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Khujand, mkr. 13
House 26, apt. 50
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September 24, 2009

To: The Ombudsman of the Republic of Tajikistan
The Honourable Zarif Alizoda

cc. Presidential Administration of the Republic of Tajikistan
Prosecutor General for the Republic of Tajikistan
Head of the OSCE Office in Tajikistan
Regional Office of the United Nations High Commissioner
for Human Rights in Kyrgyzstan

Dear Zarif Alizoda:

I am writing to respectfully request that you please take all necessary measures to uphold and protect my rights from the illegal actions of Lieutenant Colonel Saidaliev, Lieutenant Mahmadjonov, and Irkin Irkinovich Ergashev of the Khujand State Committee for National Security (“SCNS headquarters”) along with the actions of Khujand Deputy Prosecutor Muzafarov.

The actions of these officials violated my rights protected by the legislation and Constitution of the Republic of Tajikistan (Constitution) and by international treaties recognized by the Republic of Tajikistan.

I am 34 years old. I am a citizen of the Republic of Tajikistan and live in Khujand along with my wife, Takhmina, and our 3-month-old baby girl. I have been one of Jehovah’s Witnesses since 1993.

The Factual Basis of My Complaint

(i) June 8, 2009, Incident

On June 8, 2009, I was summoned by Lieutenant Mahmadjonov to report to SCNS headquarters at 1:00 p.m. that same day. When I arrived, Lieutenant Mahmadjonov and I.I. Ergashev said Jehovah’s Witnesses were “banned” in the Republic of Tajikistan and were being investigated for “extremism” and “stirring up religious hatred.” They demanded that I write a statement responding to a form they gave me. The form listed 22 questions about the religious beliefs and practices of Jehovah’s Witnesses. I was not permitted to keep a copy of the form. I recall that the list of 22 questions included the following:

- What do you know about the organization of Jehovah’s Witnesses?
- How did you become a member of the organization of Jehovah’s Witnesses?
Who is your spiritual mentor?

- Have you been involved in recruiting other citizens of Tajikistan into the organization? Who? What are their names and addresses?
- Have you attended meetings of Jehovah's Witnesses? How many people were in attendance?
- Where were these meetings held? At whose home? When? How often?
- Who was in charge of the meetings? Where does the leadership come from?
- Which Jehovah's Witnesses do you know? What are their names and addresses?
- Who do you know among the organization's leaders?
- Do you know that Jehovah's Witnesses are banned in Tajikistan? When did you find out?
- What is your view of the requirement to do military service? Do you think it is important?

I considered their questioning illegal and a violation of my right to freedom of religion and association. The statements of Lieutenant Mahmadjonov and I.I. Ergashev made it obvious that they were investigating me for a possible criminal charge simply because I was practicing my religious beliefs. I therefore declined to answer their questions.

I.I. Ergashev was enraged. While I was sitting on a chair, he repeatedly punched me with his fist on the top of my head and in my stomach, swore at me, and threatened me with imprisonment. He then said that if I did not answer all 22 questions he would force my wife, who had given birth three weeks earlier, to come to SCNS headquarters with our baby girl and require her to "stand for days with your baby in her arms" until I answered all their questions. At 5:00 p.m. Lieutenant Colonel Saidaliev came to see me. He said I need not answer all 22 questions. I reluctantly agreed to prepare a written response to some of the questions. After writing out my response, I was released shortly after 6:00 p.m. I had been detained for 5 hours (1:00 p.m. to 6:00 p.m.).

(ii) Illegal Raid of a Private Gathering of Believers, on June 4, 2009

My interrogation and detention was obviously related to the June 4, 2009, raid (at 5:30 p.m.) by approximately 11 law enforcement officials of a small group of 17 persons peacefully gathered together in the private home of Natalya Martynova, one of Jehovah's Witnesses living in Khujand. The officials forced their way into her apartment—without a search warrant—searched the apartment and seized personal religious texts and publications of those gathered. Most of the 17 persons gathered in that private home were Jehovah's Witnesses. I was not present. Approximately 10 individuals were then taken by the officials to SCNS headquarters where they were detained and interrogated until after 11:00 p.m. The officials presented the 10 individuals with a form of 22 questions about the beliefs and practices of Jehovah's Witnesses (apparently the same form presented to me on June 8, 2009) and demanded they provide written responses.

(iii) July 14, 2009, Incident

On July 13, 2009, I was again summoned by Lieutenant Mahmadjonov to appear at SCNS headquarters the following morning, July 14, 2009, at 7:30 a.m.

One hour after I arrived, Lieutenant Mahmadjonov took me by car to the office of Khujand Deputy Prosecutor Muzafarov. The Deputy Prosecutor told me he was not satisfied with my June 8, 2009, written answers and wanted me to respond to all 22 questions. He was rude and verbally abusive. He claimed I was the “leader” of Jehovah’s Witnesses in the region. He stated he would “not permit Christians to preach” in the Republic of Tajikistan, which he said was an “Islamic state.”

Three times during the interrogation, Deputy Prosecutor Muzafarov threatened he would have me charged and imprisoned. He said he was searching for evidence that Jehovah’s Witnesses were engaged in “extremism” and were inciting “interdenominational hatred.” He said he would contact the 18 registered religious groups in Khujand and asked that they provide him with their opinion on the religious publications used by Jehovah’s Witnesses.

(iv) August 2009 Incidents

The harassment and threats by local state officials in Khujand continues. In mid-August 2009, other Jehovah’s Witnesses were summoned to SCNS headquarters. I was not present. I understand that while interrogating these individuals, the state officials summoned a Mullah and family members in an effort to intimidate the detainees to provide incriminating statements against their fellow believers and to renounce their religious faith.

Jehovah’s Witnesses Are No Threat to the Republic of Tajikistan

Jehovah’s Witnesses are an internationally respected Christian religion that poses no legitimate threat to the Republic of Tajikistan. They are widely recognized as a “known religion” in the 27 countries of the European Union, the 47 countries of the Council of Europe, and most other democratic countries. They are legally registered in more than 160 countries, including many European and Asian countries with a Muslim majority, such as: Albania, Azerbaijan, Kazakhstan, Kyrgyzstan, Pakistan, and Turkey; as well as in other countries with a Muslim majority such as Bangladesh, Chad, Côte d’Ivoire, Guinea, Indonesia, Mali, Mayotte, Niger, Senegal, Sierra Leone, Sudan, and The Gambia.

The European Court of Human Rights (ECHR) in Strasbourg, France, has repeatedly confirmed Jehovah’s Witnesses are a “known religion” entitled to the protections of international law.¹ In its recent judgment in *Kuznetsov v. Russia*, the ECHR stated: “It is undeniable that the collective study and discussion of religious texts by the members of the religious group of Jehovah’s Witnesses was a recognized form of manifestation of their religion in worship and teaching.”² Attached as Annex 3 to this complaint is a list of 22 ECHR cases of the upholding the rights of Jehovah’s Witnesses to carry out their religious beliefs and practices.

¹ *Kokkinakis v. Greece*, 25 May 1993, § 31-32, Series A no. 260-A.

² *Kuznetsov v. Russia*, no. 184/02, § 53, 56-57, 11 January 2007.

The UN Human Rights Committee³ has also ruled in favor of Jehovah's Witnesses, finding that their religious beliefs and practices are entitled to protection under the human rights treaties of the United Nations.⁴

Jehovah's Witnesses are not a new religion in the Republic of Tajikistan. They have been active in the republic for more than 50 years.

My personal history is well known to local state officials. In 1993, before I became one of Jehovah's Witnesses, I was an instructor in hand-to-hand combat for the Presidential Battalion during the Civil War and was recognized by the President for my efforts to uphold and protect the Constitution of the Republic of Tajikistan. Twice I was the national boxing champion for the Republic of Tajikistan.

My subsequent studies of the Bible with Jehovah's Witnesses helped me to become peaceful and genuinely respectful towards peoples of all religions and nationalities. I do not present any threat to the Republic of Tajikistan. In fact, on May 15, 2009, three weeks before I was detained and beaten at SCNS headquarters, my family was featured on the local television program "Asia" as an example of a happy and peaceful family for residents of Khujand to imitate.

Specific Violations of My Rights

The actions of Lieutenant Colonel Saidaliev, Lieutenant Mahmadjonov, I.I. Ergashev, and Deputy Prosecutor Muzafarov, as described above, seriously violated my rights protected by the law of the Republic of Tajikistan and international treaties.

1. It was illegal for state officials to demand that I answer their questions about the religious beliefs and practices of Jehovah's Witnesses under threat of detention, imprisonment, and physical and verbal abuse:
 - a. Article 4.4 of the Law of the Republic of Tajikistan on Freedom of Conscience and Religious Associations (RT FCRA) provides that "[n]o one is obligated to disclose his attitude towards religions. No one shall be subjected to coercion when determining his attitude towards religion, towards professing a religion, towards participating or not participating in religious worship, other religious ceremonies and rituals, [and] activities of religious associations."
2. It was illegal for the state officials to beat and threaten me with imprisonment, and to threaten to humiliate my wife, Takhmina, by requiring that she "stand for days" with our baby girl until I answered their questions about the religious beliefs and practices of me and my fellow believers.
 - a. Articles 5 and 7 of the Universal Declaration of Human Rights (Universal Declaration) declare that "[n]o one shall be subjected to torture or to cruel, inhuman, or degrading treatment" and that all persons are entitled to "equal

³ The UN Human Rights Committee is a treaty-based mechanism where a group of experts examines reports and rules on individual communications pertaining only to alleged violations by State Parties of the International Covenant on Civil and Political Rights.

⁴ *Yoon et al. v. South Korea*, Human Rights Committee CCPR/C/88/D/1321-1322/2004, 1 December 2006 at paras. 2.1, 2.5, 8.3.

protection of the law.” “Torture,” as defined in Article 1 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UN Convention Against Torture) includes mental or physical suffering inflicted by state officials for the purpose of obtaining “information or a confession.” Such unlawful acts should be prosecuted criminally, as required by Article 4 of the UN Convention Against Torture.

- b. Article 4.5 of RT FCRA provides that state officials may not “hinder the exercise of the right to freedom of conscience and religion, including by use of force against a person [and] by intentionally offending citizens’ sentiments in connection with their attitude towards religion.”
3. The ongoing investigation by state officials of my religious beliefs and practices and their threat to charge me criminally for peacefully practicing my religious faith, has unjustifiably violated my rights.
 - a. RT FCRA regulates the activities of “religious associations”; it does not regulate the activities of individual believers. Article 4.1 of RT FCRA guarantees that individual believers have “the right to profess, individually or jointly with others, any religion, or to profess no religion, to freely choose, disseminate and change religious or other beliefs, as well as to act in harmony with them.” That same right is guaranteed by Article 26 of the Constitution, by Article 18 of the Universal Declaration, and by Article 18 of the International Covenant of Civil and Political Rights (ICCPR)
 - b. Although Jehovah’s Witnesses in the Republic of Tajikistan currently do not have an operating registered religious organization and therefore do not enjoy all the benefits that flow from having a registered organization (such as charity status and the right to own property), the RT FCRA, Constitution, and international treaties recognized by the Republic of Tajikistan all guarantee the rights of individual citizens to manifest their religious beliefs without state interference.

Furthermore, on April 2, 2009, Ambassador Nuriddin Shamsov, Head of the Delegation for Tajikistan, told the OSCE Permanent Council Meeting that the RT FCRA “does not specifically declare that religious communities must have registration to be able to function.”

In the same official statement, Ambassador Shamsov told the OSCE Permanent Council Meeting that Jehovah’s Witnesses are among the “religious minorities” in the republic deserving of respectful and tolerant treatment by the state. Ambassador Shamsov’s official statement reads:

The Constitution of Tajikistan provides for freedom of religion and the Government respects this right in practice. . . .

My Government [is] taking efforts to ensure religious tolerance and, is making efforts to deal respectfully with [a] wide-range groups of religious minorities, such as Orthodox and Catholic Christians, Baptists, Seven-day Adventists, Jehovah’s Witnesses, Lutherans, Korean protestants, Bahai’s, Zoroastrians and Krishnaites.

On July 10, 2009, Ambassador Shamsov repeated the above official statements in his submissions on behalf of the Republic of Tajikistan to the OSCE Supplementary Human Dimension Meeting on Freedom of Religion or Belief.

4. It was illegal for Deputy Prosecutor Muzafarov to threaten me with criminal responsibility for discussing my religious beliefs with friends and neighbours in Khujand and to threaten that he would “not permit Christians to preach” in the republic, which he claimed is an “Islamic state.”
 - a. The Republic of Tajikistan is a secular state. Articles 1, 17 and 26 of the Constitution and Articles 4.2 and 5.2 of the RT FCRA guarantee that all religious beliefs and faiths, including minority Christian religions such as Jehovah’s Witnesses, are entitled to the equal benefit and protection of the law.
 - b. Article 4.1 of the RT FCRA guarantees “the right to . . . freely choose, disseminate and change religious or other beliefs as well as to act in harmony with them.” That same right is guaranteed by Article 26 of the Constitution, Article 18 of the Universal Declaration, and Article 18 of the ICCPR.
 - c. The UN Human Rights Committee in General Comment No. 22 on Article 18 of the ICCPR states at paragraphs 2 and 4:

Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community. . . .

In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.

I would be pleased to meet with you in person to provide further details on the above violation of my rights. I respectfully request that you please take all necessary measures to uphold and protect my rights under the legislation and Constitution of the Republic of Tajikistan and under international treaties accepted by the Republic of Tajikistan.

With deep respect,

[original signed]

Zafar Rahimov

Appendix

1. *Kokkinakis v. Greece*, 25 May 1993, § 31-32, Series A no. 260-A.
2. *Kuznetsov v. Russia*, no. 184/02, § 53, 56-57, 11 January 2007.

3. List of Decisions of the ECHR Recognizing Jehovah's Witnesses as a "Known Religion" and Upholding Their Beliefs and Practices.
4. Statement of the Head of the Delegation of Tajikistan, Ambassador Nuriddin Shamsov, at the OSCE Permanent Council Meeting No. 757 on April 2, 2009.
5. Statement of the Head of the Delegation of Tajikistan, Ambassador Nuriddin Shamsov, at the OSCE Supplementary Human Dimension Meeting on Freedom of Religion or Belief on July 10, 2009.
6. UN Human Rights Committee, General Comment No. 22 on Article 18 of the ICCPR.



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

COURT (CHAMBER)

CASE OF KOKKINAKIS v. GREECE

(Application no. 14307/88)

JUDGMENT

STRASBOURG

25 May 1993

29. The applicant did not only challenge what he claimed to be the wrongful application to him of section 4 of Law no. 1363/1938. His submission concentrated on the broader problem of whether that enactment was compatible with the right enshrined in Article 9 (art. 9) of the Convention, which, he argued, having been part of Greek law since 1953, took precedence under the Constitution over any contrary statute. He pointed to the logical and legal difficulty of drawing any even remotely clear dividing-line between proselytism and freedom to change one's religion or belief and, either alone or in community with others, in public and in private, to manifest it, which encompassed all forms of teaching, publication and preaching between people.

The ban on proselytism, which was made a criminal offence during the Metaxas dictatorship, was not only unconstitutional, Mr Kokkinakis submitted, but it also formed, together with the other clauses of Law no. 1363/1938, "an arsenal of prohibitions and threats of punishment" hanging over the adherents of all beliefs and all creeds.

Mr Kokkinakis complained, lastly, of the selective application of this Law by the administrative and judicial authorities; it would surpass "even the wildest academic hypothesis" to imagine, for example, the possibility of a complaint being made by a Catholic priest or by a Protestant clergyman against an Orthodox Christian who had attempted to entice one of his flock away from him. It was even less likely that an Orthodox Christian would be prosecuted for proselytising on behalf of the "dominant religion".

30. In the Government's submission, there was freedom to practise all religions in Greece; religious adherents enjoyed the right both to express their beliefs freely and to try to influence the beliefs of others, Christian witness being a duty of all Churches and all Christians. There was, however, a radical difference between bearing witness and "proselytism that is not respectable", the kind that consists in using deceitful, unworthy and immoral means, such as exploiting the destitution, low intellect and inexperience of one's fellow beings. Section 4 prohibited this kind of proselytism - the "misplaced" proselytism to which the European Court referred in its *Kjeldsen, Busk Madsen and Pedersen v. Denmark* judgment of 7 December 1976 (Series A no. 23, p. 28, para. 54) - and not straightforward religious teaching. Furthermore, it was precisely this definition of proselytism that had been adopted by the Greek courts.

A. General principles

31. As enshrined in Article 9 (art. 9), freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It 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.

While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to "manifest [one's] religion". Bearing witness in words and deeds is bound up with the existence of religious convictions.

According to Article 9 (art. 9), freedom to manifest one's religion is not only exercisable in community with others, "in public" and within the circle of those whose faith one shares, but can also be asserted "alone" and "in private"; furthermore, it includes in principle the right to try to convince one's neighbour, for example through "teaching", failing which, moreover, "freedom to change [one's] religion or belief", enshrined in Article 9 (art. 9), would be likely to remain a dead letter.

32. The requirements of Article 9 (art. 9) are reflected in the Greek Constitution in so far as Article 13 of the latter declares that freedom of conscience in religious matters is inviolable and that there shall be freedom to practise any known religion (see paragraph 13 above). Jehovah's Witnesses accordingly enjoy both the status of a "known religion" and the advantages flowing from that as regards observance (see paragraphs 22-23 above).

33. The fundamental nature of the rights guaranteed in Article 9 para. 1 (art. 9-1) is also reflected in the wording of the paragraph providing for limitations on them. Unlike the second paragraphs of Articles 8, 10 and 11 (art. 8-2, art. 10-2, art. 11-2) which cover all the rights mentioned in the first paragraphs of those Articles (art. 8-1, art. 10-1, art. 11-1), that of Article 9 (art. 9-1) refers only to "freedom to manifest one's religion or belief". In so doing, it recognises that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected.

34. According to the Government, such restrictions were to be found in the Greek legal system. Article 13 of the 1975 Constitution forbade proselytism in respect of all religions without distinction; and section 4 of Law no. 1363/1938, which attached a criminal penalty to this prohibition, had been upheld by several successive democratic governments notwithstanding its historical and political origins. The sole aim of section 4 was to protect the beliefs of others from activities which undermined their dignity and personality.

35. The Court will confine its attention as far as possible to the issue raised by the specific case before it. It must nevertheless look at the foregoing provisions, since the action complained of by the applicant arose from the application of them (see, *mutatis mutandis*, the *de Geouffre de la*



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

FIRST SECTION
(as composed before 1 April 2006)

CASE OF KUZNETSOV AND OTHERS v. RUSSIA

(Application no. 184/02)

JUDGMENT

STRASBOURG

11 January 2007

FINAL

11/04/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

B. Case-law of the Supreme Court of the Russian Federation

50. On 30 July 1999 a deputy President of the Supreme Court ruled on the complaint brought by the local authorities of Kaluga against an elder of the local community of Jehovah's Witnesses who had allegedly failed to give notice of a religious meeting to the local authorities:

“...according to the Russian Law on freedom of conscience and religious associations, the phrase 'without obstruction' means that no permission from, or clearing of the matter with, the secular authorities is required for performing religious ceremonies on premises provided [for that purpose].”

51. On 14 August 2001 a deputy President of the Supreme Court ruled on a similar complaint brought by the authorities of Kislovodsk against a Jehovah's Witness in connection with an allegedly unauthorised religious gathering:

“According to Article 16 of the Russian Federation Law on freedom of conscience and religious associations, religious services and other religious rites and ceremonies can take place without any interference... in other places made available to religious organisation for that purpose... Therefore, the local religious organisation was not required to inform the State authority of its gathering.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 8, 9, 10 AND 11 OF THE CONVENTION

52. The applicants complained under Articles 8, 9, 10 and 11 of the Convention that on 16 April 2000 they had been prevented from having a religious meeting without undue interference on the part of the authorities.

53. The Court notes that the main purpose of the applicants' gathering on 16 April 2000 was to join in Biblical study and public worship. In doing so they undeniably exercised their rights to freedom of expression and to freedom of peaceful assembly under Articles 10 and 11 of the Convention. That being said, since the nature of the assembly was primarily religious and the participants belonged to the religion of the Jehovah's Witnesses (see *Thlimmenos v. Greece* [GC], no. 34369/97, § 42, ECHR 2000-IV), the Court will first examine this complaint from the standpoint of Article 9 of the Convention, which reads 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. Whether there has been interference

1. Arguments by the parties

54. The Government claimed, firstly, that the applicants had failed to produce – in the domestic proceedings or before this Court – any evidence in support of their allegation that the meeting had been disrupted. In their submission, Mr Kuznetsov, confronted with the request to produce documents demonstrating the lawfulness of the community meeting, realised that “the meeting should not be held” and indicated to the congregation that the meeting should end. The Government also asserted that the founding documents of the Jehovah's Witnesses religious organisations did not provide for the forms of worship mentioned by the applicants – a “worship meeting” or “religious meeting”.

55. The applicants pointed to the overwhelming body of evidence submitted to the domestic courts, including statements by independent witnesses such as the college principal, to the effect that the meeting of their congregation had been disrupted following the arrival of the Commissioner and her aides. There was no requirement in law to demonstrate the lawfulness of the meeting or to show that it was “necessary” or “should be held”. In any event, Mr Kuznetsov had never made an admission of the kind alleged by the Government. The Government's attempts to reverse the burden of proof notwithstanding, it was incumbent on the intervening authorities to show that the meeting had been unlawful, which they had been unable and failed to do. As to the form of the meeting in question, the applicants considered that its actual form – be it a rite, ceremony, prayer, hymn or other liturgy – was of no relevance for the legal analysis of the alleged violation.

2. The Court's assessment

56. 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. It 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. While religious freedom is primarily a matter of individual

conscience, it also implies, *inter alia*, freedom to “manifest [one's] religion”. Bearing witness in words and deeds is bound up with the existence of religious convictions (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 114, ECHR 2001-XII, and *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, § 31).

57. The Court further reiterates that Article 9 of the Convention protects acts of worship and devotion which are aspects of the practice of a religion or belief in a generally recognised form (see *C. v. the United Kingdom*, no. 10358/83, Commission decision of 15 December 1983, Decisions and Reports 37, p. 142). It is undeniable that the collective study and discussion of religious texts by the members of the religious group of Jehovah's Witnesses was a recognised form of manifestation of their religion in worship and teaching. Thus, the applicants' meeting on 16 April 2000 attracted the protection of Article 9 of the Convention.

58. The Government claimed that there had been no interference since the applicants had interrupted the meeting on their own initiative, once their attention had been drawn to the fact that they did not have the appropriate documents for holding it. The Court considers that this claim is not borne out by the materials produced before it.

59. There is nothing in the parties' submissions to indicate that the religious meeting would have been wound up ahead of time had it not been for the arrival of the Commissioner and her aides. The Government did not furnish any alternative explanation or reason for the early termination of the applicants' meeting. The Court therefore considers that there was a causal link between their arrival at the site and the disruption of the meeting.

60. It is not contested that the command to halt the meeting was given by Mr Kuznetsov, who had gone on stage and indicated, in sign language, that the police wanted the meeting to end (see paragraph 29 above). However, in so doing, he was relaying the demand of the senior police inspector, Mr Lozovyagin, who had told him that the meeting could not be continued without the appropriate documents (see paragraphs 27 and 33 above). It further appears that neither Mr Lozovyagin nor any other person in the Commissioner's team mastered sign language. For that reason they were unable to communicate directly with the audience, which consisted mostly of profoundly deaf applicants. The Court notes the testimony of the applicant Ms Lappo in the domestic proceedings. She is not hearing-impaired and witnessed an exchange between the Commissioner and one of her aides, who claimed to be unable to stop the meeting because the participants were “deaf mutes” (see paragraph 25 above). The Commissioner then told Mr Kuznetsov to disperse the gathering. The Court finds that in these circumstances Mr Kuznetsov merely acted as a medium of communication, passing on the Commissioner's order.

61. The Court further recalls that the responsibility of a State under the Convention may arise for acts of all its organs, agents and servants, even

List of Decisions of the European Court of Human Rights
Recognizing Jehovah's Witnesses As a "Known Religion" and
Upholding Their Beliefs and Practices

RUSSIA	<i>Kuznetsov v. Russia</i> , no. 184/02, 11 January 2007
	<i>Faizov v. Russia</i> , no. 19820/04, 15 January 2009
GEORGIA	<i>Members (97) of the Gldani Congregation of Jehovah's Witnesses v. Georgia</i> , no. 71156/01, ECHR 2007-V
BULGARIA	<i>Stefanov v. Bulgaria</i> (friendly settlement), no. 32438/96, 3 May 2001
	<i>Khristiansko Sdruzhenie "Svideteli na Iehova" (Christian Association Jehovah's Witnesses) v. Bulgaria</i> , no. 28626/98, Commission decision of 3 July 1997, Decisions and Reports 90, p. 77
AUSTRIA	<i>Hoffmann v. Austria</i> , 23 June 1993, Series A no. 255-C
	<i>Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria</i> , no. 40825/98, 31 July 2008
	<i>Löffelmann v. Austria</i> , no. 42967/98, 12 March 2009
	<i>Gütl v. Austria</i> , no. 49686/99, 12 March 2009
	<i>Lang v. Austria</i> , no. 28648/03, 19 March 2009
GREECE	<i>Kokkinakis v. Greece</i> , 25 May 1993, Series A no. 260-A
	<i>Manoussakis and Others v. Greece</i> , 26 September 1996, <i>Reports of Judgments and Decisions</i> 1996-IV
	<i>Efstathiou v. Greece</i> , 18 December 1996, <i>Reports of Judgments and Decisions</i> 1996-VI
	<i>Valsamis v. Greece</i> , 18 December 1996, <i>Reports of Judgments and Decisions</i> 1996-VI
	<i>Georgiadis v. Greece</i> , 29 May 1997, <i>Reports of Judgments and Decisions</i> 1997-III
	<i>Tsirlis and Kouloumpas v. Greece</i> , 29 May 1997, <i>Reports of Judgments and Decisions</i> 1997-III
	<i>Pentidis and Others v. Greece</i> , 9 June 1997, <i>Reports of Judgments and Decisions</i> 1997-III
	<i>Tsavachidis v. Greece</i> (striking out) [GC], no. 28802/95, 21 January 1999
	<i>Thlimmenos v. Greece</i> [GC], no. 34369/97, ECHR 2000-IV
	<i>Andoniadis v. Greece</i> , no. 10803/04, 6 July 2006
FRANCE	<i>Palau-Martinez v. France</i> , no. 64927/01, ECHR 2003-XII
	<i>Paturel v. France</i> , no. 54968/00, 22 December 2005

НАМОЯНДАГИИ ДОИМИИ
ҶУМҲУРИИ ТОҶИКИСТОН
ДАР НАЗДИ САҲА



PERMANENT MISSION OF
THE REPUBLIC OF
TAJIKISTAN
TO THE OSCE

**Statement of the Head of Delegation of Tajikistan
Ambassador Nuriddin Shamsov at the OSCE Permanent Council
Meeting № 757 on April 2, 2009**

*In Response to European Union and United States
Statements on Tajikistan Law on Freedom of Conscience
and Religious Associations*

Madam Chairperson,

Delegation of Tajikistan thanks the European Union's and the delegation of United States interest regarding the new Law of the Republic of Tajikistan on Freedom of Conscience and Religious Associations adopted recently. HE the President Emomali Rahmon signed the Law on March 25, 2009 and it will enter into force after official publication. Before adoption the draft Law was discussed actively with the OSCE Advisory Council on Freedom of Religion or Belief and representatives of all religious communities as well as many parts of proposed recommendations were accepted by Tajik lawmakers.

The Constitution of Tajikistan provides for freedom of religion and the Government respects this right in practice. The previous Law of Tajikistan on Religion and Religious Associations was established on December 1, 1994 and amended in 1977. Since that time Tajikistan has gone through crucial and substantial changes in the socio-political and social-economic life of the Country. Explaining the motivation for the Law, the Government of Tajikistan strongly believes that it is needed to consolidate civil society, address current challenges and combat religious radicalism and nihilism.

The new Law provides the right of individuals to choose religion and practice their religion of choice, affirms the equality of all faiths before the Law, non-interference of the State in religious community's activity, the right of religious communities to manage their own affairs and select their leadership and the rights of individuals and religious communities to conduct worship, teach religion and use religious literature.

The Law does not specifically declare that religious communities must have registration to be able to function.

Tajikistan, where Muslims represent 95 % of inhabitants based mostly on Hanafi Islamic tradition. Giving tribute to great role of Imomi A'zam in the history of Islam Tajikistan this year celebrates 1310 of his birth. My Government taking efforts to ensure religious tolerance and, is making efforts to deal respectfully with wide-range groups of religious minorities, such as Orthodox and Catholic Christians, Baptists, Seven-day Adventists, Jehovah's Witnesses, Lutherans, Korean protestants, Bahai's , Zoroastrians and Krishnaitis. In accordance with information provided by the Ministry of Culture, Christian missionaries from Western countries, Korea, India and elsewhere are present in Tajikistan and functioning freely.

Regarding the Jewish Community, I have to note that a new building of Synagogue has been recently donated by Tajikistan authorities to the city's Jewish congregation in the center of Dushanbe. As it was stated by local Rabbi, he and his community believe the new Synagogue is an improvement over the old one. The opening of one of the World modern Ismailit Cultural Centers in my capital is on the way also.

On March 30, 2009 the Government of Tajikistan organized round-table discussions on the new Law with representatives of relevant state institutions, religious organizations and leading mass-media. I assure you that the issue of religious conscience and freedom will remain on the agenda of open dialogue between my Government and it's partners, in particular the European Union and the OSCE.

Thank you, Madam Chairperson.

НАМОЯНДАГИИ ДОИМИИ
ҶУМҲУРИИ ТОҶИКИСТОН
ДАР НАЗДИ САҲА



ENGLISH only
**PERMANENT MISSION OF THE
REPUBLIC OF TAJIKISTAN
TO THE OSCE**

**Statement of the Head of Delegation of Tajikistan
Ambassador Nuriddin Shamsov at the OSCE Supplementary Human
Dimension Meeting on Freedom of Religion or Belief
on 10 July, 2009**

*In response to United States Delegation
Statement on status of Religious or Belief Communities
Session 1*

Chairperson,

I thank Delegation of United States interest regarding status of religious or belief communities and Law of the Republic of Tajikistan on Freedom of Conscience and Religious Associations adopted recently. We recall that before adoption the draft Law was discussed actively with the OSCE Advisory Council on Freedom of Religion or Belief and representatives of all religious communities as well as many parts of proposed recommendations were accepted by Tajik lawmakers.

The Constitution of Tajikistan offers a more tolerant stance regarding religious freedom and provides for freedom of religion. Government respects this right in practice. The previous Law of Tajikistan on Religion and Religious Associations was established on December 1, 1994 and amended in 1977. Since that time Tajikistan has gone through crucial and substantial changes in socio-political and socio-economic life of the Country. Regarding motivation for new Law, Government of Tajikistan strongly believes that it is needed to consolidate civil society, address current challenges and combat religious radicalism and nihilism.

New Law provides the right of individuals to choose religion and practice their religion of choice, affirms the equality of all faiths before the Law, non-interference of the State in religious community's activity, the right of religious communities to manage their own affairs and select their leadership, rights of individuals and religious communities, to conduct worship, teach religion and use religious literature. The Law does not specifically declare that religious communities must have registration to be able to function.

Tajikistan, where Muslims represent 95 % of inhabitants based mostly on Hanafi Islamic tradition. Giving tribute to great role of Imomi A'zam in the history of Islam Tajikistan this year celebrates 1310 of his birth. My Government is making efforts to ensure religious tolerance and to treat respectfully with wide-range groups of religious minorities, such as Orthodox and Catholic Christians, Bapists, Seven-day Adventists, Jehovah's Witnesses, Lutherans, Korean protestants, Bahai's , Zoroastrians and Krishnaitis. In accordance with information provided by the Ministry of Culture, Christian missionaries from Western countries, Korea, India and elsewhere are present in Tajikistan and functioning freely.

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Government of Tajikistan continues arrangement of several round-table discussions on new Law together with representatives of state institutions, religious communities and leading mass-media. I assure you that the issue of religious conscience and freedom will remain on the agenda of open dialogue between my Government and it's partners, in particular United States, European Union and the OSCE.

Thank you, Chairperson.



General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18) : . 30/07/93.
CCPR/C/21/Rev.1/Add.4, General Comment No. 22. (General Comments)

Convention Abbreviation: CCPR

GENERAL COMMENT 22

The right to freedom of thought, conscience and religion

(Article 18)

(Forty-eighth session 1993)

1. The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4.2 of the Covenant.
2. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.
3. Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19.1. In accordance with articles 18.2 and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief.
4. The freedom to manifest religion or belief may be exercised "either individually or in community with others and in public or private". The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or headcoverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily

spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.

5. The Committee observes that the freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief. Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are similarly inconsistent with article 18.2. The same protection is enjoyed by holders of all beliefs of a non-religious nature.

6. The Committee is of the view that article 18.4 permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way. The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18.4, is related to the guarantees of the freedom to teach a religion or belief stated in article 18.1. The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

7. In accordance with article 20, no manifestation of religion or belief may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. As stated by the Committee in its General Comment 11 [19], States parties are under the obligation to enact laws to prohibit such acts.

8. Article 18.3 permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States parties' reports should provide information on the full scope and effects of limitations under article 18.3, both as a matter of law and of their application in specific circumstances.

9. The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any

impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26. The measures contemplated by article 20, paragraph 2 of the Covenant constitute important safeguards against infringement of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by articles 18 and 27, and against acts of violence or persecution directed towards those groups. The Committee wishes to be informed of measures taken by States parties concerned to protect the practices of all religions or beliefs from infringement and to protect their followers from discrimination. Similarly, information as to respect for the rights of religious minorities under article 27 is necessary for the Committee to assess the extent to which the right to freedom of thought, conscience, religion and belief has been implemented by States parties. States parties concerned should also include in their reports information relating to practices considered by their laws and jurisprudence to be punishable as blasphemous.

10. If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.

11. Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service. The Committee invites States parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under article 18 and on the nature and length of alternative national service.



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**Office of the United Nations High Commissioner for Human Rights
Geneva, Switzerland**