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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3285/2019**, ***

Communication submitted by:	Rashid Ruzimatov (first author), Irina Kakabaeva (second author) and Rakhim Ruzimatov (third author) (represented by counsel, Karina Moskalenko and Marina Makarova)
Alleged victims:	The authors
State party:	Turkmenistan
Date of communication:	9 July 2018 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 10 April 2019 (not issued in document form)
Date of adoption of Views:	26 October 2022
Subject matter:	Prohibition on leaving Turkmenistan
Procedural issue:	Lack of cooperation by the State party
Substantive issues:	Freedom of movement – own country; privacy; family rights
Articles of the Covenant:	12 and 17
Article of the Optional Protocol:	1

1. The authors of the communication, Rashid Ruzimatov (referred to in the present communication as the first author), his wife Irina Kakabaeva (referred to as the second author) and their son Rakhim Ruzimatov (referred to as the third author) are nationals of Turkmenistan and the Russian Federation, born in 1951, 1952 and 1984 respectively. The authors claim that the State party has violated their rights under articles 12 and 17 of the Covenant. The Optional Protocol entered into force for the State party on 1 August 1997. The authors are represented by counsel.

* Reissued for technical reasons on 8 March 2023.

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

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

Facts as submitted by the authors

2.1 On 18 September 2002, the first and second authors were brought for interrogation to the Ministry of Interior of Turkmenistan. On the next day, they were interrogated by the Investigative Committee, Criminal Investigation Department, Ministry of Interior, and at the Ministry of National Security. The interrogations concerned their son-in-law, Murad Garabaev, who was prosecuted in 2002 in connection with the illegal transfer of a large sum of money from the Central Bank of Turkmenistan. The Investigative Committee confiscated the authors' passports but returned them after one month.

2.2 In February 2003, the first author was prevented from boarding a plane to the Russian Federation, when he was going through passport control at Ashgabat International Airport. He then learned about an exit ban imposed on him. In 2004 and 2006, he unsuccessfully sought permission to leave Turkmenistan to visit his sick father, and later, to attend his father's funeral.

2.3 Having learned about the exit ban imposed on her husband, the second author enquired to the Prosecutor General's Office about her own status. She found out that a similar prohibition had been imposed on her as well.

2.4 The third author lived, studied and worked in the Russian Federation from 2002 to 2014, when he came to visit his parents in Turkmenistan. In August 2014, when he was returning to the Russian Federation, he was prevented from leaving Turkmenistan.

2.5 None of the authors received any notification or were given any reasons for being on the list of people banned from leaving the country.

2.6 Between 2003 and 2017, the authors submitted some 40 appeals to numerous State institutions to have the exit ban removed. Most of their appeals were forwarded to the Migration Service, where since 2013 people have been able to obtain information about whether they are subject to an exit ban (i.e. on the so-called "black list"). The Migration Service always responded saying that the authors' enquiry had been transmitted to the relevant authorities, and that following the decision by those authorities, the exit ban remained in force.

2.7 In April 2015, the authors filed a civil suit against the Migration Service's unlawful decision of 3 March 2015, with Kopetdag District Court in Ashgabat.[1] They claimed that they had been banned from exiting the country for 13 years, that they could not see their family who lived abroad, and that the Migration Service had failed to resolve the problem or explain the reasons for the restrictions imposed on them. They requested that the Migration Service lift the exit ban. On 5 May 2015, Kopetdag District Court rejected their suit as unfounded, stating that the Migration Service was an executive body and was not responsible for issuing the exit ban.[2] On 14 May 2015, the authors submitted an appeal to Ashgabat City Court. Their appeal was rejected on 4 June 2015. On 24 June 2015, they filed a supervisory review request to the Supreme Court. On 21 July 2015, the Supreme Court redirected this complaint to Ashgabat City Court. On 3 August 2015, Ashgabat City Court rejected the authors' supervisory review request. On 7 August 2015, the authors submitted another supervisory review request to the Supreme Court. Their request was rejected by the Supreme Court on 18 August 2015.

2.8 During the court hearings, a representative of the Migration Service refused to name the agency that had issued the exit ban and to give reasons why such a ban had been imposed.

2.9 On 20 December 2017, a newly established Ombudsman's Office informed the authors that the exit ban against them had been issued by the National Security Committee. The Ombudsman did not respond to the authors' request for assistance in having the ban lifted.

[1] The relevant decision of the Migration Service states that the author's enquiry dated 29 January 2013 has been reviewed and transmitted to the relevant authorities and that following the decision of the latter, the prohibition on exiting the country remains in force.

[2] The court did not indicate which agency was responsible for imposing the ban.

2.10 The authors claim that they have exhausted all possible administrative and judicial remedies. They do not consider that further complaints to courts would be effective given the superficial approach and lack of legal analysis of their claims by the courts.

Complaint

3.1 The authors claim that their freedom of movement under article 12 of the Covenant has been violated by the exit ban imposed on them. The only restrictions of this right must be provided by law, be necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and be consistent with the other rights recognized in the Covenant. The authors state that in their case, the exit ban does not correspond to these criteria. In more than 15 years, they never received an explanation as to why the exit ban had been imposed. The legislation which regulates restrictions on freedom to exit the country is vague and allows for its arbitrary application.[3]

3.2 The authors claim that there has been arbitrary and unlawful interference in their private and family life in violation of article 17 of the Covenant. They cannot visit their family members residing in the Russian Federation (their daughter and grandchildren). The second author suffers from a range of chronic diseases and cannot go to the Russian Federation for the specialized medical assistance that she needs. The third author, who lived in the Russian Federation for 14 years, had lost his job and friends because of the ban.

Lack of cooperation by the State party

4. In notes verbales dated 10 April 2019, 2 July 2020 and 5 November 2020, the Committee requested the State party to submit to it information and observations on the admissibility and the merits of the present communication. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to the admissibility or the substance of the authors' claims. It recalls that article 4 (2) of the Optional Protocol obliges States parties to examine in good faith all allegations brought against them and to make available to the Committee all information at their disposal. The Committee considers that in the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they have been properly substantiated.[4]

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

5.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 The Committee notes the authors' claim that they have exhausted all available domestic remedies. In the absence of a submission to the contrary from the State party, the Committee finds the authors' claims admissible under article 5 (2) (b) of the Optional Protocol.

[3] According to the authors, art. 30 of the Migration Act provides grounds for a temporary exit ban. Paras. 1–9 list the grounds on which a person can be prohibited from leaving the country. This includes, in particular, people who possess State secrets, those of the age of mandatory military conscription, convicted criminals, and parties in civil, administrative or criminal proceedings. The authors do not fall within any criteria specified in paras. 1–9 of the Act. They believe that the exit ban could be related to their son-in-law's criminal investigation and be imposed on them under para. 10 of the Act, which allows for a temporary exit ban in the interests of national security. The term "national security" is not defined and allows for a broad interpretation.

[4] See, for example, *Sannikov v. Belarus* (CCPR/C/122/D/2212/2012), para. 4; and *Khalmamatov v. Kyrgyzstan* (CCPR/C/128/D/2384/2014), para. 4.

5.4 The Committee finds that the authors' claims under articles 12 and 17 of the Covenant are well substantiated and proceeds to its consideration of the merits.

Consideration of the merits

6.1 The Committee has considered the case in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

6.2 The Committee notes the authors' claim that their right to leave any country, including their own, under article 12 of the Covenant was violated. The Committee recalls its general comment No. 27 (1999), on article 12, in which it stated that liberty of movement was an indispensable condition for the free development of an individual. However, the Committee also recalls that the rights under article 12 are not absolute. Article 12 (3) provides for exceptional cases in which the exercise of rights covered by article 12 may be restricted. In accordance with the provisions of that paragraph, a State party may restrict the exercise of those rights only if the restrictions are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the Covenant. In its general comment No. 27 (1999), the Committee noted that "it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them" and that "restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function". In the present case, the State party has not provided any information that would point to the necessity of the restriction, nor justify it in terms of its proportionality. The documents on file indicate that not only could the authors not leave their country, but they were also not informed about the restriction imposed on them in the first place. Nor were they informed about the grounds for such restriction. Despite their constant efforts to find out the reason why the ban had been imposed, and to have it lifted, their requests have not been properly addressed by the State authorities for more than 15 years. In these circumstances, the Committee concludes that there has been a violation of article 12 of the Covenant.

6.3 The Committee further notes the authors' claim that their rights to privacy and family life under article 17 of the Covenant have been violated by the exit ban. The Committee notes the authors' claim that because of the ban they were not able to see their family members who lived in Moscow, for more than 15 years in the case of the first and second authors and more than 4 years in the case of the third author, that the third author lost his job and that the second author was unable to travel to the Russian Federation for specialized medical treatment.

6.4 The Committee reiterates that article 17 deals with protection against both unlawful and arbitrary interference. The Committee refers to its general comment No. 16 (1988) on the right to privacy, in which it states that the term "unlawful" means that no interference can take place except in cases envisaged by the law.[5] The Committee notes the authors' allegation that most likely the restriction in question was based on article 30 (10) of the Migration Act. Under these circumstances, the question before the Committee is not whether such interference has a legal basis in domestic law, but rather whether or not the application of domestic law was arbitrary under the Covenant, as even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.[6]

6.5 The Committee notes that article 30 (10) of the Migration Act prohibits exit from the State party in cases where the individual's departure is contrary to the interests of national security. It also notes that at no point did the State authorities inform the authors that they presented a risk to national security. From the information on file, and in the absence of a reply from the State party, the Committee perceives that the State party has not attempted to balance the family life and health concerns of the authors with the national security issues or any other considerations that gave rise to the imposition of an exit ban. The Committee thus considers that the interference in the authors' private and family life was unreasonable and therefore arbitrary, in violation of article 17 of the Covenant.

[5] See para. 3.

[6] Ibid., para. 4; and *Whelan v. Ireland* (CCPR/C/119/D/2425/2014), para. 7.8.

7. 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 authors' rights under articles 12 and 17 of the Covenant.

8. Pursuant to 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 obligated, inter alia, to provide the authors with adequate compensation for the violation of their rights. The State party is also under an obligation to take all steps necessary to ensure the authors' right to leave the country, and to prevent similar violations from occurring in the future.

9. 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 remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.