

**LEGAL FRAMEWORK, PRACTICAL SITUATION AND
RECOMMENDATIONS IN CONNECTION WITH
RELIGIOUS MATERIALS**

(In the context of freedom of conscience and freedom of expression)

RESEARCH PAPER



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SUMMARY

This paper aims to define the legal framework on religious materials, examine its correspondence with the articles 9 and 10 of the European Convention on Human Rights (ECHR), along with the case law of the European Court of Human Rights (ECtHR), prepare a package of recommendations to eliminate voids in the legislation and shortcomings in practice revealed by the monitoring. The report based on the conclusions determined through a special methodology and application of various monitoring tools covers the following:

The **introduction** of the paper is dedicated to general condition of religious materials in the country, existing problems on this, endeavours of international organizations to solve these problems. It also informs about adopted international norms on this issue. The research revealed that, despite numerous international norms creating obligations on freedoms of conscience and expression for the state, there are significant problems in connection with religious materials under the framework of these freedoms.

The further part of the paper is dedicated to the legislation analysis. During the analysis the legislation and sublegislative norms on religious materials, problems arising from application of these laws and causes creating these problems were investigated. Relevant recommendations were prepared for elimination of these problems. During the legislation analysis the voids and contradictions in law were underlined, comparisons with the international norms, to which Azerbaijan is a party, were carried out and the names of these norms were mentioned. Principles and standards envisaged by the articles 9 and 10 of the ECHR (adopted in 1950) are benchmarks for analysis of the national legislation.

The analysis revealed that, the relevant legislative acts, particularly the **Law on freedom of religious belief** and other normative legal acts adopted for its application, are not in line with the Constitution and the relevant international norms, to which Azerbaijan is a party, in majority of the circumstances. This causes violation of human rights.

A number of tools were applied at the monitoring phase to determine the problems existing in practice. These tools are **official inquiries addressed to the corresponding state structures, information received from the religious communities, from the experts on this topic, from lawyers and human rights defenders and facts covered in the media**. Along with that, it is referred to the national and international reports.

We sent inquiries to three state structures (the Ministry of Internal Affairs, the State Customs Committee, the State Committee on Religious Associations), but only two of them responded to us – the State Customs Committee and the State Committee on Religious Associations (SCRA).¹

To our inquiry about titles of religious literature which was prohibited from being imported into the country between 01.01.2017 and 12.11.2017 the State Customs Committee responded that, it could not provide a third party with such information due to confidentiality. The response of SCRA was similar. The Committee responded to our inquiry on import of religious books for the purpose of production, selling and distribution in Azerbaijan, selling and distribution of which is prohibited, that, since this information is for internal use only, it cannot be shared with a third party. We shall note that, none of these grounds are compatible with the articles 15, 22 and 24 of

¹ https://drive.google.com/file/d/1_EnBBkMC_5m7PCJkc2coIvWfTstzbDtz/view?usp=sharing

the Law on Access to Information. Since the state structures refused to answer our questions, we have referred to information in the media.

Information from the religious communities was taken through survey questionnaires. Various questions are included in these surveys. We can conclude from their answers to our questions that, the Muslim communities of Azerbaijan are not engaged in publishing, importing and distributing of religious literature in the country. Printing, publishing and importing of books on Islam is carried out by various persons and selling points. The religious communities, which face problems with import and publishing of books, are Jehova's Witnesses and Christian Baptists. Independent of their religious affiliation, all religious communities are facing serious problems with important, publishing, distribution and selling of religious literature.

We have used information from experts, jurists, lawyers and victims in connection with this topic. This information reveals that, the courts usually decide against the citizens, when they face problems arising from religious materials. This is caused by legislative voids, absence of alternative independent expertise and absence of impartiality of courts.

The final conclusions and recommendations are reflected in the end of the report. These recommendations are aimed to upgrade the legislation and eliminate shortcomings in practice.

INTRODUCTION

International Law

The European Court states in the case of *Kokkinakis v. Greece* that, freedoms of thought, conscience, religion and belief are one of the pillars of a democratic society². Access to religious literature, their distribution, production, selling is covered by these freedoms. People feel a need for various literature, items and accessories in connection with their beliefs and ideas. For example, a Jew might want to wear kippah to express himself, while a Christian might feel a need to wear a crucifix for the same reason. It is possible that, these needs arise from religion. Or Shia Muslims use muhr stones during prayers, Muslim women wear hijab during prayers. Therefore, limiting of a conduct of religious rituals for a Muslim in any way can be considered an intervention to his/her freedom of conscience and freedom of expression.

The resolutions of the UN Commission on Human Rights³ and Human Rights Council⁴ state that, freedoms of conscience, religion and belief cover a right to "prepare, produce and distribute relevant publications" in connection with religions. The General Comment 22 of the Commission on Human Rights notes that, a freedom to prepare and distribute religious texts by religious groups is within the concept of "application or teaching of religion or belief"⁵.

² Kokkinakis v. Greece, judgements of 25 may 1993, Series A, no 260-A, p. 17, para. 31

³ Commission on Human Rights resolution 2005/40 (paragraph 4 (d))

⁴ Human Rights Council Resolution 6/37 (paragraph 9(g)) where States are urged "[t]o ensure, in particular, [. . .] the right of all persons, to write, issue and disseminate relevant publications in these areas"

⁵ General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18): . 07/30/1993. CCPR/C/21/Rev.1/add.4, para. 4

Azerbaijan's practice

Legislative prohibitions on import of religious materials coincide with the period when the religious situation in the country started getting tenser. In 2009, when Baku was declared a capital of the Islamic Culture, 3 mosques were destroyed under the pretext of being “illegal constructions”⁶. According to the state officials, documents of those mosques were not in order⁷. Whereas, the relevant state structures could have easily provided those mosques with necessary documentation and legalize them.

On that year amendments made to the Law on Freedom of Religious Belief severely limited the possibilities for religious activity. These amendments prohibited those, who have received religious education abroad to conduct religious ceremonies in Azerbaijan⁸ (mitigated⁹).

Despite not being envisaged by the Constitution or other legislative acts, since 2010 an unofficial prohibition of students wearing hijab coming to schools was established¹⁰. Protests against this prohibition were held in the country¹¹ and abroad¹². Dozens of participants of these protests were arrested¹³.

Another amendment to the law in December, 2011 aggravated punishments for selling of religious materials¹⁴. Previously illegal selling of religious materials envisaged only administrative punishment – a fine between 200 AZN and 400 AZN. After this amendment an administrative punishment for the same action was abolished and a criminal liability was established. Fine punishment was changed into deprivation of liberty. From then on perpetrators would face a prison term of up to 5 years.

The local organization Media Rights Institute noted in its statement in connection with these amendments that, “a law envisaging harsh criminal sanctions for producing of religious literature, items and other informative materials of religious nature, their import with a purpose of selling, distribution or importing, their selling and distribution without relevant authorization is a serious threat for freedom of expression in the country¹⁵.”

Another local human rights organization DEVAMM (Center for Protection of Freedom of Religious Belief and Conscience) assessed this step as biased and baseless.¹⁶

⁶ <https://az.trend.az/azerbaijan/society/1492012.html>

⁷ <https://az.trend.az/azerbaijan/society/1468391.html>

⁸ Law of the Republic of Azerbaijan No. 841-IIIQD dated June 30, 2009 (Azerbaijan Newspaper 22 July 2009, 158, Legislative Assembly of the Republic of Azerbaijan, 2009, 07, art. 512)

⁹ Law of the Republic of Azerbaijan No. 29-VQD dated December 4, 2015 (Azerbaijan Newspaper, 06 December 2015, 269, Legislative Assembly of the Republic of Azerbaijan, 2015, 12, Article 1443)

¹⁰ <https://www.youtube.com/watch?v=Xjig1w0Puxg>

¹¹ <https://www.youtube.com/watch?v=ho799DNVtxU>

¹² https://www.youtube.com/watch?v=1fnSo_81dFs

¹³ <https://docs.rferl.org/az-AZ-Latn/2014/08/31/fe73dd1b-7a24-4d85-bfb2-02f2adcb172e.pdf>

¹⁴ Law of the Republic of Azerbaijan No. 14237-IVQD ("Republic" newspaper, December 13, 2011, No. 269, "Azerbaijan" newspaper, 14 December 2011, No. 276, Legislative Code of the Republic of Azerbaijan, 2011, No 12, Article 1093)

¹⁵ <https://www.azadliq.org/a/24422600.html>

¹⁶ <https://www.azadliq.org/a/24420217.html>

The European Commission against Racism and Intolerance (ECRI) stated in the Other Issues Concerned with Religious Freedoms part of its 2011 report that, the SCRA allows import of religious literature in smaller quantities than necessity of religious communities.¹⁷ In the 2016 report they have stated the necessity of changing the general attitude of the state structures in connection with religious freedom:

“...Until the entering into force of the necessary legal amendments the authorities should interpret and apply the current legislation in conformity with the binding standards of Articles 9 and 14 ECHR in particular and the case law of the ECtHR and refrain from police raids, arrests and criminal sentences, where there is no clear indication that such limitations to the freedom of religion are necessary in a democratic society”¹⁸.

In the 2016 international report of the USA on condition of religious freedom it is stated that, the US Ambassador and the Embassy officials have continued to call the government officials, along with the high ranking officials of the SCRA to solve longstanding issues in connection with registration of religious structures and eliminate obstacles in connection with import and publishing of literature of religious nature¹⁹.

United States Commission on International Religious Freedom (USCIRF) stated in its 2017 report that, there are problems in connection with religious literature in Azerbaijan and proposed its recommendations to the US government for solution of this problem.²⁰

In its 2012 report Human Rights Watch stressed that, the legislation of Azerbaijan on religious materials limits freedom of religion.²¹

Broad analysis of the Law on Freedom of Religious Belief was reflected in the joint opinion of the Venice Commission of 2012 and necessary recommendations were proposed to the government.²²

It is regretful that, despite attempts of local and international organizations, constraints in connection with legislation on religious materials still exist. For example, it has been quite long since books of a Turkish cleric Said Nursi have been prohibited from being brought to the country.²³ Sometimes we witness in the media that, the Ministry of Internal Affairs have found and confiscated such literature as a criminal item from various places during its operations.²⁴ These books are prohibited in the neighbouring Russian Federation as well.²⁵

In the case of *Yedinoe Dukhovnoye Upravleniye Musulman Krasnoyarskogo Kraya v. Russia* the European Court concluded that, there were no grounds to prohibit these books.²⁶ According to the result of European Court examination, books of Said Nursi do not have content calling for

¹⁷ <https://www.coe.int/t/dghl/monitoring/ecri/country-by-country/azerbaijan/AZE-CbC-IV-2011-019-AZE.pdf>

¹⁸ <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Azerbaijan/AZE-CbC-V-2016-017-AZE.pdf>

¹⁹ <https://az.usembassy.gov/az/2016-ci-ildə-dini-azadlığın-vəziyyətinə-dair-beynəlxalq-hesabat/>

²⁰ <https://www.uscirf.gov/sites/default/files/Azerbaijan.Azeri%20translation.pdf>

²¹ <https://www.hrw.org/az/world-report/2013/country-chapters/259896>

²² [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)022-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)022-e)

²³ <https://apa.az/xeber-az/dini-xeberler/risaleyi-nur-azerbaycanda-2012-ci-ilin-sonundan-qadagan-olunub-video.html>

²⁴ http://www.bbc.com/azeri/azerbaijan/2014/04/140414_baku_gulenists_operation

²⁵ <https://www.osce.org/odihr/106483?download=true>

²⁶ Concerning a case pending before the ECtHR and the controversy over whether Said Nursi's writings foster hostility and hatred for non-believers see *Yedinoe Dukhovnoye Upravleniye Musulman Krasnoyarskogo Kraya v. Russia*, No. 28621/11, lodged on 4 April 2011.

violence, fanaticism, xenophobia, religious discrimination. Based on this decision we can consider the decision of SCRA on Said Nursi's books illegal and groundless.

In his video appeal made on 8 February 2018 the Islam theologian Elshad Miri claimed that, publishing of his "It does not exist in Islam" book was prohibited by SCRA²⁷. He considered this decision to be groundless and biased and sued the organization.

It shall be noted that, this is not the first case of SCRA being sued. One case in connection with ban to import religious literature to the country with respect to Jehowa's Witnesses is in the European Court. The applicants appealed to the SCRA to bring the book into the country in line with the national legislation. But the committee did not consider all the requested literature to be eligible²⁸.

LEGISLATION ANALYSIS

The Constitution of the Republic of Azerbaijan

According to the article 12.2 of the Constitution, Rights and liberties of a person and citizen listed in the present Constitution are implemented in accordance with international treaties wherein the Republic of Azerbaijan is one of the parties²⁹. From this we can conclude that, if the national legislation has determined different rules in comparison with international treaties on human rights to which Azerbaijan is a party, the norms of international treaties take precedence.

In other words, the Constitution necessitates the legislation on religious materials being in line with the relevant norms of the international law.

The law on freedom of religious belief

According to the article 22 of this law, it is allowed with permission of the relevant executive authority, to manufacture, import, export and freely distribute literature, audio and video materials, goods and items of religious purposes and other informational materials of religious content³⁰. Independent of its content (religious or not), publishing, importing, selling and distributing any "literature" and "other information materials" is one of the forms of exercise of freedom of expression. According to the article 10 of the European Convention, this right can be subject to limitations envisaged by law and necessary for functioning democratic society³¹. Azerbaijan has ratified the European Convention, one of the most important international treaties on human rights in December, 2001³². By this it has accepted the responsibility to ensure the rights enshrined in this Convention and its protocols within its jurisdiction, including the right to freedom of expression and freedom of conscience, the jurisdiction of the European Court, along with the applicability of the case-law of the Court connected to the Convention in the country. According to the European Court, in order for the intervention to be applicable to the principle of necessity in a democratic society, it must be proportionate with the sought for legitimate aim and persistent

²⁷ <https://www.youtube.com/watch?v=M8TSAz2uqSY>

²⁸ <https://www.azadliq.org/a/28870221.html>

²⁹ <http://www.e-qanun.az/framework/897>

³⁰ <http://www.e-qanun.az/framework/7649>

³¹ <http://www.e-qanun.az/framework/1405>

³² Legislative Code of the Republic of Azerbaijan No. 03 Date Published Date 31-03-2002 Article number 113

social pressure for this shall exist³³. The requirement to ask for permission in advance envisaged by law is censorship in essence and is not proportionate to a legitimate aim. It is possible to prevent literature, which can cause discord in the society with elements of hate speech, violence, xenophobia, through courts. This is a reasonable, successful kind of solution, which is in line with the principles of a democratic society. Pay attention to this: such harsh restrictions and control is only with respect to religious literature. Legislatively identifying religion as the most dangerous topic in the society does not only fail to connect with the principle of necessity in a democratic society, on the contrary it weakens the atmosphere of confidence between the citizens and the state in the society.

The UN Human Rights Committee have stated that,

“the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts [...]; the practice and teaching of a religion or belief includes [...] the freedom to prepare and distribute religious texts or publication”³⁴.

Similarly the UN General Assembly have also called the states to ensure the rights of all citizens to prepare, publish and distribute relevant publications on this topic (religion or belief)³⁵. Also, the OSCE Vienna Final Act (1989) determines that, the OSCE member states shall respect the rights of religious persons and communities to have access to sacred books and religious publications [...], articles and materials on application of religion or belief, possess them and use them and allow religious people, organizations and structures to produce, import and distribute religious publications and materials³⁶.

The law having unclear notions such as “literature of religious direction”, “items of religious direction”, “other information materials with a religious content” causes questions in connection with the quality of the law and legality of its application. Normative notions were not bestowed upon these terms, which cause violation of the principle of legal certainty. This in its turn can lead to arbitrariness and independence of discretion in application of law. The term religious literature shall be explained to the society – sometimes religious issues are touched upon in non-religious literature. The criteria of literature falling under this law shall be clarified.

Based on various thoughts and ideas, we can doctrinally explain the term “literature with religious direction” as literature having religious content directed at fulfilling religious needs and beliefs of people. In these books religious ceremonies, their conduct procedures are explained, information about theories, schools of thought, religious dogmas and comments on them, knowledge about creation and development of religions, thoughts and ideas of prominent clerics, along with other information with religious content are reflected.

The article 7.8 of the Statute on the State Committee on Religious Affairs provides that, ensuring of conduct of theologian examination of religious literature, items and other information materials with religious content is among the duties of the Committee.³⁷

³³ Handyside v. United Kingdom, 5493/72, 07.12.1976, § 49

³⁴ Par. 4 of the UN Human Rights Committee CCPR General Comment no. 22, Article 18

³⁵ Par. 10 letter “c” of the UN General Assembly Resolution 62/157 on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (adopted on 18 December 2007)

³⁶ OSCE Vienna Concluding Document (1989), paragraphs 16.9 and 16.10.

³⁷ Statute on the The State Committee on Religious Associations of the Republic of Azerbaijan (approved by the Decree of the President of the Republic of Azerbaijan No 544 of 20 July 2001, No. 544)

According to the article 29 of the Law on freedom of religious belief, the Religious Committee provides conduct of religious studies expertise, attracts to this representatives and relevant experts of religious institutions. The question here is how good the approach envisaged by this norm is. If religious literature enters the academic sphere, then existence of various interpretations is natural and unavoidable. These interpretations can be contrary to thoughts of majority of the society.

In the case of *Handyside v. United Kingdom* the European Court expressed that, expressing and spreading opinion is one of the fundamental pillars of a democratic society, freedom of expression is not only about revealing information and thoughts, which are harmless, unimportant and easily accepted, it also envisages thoughts not shared by the state and the society, thoughts, which can trouble or shock them. Prohibiting publishing and import of literature for merely being against the thoughts of some experts and part of the society can be considered to be a constraint of academic freedoms and censorship to freedom of expression and conscience.

Another violation is absence in legislation of alternative structure, which could possibly dispute the opinion of the Religious Committee at a judicial level and examine this opinion. In current practice when the opinion of the Religious Committee on a religious material is disputed at a judicial level, the examination of this material is conducted by experts from the Committee again. This violates *the principle of impartiality* and causes suspicion to *objectivity and independence* of the examination.

According to the paragraph 3 of the article 22 of the Law, *Sale of literature (on paper and electronic media), audio and video materials, articles and items of religious purposes and other informational materials of religious content, marked with holographic sticker, shall be carried out only in specialized points of sale, formed with permission of the relevant executive authority*. This requirement causes serious questions in the context of the articles 9 and 10 and possibility of justifying it as necessitated by a democratic society is under suspicion. On the other hand, since it is easily possible to find literature with any content on the Internet and it is virtually impossible to prevent this, the functionality of this norm is under question.

Analysis of the article 167-2 of the Criminal Code

By 2011 amendments to the law the articles 300.0.1 and 300.0.2 were removed from the Code of Administrative Offences, merged and added as an article 167-2 to the Criminal Code³⁸. The Code of Administrative Offences envisaged fines from 200 AZN to 400 AZN for distribution of literature, items and information materials with religious content without authorization of a relevant executive authority. This provision was added to the Code of Administrative Offences in 2009³⁹. According to the new provision, the same action would be punished with a fine of 5000-7000 AZN or up to 2 years of deprivation of liberty, if the same actions are carried out by a group of people, who have made the planning in advance or carried out by an organized group or if this action was carried out again, then it would be punished with a fine of 7000-9000 AZN or up to 5 years of deprivation of liberty. It is evident that, an administrative offence causing 200 AZN of

³⁸ Law of the Republic of Azerbaijan No. 237-IVQD ("Respublika" newspaper, December 13, 2011, No. 269)

³⁹ https://azertag.az/xeber/azərbaycan_respublikasının_cinayət_macallasına_inzibati_xəttə_macallasına_va_cinayət_prosesual_macallasına_alavələri_va_dəyişikliklərin_edilməsi_haqqında_azərbaycan_respublikasının_qanunu-443182

fine suddenly changed into a crime punished by such a menacing measure as prison term of up to 5 years.

The statistics show that, fines have not been applied or rarely applied for selling of religious literature and items within this period. Also the law does not mention “*for selling of literature prohibited by a court decision being in legal force*”. Had it been written like this, then a responsibility for violating the court decision in legal force would have been somewhat understandable. Also such harsh punishment for this violation, which is not very dangerous, is inadequate.

According to the logic of this norm, if a pious person coming back from Hajj pilgrimage, wants to buy a rosary as a gift to his/her dear people, he/she needs to ask for permission and if such permission is not given, then this person might expect criminal prosecution under the article 167-2 of the Criminal Code. From this perspective, application of a permission system for production, import and distribution of such items for having religious content shall be considered an unsuccessful approach (in current practice distribution of these items does not require permission in almost any country).

We think that, there is not need for authorization for *items of religious direction*, which is envisaged by law, since those items are in public circulation for mainly commercial purposes and do not play a significant role in religious propaganda, spreading of a socially harmful idea through them is not realistic. In general, envisaging of a criminal liability for actions envisaged under the article 167-2 of the Criminal Code being carried out without authorization in another norm is mistaken. There is a criminal liability envisaged under the article 283 of the Criminal Code for propaganda of the relevant content. An administrative liability for production, import and distribution of those items with prior authorization would have been a sufficient measure.

MEETINGS WITH COMMUNITIES

We carried out meetings with religious communities in Baku and a number of other regions of the country in connection with the topic. According to the information we received from the community of one of the most attended mosques of Baku Mashadi Dadash, the religious community is not engaged in publishing, distribution and selling of books. The community stated that, importing, selling and publishing of literature on Islam happens through personal initiative. Another option is stores selling religious literature being interested in this. Our further research confirmed these claims of the community.

To our questions the Mirili village community of Imishli district responded that, the need for books in the village is met through books brought from Baku.

Pious people regularly attending the largest mosque of Shaki, the Juma Mosque told us that, there is a serious problem with bringing books to the country from abroad, there is a ban on translations of Koran being published in Turkish or Russian, its interpretations and books about religion from Turkey and Iran. Similar situation is with regards to the books from Iran.

According to our information received from a number of stores selling religious books in Baku the importing and selling of the following books is prohibited: Comments of Baghdad Scholars (author: Magafil-Ibn Atiyya), Together with the Righteous (author: Mahammad Tijani Samavi), Nights of Pishavari (author: Seyid Mahammad Musavi-Shirazi), Wahhabism between Two Roads

(author: Sheikh Nasir Makarin Shirazi), Wahhabi Faction (author: Seyid Mahammad Hasan Gazvini), Who is the Prophet's Viceroy? (author: Ahmed Asadnajat), In the Western Religion – until Ashura (author: Seyid Kazim Parpanji), the Jamal War (author: Jasar Subhani), Pain of Sin (author: Hashim Rasuli), Century of Apparition (author: Ali Kuranu), Shias and Unjustified Accusations (author: Seyid Sadig Shirazi). These books are in the list of most radical and dangerous religious publications⁴⁰.

Court Experience

It is evident from the research that, there has not been a case of suing the Religious Committee in connection with religious materials linked to Islam. The most recent story on this is concerned with the theologian Elshad Miri, who stated on 8 February 2018 that, he would sue the Religious Committee for not allowing to publish his book called *It Does Not Exist in Islam*⁴¹. Later we contacted E.Miri and it became evident that, his complaint would be reviewed at the Baku Administrative-Economic Court in April.

The only case of suing for not being allowed to bring religious books into the country was made by the community of Jehowa's Witnesses. This religious community, which has had problems with importing religious literature of their preference, failed to win in all of the internal court instances. After that, the community appealed to the European Court,⁴² the communication in connection with the complaint has been completed and the decision is being expected. There is a ban on import of the following books linked to this confession: *Modern People of Jehowa*, *Sacred Book – the Old Testament*, *Watchtower*, *Jehowa declares the Kingdom of God*.

According to information received from the lawyer Yalchin Imanov he had been to a number of court proceedings in connection with illegal religious literature during the period of his work as a licensed lawyer. He claimed that, followers of the Turkish cleric Said Nursi, who were arrested in April, 2014 in Baku under the pretext of illegal distribution of religious literature, became victims of political conjuncture⁴³. The lawyer stated that, these persons were deprived from their liberty under the influence of arrests against supporters of Fathullah Gulen in Turkey after a failed coup attempt in 2015 in Turkey. They had no relations with Fathullah Gulen and their arrest was politically motivated.

Y.Imanov stated that, the journalist Nijat Aliyev was arrested under the article 167-2.2.1 of the Criminal Code (illegal distribution of religious literature), which was also unjustified⁴⁴. The Religious Committee presented an opinion about books found in Nijat Aliyev's house (*A Miracle without a Miracle – every child of God can create it by Arshad Azimzada*; *Men, who met Imam Zaman by Ismayil Ahmadov and Hamasayi Huseyni*; *Heroics of Imam Hussain by Shahid Murtaza Mutahhari*) that those are religious literature and this opinion was added to the criminal case. Whereas the first book is dedicated to methods of treatment of various illnesses and is absolutely not a religious book and in general all of these three books are sold openly in bookstores.

⁴⁰ <http://m.apa.az/az/dini-xeberler/azerbaycanda-qadagan-olunmus-en-tehlukeli-dini-edebiyatlarin-siyahisi-aciqlanib-ekskluziv-video>

⁴¹ <https://www.youtube.com/watch?v=M8TSAz2uqSY>

⁴² <https://www.azadliq.org/a/28870221.html>

⁴³ <https://www.azadliq.org/a/27293451.html>

⁴⁴ <https://www.irfs.org/az/news-feed/journalist-nijat-aliyev-sentenced-to-10-years-in-prison/>

The lawyer Fariz Namazli stated that, the police planted two religious books in Russian and Turkish to the house activists Elgiz Gahraman arrested in 2016 during a search in his house, but later no charges were made in connection with these books⁴⁵. The forensic examination stated an opinion that, those books are not forbidden religious. According to F.Namazli, they are still unaware why those books were planted in Elgiz's house and why relevant charges were not brought forwards against him. The lawyer said that, in that period arrests linked to FETO were being made in Azerbaijan.

Another person, who has had problems with religious materials, is the alumnus of the Theology Faculty of the Baku State University Zaka Miraghayev. In June, 2012 the Ministry of National Security, which was later abolished, and the officers of the Police Station 18 carried out a search in his house, took away religious books without compiling any document. Mainly the books by Said Nursi were taken from his house. Z.Miraghayev stated that, those books have not been returned to him yet. The claims of Z.Miraghayev were not satisfied by the internal court instances and his case is currently in the European Court.

CONCLUSIONS

The main conclusion of the monitoring was that, main problems in connection with religious materials arise from the existing legislation. There is a need to update the legislation on religious materials, make relevant amendments and fill the voids. Punishments envisaged by law in connection with this sphere are extremely harsh. There is a need to soften these laws, decriminalize punishments for publishing, distribution and selling of religious books without authorization of the Religious Committee. Necessary international norms for establishment of a legal basis in this sphere do exist. These norms are both universal and regional documents. Relevant documents adopted in the framework of the European Court, in connection with obligations arising from membership of Azerbaijan to the Council of Europe, International Covenant on Civil and Political Rights, UN's Universal Declaration of Human Rights ratified by Azerbaijan, bilateral and multilateral inter-state treaties, national norms of states, which are parties to these documents allows creating of national institutions to apply and oversee application of these norms. The norms adopted within international and national frameworks create responsibilities for states and their governments to protect human rights. States shall conduct regulatory measures or create relevant service structures to regulate legislator issues. These measures are not limited just by creation of relevant normative legal basis and establishment of relevant structures. Unification and coordination of potential of various state institutions is a necessary precondition for any success in this sphere.

During the conducted monitoring it was determined that, one of the main reasons behind increased tension in the religion sphere is distance between the state and the religious citizens. Changes to legislation were not accompanied by learning of thoughts of representatives of religious communities and civil society. This led to exacerbation of problems instead of their solution.

⁴⁵ <https://www.amerikaninsesi.org/a/hebs/3677826.html>

RECOMMENDATIONS

1. State having margin of appreciation shall not be understood as being allowed to freely harm the essence of values connected to human rights. As mentioned in the Constitution, *no provision of the Constitution can be interpreted as a provision directed at abolishing of human and citizen rights and freedoms*. This principle shall be applied to the rest of the legislation as well.

2. The Law on Religious Beliefs has a number of restrictive provisions contrary to the international standards. Along with that, provisions regulating the coverage of law, beneficiaries of freedom of religion and conscience, the part on publishing and distribution of religious materials shall also be updated to meet international standards.

2.1. The law has an uncertain terminology and this situation may lead to arbitrary application of the Law. Notions used in this article (for example, “literature of religious direction” and “items and materials of religious direction”) are very vague and not in line with the legislative act. Mentioned terms shall be changed with more concrete terminology relevant to the law or shall be abolished.

2.2. The article 22 of the Law on Religious Beliefs shall be reformulated to ensure legal certainty and predictability.

2.3. The paragraphs 2 and 3 of the article 22 of the Law are contrary to the principles of international human rights. It is recommended to remove these paragraphs.

3. Harsh constraints in connection with production, import, export, free distribution and selling of religious literature, items and other materials by persons and religious organizations shall be eliminated.

4. The legislation does not envisage an alternative independent examination of religious materials. According to the existing practice, if the opinion of the SCRA on religious materials is disputed in court, then the representatives of the Committee are called for an additional examination. This leads to violation of the principle of impartiality and causes suspicion to fairness and independence of the examination. This issue needs to be solved.

5. The article 167-2 of the Criminal Code is contrary to the international principles of human rights. The article 283 of the Criminal Code envisaged criminal liability for propaganda of the aforementioned nature. Along with that, points mentioned in the paragraph 8 also refer to this. Therefore it is recommended to abolish the article 167-2.

6. Detailed recommendations of the Parliamentary Assembly of the Council of Europe and OSCE shall be applied. Close cooperation with local and international civil society shall be established in this direction.