputed by the authors, there are over 17,000

¹¹ General comment No. 31 (2004), para. 10.

¹² *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4.

followers of the association in the State party, they use their religious literature freely, their community has 55 houses of worship and they are united in 59 registered local religious associations and 1 regional religious association. In the light of the above, and in the absence of any further information or explanations, the Committee concludes that the authors' claim under article 27 of the Covenant is insufficiently substantiated for the purposes of admissibility and is therefore inadmissible under article 2 of the Optional Protocol.

8.7 The Committee considers that the authors have sufficiently substantiated the remaining claims under articles 18 and 19 of the Covenant for the purposes of admissibility. Accordingly, it declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

9.2 In relation to the authors' claim under article 18 (1) of the Covenant, the Committee recalls that the 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 a religious group of its basic affairs, such as the freedom to choose religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.¹³ Furthermore, under article 18 (3) of the Covenant, the freedom to manifest one's religion or beliefs is not absolute but may be subject to certain limitations, but only those prescribed by law and necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. In the present case, the Committee notes that the authors were not allowed to import religious publications. Such a restriction interferes with the right to freedom of religion. Consistent with its general comment No. 22 (1993), the Committee considers that the freedom to prepare and distribute religious texts or publications forms part of the authors' right to manifest their beliefs and that the refusal to permit the importation of the religious publications constitutes a limitation of that right.

9.3 The Committee must decide whether the limitation on the authors' right to manifest their religion was "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. In its general comment No. 22 (1993), the Committee observed that article 18 (3) is to be strictly interpreted: restrictions are not allowed on grounds not specified therein, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security (para. 8). In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26 (para. 8).

9.4 The Committee notes that the State party advanced detailed arguments as to why it was necessary, for the purposes of article 18 (3) of the Covenant, to refuse to permit the importation of the religious publications in question, notably that, according to the Agency for Religious Affairs, the 10 publications contained calls for incitement to social and religious discord and ideas that discouraged secular education, promoted the break-up of family relationships, pruned the superiority of the religion in question over others, encouraged the formation of negative attitudes towards political organizations, other religions and world religions and propagated religious hatred and enmity.

9.5 The Committee also notes the authors' contentions that the 2011 Law on Religious Activity and Religious Associations provides no criteria for the Agency for Religious Affairs (now the Committee on Religious Affairs) to follow when deciding whether to reject a religious organization's request for permission to import religious literature, and that a religious organization is prohibited from importing religious literature into the State party without the Agency's approval. It also notes the authors' submission that the State party did

¹³ General comment No. 22 (1993), para. 4, and, for example, *Boodoo v. Trinidad and Tobago* (CCPR/C/74/D/721/1996), para. 6.6.

not dispute either the religious beliefs of Jehovah's Witnesses to which the Agency objected or the errors that the Agency made in mischaracterizing those beliefs, which proves further the hazards of a State-sanctioned inquiry into the legitimacy of religious beliefs. It further takes note of the authors' arguments that the reasons given by the State party for prohibiting the importation of the religious publications in question do not satisfy the requirements of articles 18 (3) and 19 (2) of the Covenant because, they claim, the religious publications of Jehovah's Witnesses contain no calls to violence or incitement to religious hatred and those same publications have been peacefully used and distributed by Jehovah's Witnesses worldwide.

9.6 The Committee reiterates that article 18 (3) of the Covenant must be strictly interpreted; limitations on article 18 (1) of the Covenant must be prescribed by law, may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated.¹⁴ The Committee observes that the authors have sufficiently substantiated the interference with their rights and, therefore, the burden of proof has shifted to the State party to justify the limitation imposed.¹⁵ Furthermore, the Committee recalls that, when a State party invokes a ground in order to restrict freedom of expression, it must demonstrate in a specific and individualized fashion the precise nature of the threat and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.¹⁶ In the present case, the Committee notes the authors' claim that the 2011 Law does not prescribe criteria on which the expert examination of religious literature should be based. The reasons given for refusing to permit the importation of some of the authors' publications suggest that permission may be refused for arbitrary or other prohibited reasons, such as disagreement by the State or other religions with the religious principles expressed in the literature. Moreover, religious freedom is particularly necessary to protect the rights of those who adhere to unpopular beliefs. The importation ban that the 2011 Law may produce is also problematic in the light of article 19, which guarantees "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers". In addition, the Committee notes that, in the present case, the State party has failed to substantiate its responses to the authors' claims or provide any examples to show how the prohibited publications threaten any of the interests protected by article 18 (3). The Committee also notes that, since the publications concerned are freely accessible on the Internet and can be imported for personal use, as claimed by the State party, it is difficult to maintain that it was necessary to prohibit their importation by the authors. In these circumstances, the Committee finds that the limitation has not been shown to serve any legitimate purpose identified in article 18 (3); nor has the State party shown that this limitation of the right to manifest religion is proportionate to a legitimate purpose that it might serve. The Committee accordingly considers that the State party has failed to justify the restrictions on the authors' manifestation of their religion and concludes that the refusal to permit the importation of the religious publications in question is contrary to the freedom to manifest one's religion and therefore amounts to a violation of the authors' rights under article 18 (1) of the Covenant.

9.7 In the light of its finding, the Committee will not examine separately the authors' claims under article 19 of the Covenant.

10. 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 article 18 (1) of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to (a) remove the restrictions on the right of the authors to import the 10 religious publications; (b) take appropriate steps to provide the authors with adequate compensation, including for legal expenses and fees; and (c) review its legislation, regulations and practices with a view to ensuring that the rights under article 18 of the

¹⁴ General comment No. 22 (1993), para. 8.

¹⁵ General comment No. 34 (2011), para. 27.

¹⁶ *Ibid.*, para. 35.

Covenant may be fully enjoyed in the State party. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

12. 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 or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present 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.
