



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. 3153/2018*,**

<i>Communication submitted by:</i>	Rovshan Mursalov, Fatima Balova, Milena Makarenko, Basti Rasulova, Galina Fazliahmadova and Goderdzi Kvaratskhelia (represented by counsel, Daniel G. Pole and Petr Muzny)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Azerbaijan
<i>Date of communication:</i>	22 May 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 23 March 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	1 November 2022
<i>Subject matter:</i>	Arrest; detention; home search; administrative expulsion of a foreigner for participation in religious activity of Jehovah's Witnesses
<i>Procedural issues:</i>	Exhaustion of domestic remedies; level of substantiation of a claim
<i>Substantive issues:</i>	Arbitrary arrest and detention; home search; discrimination; freedom of expression; freedom of religion
<i>Articles of the Covenant:</i>	9, 13, 17, 18, 19, 26 and 27
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1.1 The authors of the communication are Rovshan Mursalov, Fatima Balova, Milena Makarenko, Basti Rasulova, Galina Fazliahmadova and Goderdzi Kvaratskhelia, born in 1975, 1966, 1967, 1974, 1948 and 1965, respectively. All the authors are nationals of Azerbaijan, except for Mr. Kvaratskhelia, who is a Georgian national. The authors claim that the State party has violated their rights under articles 9 (1), 13, 17 (1), 18 (1) and (3), 19 (2)

* Adopted by the Committee at its 136th session (10 October–4 November 2022).

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



and (3), 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.

1.2 On 22 May 2018, the State party requested the Committee to consider the admissibility of the communication separately from the merits. On 23 October 2018, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, denied the State party's request.

Facts as submitted by the authors

2.1 All the authors identify as Jehovah's Witnesses. On 9 April 2015, the authors were gathered at Mr. Mursalov's home, in Baku, for religious worship and discussion of holy books. The police entered his home, searched all the authors and confiscated various items without providing a warrant. They made humiliating comments about the Jehovah's Witnesses' faith, saying things like "Islam is the last religion and the only one". The authors were taken to the police station and were held for more than five hours, sometimes outside in the cold. The authors explained that, in Baku, Jehovah's Witnesses are registered as a legal association.

2.2 On 29 June 2015, the authors were summoned to the police station and were all, with the exception of Mr. Kvaratskhelia, charged with attending an unlawful religious meeting under article 299.0.2 of the Code of Administrative Offences (violation of the rules on the organization and conduct of religious meetings, street processions and other religious ceremonies). The authors claim that the charges were brought outside the time period in which charges may be made against individuals after their arrest. On 8 July 2015, the authors, with the exception of Mr. Kvaratskhelia, were found guilty of committing an administrative offence by the Garadagh District Court and were issued with a warning under article 21 of the Code of Administrative Offences. The Court held that the authors had unlawfully conducted a religious meeting at an address other than the legal address used for the registration of Jehovah's Witnesses in Baku under article 12 of the Law on Freedom of Religious Beliefs of Azerbaijan, which establishes the procedure for registration of religious associations.

2.3 The authors, with the exception of Mr. Kvaratskhelia, filed separate appeals on 21 July 2015. Those appeals were rejected on 6 August 2015 and 18 August 2015 by the Baku Court of Appeal. The authors claimed that the trial court had incorrectly applied the law and that the decision violated their rights under the Constitution, the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), the Universal Declaration of Human Rights and the Covenant. In their appeal, the authors claimed violations of the same articles of the Covenant as they raise in the present communication.

2.4 On 6 July 2015, Mr. Kvaratskhelia was found guilty by the Garadagh District Court. He was charged under article 300.0.4 of the Code of Administrative Offences (spreading of religious propaganda by foreigners and persons without citizenship). Mr. Kvaratskhelia notes that, although when the administrative charges were brought against him the maximum penalty allowed was expulsion from the country, the article was amended on 1 March 2016 to make the maximum penalty one year's imprisonment. The author claims that this in itself demonstrates the disproportionate nature of the penalty imposed on him. The Court held that Mr. Kvaratskhelia was guilty of spreading religious propaganda and was issued with a warning and ordered to be expelled. He was held in custody in Baku overnight and, on 7 July 2015, he was deported to Georgia. Mr. Kvaratskhelia received a copy of the trial decision only on 10 November 2015, after requesting it.

2.5 On 20 November 2015, Mr. Kvaratskhelia filed an appeal, which was dismissed as time-barred on 25 November 2015. On 28 March 2016, he filed the appeal again, stating that he had only received the trial decision on 10 November 2015. On 30 March 2016, the Garadagh District Court dismissed his appeal. On 18 April 2016, the Criminal Board of the Baku Court of Appeal confirmed the decision of 30 March 2016 to dismiss the author's appeal. Mr. Kvaratskhelia claims that he did not receive any summons notifying him of the date of the court hearing for this appeal and was only provided with a copy of the Baku Court of Appeal decision on 21 January 2017, after requesting it on multiple occasions.

Complaint

3.1 The authors claim that articles 9 (1), 17 (1), 18 (1) and (3), 19 (2) and (3), 26 and 27 of the Covenant have been violated as a result of their convictions under the Code of Administrative Offences. Further, Mr. Kvaratskhelia claims that article 13 of the Covenant has also been violated by his expulsion from Azerbaijan without the opportunity for review or appeal.

3.2 The authors claim that their detention at the police station was unlawful under article 9 (1) of the Covenant because its purpose was not investigatory, but was instead aimed at intimidating and coercing them into not exercising their freedoms. It was thus discriminatory in nature, as demonstrated by the discriminatory and abusive opinions voiced by the police officers about their beliefs. The authors claim that the police provided no evidence to justify their arrest, which was not based on a legitimate lawful necessity. Further, the authors state that, even if the arrest was necessary, a detention of more than five hours was unreasonable.

3.3 Further, Mr. Kvaratskhelia claims that he suffered additional instances of arbitrary detention when he was held in detention overnight prior to his deportation. He also claims that his rights under article 13 of the Covenant were violated when he was expelled from Azerbaijan on the basis of religious discrimination, in the absence of any legitimate basis such as a threat to public safety. Further, the author was expelled without a copy of the trial decision, and he did not have the opportunity for a review or appeal of the decision. The author submits that this penalty was arbitrarily imposed and that the violation of his rights under article 13 was further exacerbated when his appeal was not heard owing to procedural deficiencies, which were caused by the undue delay in his case being addressed by the State party's authorities.

3.4 The authors claim that Mr. Mursalov's and Mr. Kvaratskhelia's right to privacy and security of their home (article 17 (1) of the Covenant) was violated by the police search. The authors claim that this interference cannot be justified simply by their conduct. They submit that a higher degree of protection is warranted by article 17, which refers to the interference of a private space, and that the State party did not sufficiently justify such interference.

3.5 The authors claim that the police investigation and trial decision interfered with their right to freedom of religion and expression under articles 18 (1) and (3) and 19 (2) and (3) of the Covenant. They submit that the interference was not justified and was not prescribed by law because the Code of Administrative Offences, under which the authors were found guilty, was not formulated nor applied with sufficient precision to enable them to foresee, to a degree that was reasonable in the circumstances, the consequences that a given action might entail. Further, the authors submit that the interference did not pursue a legitimate aim and is not necessary in a democratic society because the actions of the authors were peaceful.

3.6 Finally, the authors claim that they were subject to discriminatory abuse and insults by authorities of the State party, as well as discriminatory laws, violating their rights under articles 26 and 27 of the Covenant.

State party's observations on admissibility

4.1 On 22 May 2018, the State party challenged the admissibility of the communication on the basis that the authors had failed to exhaust all available domestic remedies.

4.2 With regard to the authors' claim under article 17 of the Covenant, the State party submits that the domestic courts were limited to reviewing the case as brought before them by the police, namely on the issue of attending an unlawful religious meeting. As the cases before the domestic courts did not concern the alleged human rights violations, the authors should have launched separate legal proceedings as to allegations of violations of their rights under article 17. Those remedies could have included the submission of complaints to the Prosecutor's Office or the Ombudsman of Azerbaijan or the initiation of judicial proceedings in domestic courts.

4.3 The State party notes that the authors have failed to submit any evidence in support of their claims about unlawful interference by the police in their private apartment before the Committee or the domestic authorities. The State party notes that any claim must be supported by substantiating material, otherwise it is merely an allegation, and in this

communication no such material has been provided by the authors. Therefore, the State party submits that the claim has not been properly substantiated and should be declared inadmissible.

4.4 With regard to Mr. Kvaratskhelia's claim under article 13, the State party notes that he was officially presented with a copy of the court decision against him on 6 July 2015, and that he was aware of the statutory limit for submitting an appeal against his conviction. However, he lodged his appeal only on 25 November 2015, thus missing the deadline set by the law. Therefore, the State party submits that this claim should be deemed inadmissible on the grounds of failure to exhaust domestic remedies.

4.5 With regard to the authors' claim under article 9 of the Covenant, the State party submits that the authors did not submit complaints to the national authorities regarding interference with their right to liberty and security. Therefore, they have not demonstrated that they have exhausted all available domestic remedies. The State party also submits that the authors were never detained or arrested, as they were invited to the police station only to provide testimony in relation to the administrative charges against them. Their stay at the police station for five hours was caused by the large number of people there. Accordingly, the State party submits that the authors' claim under article 9 is manifestly ill-founded.

4.6 With regard to the authors' claim under article 19 of the Covenant, the State party submits that this claim has not been raised before the domestic courts and should therefore be deemed inadmissible owing to the non-exhaustion of domestic remedies. The authors should have pursued other available domestic remedies, such as a complaint to the Prosecutor's Office or the Ombudsman, before submitting a claim to the Committee.

4.7 With regard to the authors' claims under articles 26 and 27 of the Covenant, the State party submits that they should also be deemed inadmissible owing to the non-exhaustion of domestic remedies, similarly to the claims above. Moreover, the State party submits that the claims are manifestly ill-founded and that the authors have not substantiated them sufficiently to be regarded as victims. The State party notes that the authors have been charged with offences that are applicable equally to any religious group without any discrimination. The authors' allegations are based on vague statements, without any reliable evidence, as they do not identify any other religious groups that have been treated differently from Jehovah's Witnesses in a similar situation. The State party submits that there are a number of cases before other international bodies, such as the European Court of Human Rights, concerning interference with religious meetings held by religious communities other than Jehovah's Witnesses in violation of the law in Azerbaijan.

4.8 Finally, the State party draws the Committee's attention to the fact all of the authors, except for Mr. Kvaratskhelia, received only administrative warnings, although article 299.0.2 of the Code of Administrative Offences envisions fines of up to 2,000 Azerbaijan manats. Moreover, their administrative offence records were annulled after one year and, at the time of the submission of their communication, the authors were considered to have no administrative offence record. Therefore, the State party submits that the communication is manifestly ill-founded and should be declared inadmissible.

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

5.1 On 31 July 2018, the authors submitted their comments on the State party's observations on admissibility. The authors reject the State party's view that the jurisdiction of the domestic courts is restricted to the issues the police raise. The authors were obligated to turn elsewhere for the protection of their constitutional and Covenant rights. They note that they all raised the issue of violation of the right to the privacy and security of the home during court proceedings and in their appeals. Both Mr. Mursalov and Mr. Kvaratskhelia should have been entitled to the privacy and security of their home; however, the police entered their residence without permission, identification or warrant. When the authors brought these violations before the domestic courts, with first-hand eyewitness statements to substantiate the interference, the courts refused to address the violation of article 17 of the Covenant.

5.2 With regard to the State party's claim of non-exhaustion of domestic remedies under article 13, the authors reject the State party's claim that Mr. Kvaratskhelia was aware of the

time limit for submission of the appeal. They refer to the text of his appeal, in which he argues that he was expelled from the country before the court decision even entered into force, thus depriving him of his right to appeal, and that he received a copy of the court decision by mail only four months after he was expelled.

5.3 The authors reject the State party's claim that the police invited them to the police station to offer their testimony, and submit that they were all detained and forcibly transported by the police to the station. They refer to their statements, in which they claimed that the police demanded that all participants in the religious gathering went to the police station.

5.4 With regard to the State party's claim of non-exhaustion of domestic remedies under article 19, the authors refer to their statements before the district and appeal courts, in which they repeatedly identified the factual basis for violations of their rights under article 19. In addition, Mr. Mursalov and Mr. Kvaratskhelia, in their written motions to the district court and to the court of appeal, specifically pleaded violations of article 19.

5.5 With regard to the claims under articles 26 and 27, the authors submit that, when they were detained at the police station, the police made comments that demonstrated religious intolerance and specifically asked them about their religious beliefs. They further submit that the State party's argument that there are a number of cases before other international bodies concerning interference with religious meetings held by religious communities other than Jehovah's Witnesses does not mean that the State party is not discriminating against them. According to them, the State party has ignored the discriminatory motivation behind the police actions and admits the religious intolerance in its submission when it notes that the proceedings of an administrative nature against the authors were related to their participation in the religious meeting.

5.6 As to the fact that all authors, except for Mr. Kvaratskhelia, received only warnings, the authors submit that their rights under the Covenant were still violated under each of the claimed articles of the Covenant because they were detained and harassed and their peaceful religious worship was unlawfully disrupted.

State party's observations on the merits

6.1 In a note verbale dated 13 September 2018, the State party submitted its observations on the merits. It provided general background on the situation of freedom of religion, statistical data and relevant domestic legislation.

6.2 As to the alleged violation of the authors' rights under article 9 of the Covenant, the State party submits that the authors were invited to the police station to give explanations. The State party admits that they were briefly deprived of their liberty and released some hours later. The State party contends that the deprivation of liberty was not arbitrary. It argues that the duration of the detention was a result of the large number of individuals from whom explanations had to be sought.

6.3 The State party admits that the search of the home of Mr. Mursalov and Mr. Kvaratskhelia amounted to an interference with rights under article 17 of the Covenant, but argues that the apartment in question did not constitute their home. It submits that the two authors failed to prove that the apartment that they were living in was their home within the meaning of article 17 of the Covenant. The State party argues that the authors had to prove that they had long-standing ties to their residence or that they rented the apartment or shared its rent with others on a legal basis. It refuses to consider the apartment in question as Mr. Mursalov's home and asserts that Mr. Mursalov and Mr. Kvaratskhelia failed to submit any evidence that the apartment searched by the police constituted their home.

6.4 The State party submits that the search was conducted in accordance with articles 177, 236 and 242 of the Criminal Procedure Code in the interest of public safety and for the prevention of disorder. It argues that the search was necessary because the police had a reasonable suspicion that the authors were engaged in unlawful activities. The State party adds that authors' neighbours stated that a lot of people were visiting them and that it was suspected that the literature distributed by them was of a radical nature, giving rise to intolerance and enmity between representatives of different confessions.

6.5 Furthermore, the State party contends that the interference with the authors' rights under articles 18 and 19 is justified as being prescribed by law under article 12 of the Law on Freedom of Religious Beliefs, submitting that this law has a legitimate aim necessary in a democratic society. The State party recalls that article 18 does not protect every act motivated or inspired by religion or belief and does not always guarantee the right to behave in the public sphere in a manner dictated by religion or beliefs. It refers to the European Court of Human Rights case *Kokkinakis v. Greece*,¹ arguing that, in democratic societies, in which several religions coexist within the same population, it may be necessary to place limitations on the freedom to manifest religion or beliefs in order to reconcile the interests of various groups and emphasizing the State's role as the neutral and impartial organizer of the exercise of various religions, faiths and beliefs. The State party argues that it should be allowed a broad margin of appreciation, affirming that this is necessary because of political developments geographically close to Azerbaijan. The State party thus claims instability in surrounding States as a legitimate reason for the limitations set out in the Law on Freedom of Religious Beliefs for fear of political instability and preventing coups d'état and military interventions. It maintains that it applies stricter measures in the sphere of freedom of religion and freedom of expression to protect public order. It asks the Committee to consider that it is, in principle, better placed than an international court to evaluate local needs and conditions. It submits that all the authors had to do was register and then they could worship.

6.6 With regard to the expulsion of Mr. Kvaratskhelia, the State party cites case law and submits that the expulsion of aliens is justified only in a proper defence of the country from some danger, anticipated or actual, for the purpose of preserving public order or if the person is dangerous for the welfare of the country. It asserts that Mr. Kvaratskhelia was deported for violating article 300.0.4 of the Code of Administrative Offences, which forbids the spreading of religious propaganda by foreigners, and that the article was accessible to and formulated with sufficient precision to enable Mr. Kvaratskhelia to foresee the consequences of his actions.

6.7 The State party submits that its limitation on foreigners spreading religious propaganda was enacted to address numerous attempts by radical religious movements to disseminate their views among the population. It refers to numerous cases of violent attacks on places of worship by representatives of religious movements that are not traditional in Azerbaijan and of Azerbaijanis joining religious terrorist organizations abroad. It states that Mr. Kvaratskhelia was expelled because he attended a meeting to disseminate his religious views, in violation of the legislation of Azerbaijan, and affirms that he was afforded procedural guarantees throughout the deportation process.

6.8 The State party explains that, in accordance with article 130.1 of the Code of Administrative Offences, a complaint against a decision in an administrative offence case may be lodged within 10 days from the day that its copy is officially presented as prescribed by article 57 of the Code. It argues that Mr. Kvaratskhelia duly received the decision on 6 July 2015, that he signed the relevant receipt slip and, moreover, was present at the hearing before the first instance court. According to the State party, Mr. Kvaratskhelia filed his appeal on 25 November 2015, and therefore missed the procedural deadline for lodging an appeal.

6.9 The State party recalls that, in line with established jurisprudence, the Committee is not competent to act as an appellate instance and it is not for the Committee to substitute its views for the judgment of the domestic courts on the evaluation of facts and evidence in a case, unless the evaluation is manifestly arbitrary or amounts to denial of justice. The State party argues that there has been no violation of rights under article 13 of the Covenant.

6.10 With regard to the alleged discrimination under articles 26 and 27 of the Covenant, the State party asserts that articles 299.0.2 and 300.0.4 of the Code of Administrative Offences are equally applicable to all, without discrimination. The State party objects to the authors' discrimination claims, submitting that they are based on vague statements, without any reliable evidence that could be provided before the national courts. The State party affirms that the authors did not suffer discrimination as they did not point to other religious

¹ Case No. 14307/88, Judgment, 25 May 1993, para. 33.

groups in a similar situation and/or any difference in treatment of the religious groups by the public authorities.

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

7.1 On 14 January 2019, the authors submitted their comments on the State party's observations. They note that the State party does not dispute the facts as set out in the communication and ask the Committee to accept the facts as uncontroverted.

7.2 They maintain that the State party's observations in relation to article 9 are contradictory. It is obvious from the facts that the authors were deprived of their liberty. If the authors were released by the police, it logically flows that they were not free to leave until they were released. Likewise, the State party argues that the duration of the detention was caused by the large number of individuals from whom explanations had to be sought. Implicit in the State party's argument is the fact that the authors could not leave without first giving statements to the police. Plainly speaking, they were deprived of their liberty. They were not merely "invited" to the police station.

7.3 In relation to the violation of article 17 of the Covenant, the authors argue that the search of their home was arbitrary and unlawful. The State party misconstrues the meaning of "home" in an attempt to ignore the undisputed evidence before the courts. The concept of "home" within the meaning of article 17 of the Covenant is not limited to those that are lawfully occupied or that have been lawfully established.² Whether the apartment in question constituted the home of Mr. Mursalov and Mr. Kvaratskhelia, attracting the protection of article 17 of the Covenant, will depend on the factual circumstances. In this case, although the State party refuses to consider the apartment in question as Mr. Mursalov's home, it has failed to indicate what other premises could have been his home.³ Likewise, although Mr. Kvaratskhelia was a visitor to Azerbaijan, he had been in the country for almost three months and there was never any suggestion that another residence in Azerbaijan was his home. The authors question why the police searched it, if the apartment in question was not Mr. Kvaratskhelia's home.

7.4 The authors challenge the State party's assertion that they failed to submit evidence that the apartment searched by the police constituted their home. In his statement at trial, Mr. Mursalov wrote: "The officers invaded my home without permission [...] and without any explanations they intruded into my home thus violating several of my rights" and "they conducted a search in my house, searched wardrobes, looked through our personal belongings, and even searched in the underwear closet." The police never challenged or disputed the fact that it was Mr. Mursalov's home. In fact, the police confirmed that there had been a search of the house belonging to Mr. Mursalov and that he "gathered Jehovah's Witnesses at the address where he resides and conducted a religious ceremony". During the trial, a police officer testified that Mr. Mursalov "organized a religious event at the place belonging to him and where he is currently residing". Neither the trial court nor the appeal court disputed the fact that the apartment constituted his home. Even assuming that the Committee were to conclude that the apartment in question did not constitute Mr. Mursalov's and Mr. Kvaratskhelia's home, there can be no question there was an interference with their privacy within the meaning of article 17 of the Covenant.

7.5 Contrary to the State party's submissions that the searches were conducted in accordance with the Criminal Procedure Code, the interference was arbitrary and unlawful. Although the police treated Mr. Mursalov and Mr. Kvaratskhelia like criminals, they were never charged with criminal offences. The police charged them under the Code of Administrative Offences. Under that Code, the police have no authority to enter a residential home for the purpose of search and seizure. Even if the Criminal Procedure Code were applicable, there was no evidence in the case materials that the police had obtained a prior

² European Court of Human Rights, *Prokopovich v. Russia*, case No. 58255/00, Judgment, 28 October 2004, para. 36; and European Court of Human Rights, *Sargsyan v. Azerbaijan*, case No. 40167/06, Judgment, 16 June 2015, para. 253.

³ European Court of Human Rights, *Prokopovich v. Russia*, para. 38.

court order to conduct the searches. The authors contend that the allegation against them did not amount to a criminal offence requiring a warrantless search.

7.6 According to the authors, the State party has failed to explain whose public safety was in jeopardy or what disorder would have been prevented by the police forcibly entering the authors' home and searching it. As to the neighbours' statements, there is no record of any complaints about visits or visitors to the authors' home. Furthermore, it is disturbing to think that, in a democratic society, merely having a number of visitors could create a reasonable suspicion of unlawful activities. Likewise, there is no record of anyone complaining about the authors' religious literature. The Garadagh District Police Department refused to initiate criminal cases against the authors because the samples of religious publications taken from the address did not contain incitement directed at dividing the territorial integrity of the State, or any calls for conducting illegal pickets or rallies to disturb public order by arousing national, social or religious hatred.

7.7 The authors note that the State party admits there was an interference with their rights under articles 18 and 19 of that Covenant, but attempts to justify it as being prescribed under the Law on Freedom of Religious Beliefs, which has a legitimate aim necessary in a democratic society. They allege that the State party failed to answer their submissions that the law violates the Covenant, as well as the Constitution of Azerbaijan. A law that is imprecise, is unconstitutional and violates a State's international commitments cannot be considered to be prescribed by law under the Covenant.

7.8 The State party provides no specifics about or any causal connection between the alleged external political instability in surrounding States as a legitimate reason for the limitations in the Law on Freedom of Religious Beliefs and a requirement that the authors register before being allowed to worship freely with one another. Jehovah's Witnesses are known to be a religious group committed to pacifism.⁴ They have been present worldwide for more than 100 years. Far from causing any instability or incitement to hatred, they have regularly been the object of persecution precisely for their neutral stance on political and military affairs. Hence, prohibiting a peaceful, private religious discussion by the authors in a private home is far removed from any speculative State fear of political instability.

7.9 The authors challenge the State party's attempt to misconstrue the seminal European Court of Human Rights decision in *Kokkinakis v. Greece*, applying it to justify limitations on freedom of religion. According to the authors, the State party has wrongly cited the discredited submission of the Government of Greece that limitations on religious activity are necessary because, otherwise, major unrest would be caused that would probably disturb the social peace.⁵ The European Court of Human Rights soundly rejected that submission.

7.10 The authors point out that the State party ignores the fact that a State lacks competence to make decisions in the religious sphere. Rather, this very incapacity and the need to strictly limit State power render the Committee better placed to evaluate the effect of applying the Law on Freedom of Religious Beliefs. Finally, the State party admits that it imposes registration as a precondition to exercising religious freedom, an action that the Committee has established is disproportionate and does not meet the requirements of article 18.⁶

7.11 With regard to the expulsion of Mr. Kvaratskhelia, the authors note that there is no evidence that he posed any danger to the welfare of the country or disturbed public order. He was arrested, detained, found guilty of an administrative offence and deported for allegedly violating article 300.0.4 of the Code of Administrative Offences, which forbids the spreading of religious propaganda by foreigners. Nowhere in the legislation of the State party is the term "religious propaganda" defined or explained. The English term "propaganda" is not a legal expression, but rather a plain English word. It has developed a double meaning. "Propaganda" as used in the Code is an English word translated from the original Azerbaijani. The Azerbaijani word used in article 300.0.4 of the Code is "*təbliğat*" and is of Arabic origin. Similar to the English word, it is derived from a root meaning "spreading". The English word

⁴ European Court of Human Rights, *Thlimmenos v. Greece*, case No. 34369/97, Judgment, 6 April 2000, para. 42.

⁵ European Court of Human Rights, *Kokkinakis v. Greece*, para. 46.

⁶ *Malakhovskiy and Pikul v. Belarus* (CCPR/C/84/D/1207/2003), para. 7.6.

“propaganda” is derived from Latin and has an agricultural root, as in spreading seed, and, like the Azerbaijani term, it has a broad meaning that can be either positive or negative. For example, the Azerbaijani term can be used to refer to political campaigns (*siyasi təbliğat kampaniyası*) or to encourage the reading of books. It is incorporated in the name of a centre for conferences, book presentations and a bookstore (“*Azərkitab*” Kitab Təbliğatı Mərkəzi). It is commonly used to describe the introduction or advertising of a new culture to other people. For example, there is the National Tourism Publicity Bureau (Milli Turizm Təbliğat Bürosu). Thus, article 300.0.4 purports to outlaw even the introduction by a foreigner of religious aspects of a new culture to another person. This broad application prohibits any activity, regardless of how innocent, if it is religious and communicated by a foreigner. The State party has broadly construed the term “propaganda” to encompass conduct that was clearly lawful. In this case, Mr. Kvaratskhelia was punished for merely attending a peaceful religious service of Jehovah’s Witnesses held in a private home.

7.12 The word “propaganda” can also have a pejorative connotation. For example, the European Court of Human Rights reviewed the provisions of the Criminal Code of Turkey, which prohibited “harmful propaganda”. In two cases, the Court noted that the domestic law had defined the term with detailed criteria that exhaustively listed conduct that could result in an offence. In both cases, however, the Court found that, although the impugned law was prescribed and legitimate, it was disproportionate to the offences, since neither case involved incitement to violence. In a third case, the dissolution of a political party that had advanced “propaganda based on racial differences and aimed at destroying the constitutional order” was ruled to violate the Convention. In contrast, article 300.0.4 of the Code of Administrative Offences contains no criteria at all, let alone “exhaustive” criteria, and Mr. Kvaratskhelia’s conduct was peaceful, non-violent and non-political.

7.13 The authors recall that the European Court of Human Rights, in its analysis, referred to a series of cases establishing a qualitative requirement in any statute so that an individual could foresee when an offence would be committed. This principle was the basis for the decision in *Kokkinakis v. Greece*,⁷ in which the Court considered that the term “proselytism”, similar to “propaganda”, could encompass both lawful and improper conduct. As the Greek courts did not limit application of the domestic law so that it would prohibit only improper conduct, the Court found a violation of article 9 of the Convention. The domestic courts in the present case similarly refused to limit the application of article 300.0.4 of the Code of Administrative Offences.

7.14 Mr. Kvaratskhelia was manifesting his sincerely held personal religious beliefs at a private religious service. There is no evidence that he was involved in disseminating discriminatory statements. There is also no evidence that any Jehovah’s Witness in Azerbaijan has engaged in or incited violence. Nor is there any evidence that any Jehovah’s Witnesses in Azerbaijan have joined religious terrorist organizations abroad. While Jehovah’s Witnesses are a Christian minority in Azerbaijan, they are not a radical religious movement. The State has registered Jehovah’s Witnesses in Baku since 1999.

7.15 Moreover, Mr. Kvaratskhelia disputes that he received the Garadagh District Court’s decision on 6 July 2015. The court’s verdict was announced orally that day, but he was not given a copy of the court’s written decision. He never signed any slip to acknowledge receipt of the written decision. The Government has failed to produce a copy of the purported receipt slip, or any other proof that he received a copy of the court’s decision before 10 November 2015, when he received it in the post. Mr. Kvaratskhelia wrote to the Garadagh District Court on 20 October 2015 to request a copy of the decision, clearly stating that he had not yet received it. On 27 October 2015, the District Court wrote to provide him with a copy of its decision of 6 July 2015. The District Court did not dispute Mr. Kvaratskhelia’s allegation that he had not received the decision, nor did the District Court refer to his signing of any receipt slip. The first mention of Mr. Kvaratskhelia signing a “receipt slip” was not until the

⁷ See also European Court of Human Rights, *Öztürk v. Turkey*, case No. 22479/93, Judgment, 28 September 1999, paras. 29 and 71; European Court of Human Rights, *Başkaya and Okçuoğlu v. Turkey*, case Nos. 23536/94 and 24408/94, Judgment, 8 July 1999, paras. 27, 64 and 67; and European Court of Human Rights, *Freedom and Democracy Party (ÖZDEP) v. Turkey*, case No. 23885/94, paras. 14 and 47.

Baku Court of Appeal's decision of 18 April 2016, by which time there was no domestic remedy to challenge the Court of Appeal's finding. Mr. Kvaratskhelia reiterates that he did not receive the Court of Appeal's decision until 30 December 2016 – eight months later – and only after repeatedly asking for it.

7.16 The authors further challenge the State party's affirmation that articles 299.0.2 and 300.0.4 of the Code of Administrative Offences are equally applicable to all without any discrimination. This ignores the reality that legislation that appears to be neutral can nevertheless be applied discriminatorily. The State discriminates against individuals and among religious groups by treating groups with State registration differently from groups and individuals without registration. It is easier for religious majorities favoured by the State to obtain registration. According to article 12 of the Law on Freedom of Religious Beliefs, in order for a religious community to apply for State registration, it must have a minimum of 50 founders. A group of 49 worshippers is denied registration and the State privileges that registration provides.

7.17 The authors contend that the State party is attempting to reverse the onus of proof and is disregarding the fact that the domestic courts were presented with unchallenged evidence but failed in their judicial duty to consider it. Neither the State authorities nor the courts chose to disprove the authors' evidence before the national courts or to adduce any evidence to the contrary. The State therefore is estopped from denying the ample evidence provided in the communication.

7.18 The State party has discriminated against the authors in comparison with adherents of the main religion in Azerbaijan, Islam. In comparison with those who adhere to mainstream Islam, the authors were subjected to discriminatory treatment as confirmed by the following evidence, which has not been challenged by the State party. The authors were subjected to terror and indignity when more than 20 police officers forced their way into a private home simply because the authors were meeting to read and study the Bible. Police ordered everyone not to move, started recording them on video and searched them, confiscating their personal property, including cash, electronic devices, religious literature and copies of the Holy Scripture. The police ordered everyone, including the elderly and young children, to go with them to the police station, where they were held for more than five hours. The authors were humiliated and made to feel like dangerous criminals. At the police station, the authors were at times forced to stand outside in the cold, finally being released in the early hours of the morning. The authors were subjected to humiliating remarks about their faith. Police officers asked the authors why they did not worship in Islam or read the Qur'an; officers tried to convince the authors that "Islam is the last religion and the right one". To try to convince one's neighbour about the truthfulness of one's faith is protected by freedom of religion. However, as noted by the European Court of Human Rights, "what would in the civilian world be seen as an innocuous exchange of ideas which the recipient is free to accept or reject, may, within the confines of military life, be viewed as a form of harassment or the application of undue pressure in abuse of power".⁸ In the present case, the authors had been detained by the police and were clearly under the control and authority of the police. The humiliating remarks of the police, acting in their official capacity, cannot be shielded by the right to freedom of expression. Instead, in the context of the facts of this case, their humiliating remarks constitute application of undue pressure in abuse of power. The authors were found guilty of offences and given administrative warnings. Members of the main religion in Azerbaijan, Islam, are not subjected to such punitive actions, designed to threaten and coerce them into abandoning their faith.

7.19 The authors recall that State-sponsored acts of religious intolerance and discrimination directed toward Jehovah's Witnesses are the subject of numerous separate communications pending before the Committee. The Committee has expressed concern about the reported interference in religious activities, the harassment of members of religious

⁸ *Larissis and Others v. Greece*, case No. 140/1996/759/958–960, Judgment, 24 February 1998, para. 51.

groups, including Jehovah's Witnesses, and the increase in arrests, detention and administrative or criminal sanctions against them.⁹

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 the communication 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 observes that the State party has contested the authors' argument that they exhausted all available domestic remedies, as required by article 5 (2) (b) of the Optional Protocol. According to the State party, the authors should have launched separate proceedings, such as a complaint to the Prosecutor's Office or Ombudsman, or judicial proceedings, with regard to the alleged violation under articles 17 and 19, while, in relation to article 13, Mr. Kvaratskhelia should have appealed his administrative expulsion within the prescribed deadline. The Committee notes the State party's argument that the authors' claims brought under articles 9, 26 and 27 are not sufficiently substantiated and manifestly ill-founded.

8.4 The Committee notes, however, that the authors claim that there are no further effective domestic remedies available to them as they filed several separate appeals to the Baku Court of Appeal and these were rejected on 6 August 2015, 18 August 2015 and 18 April 2016. It also notes that, when the authors unsuccessfully appealed their convictions to the Court of Appeal, they raised the substance of all their allegations under the Covenant. Moreover, the Committee recalls that article 5 (2) (b) of the Optional Protocol, by referring to "all available domestic remedies", refers in the first place to judicial remedies.¹⁰ Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

8.5 With respect to Mr. Kvaratskhelia's claims under article 13 of the Covenant, the Committee considers that the court of appeal's rejection of his complaint on procedural grounds ignored his uncontroverted evidence that he did not receive the trial decision until 10 November 2015 (four months after the decision was rendered) and that he had appealed promptly. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining this part of the communication.

8.6 The Committee considers that the authors have sufficiently substantiated, for the purposes of admissibility, their claims under articles 9 (1), 13, 17 (1), 18 (1) and (3), 19 (2) and (3), 26 and 27 of the Covenant. The Committee thus declares these claims admissible and proceeds with its consideration of the merits.

Considerations of the merits

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

9.2 With respect to the authors' claim under article 18 (1) and (3) of the Covenant, the Committee recalls its general comment No. 22 (1993), in which it stated that article 18 did not permit any limitation whatsoever on freedom of thought and conscience or on the freedom

⁹ [CCPR/C/AZE/CO/4](#), para. 32. The Committee has also called upon Azerbaijan to guarantee the effective exercise of freedom of religion and belief in practice and refrain from any action that may restrict such freedom beyond the narrowly construed restrictions permitted under article 18 of the Covenant (*ibid.*, para. 33).

¹⁰ Human Rights Committee, *R.T. v. France*, communication No. 262/1987, para. 7.4; *Schmidl v. Czech Republic* ([CCPR/C/92/D/1515/2006](#)), para. 6.2; and *Staderini and De Lucia v. Italy* ([CCPR/C/127/D/2656/2015](#)), para. 8.3.

to have or adopt a religion or belief of one's choice.¹¹ By contrast, the right to freedom to manifest one's religion or beliefs may be subject to certain limitations, but only those prescribed by law and necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. In the present case, the Committee notes the authors' arguments that the State party violated their rights under article 18 (1) of the Covenant by apprehending them during a private religious discussion in the home of one of them, taking them to the police station, where they were held for over five hours, and convicting them of an administrative offence in the form of administrative warnings. The authors were sanctioned for conducting religious worship outside of a legally recognized address, as they had not been granted the status of a religious association with a legally designated address. Applying its general comment No. 22 (1993), in paragraph 4 of which it stated that the freedom to manifest religion or belief could be exercised either individually or in community with others and in public or private, the Committee considers that the authors' claims relate to their right to manifest their religious beliefs, and that the arrest, detention and conviction constitute limitations of that right.

9.3 The Committee must address the issue of whether the said limitations on the authors' right to manifest their religious beliefs were necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, within the meaning of article 18 (3) of the Covenant. The Committee recalls that, according to paragraph 8 of its general comment No. 22 (1993), article 18 (3) is to be interpreted strictly, and limitations on the freedom to manifest 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.¹²

9.4 In the present case, the limitations placed on the authors' right to manifest their religious beliefs stem from the requirement set out in article 12 of the Law on Freedom of Religious Beliefs, that a religious association has to officially register in order to operate lawfully. The Committee notes that the State party has not specifically explained that engaging in religious worship is conditioned by officially registering as a religious association. The Committee also notes that the State party has not provided evidence indicating that the peaceful manifestation of the authors' religious beliefs in the home of one of the authors threatened public safety, order, health or morals, or the fundamental rights and freedoms of others. The Committee further observes that the State party has not described any context, or provided any example, in which there was a specific and significant threat to public order and safety that would justify the blanket ban on religious worship outside of a registered religious organization. Even if the State party could demonstrate the existence of a specific and significant threat to public safety and order, it has failed to demonstrate that the registration requirement of article 12 of the Law on Freedom of Religious Beliefs was proportionate to that objective, in view of its considerable limitation on the act of religious worship. Nor has the State party attempted to demonstrate that the requirement was the least restrictive measure necessary to ensure the protection of the freedom of religion or belief. While the State party has noted that article 18 (3) of the Covenant permits certain restrictions on the right to manifest one's religion or beliefs in order to protect the fundamental rights and freedoms of others, the Committee observes that such protection requires identifying which specific fundamental rights are affected, and the persons so affected. The Committee notes that exceptions under article 18 (3) are to be interpreted strictly and not applied in the abstract. In the present case, the State party has not identified any specific fundamental rights or freedoms of others that were affected by the religious worship conducted by the authors in Mr. Mursalov's home. Accordingly, the Committee considers that the State party has not provided a sufficient basis for the limitations imposed, so as to demonstrate that they were permissible within the meaning of article 18 (3) of the Covenant.¹³

9.5 The Committee observes that, during the domestic proceedings, the Garadagh District Court and the Baku Court of Appeal upheld the authors' convictions on the ground that the activity of the community of Jehovah's Witnesses and the authors worshipping in Mr.

¹¹ Para. 3. See also *Bekmanov and Egemberdiev v. Kyrgyzstan* (CCPR/C/125/D/2312/2013), para. 7.2.

¹² See also *Malakhovsky and Pikul v. Belarus*, para. 7.3.

¹³ *Mammadov, Niftaliyev and Abbasova v. Azerbaijan* (CCPR/C/129/D/2928/2017), para. 7.5.

Mursalov's home violated various requirements of the Law on Freedom of Religious Beliefs. Specifically, the State party cited the provision of the law stating that religious associations could operate only after being officially registered and only at places of worship specified in the information presented for State registration as the legal address. The Committee recalls that article 18 (1) of the Covenant protects the right of all members of a religious congregation to manifest their religion in community with others, in worship, observance, practice and teaching.¹⁴ The Committee considers that the justifications provided by the State party do not demonstrate how the requirements to be legally registered as an association prior to conducting religious worship were proportionate measures necessary to serve a legitimate purpose within the meaning of article 18 (3) of the Covenant. The Committee notes that the State party did not advance any argument as to why it was necessary for the authors to first register with the Government before practising their religion in a community in a private home. The Committee concludes that the punishment imposed on the authors amounted to a limitation of their right to manifest their religion under article 18 (1) of the Covenant, and that neither the domestic authorities nor the State party has 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 and sanctioning the authors with an administrative warning for holding the religious meeting, the State party violated their rights under article 18 (1) of the Covenant.

9.6 With regard to Mr. Kvaratskhelia, the Committee observes that article 18 (1) of the Covenant protects the right of all members of a religious congregation, not only nationals of a State party, to manifest their religion in community with others, in worship, observance, practice and teaching. The Committee concludes that the punishment imposed on Mr. Kvaratskhelia, and in particular its harsh consequences for him, with his deportation from the State party, amount to a limitation of his right to manifest his religion under article 18 (1) and that the limitation, although prescribed by law, was not proportionate or justified. In addition, the Committee observes that the State party has failed to justify such limitation as serving any legitimate purpose identified in article 18 (3) or that this sweeping limitation of the right to manifest religion is proportionate to any legitimate purpose that it might serve.¹⁵ The Committee therefore concludes that such limitation does not meet the requirements of article 18 (3), and that Mr. Kvaratskhelia's rights under article 18 (1) of the Covenant have been violated.

9.7 The Committee notes the authors' claim that the police took them to a police station and arbitrarily detained them for five hours. Noting the position of the domestic authorities that this incident did not represent a deprivation of liberty but a mere invitation to provide explanations and compile documents, 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 paragraph 6 of which it stated that "deprivation of personal liberty is without free consent. Individuals who go voluntarily to a police station to participate in an investigation, and who know that they are free to leave at any time, are not being deprived of their liberty". The Committee notes the authors' claim that they were not free to leave police custody during the relevant period. In the absence of information from the State party contesting this specific allegation and indicating that the authors could have freely decided not to accompany the police officers to the police station or, once there, could have left at any time without facing adverse consequences, the Committee concludes that the authors were coerced into accompanying the police to the station and remaining there until their release, and were therefore deprived of their liberty.

9.8 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,¹⁶ the Committee must next assess whether the authors' arrest and detention were arbitrary or unlawful. The Committee recalls that protection against arbitrary detention is to be applied broadly, and that the "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due

¹⁴ *Leven v. Kazakhstan* (CCPR/C/112/D/2131/2012), para. 9.4.

¹⁵ *Amedzro v. Tajikistan* (CCPR/C/133/D/3258/2018), para. 7.9.

¹⁶ General comment No. 35 (2014), para. 10.

process of law.¹⁷ The Committee also recalls that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant, including freedom of religion, is arbitrary.¹⁸ The Committee notes the authors' allegation that Jehovah's Witnesses face a pattern of harassment by the State party's authorities, and that in the authors' specific case, the officers did not inform the authors of the charges against them at the time of their arrest and apprehension. The Committee therefore considers that the actions of the police lacked appropriateness, predictability and regard for due process guarantees. Further, referring to its findings in paragraph 9.5 above, the Committee considers that the authors' arrest and detention constituted punishment for the legitimate exercise of their right to manifest their religious beliefs. The Committee therefore concludes that the authors were arbitrarily arrested and detained in violation of their rights under article 9 (1) of the Covenant.

9.9 In the light of its finding that there has been a violation of articles 18 and 9 of the Covenant, the Committee decides not to examine separately the authors' claims under articles 17, 19, 26 and 27 of the Covenant and Mr. Kvaratskhelia's claim under article 13 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 rights of each of the authors under articles 9 (1) and 18 (1) and (3) 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 to, inter alia, provide the authors with adequate compensation, including for any legal expenses incurred by them. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by reviewing its domestic legislation, regulations and/or practices with a view to ensuring that the rights under the Covenant may be fully enjoyed in the State party.

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

¹⁷ *Formonov v. Uzbekistan* (CCPR/C/122/D/2577/2015), para. 9.3.

¹⁸ General comment No. 35 (2014), para. 17.