



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF NASIROV AND OTHERS v. AZERBAIJAN

(Application no. 58717/10)

JUDGMENT

Art 5 § 1 • Liberty of person • Applicants escorted to police station and retained there for several hours • Unrecorded, arbitrary and unjustified detention • No obstacles to drawing up an administrative offence report on the spot

Art 9 • Freedom of religion • Unlawful detention of members of the Jehovah's Witnesses congregation for door to-door preaching and distribution of religious literature • No evidence of improper methods of proselytising

STRASBOURG

20 February 2020

FINAL

20/06/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Nasirov and Others v. Azerbaijan,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O’Leary, *President*,
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
André Potocki,
Yonko Grozev,
Lətif Hüseynov,
Anja Seibert-Fohr, *judges*,

and Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 28 January 2020,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 58717/10) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by seven Azerbaijani nationals, Mr Famil Zakir oğlu Nasirov (*Famil Zakir oğlu Nəsirov* - “the first applicant”), Ms Amina Talat gizi Mammadova (*Əminə Tələt qızı Məmmədova* - “the second applicant”), Ms Gulnaz Mahammadali gizi Hasanova (*Gülnaz Məhəmmədəli qızı Həsənova* - “the third applicant”), Ms Salatin Ali gızı Iskandarova (*Salatın Əli qızı İsgəndərova* - “the fourth applicant”), Ms Shafiga Mahammad gizi Mammadova (*Şəfiqə Məhəmməd qızı Məmmədova* - the fifth applicant”), Ms Rahima Amikishi gizi Huseynova (*Rəhimə Əmikişi qızı Hüseynova* - “the sixth applicant”) and Ms Aygül Novruz gizi Nasirova (*Aygül Novruz qızı Nəsirova* - “the seventh applicant”) (“the applicants”) on 7 October 2010.

2. The applicants were represented by Mr R. Cook, Mr A. Carbonneau and Mr J. Wise, lawyers practising in the United Kingdom and Canada respectively. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr Ç. Əsgərov.

3. The applicants complained under Articles 9, 10 and 14 of the Convention that the domestic authorities had unlawfully interfered with their right to freedom of religion. The third, fourth, fifth, sixth and seventh applicants further complained under Article 5 of the Convention that their arrest and their detention in excess of the time permitted by domestic law had been without just cause and in breach of their right to liberty. The seventh applicant also complained that the search and seizure carried out by the police officers at her home had infringed her rights under Article 8 of the Convention.

4. On 30 August 2017 notice of the complaints concerning Articles 5 (in respect of the third, fourth, fifth, sixth and seventh applicants), 8 (in respect of the seventh applicant), 9, 10 and 14 (in respect of all the applicants) of the Convention was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants' dates of birth and places of residence are listed in the Appendix.

6. The applicants are members of the Religious Community of Jehovah's Witnesses.

A. The Baku incident

7. On 3 March 2010 the first and second applicants were preaching door to door in an apartment block in Baku. While they were still inside the apartment block three uniformed police officers approached them and asked why they were bothering people. The police officers took the first and second applicants to the Khatai District Police Department, where reports were drawn up and they were asked to remove the literature they were carrying from their bags. After three hours at the police station the two applicants were taken to the Khatai District Court.

8. On the same date and by separate decisions the Khatai District Court found the first and second applicants guilty under Article 300.0.2 of the Code of Administrative Offences (hereinafter referred to as "the CAO") of distributing literature which had not been approved for import and fined each of them 200 Azerbaijani manats (AZN – approximately 200 euros (EUR) at the relevant time).

9. On 12 March 2010 the first and second applicants lodged appeals against those decisions. They argued that they had not been engaged in unlawful activities and had been arrested without legitimate cause. The applicants also complained that the first-instance court's decisions violated their rights under Articles 9, 10 and 14 of the Convention.

10. On 8 April 2010 the Baku Court of Appeal dismissed the first applicant's appeal and upheld the decision of the first-instance court. The appellate court found that under the relevant legislation, the books which he had been distributing had been allowed only for the internal purposes of the religious organisation in question at its registered legal address, whereas he had been distributing the books in public places to people who were not members of a Jehovah's Witnesses congregation.

11. On 31 May 2010 the Baku Court of Appeal quashed the decision of the first-instance court in respect of the second applicant on the grounds that there had been no assessment of whether the books she had been distributing had been approved for import. It referred the case back for fresh consideration.

12. On 1 July 2010 the Khatai District Court found the second applicant guilty under Article 300.0.2 of the CAO. The court stated that despite the fact that the books in her possession, including the one entitled “*What does the Holy Book really teach?*” (“*Əslində müqəddəs kitab nəyi öyrədir*”), were permitted for import by the State Committee for Work with Religious Associations (*Dini Qurumlarla İş Üzrə Dövlət Komitəsi* – hereinafter referred to as “the Committee”), their usage was restricted to within the religious organisation in question. However, the court discontinued the proceedings as time-barred without applying a penalty and ordered the confiscated books to be returned to the second applicant.

13. On 13 July 2010 the second applicant lodged an appeal against that decision, reiterating the submissions she had made during her first appeal.

14. On 27 July 2010 the Baku Court of Appeal dismissed the second applicant’s appeal and upheld the decision of the first-instance court. The appellate court held that although the books she had been distributing had not been banned by the Committee, they were only allowed for the internal purposes of the religious organisation in question at its registered legal address but not for distribution in public places.

B. The Aghstafa incident

15. On 26 April 2010 the third, fourth and fifth applicants were preaching door to door in the town of Aghstafa and then went to a friend’s home. While they were there, three or four police officers knocked on the door, looking for “women with sports bags”. The police officers searched their bags and seized approximately 400 assorted books which the three applicants had previously obtained at a religious assembly for further distribution. Afterwards, the third, fourth and fifth applicants were taken to the Aghstafa District Police Department, where they were detained for several hours before being released after midnight. The next morning, 27 April 2010, they returned to the police station as ordered and were taken to the Aghstafa District Court.

16. On the same day and by separate decisions the Aghstafa District Court found the three applicants guilty of distributing literature which had not been approved for import under Article 300.0.2 of the CAO and fined each of them AZN 200 (approximately EUR 200 at the relevant time).

17. On 14 May 2010 the third, fourth and fifth applicants lodged appeals against those decisions. Relying on various Articles of the Convention and Article 1 of Protocol No. 1 to the Convention, they argued that they had not

been engaged in unlawful activities and had been arrested without legitimate cause.

18. On 8 June 2010 the Ganja Court of Appeal, by separate decisions, quashed the decisions of the first-instance court in part, ordering that all the books, except those entitled “*What does the Holy Book really teach?*”, be returned to the Jehovah’s Witnesses’ headquarters in Baku. The appellate court stated that the particular title the applicants had been distributing had been banned by the Committee and that the remaining titles were allowed only for the internal use of the religious organisation at the registered legal address of the entity concerned but could not be distributed in public places.

C. The Sumgayit incident

19. On 4 May 2010 the sixth and seventh applicants were bearing witness house to house in Sumgayit when a police officer who happened to live in the same apartment block detained them and took them to the police station. They were questioned and the religious literature in their bags was confiscated. Whereas the sixth applicant remained at the police station until she was released after midnight, the police officers took the seventh applicant to the apartment which she allegedly shared with other persons, where they carried out a search, confiscating her religious literature. She was then returned to the police station and detained until early in the morning of 5 May 2010. The following day, 6 May 2010, the two applicants returned to the police station as ordered and were taken to the Sumgayit City Court.

20. The court on the same date and by separate decisions found the sixth and seventh applicants guilty under Article 300.0.2 of the CAO of distributing literature not approved for import and fined them AZN 200 (approximately EUR 200 at the relevant time) each.

21. According to the decision of the first-instance court in respect of the seventh applicant, her registered place of residence was in Baku.

22. On 18 May 2010 the sixth and seventh applicants lodged appeals against those decisions. Relying on Articles 5, 8, 9, 10 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention, they argued that they had not been engaged in unlawful activities and had been arrested without legitimate cause. They also sought the recovery of the costs involved and the return of the seized books.

23. On 12 June 2010 the Sumgayit Court of Appeal, by separate decisions, quashed the decisions of the first-instance court. Having found the sixth and seventh applicants not guilty of committing the administrative offence provided for by Article 300.0.2 of the CAO, the court discontinued the proceedings and ordered the confiscated property to be returned to them. The court held that although the applicants had possessed books banned by the Committee, the evidence had not proved that they had been distributing

them. However, as they had been causing a public disturbance by unexpectedly knocking on citizens' apartment doors and breaching the general provisions of the legislation regulating religious activities, their claim for recovery of the costs involved was dismissed.

II. RELEVANT DOMESTIC LAW

A. The Constitution of the Republic of Azerbaijan

24. At the material time, the relevant provisions of the Constitution provided as follows:

Article 47. Freedom of thought and speech

“...

III. Agitation and propaganda inciting racial, ethnic, religious and social discord and hostility are not allowed.”

Article 48. Freedom of conscience

“...

III. Everyone has the right to independently determine his or her attitude to religion, to confess, alone or in community with others, to any religion or to refrain from following one, to manifest his or her religious belief and to convey it to others.

IV. Freedom of conscience and religion shall not serve as a basis for exemption from responsibility for violation of the law. ...”

B. The relevant domestic legislation concerning religious activities

25. Article 22 (Religious literature and assets of religious nature) of the Law on Freedom of Religion, as in force at the material time, provided that individuals and religious communities could obtain and use religious literature and other assets and materials of a religious nature in any language. Religious communities could, with the consent of the relevant executive authority for religious affairs, import and freely distribute literature, assets of a religious nature and other information material with religious content.

26. Paragraph 9.2 of the Regulations on the State Committee for Work with Religious Communities, as in force at the material time, provided that in the fulfilment of its duties, the Committee had the right to control and authorise the production, import and distribution of literature and assets of a religious nature and information material with religious and other content upon the request of religious communities or the relevant public authorities.

C. Code of Administrative Offences

27. Article 300.0.2 (Violation of legislation concerning freedom of religion) of the CAO, as in force at the material time, provided that the distribution by natural persons of literature and assets of a religious nature and information material with religious content which had been imported or produced without the consent of the relevant executive authority was punishable by a fine in the amount of 200 to 400 manats and the seizure of the literature, items and material directly forming the subject of the administrative offence.

28. Article 396.1 (Measures to secure administrative-offence proceedings) of the CAO, as in force at the material time, provided for a number of measures, including administrative escorting (*gətirilmə*) of a suspect to a police station and administrative arrest (*inzibati qaydada tutma*). Such measures may be used for the purpose of putting an end to an administrative offence; establishing an offender's identity; compiling an administrative-offence record, where this could not be done on the spot; ensuring the timely and correct examination of a case; and enforcing a decision taken in a case.

29. Article 398.1 (Administrative arrest) of the CAO, as in force at the material time, provided that an administrative arrest was a restriction of the liberty of a natural person for a limited period of time which could be applied in exceptional cases if it was necessary in order to examine thoroughly and promptly a case concerning an administrative offence or to ensure the execution of a decision relating to an administrative offence. The duration of this type of arrest could not exceed three hours (Article 399.1 (Duration of the administrative arrest)).

30. Article 400 (Record of administrative arrest) of the CAO, as in force at the material time, provided that in all circumstances a record of administrative arrest (*inzibati qaydada tutma haqqında protokol*) had to be drawn up containing the following information: the date and place where the record was drawn up; the official position, name, surname and patronymic of the person who drew up the record; the personal details of the arrested person; and the date of and reasons for the arrest. The record had to be signed by the person who drew it up and the arrested party. If the latter refused to sign it, this fact had to be noted in the record.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

31. The third, fourth, fifth, sixth and seventh applicants complained under Article 5 of the Convention that their arrest and detention had been

unlawful. The Court considers that the present complaint falls to be examined under Article 5 § 1 of the Convention, which reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

A. Admissibility

1. Applicability of Article 5 of the Convention

32. The Government contested the applicability of Article 5 of the Convention to the situation of the third, fourth, fifth, sixth and seventh applicants. They argued that these applicants had never been arrested within the meaning of Article 5 of the Convention as they had been invited to the respective police stations and their stay at the police station had not exceeded three hours, thus remaining within the period permitted by the domestic legislation.

33. The third, fourth, fifth, sixth and seventh applicants disagreed, noting, in particular, that they had not been invited to the police station to assist with an investigation but had been apprehended by the police without any legal justification. A refusal to comply or an attempt to resist would have been construed as violence against a police officer and would have exposed them to the risk of receiving heavy penalties. They had been held at the police stations, where they had not been free to leave at any time, for different periods exceeding three hours and they had been transported by police vehicle directly to the courts while in detention.

34. The Court reiterates that Article 5 § 1 may apply to deprivations of liberty of a very short duration, for example where applicants were stopped for the purposes of a search for a period which did not exceed thirty minutes

during which they were entirely deprived of any freedom of movement and were obliged to remain where they were (see *Gillan and Quinton v. the United Kingdom*, no. 4158/05, § 57, ECHR 2010 (extracts)) or where the length of time during which an applicant was held at a police station did not exceed forty-five minutes (see *Shimovolos v. Russia*, no. 30194/09, §§ 48-50, 21 June 2011).

35. The Court recalls that in order to determine whether there has been a deprivation of liberty, the starting-point must be the concrete situation of the individual concerned and account must be taken of a whole range of factors arising in a particular case, such as the type, duration, effects and manner of implementation of the measure in question. The distinction between deprivation of, and a restriction upon, liberty is merely one of degree or intensity and not one of nature or substance (see *Shimovolos*, cited above, § 49).

36. In the present case, the taking of the applicants to police stations (whether or not specifically with recourse to the procedure of administrative escorting) and their retention there for a certain period of time, taken as a whole, did fall within the scope of Article 5 § 1 of the Convention. There is nothing to suggest that, as a matter of fact and/or given the requirements of domestic law, the applicants could have freely decided not to follow the police officers to the police station or, once there, could have left at any time without facing adverse consequences (compare *Khalikova v. Azerbaijan*, no. 42883/11, § 102, 22 October 2015, and *Tsvetkova and Others v. Russia*, nos. 54381/08 and 5 others, § 107, 10 April 2018). The Court considers that throughout the events there was an element of coercion which, notwithstanding the duration of this procedure, was indicative of a deprivation of liberty within the meaning of Article 5 § 1 (see *Shimovolos*, cited above, § 50; *Krupko and Others v. Russia*, no. 26587/07, §§ 36 and 38, 26 June 2014; and *Tsvetkova and Others*, cited above, § 108).

37. Accordingly, the Court finds that Article 5 applies to the complaint and rejects the Government's objection in this respect.

2. *The sixth and seventh applicants' victim status*

38. The Government also argued that the sixth and seventh applicants could not claim to be a victim of the alleged violations of Article 5 since the proceedings in respect of them had been discontinued by the decision of the appellate court. Accordingly, their responsibility had not been established and their rights had not been otherwise limited, therefore, they could not claim to have sustained any harm.

39. The applicants disagreed. They submitted that the domestic authorities had not acknowledged the violation of their right and had not afforded redress for the violation.

40. The Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a

“victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

41. The Court observes that the distribution of religious literature by the sixth and seventh applicants was interrupted by a police officer, who took them to the police station. Although the appellate court subsequently discontinued the administrative proceedings against them, the domestic courts did not expressly acknowledge that the taking of the sixth and seventh applicants to the police station and their retention there for a certain period of time had been unlawful, and no compensation or other redress was awarded to them in that connection. In such circumstances, the Court finds that the mere fact that the appellate court subsequently discontinued the administrative proceedings against them was insufficient to deprive them of their “victim” status (see, *mutatis mutandis*, *Ramazanova and Others v. Azerbaijan*, no. 44363/02, §§ 36-38, 1 February 2007; *Efendiyeva v. Azerbaijan*, no. 31556/03, §§ 48-50, 25 October 2007; and *Jafarli and Others v. Azerbaijan*, no. 36079/06, §§ 43-47, 29 July 2010).

42. The Court considers, therefore, that the sixth and seventh applicants may still claim to be a victim of an alleged violation of the rights guaranteed by Article 5.

3. Conclusions as to admissibility

43. Consequently, the Court finds that this complaint is not manifestly ill-founded or indeed inadmissible on any ground listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

44. The third, fourth, fifth, sixth and seventh applicants argued that, even assuming that their detention had been within the time-limit permitted by the domestic legislation, the authorities had failed to demonstrate the existence of any exceptional circumstances justifying their administrative arrest under Articles 396 and 398 of the CAO. The police officers had had no reasonable basis to believe that they had been doing anything illegal and it was only after their arrest and the search and seizure that the allegedly illegal religious publications had been found.

45. The Government submitted that the third, fourth, fifth, sixth and seventh applicants had been invited to the respective police stations for the purpose of documenting their explanations concerning the commission of the offence under Article 300.0.2 of the CAO and compiling the relevant

records. They had been released after the completion of the necessary formalities and with no records of an administrative arrest having been compiled.

2. *The Court's assessment*

46. The Court reiterates that Article 5 of the Convention enshrines a fundamental right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty. In proclaiming the “right to liberty”, paragraph 1 of Article 5 contemplates the physical liberty of the person; its aim is to ensure that no one should be deprived of that liberty in an arbitrary fashion. Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty and no deprivation of liberty will be lawful unless it falls within one of those grounds (see *Navalnyy v. Russia* (no. 2), no. 43734/14, § 55, 9 April 2019).

47. The Court must first ascertain whether the applicants’ deprivation of liberty complied with the requirements of Article 5 § 1 and was free from arbitrariness. Where the “lawfulness” of detention is in issue, including the question whether “a procedure prescribed by law” has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness. What is at stake here is not only the “right to liberty” but also the “right to security of person” (see, among other authorities, *Bozano v. France*, 18 December 1986, § 54, Series A no. 111, *Wassink v. the Netherlands*, 27 September 1990, § 24, Series A no. 185-A, and *Emin Huseynov v. Azerbaijan*, no. 59135/09, § 84, 7 May 2015). It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of “arbitrariness” in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008).

48. In the present case, the Court firstly notes that if the police officers believed that the applicants were committing an administrative offence, they were required to draw up an administrative offence report. The applicants could have been escorted to a police station if the administrative offence report could not be drawn up at the place where the offence had been discovered (see paragraph 28 above). However, the Government have not argued that in the circumstances of the case this was impossible, and no obstacles to drawing up the report on the spot may be discerned from the documents in the case file or from any domestic decisions (see, for similar reasoning, *Navalnyy and Yashin v. Russia*, no. 76204/11, §§ 68 and 93,

4 December 2014, and *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, § 489, 7 February 2017).

49. Secondly, the Court observes that no records of administrative arrest were drawn up in respect of any of the applicants once they had been escorted to the police stations. Even assuming that the applicants' deprivation of liberty did not exceed the three hours permitted by the domestic legislation as submitted by the Government, it appears that this deprivation of liberty was not documented at all and constituted unrecorded and unacknowledged detention, which, as the Court has consistently held, is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (see *Aleksandr Sokolov v. Russia*, no. 20364/05, §§ 71-72, 4 November 2010; and *Nagiye v. Azerbaijan*, no. 16499/09, § 57, 23 April 2015; see also *Kurt v. Turkey*, 25 May 1998, § 125, *Reports* 1998-III; and *Anguelova v. Bulgaria*, no. 38361/97, § 157, ECHR 2002-IV).

50. Thirdly, the Court notes that under Article 398.1 of the CAO, administrative arrest could be applied only in exceptional cases, that is, where it was "necessary" in view of the specific situation objectively indicating that without such a measure it would be "impossible" to achieve the statutory goals such as ensuring the expedient and correct examination of the case or enforcing a penalty (see paragraph 29 above). However, neither the domestic authorities nor the Government before the Court provided any justification, namely that this was an "exceptional case" or that administrative arrest was "necessary for the prompt and proper examination" of the case, although these were essential elements pertaining to the legality of the deprivation of liberty (see *Tsvetkova and Others*, cited above, § 121).

51. The foregoing considerations are sufficient to enable the Court to conclude that the third, fourth, fifth, sixth and seventh applicants' deprivation of liberty was unjustified, arbitrary and unnecessary irrespective of its duration.

52. It follows that there has been a violation of Article 5 § 1 in respect of the third, fourth, fifth, sixth and seventh applicants.

II. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

53. The applicants complained under Article 9 of the Convention that the unlawful interference by the domestic authorities with their freedom of worship and religious practice had amounted to a violation of their right to freedom of religion. Article 9 provides as follows:

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

54. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

55. The applicants submitted that they were unlawfully arrested, detained, prosecuted and convicted because they had been manifesting their religious beliefs as Jehovah’s Witnesses by bearing witness publicly.

56. The applicants further submitted that the domestic authorities’ restrictive interference with their right to freedom of religion had no basis under the national legislation or the Convention. They argued that of all the books which had been seized by the police, only one title had been found by the domestic courts during the subsequent proceedings to be banned for import. However, even that particular title had previously been approved for import by the Committee. In support of their submission, the applicants provided a copy of a letter from the Committee dated 1 July 2006 whereby it had allowed the import of 1,000 copies of the book entitled “*What does the Holy Book really teach?*”

57. Furthermore, the applicants argued that the measures taken had not pursued a legitimate aim because the distributed books did not contain any call to violence, discrimination or intolerance, instead referring only to sincerely held religious beliefs, albeit critical of other religious groups. The domestic authorities had also failed to exercise their discretion carefully, and that had resulted in interference which had not been necessary in a democratic society.

58. The Government admitted that there had been interference by the police officers with the distribution of the religious literature by the applicants. They argued that it had been prescribed by law, namely by Article 300.0.2 of the CAO, which had been accessible to the applicants, who could reasonably have foreseen the consequences of their actions. Moreover, the interference had pursued the legitimate aim of the protection

of the rights and freedoms of others as the literature distributed by the applicants and excluded from import and distribution by the Committee, particularly the book entitled “*What does the Holy Book really teach?*”, contained disparaging expressions directed against Christian and Jewish communities. Therefore, the interference had to be regarded as necessary in a democratic society for the purposes of Article 9 of the Convention.

2. *The Court’s assessment*

(a) **General principles**

59. As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention. This freedom is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion (see, among other authorities, *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A; *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I; *S.A.S. v. France* [GC], no. 43835/11, § 124, ECHR 2014 (extracts); and *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 103, 26 April 2016).

60. Religious freedom is primarily a matter of individual thought and conscience. This aspect of the right set out in the first paragraph of Article 9, to hold any religious belief and to change religion or belief, is absolute and unqualified. However, as further set out in Article 9 § 1, freedom of religion also encompasses the freedom to manifest one’s belief alone and in private but also to practise in community with others and in public. The manifestation of religious belief may take the form of worship, teaching, practice and observance. Bearing witness in words and deeds is bound up with the existence of religious convictions (see *Kokkinakis*, cited above, § 31, and *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 105, ECHR 2005-XI). Since the manifestation by one person of his or her religious belief may have an impact on others, the drafters of the Convention qualified this aspect of freedom of religion in the manner set out in Article 9 § 2. This second paragraph provides that any limitation placed on a person’s freedom to manifest religion or belief must be prescribed by law and necessary in a democratic society in pursuit of one or more of the legitimate aims set out therein (see *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, § 80, ECHR 2013 (extracts)).

(b) Application of the general principles to the present case

(i) Whether there was interference

61. The Court notes that it is undisputed by the parties that the measures taken following the distribution of religious literature by the applicants amounted to an interference with the exercise of their right to freedom of religion, as guaranteed by Article 9 of the Convention. The Court shares this view.

(ii) Whether the interference was justified

62. The Court notes that the Government relied on Article 300.0.2 of the CAO (see paragraph 27 above) as a legal basis for the interference with the applicants' right.

63. However, the Government's argument in this respect is contradicted by the decisions of the domestic courts, which found that the books in the applicants' possession had not been banned for import by the Committee and ordered their return to the applicants (see paragraphs 12, 18 and 23 above). Moreover, although the domestic courts' decisions were contradictory in respect of the book entitled "*What does the Holy Book really teach?*", the Court takes note of the letter of the Committee dated 1 July 2006 (see paragraph 56 above) allowing the import of 1,000 copies of that book. The Government provided no explanation in respect of this contradiction. In these circumstances, the Court cannot but conclude that the books in question could not be considered to constitute literature of a religious nature imported without the consent of the relevant authority, and that their distribution could not have been prevented on the basis of Article 300.0.2 of the CAO.

64. The Court also cannot accept the reasoning of the domestic courts to the effect that the use of the religious literature in question was restricted to the internal purposes of the religious organisation at its registered legal address and that the books could not be distributed in public places to people who were not members of a Jehovah's Witness congregation (see paragraphs 10, 14 and 18 above). In this connection, the Court notes that the domestic courts failed to rely on any provision of domestic law when they interpreted in such a restrictive way the scope of the use by believers of legally imported religious literature.

65. The Court further notes that, although some of the decisions of the domestic courts referred to the public disturbance and invasion of the privacy of others caused by the applicants' practice of door-to-door preaching (see paragraph 23 above), their findings were limited to a short statement and were not supported by convincing evidence in this respect. Moreover, leaving aside the question whether Azerbaijani law did provide for any offence of proselytism, which appears not to be the case, no evidence of improper methods of proselytising by members of the

Jehovah's Witnesses community was produced or examined in the domestic proceedings (see, by contrast, *Kokkinakis*, cited above, § 48, and *Larissis and Others v. Greece*, 24 February 1998, § 45, Reports 1998-I; compare *Jehovah's Witnesses of Moscow and Others v. Russia*, no. 302/02, § 122, 10 June 2010) or referred to in the Government's submissions before the Court.

66. The foregoing considerations are sufficient to enable the Court to conclude that the interference in question was not "prescribed by law" within the meaning of Article 9 § 2 of the Convention.

67. Having reached that conclusion, the Court does not need to satisfy itself that the other requirements of Article 9 § 2 (in respect of a "legitimate aim" and the "necessity of the interference") have been complied with.

68. There has accordingly been a violation of Article 9 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

69. The seventh applicant complained that the search and seizure carried out by the police officers at her premises had infringed her right to respect for her home under Article 8 of the Convention, which reads as follows:

"1. Everyone has the right to respect for his ... home ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

1. The parties' submissions

70. The Government submitted that the seventh applicant had failed to produce any evidence either before the domestic courts or before the Court that she had longstanding ties with the apartment where the search had been conducted, namely that she had been renting it or sharing its rent with others or had otherwise been legally residing there. Therefore, the apartment in question could not be considered her "home" for the purposes of Article 8 of the Convention.

71. The seventh applicant argued that throughout the proceedings the domestic authorities had continuously referred to her as residing at (*yaşayan*) or renting (*kirayədə qalan*) the apartment where the search had been conducted. Nor had it been disputed in the domestic proceedings that the apartment in question had contained her personal belongings, including the religious literature which had been seized in the course of the search and seizure operation. Moreover, the Government in their submissions had not provided information concerning her permanent residence or any other

information contradicting her allegations that she had been lawfully residing at the apartment in question.

2. *The Court's assessment*

72. The Court notes at the outset the Convention organs' case-law to the effect that the concept of "home" within the meaning of Article 8 is not limited to dwellings which are lawfully occupied or which have been lawfully established. "Home" is an autonomous concept which does not depend on classification under domestic law. Whether or not a particular dwelling constitutes a "home" which attracts the protection of Article 8 § 1 will depend on the factual circumstances, namely the existence of sufficient and continuous links with a specific place (see *Prokopovich v. Russia*, no. 58255/00, § 36, ECHR 2004-XI (extracts)).

73. In so far as the applicant relied on Article 8 of the Convention, the Court has previously accepted material such as documents from the local administration, plans, photographs and maintenance receipts, as well as proof of mail deliveries, statements of witnesses or any other relevant evidence (see, for instance, *Prokopovich*, cited above, § 37), as examples of prima facie evidence of residence at a particular property.

74. The Court notes that it is clear from the documents in the case file that the seventh applicant was not the owner of the apartment in question and was not in possession of a rental agreement in respect of it. Furthermore, it appears from the case file that her registered residency address was not in Sumgayit, where the matter giving rise to the complaint occurred, but in Baku (see paragraph 21 above), and that fact was not disputed by the seventh applicant either in the domestic proceedings or before the Court. What is more important is that, despite being legally represented before the Court, she failed to submit any evidence such as listed in the preceding paragraph in order to support the existence of sufficient and continuous links with a specific place, namely the apartment where the search was conducted or of any other right that she might have had in its respect.

75. In light of the foregoing, the Court finds that the apartment in question cannot be considered as her home within the meaning of Article 8 of the Convention. It, therefore, accepts the objection raised by the Government and rejects the seventh applicant's complaint as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 (a) and 4 of the Convention (see *Chelu v. Romania*, no. 40274/04, §§ 43-46, 12 January 2010).

IV. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

76. The applicants also alleged that their rights guaranteed by Article 10 of the Convention had been breached on account of the measures taken against them as described above.

77. The Court notes that this complaint is linked to those examined above and must therefore likewise be declared admissible. It also considers that the arguments relied on under this complaint are similar to those which the applicants submitted under Article 9 of the Convention. Given that the Court has already found a violation of that provision, it does not consider it necessary to examine the applicants' complaint raised under Article 10 of the Convention (see *Kokkinakis*, cited above, §§ 54-55; *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, §§ 143-44, 3 May 2007; and *Begheluri v. Georgia*, no. 28490/02, §§ 180-81, 7 October 2014).

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 9

78. The applicants complained under Article 14 in conjunction with Article 9 of the Convention that they had suffered discrimination in the enjoyment of their Convention rights on the grounds of belonging to a religious minority.

79. The Court notes that this complaint is linked to that under Article 9 of the Convention and must therefore likewise be declared admissible. However, having regard to the finding of a violation which the Court reached under Article 9 of the Convention (see paragraph 68 above), it does not consider it necessary to examine the complaint also under Article 14 (see *Kokkinakis*, cited above, §§ 56-57, and *Nolan and K. v. Russia*, no. 2512/04, § 79, 12 February 2009).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. Pecuniary damage

81. The applicants claimed that they had suffered pecuniary damage on account of the fine they had been made to pay in the administrative

proceedings. In support of their claim they have submitted the relevant payslips for the following amounts: the first applicant EUR 103, the third applicant EUR 96, the fourth applicant EUR 96, and the fifth applicant EUR 96.

82. The Government submitted that they were prepared to accept the applicants' claims in respect of pecuniary damage if the Court found a violation in the present case.

83. The Court considers that there is a direct causal link between the finding of a violation under Article 9 of the Convention and the fine which the first, third, fourth and fifth applicants paid (for similar reasoning, see, *mutatis mutandis*, *Lashmankin and Others*, cited above, § 515, and *Novikova and Others v. Russia*, nos. 25501/07 and 4 others, § 232, 26 April 2016). The Court therefore awards the first applicant EUR 103, the third applicant EUR 96, the fourth applicant EUR 96, and the fifth applicant EUR 96 in respect of pecuniary damage, plus any tax that may be chargeable.

2. Non-pecuniary damage

84. The applicants claimed the following amounts in respect of non-pecuniary damage: the first applicant EUR 5,000, the second applicant EUR 5,000, the third applicant EUR 7,500, the fourth applicant EUR 7,500, the fifth applicant EUR 7,500, the sixth applicant EUR 7,500, and the seventh applicant EUR 10,000.

85. The Government submitted that the applicants' claims in respect of non-pecuniary damage were unsubstantiated and unreasonable. They contended that, in any event, a finding of a violation would constitute sufficient just satisfaction.

86. The Court considers that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation, and that just satisfaction should thus be awarded on that account. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards each applicant EUR 3,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

87. The applicants claimed EUR 10,150 as the total amount for legal fees incurred before the Court.

88. The Government submitted that the applicants had not produced any evidence to show that they had actually paid or were legally bound to pay any fees for the representative's work, a fact that suggested that he had been working free of charge.

89. In the present case, the Court observes that the applicants did not submit documents showing that they had paid or were under a legal

obligation to pay the fees charged by their representatives. It therefore finds no basis on which to accept that the applicants have actually incurred the costs claimed (see *Malik Babayev v. Azerbaijan*, no. 30500/11, § 97, 1 June 2017; *Merabishvili v. Georgia* [GC], no. 72508/13, § 372, 28 November 2017; and *Jafarov and Others v. Azerbaijan*, no. 27309/14, §§ 103-106, 25 July 2019). It follows that this part of the claim must be rejected.

C. Default interest

90. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 5 of the Convention in respect of the third, fourth, fifth, sixth and seventh applicants, and the complaints raised by all applicants under Articles 9, 10 and 14 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the third, fourth, fifth, sixth and seventh applicants;
3. *Holds* that there has been a violation of Article 9 of the Convention in respect of all the applicants;
4. *Holds* that there is no need to examine separately the complaint under Article 10 of the Convention;
5. *Holds* that there is no need to examine separately the complaint under Article 14 of the Convention taken in conjunction with Article 9;
6. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 103 (one hundred and three euros), plus any tax that may be chargeable, to the first applicant and EUR 96 (ninety-six euros), plus any tax that may be chargeable, to each of the third, fourth and fifth applicants in respect of pecuniary damage;

- (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, to each of the applicants in respect of non-pecuniary damage;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Síofra O'Leary
President

APPENDIX

No.	Applicant's name	Applicant's date of birth	Applicant's place of residence	Represented by
1.	Famil Zakir oglu Nasirov	1984	Lankaran	Richard Cook Andre Carbonneau Jason Wise
2.	Amina Talat gizi Mammadova	1952	Baku	Richard Cook Andre Carbonneau Jason Wise
3.	Gulnaz Mahammadali gizi Hasanova	1962	Gadabay	Richard Cook Andre Carbonneau Jason Wise
4.	Salatin Ali gizi Iskandarova	1951	Baku	Richard Cook Andre Carbonneau Jason Wise
5.	Shafiga Mahammad gizi Mammadova	1940	Baku	Richard Cook Andre Carbonneau Jason Wise
6.	Rahima Amikishi gizi Huseynova	1963	Baku	Richard Cook Andre Carbonneau Jason Wise
7.	Aygul Novruz gizi Nasirova	1984	Baku	Richard Cook Andre Carbonneau Jason Wise