



## International Covenant on Civil and Political Rights

Distr.: General  
11 October 2016

Original: English

### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2227/2012\*, \*\*

<i>Communication submitted by:</i>	Akmurat Halbayewich Yegendurdyew (represented by counsel, Shane H. Brady)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Turkmenistan
<i>Date of communication:</i>	3 September 2012 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 7 December 2012 (not issued in document form)
<i>Date of adoption of Views:</i>	14 July 2016
<i>Subject matters:</i>	Conscientious objection to compulsory military service; inhuman and degrading treatment; conditions of detention
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Freedom of conscience; inhuman and degrading treatment; conditions of detention
<i>Articles of the Covenant:</i>	7, 10 and 18 (1)
<i>Article of the Optional Protocol:</i>	5 (2) (b)

\* Adopted by the Committee at its 117th session (20 June-15 July 2016).

\*\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez Rescia, Fabián Omar Salvioli, Yuval Shany and Margo Waterval.



1. The author is Akmurat Halbayewich Yegendurdyew, a national of Turkmenistan born on 9 January 1990 in Dashoguz, Turkmenistan. He claims to be the victim of a violation of his rights under articles 7 and 18 (1) of the International Covenant on Civil and Political Rights. Although the author did not invoke article 10 of the Covenant specifically, the communication also appears to raise issues under that provision. The Covenant and the Optional Protocol entered into force for the State party on 1 May 1997. The author is represented by counsel.

### **Factual background**

2.1 The author, who has been a Jehovah's Witness since 2006, was first called by the Military Commissariat to perform compulsory military service in November 2008. In compliance with the summon, he met with representatives of the Dashoguz Military Commissariat and explained orally and in writing that his religious beliefs did not permit him to perform military service. His call to serve was deferred for six months. In May 2009, the author was summoned again by the Military Commissariat, to which he once more explained that he was not able to perform military service because his faith did not allow him to take part in any kind of military activity.

2.2 On 17 July 2009, the author was charged under article 219 (1) of the Criminal Code by the Boldumsaz District Prosecutor's Office. On 29 July 2009, the Boldumsaz District Court convicted the author for evading military service and sentenced him to 18 months' imprisonment, based on article 219 (1) of the Criminal Code. The Court stated that, according to the evidence gathered, including several testimonies and a report from the Boldumsaz District Military Commissariat indicating that the author was declared medically fit to perform military service, he was guilty of violating article 219 (1) of the Criminal Code. The author was arrested in the court room and taken to the Dashoguz remand prison. He has never been charged with any other criminal or administrative offence.

2.3 On 18 August 2009, the Dashgouz Regional Court dismissed the author's appeal.<sup>1</sup> It indicated that a review of all the evidence before it proved that the author had refused to perform military service without any legal basis and confirmed the author's conviction. The author's mother prepared a supervisory appeal to be submitted to the Supreme Court, alleging that the Regional Court's decision violated her son's rights, as established in the Universal Declaration of Human Rights and the State party's Constitution, which stipulates that every person shall have the right to practice his or her religion and observe the customs associated to it. However, the administrators of Dashoguz prison refused to provide the author with the supervisory appeal so that he could sign it. As a result, the period to submit the appeal expired. On 22 September 2009, the author's mother filed an application with the Prosecutor General requesting to renew the period for submitting the appeal to the Supreme Court. The request was granted and she was able to file the appeal before the Supreme Court. A decision of the Supreme Court has not, however, been received.

2.4 The author was transferred to LBK-12 prison, located near the town of Seydi, Lebap region, in the desert of Turkmenistan. While in detention, as a Jehovah's Witness, the author was singled out for harsh treatment. Immediately upon his arrival at the prison, he was placed in quarantine for 10 days. While held in quarantine, the author was beaten three times by other detainees under the order of the prison's guards. He was then placed in the prison's general colony, where he was falsely accused of violating the prison's rules. As a consequence, he was put in a concrete punishment cell three times, for as long as one month the third time. The conditions in the cell were deplorable, as there was no toilet, only

---

<sup>1</sup> The date of the appeal has not been provided.

an open plastic bucket, and nowhere to wash his hands. The author claims that while he was in the punishment cell he was beaten by officers of the Special Police Forces, who tried to force him to renounce to his faith. He also claims that he was forced to work although he was exhausted and that he was denied any contact with other Jehovah's Witnesses detained in the same colony.

2.5 On 29 January 2011, the author completed his sentence and was released. He was requested to report to the police department for six months.<sup>2</sup> He went to the police department twice, but stopped when he learned that article 219 (1) of the Criminal Code, for which he had been sentenced, did not contain a provision on probation. At the time of submitting his communication, the author was facing the prospect of being called up again for military service and of being imprisoned as a conscientious objector.

2.6 The author alleges that he was subjected to torture and ill-treatment while detained. He states that filing a complaint with the prison administration or other State agency for serious acts of mistreatment would only serve to expose him to harsh retaliation and further physical abuse. He maintains that there is no effective domestic remedy available for him to complain about the "inhuman or degrading treatment or punishment" suffered while in detention. He refers to the concluding observations of the Committee against Torture on Turkmenistan, in which the Committee noted the lack of an independent and effective complaint mechanism in the State party for receiving and conducting impartial and comprehensive investigations into allegations of torture, in particular of prisoners and pretrial detainees (see CAT/C/TKM/CO/1, para. 11).

2.7 In relation to the alleged violation of his rights under article 18 (1) of the Covenant, the author submits that the national courts tasked with conducting trials and considering appeals and the Supreme Court have never ruled in favour of a conscientious objector to military service.<sup>3</sup> These facts — together with the Government's repeated rejection of international appeals to provide alternatives to military service that would be compatible with the reasons for conscientious objection and to release imprisoned conscientious objectors — confirm that no domestic remedy is available in Turkmenistan for conscientious objectors to military service to challenge their criminal prosecution, conviction and imprisonment. The author therefore maintains that prior to submitting his communication to the Committee he had exhausted all available domestic remedies concerning the alleged violation of article 18 (1) of the Covenant.

2.8 The author has not submitted his communication to any other procedure of international investigation or settlement.

### **The complaint**

3.1 The author claims that his imprisonment on account of his religious beliefs in itself constituted inhuman or degrading treatment within the meaning of article 7 of the Covenant.

3.2 He also claims a violation of article 7 of the Covenant on account of the treatment he received while in detention, which amounted to torture and ill-treatment (see paras. 2.4 and 2.6 above), and of the conditions of imprisonment at LBK-12 prison. He refers to the

---

<sup>2</sup> The author did not indicate how often he had to report to the police department.

<sup>3</sup> In other communications by conscientious objectors involving Turkmenistan (e.g. communication No. 2222/2012), it is argued that the national courts of Turkmenistan have never ruled in favour of a conscientious objector to military service. In the cases of six other authors (Navruz Nasyrlyayev, Zafar Abdullayev, Matkarim Aminov, Mahmud Hydaybergenov, Shadurdy Uchetov and Dovran Bahramovich Matyakubov), all appeals filed were rejected, confirming the argument.

concluding observations of the Committee against Torture, in which the Committee expressed concern regarding ongoing physical abuse and psychological pressure by prison staff in Turkmenistan, including collective punishment, ill-treatment as a “preventive” measure, the use of solitary confinement and sexual violence and rape by prison officers or inmates (see CAT/C/TKM/CO/1, para. 18). The author refers to the jurisprudence of the European Court for Human Rights<sup>4</sup> and to the report of the Turkmenistan Independent Lawyers Association of February 2010, in which it was noted that LBK-12 prison is situated in a desert where temperatures fall to minus 20 degrees Celsius in the winter and rise to 50 degrees Celsius in the summer. The prison is overcrowded and prisoners with tuberculosis and skin diseases are kept together with healthy inmates, putting the author at a high risk of infection. Although the author does not invoke it specifically, the communication also raises issues under article 10 of the Covenant.

3.3 The author also claims that his prosecution, conviction and imprisonment for refusing to perform compulsory military service because of his religious beliefs and conscientious objection have violated his rights under article 18 (1) of the Covenant.<sup>5</sup> He notes that he repeatedly informed the Turkmen authorities that he was willing to fulfil his civic duties by performing genuine alternative service, but that the State party’s legislation does not provide such alternative.

3.4 The author requests the Committee to direct the State party to: (a) acquit him of the charges under article 219 (1) of the Criminal Code and to expunge his criminal record; (b) provide him with appropriate compensation for the non-pecuniary damages suffered as a result of his convictions and imprisonment; and (c) provide him with appropriate monetary compensation for his legal expenses, in accordance with article 2 (3) of the Covenant.

#### **State party’s observations on admissibility and the merits**

4. On 17 March 2014, the State party reported that the author’s case, among others, had been carefully considered by the relevant law enforcement bodies of Turkmenistan and no reason had been found to appeal the court decision. According to the State party, the criminal offence committed by the author had been determined accurately according to the Criminal Code of Turkmenistan. It further notes that, according to article 41 of the Constitution, “protection of Turkmenistan is the sacred duty of every citizen” and that general conscription is compulsory for male citizens. In addition, the author “did not meet the criteria of persons to be exempted from military service as provided for under article 18 of the Law on Military Duty and Military Service”.<sup>6</sup>

---

<sup>4</sup> See, e.g., *Kolesnik v. Russia*, application No. 26876/08, judgment of 17 June 2010, paras. 68-69 and 72, in which the Court concluded that an extradition order to Turkmenistan for criminal prosecution subjected the applicant in that case to “serious risk” of being subjected to torture or inhuman or degrading treatment or punishment. The following factors were taken into account: credible and consistent reports from various reputable sources of widespread torture, beatings and use of force against criminal suspects by Turkmen law enforcement authorities, as well as very poor conditions of detention.

<sup>5</sup> See, e.g., communication No. 1853-1854/2008, *Atasoy and Sarkut v. Turkey*, Views adopted on 29 March 2012, paras. 10.4 and 10.5.

<sup>6</sup> Article 18 of the Law on Military Duty and Military Service, as amended on 25 September 2010, stipulates that the following citizens shall be exempted from military service: (a) those who have been declared unfit for military service for health reasons; (b) those who have performed military service; (c) those who have performed military or another form of service in the armed forces of another State in accordance with the international agreements entered into by Turkmenistan; (d) those who have been convicted twice of committing a minor crime or convicted of a crime of medium gravity, a grave

### **Author's comments on the State party's observations**

5.1 On 14 May 2014, the author submitted his comments on the State party's observations. He argues that the State party did not contest any of the facts set out in his communication. The only attempted justification raised by the State party is its assertion that the author was convicted and imprisoned as a conscientious objector to military service because he "did not qualify" for an exemption from military service under article 18 of the State party's Law on Military Duty and Military Service. The author considers that the State party's observations show total disregard for its commitments under article 18 of the Covenant and the Committee's jurisprudence, which upholds the right to conscientious objection to military service. Furthermore, the State party does not contest the author's allegations that he has suffered inhuman and degrading treatment at the hands of law enforcement officers and prison officers, contrary to article 7 of the Covenant.<sup>7</sup>

5.2 The author requests that the Committee conclude that his prosecution, conviction and imprisonment violate his rights under articles 7 and 18 (1) of the Covenant and reiterates his request for remedies (see para. 3.4 above).

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 Before considering any claims contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol.

6.2 The Committee notes, as required by article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement.

6.3 The Committee further recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.<sup>8</sup> The Committee notes the author's submission that there are no effective remedies available to him in the State party with regard to his claims under articles 7, 10 and 18 (1) of the Covenant, and that he considers that he has exhausted the available domestic remedies with the decisions of the Boldumsaz District Court and the Dashoguz Regional Court as concerns his conviction and sentence as a conscientious objector. The Committee further notes the State party's assertion of 17 March 2014 that the author's case had been carefully considered by the relevant law enforcement bodies of Turkmenistan and no reason had been found to appeal the court decision, and that it has not contested the author's argumentation concerning the exhaustion of domestic remedies. In

---

crime or an especially grave crime; (e) citizens with an academic degree, approved in accordance with the legislation of Turkmenistan; (f) the sons or brothers of those who have died as a result of carrying out military duties during military service or military training; and (g) the sons or brothers of those who, as a result of a disease contracted as a consequence of a wound or as a result of injury or contusion, have died within one year from the day of discharge from military service (after completion of military training) or of those who, as a result of performing military service, have become disabled during military service or military training.

<sup>7</sup> See, e.g., communication No. 1449/2006, *Umarova v. Uzbekistan*, Views adopted on 19 October 2010, para. 8.3.

<sup>8</sup> See, e.g., communication No. 2097/2011, *Timmer v. Netherlands*, Views adopted on 24 July 2014, para. 6.3.

these circumstances, the Committee considers that in the present case it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

6.4 The Committee considers that the author's claims raising issues under articles 7, 10 and 18 (1) of the Covenant are sufficiently substantiated for the purposes of admissibility, declares them admissible and proceeds to an examination of the merits.

*Consideration of the merits*

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

7.2 The Committee takes note of the author's claim that he was ill-treated while detained in in LBK-12 prison, where he was singled out for harsh treatment for being a Jehovah's Witness. The Committee notes the author's claim that he was put in quarantine for 10 days upon his arrival and that he was beaten three times by other detainees under the order of the prison's guards. The Committee also takes note of the author's claim that he was falsely accused of breaking the prison rules and that, as a consequence, he was put in a concrete punishment cell three times, for as long as one month the third time. The Committee also notes that during those periods the author was beaten by officers of the Special Police Forces, who tried to force him to renounce to his faith. The Committee further notes the author's allegation regarding the lack of adequate mechanisms for investigation of torture and ill-treatment in the State party and recalls that complaints of ill-treatment must be investigated promptly and impartially by the competent authorities.<sup>9</sup> The Committee notes that the State party has not refuted the allegations of torture and ill-treatment, nor provided any information in that respect. In the circumstances of the present case, the Committee considers that due weight must be given to the author's allegations. Accordingly, the Committee concludes that the facts as presented reveal a violation of the author's rights under article 7 of the Covenant.

7.3 The Committee notes the author's claims concerning the deplorable prison conditions at LBK-12 prison, including the placement upon arrival in quarantine for 10 days, the harsh climatic conditions that the author was exposed to during an extremely hot summer and an extremely cold winter, and the poor hygiene conditions of the punishment cell where the author was sent on three occasions, as there was no toilet, only an open plastic bucket, and nowhere to wash his hands. The Committee also notes the author's claim that LBK-12 prison is overcrowded and that prisoners with tuberculosis and skin diseases are kept together with healthy inmates, putting him at a high risk of contracting tuberculosis. The Committee further notes the author's claims that he was always monitored when in LBK-12 prison and that he was not allowed to associate freely with other Jehovah's Witnesses who were in the same prison. The Committee notes that the allegations were not contested by the State party and that they are consistent with the findings of the Committee against Torture in its most recent concluding observations with regard to the State party (see CAT/C/TKM/CO/1, para. 19). The Committee recalls that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty, and that they must be treated in accordance with, inter alia, the United Nations Standard Minimum Rules for the Treatment of Prisoners.<sup>10</sup> In the absence of any other pertinent information on file, the Committee decides that due weight must be given to the author's allegations. Accordingly, the

---

<sup>9</sup> See the Committee's general comment No. 20 (1992) on the prohibition of torture and cruel treatment or punishment.

<sup>10</sup> See, e.g., communications No. 1520/2006, *Mwamba v. Zambia*, Views adopted on 10 March 2010, para. 6.4 ; and No. 2218/2012, *Abdullayev v. Turkmenistan*, Views adopted on 25 March 2015, para. 7.3.

Committee finds that confining the author in such conditions constitutes a violation of his right to be treated with humanity and with respect for the inherent dignity of the human person under article 10 (1) of the Covenant.<sup>11</sup>

7.4 The Committee further notes the author's claim that his rights under article 18 (1) of the Covenant have been violated owing to the absence in the State party of an alternative to compulsory military service, as a result of which his refusal to perform military service on account of his religious conscience led to his criminal prosecution and subsequent imprisonment. The Committee takes note of the State party's submission that the criminal offence committed by the author was determined accurately according to the Criminal Code of Turkmenistan, that pursuant to article 41 of the Constitution the "protection of Turkmenistan is the sacred duty of every citizen" and that general conscription is compulsory for male citizens.

7.5 The Committee recalls its general comment No. 22 (1993) on freedom of thought, conscience and religion, in which it considers that the fundamental character of the freedoms enshrined in article 18 (1) is reflected in the fact that this provision cannot be derogated from even in times of public emergency, as stated in article 4 (2) of the Covenant. The Committee recalls its prior jurisprudence, according to which, although the Covenant does not explicitly refer to a right of conscientious objection, such a right derives from article 18, inasmuch as the obligation to be involved in the use of lethal force may seriously conflict with the freedom of thought, conscience and religion.<sup>12</sup> The right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if such service cannot be reconciled with that individual's religion or beliefs. The right must not be impaired by coercion. A State may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside the military sphere and not under military command. The alternative service must not be of a punitive nature. It must be a real service to the community and compatible with respect for human rights.<sup>13</sup>

7.6 In the present case, the Committee considers that the author's refusal to be drafted for compulsory military service derives from his religious beliefs and that the author's subsequent conviction and sentence amounted to an infringement of his right to freedom of thought, conscience and religion, in breach of article 18 (1) of the Covenant. In this context, the Committee recalls that the repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibits the use of arms, is incompatible with article 18 (1) of the Covenant.<sup>14</sup> It also recalls that, during the

<sup>11</sup> See, e.g., communications No. 1530/2006, *Bozbey v. Turkmenistan*, Views adopted on 27 October 2010, para. 7.3; *Abdullayev v. Turkmenistan*, para. 7.3; No. 2221/2012, *Mahmud Hidaybergenov v. Turkmenistan*, Views adopted on 29 October 2015, para. 7.3; No. 2222/2012, *Ahmet Hidaybergenov v. Turkmenistan*, Views adopted on 29 October 2015, para. 7.3; and No. 2223/2012, *Japparow v. Turkmenistan*, Views adopted on 29 October 2015, para. 7.3.

<sup>12</sup> See communications No. 1321/2004 and No. 1322/2004, *Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Korea*, Views adopted on 3 November 2006, para. 8.3; No. 1786/2008, *Jong-nam Kim et al. v. Republic of Korea*, Views adopted on 25 October 2012, para. 7.3; *Atasoy and Sarkut v. Turkey*, paras. 10.4 and 10.5; No. 2179/2012, *Young-kwan Kim et al. v. Republic of Korea*, Views adopted on 15 October 2014, para. 7.4; *Abdullayev v. Turkmenistan*, para. 7.7; *Mahmud Hidaybergenov v. Turkmenistan*, para. 7.5; *Ahmet Hidaybergenov v. Turkmenistan*, para. 7.5; and *Japparow v. Turkmenistan*, para. 7.6.

<sup>13</sup> See communications No. 1642-1741/2007, *Min-Kyu Jeong et al. v. Republic of Korea*, Views adopted on 24 March 2011, para. 7.3; *Jong-nam Kim et al. v. Republic of Korea*, para. 7.4; *Abdullayev v. Turkmenistan*, para. 7.7; and *Mahmud Hidaybergenov v. Turkmenistan*, para. 7.5; *Ahmet Hidaybergenov v. Turkmenistan*, para. 7.5; and *Japparow v. Turkmenistan*, para. 7.6.

<sup>14</sup> See *Min-Kyu Jeong et al. v. Republic of Korea*, para. 7.4; *Jong-nam Kim et al. v. Republic of Korea*, para. 7.5; *Young-kwan Kim et al. v. Republic of Korea*, para. 7.4; *Atasoy and Sarkut v. Turkey*,

consideration of the State party's initial report submitted under article 40 of the Covenant, it had expressed its concern that the Law on Military Duty and Military Service, as amended on 25 September 2010, did not recognize a person's right to exercise conscientious objection to military service and did not provide for any alternative military service, and recommended that the State party, inter alia, take all measures necessary to review its legislation with a view to providing for alternative service (see CCPR/C/TKM/CO/1, para. 16). Accordingly, the Committee finds that, by prosecuting and convicting the author for refusing to perform compulsory military service owing to his religious beliefs and conscientious objection, the State party has violated his rights under article 18 (1) of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under articles 7, 10 (1) and 18 (1) of the Covenant.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is also obligated, inter alia, to impartially, effectively and thoroughly investigate the author's claims of violations of article 7; to prosecute any person or persons found to be responsible of committing those violations; to expunge the author's criminal record; and to provide him with adequate compensation. The State party is under an obligation to avoid similar violations of the Covenant in the future. In that connection, the Committee reiterates that the State party should revise its legislation in accordance with its obligation under article 2 (2), in particular the Law on Military Duty and Military Service, as amended on 25 September 2010, with a view to ensuring the effective guarantee of the right to conscientious objection under article 18 (1) of the Covenant.<sup>15</sup>

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

---

para. 10.4; *Abdullayev v. Turkmenistan*, para. 7.8; *Mahmud Hidaybergenov v. Turkmenistan*, para. 7.6; *Ahmet Hidaybergenov v. Turkmenistan*, para. 7.6; and *Japparow v. Turkmenistan*, para. 7.7.

<sup>15</sup> See communications No. 2019/2010, *Poplavny v. Belarus*, Views adopted on 5 November 2015, para. 10; and No. 1992/2010, *Sudalenko v. Belarus*, Views adopted on 27 March 2015, para. 10.