



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. 3097/2018*, **, ***

<i>Communication submitted by:</i>	Geldy Kyarizov (represented by counsel Timur Misrikhanov)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Turkmenistan
<i>Date of communication:</i>	15 October 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 10 January 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	9 July 2024
<i>Subject matter:</i>	Imprisonment as a result of unfair trial; poor conditions of detention
<i>Procedural issue:</i>	Lack of cooperation by the State party
<i>Substantive issues:</i>	Torture; unlawful detention; conditions of detention; unfair trial; freedom of movement – own country; family rights
<i>Articles of the Covenant:</i>	7, 9 (1) and (4), 10 (1), 12 (2), 14 (1), (3) (g) and (5) and 17
<i>Article of the Optional Protocol:</i>	1

1. The author of the communication is Geldy Kyarizov, a national of Turkmenistan, born in 1951. He claims that the State party has violated his rights under articles 7, 9 (1) and (4), 10 (1), 12 (2), 14 (1), (3) (g) and (5) and 17 of the Covenant. The Optional Protocol entered into force for the State party on 1 August 1997. The author is represented by counsel.

* Adopted by the Committee at its 141st session (1–23 July 2024).

** The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

*** A joint opinion by Committee members Carlos Gómez Martínez and José Manuel Santos Pais (partially dissenting) is annexed to the present Views.



Facts as submitted by the author

2.1 From 1994, the author was the President of the International Association of Akhal-Teke Horse Breeding in Ashgabat. In 1997, he became a director of the State-owned horse breeding company Turkmenatlary. On 30 January 2002, the author was detained by officers of the Ministry of National Security. He was held at the temporary detention facility of the Ministry for several days, without being formally charged. Until 6 February 2002, when the prosecutor issued a detention order, his detention was not registered and his family was not informed of his whereabouts. He was held for eight days without being informed of the charges against him. It was not until 26 February 2002 that a statement of indictment was signed by the Prosecutor General.

2.2 From the moment he was detained, the author was psychologically pressured and threatened with torture by national security officers to force him to confess to having defrauded the State-owned company. When the authorities arrested and tortured his younger brother, the author was forced to confess his guilt publicly on national television. After that public forced confession, he had a heart attack and suffered paralysis on his left side.

2.3 On 4 April 2002, the Ashgabat City Court found him guilty under article 181 (1) and (2) of the Criminal Code, for abuse of office, and under article 188 (1), for negligence. The court sentenced him to six years in a general regime prison. He was transferred to serve his sentence in prison No. LB-K/12.

2.4 In August 2006, the author was transferred to a strict regime prison, No. AN-T/2, without a relevant court decision on the change of prison regime. The author's complaints to the prison director, the prosecutor and the Ministry of the Interior concerning his unlawful transfer were not answered. The prison director told him that he had no right to complain, no name and no last name, and from that point, he was known as "No. 3". His family was not informed about his transfer and had no information about his whereabouts for five months. His wife's attempts to obtain information from the authorities about his status and whereabouts were unanswered and his own requests to receive family visits were denied.

2.5 In prison No. AN-T/2, the author was held with two other persons in a cell measuring 7 m by 3.5 m. The sanitary facilities were not separated from the rest of the cell. The two small windows contained no glass and were closed with metal blinds. The heating often did not work and the cell was extremely cold. The author was completely cut off from the rest of the world, with no access to newspapers, television or radio. The daily meal consisted of boiled grain soup, with no meat or vegetables, and a piece of black, often mouldy bread. There was only rusty tap water to drink, which was accessible for half an hour in the morning and the evening. One piece of soap measuring the size of two fingers was provided once a week. Provided there was water, he had access to one 20-minute cold shower per week, during which time he also had to wash his clothes and his bed linen and take them outside to dry. Shoes, clothes and bed linen were changed once a year. There was no access to medical services. As a result of those conditions, the author lost half of his body weight. He weighed 55 kg upon his release.

2.6 The author was released in 2007 under an amnesty. After he was released, he learned that his transfer to prison AN-T/2 had been an act of reprisal for the complaints that his wife had submitted to several independent media agencies abroad and foreign embassies in Turkmenistan. In Turkmenistan, she had also complained to the prosecutor's office on 15 occasions, between 2002 and 2007, to the Ministry of the Interior, sending 10 complaints in total, and to the Supreme Court of Turkmenistan. All her complaints were either rejected or ignored.

2.7 The author claims that the authorities confiscated and demolished his house and horse stables in 2007. The family had to rent land to continue breeding horses, but in 2010, the author's 110 horses were confiscated and the family was left without means. In 2013, the author was forced to abandon his professional activity and to sign a statement to that effect. His phone was tapped and his correspondence was censored. He and his wife were often summoned to the prosecutor's office and criminal charges were brought against his wife. He was required to obtain permission to travel within the country. The author attempted to leave Turkmenistan several times, in particular to seek medical treatment abroad. It was not until 14 September 2015 that he was able to leave for the Russian Federation.

Complaint

3.1 The author submits that the conditions of detention in prison No. AN-T/2 amounted to a violation of his rights under articles 7 and 10 (1) of the Covenant.

3.2 The author also submits that he was detained without any record between 30 January and 6 February 2002. His family was not informed of his whereabouts. He claims that he was not informed of the charges against him until the eighth day of his detention. He therefore claims that his rights under article 9 (1) and (4) of the Covenant were violated.

3.3 The author claims that the fact that he was forced to confess guilt and that the courts found him guilty without listening to his arguments violates article 14 (1), (3) (g) and (5) of the Covenant.

3.4 The author claims that he was not allowed to leave the country, in violation of article 12 of the Covenant.

3.5 The author alleges that being cut off from his family for five months in prison No. AN-T/2 violated his rights under article 17 of the Covenant.

3.6 The author claims that he has exhausted all the domestic remedies available to him and that the domestic courts and all the other authorities are under the control of the President of Turkmenistan. As to the delay in submission, the author submits that while he was in Turkmenistan, he did not have any chance to submit a complaint to the Committee, since he was concerned about his own security and that of his family members.

Lack of cooperation by the State party

4. On 10 January 2018, 13 November 2020 and 10 November 2021, the Committee requested the State party to provide information and observations on the admissibility and the merits of the present communication. The Committee regrets the failure of the State party to provide any information with regard to the admissibility or the merits of the author's 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. 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 are properly substantiated.¹

Issues and proceedings before the Committee

Considerations 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 author's claim that he has exhausted all available domestic remedies. In the absence of a submission to the contrary from the State party, the Committee finds the author's claims admissible under article 5 (2) (b) of the Optional Protocol.

5.4 The Committee notes the author's claim that being cut off from his family for five months in prison No. AN-T/2 violated his rights under article 17 of the Covenant. The Committee considers that that claim falls under article 10 (1) of the Covenant and will consider it under that article.²

5.5 The Committee notes the author's claim that the State party violated article 14 (1) and (3) (g) of the Covenant. With regard to the author's claim under article 14 (3) (g), the Committee notes that there is no reference in the domestic court decisions to any confession

¹ 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.

² *Ortikov v. Uzbekistan* (CCPR/C/118/D/2317/2013), para. 10.4.

of guilt by the author. In fact, the court acknowledged the author's not guilty plea. The Committee notes that the author has not clarified any procedural or substantive flaws which would violate his right to a fair trial under article 14 (1) of the Covenant. The Committee therefore finds this part of the claim insufficiently substantiated and thus inadmissible under article 2 of the Optional Protocol.

5.6 The Committee notes the author's claim that article 14 (5) of the Covenant was violated. It also notes that the author does not clarify his claim. The Committee considers that this part of the communication is unsubstantiated, for the purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

5.7 The Committee finds that the facts as presented by the author raise issues under articles 7, 9 (1) and (4), 10 (1) and 12 (2) of the Covenant and proceeds to the consideration of the merits.

Consideration of the merits

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

6.2 The Committee notes the author's allegations that he was arrested without an arrest warrant, that he was kept in incommunicado detention from 30 January to 6 February 2002, that he was not informed of the charges against him until eight days after his arrest, and that he was not able to challenge his detention before a judge. The Committee recalls that deprivation of liberty is permissible only when it occurs on such grounds and in accordance with such procedures as are established by law. In the present case, the fact that the author was arrested without an arrest warrant and was held incommunicado for at least seven days makes his detention arbitrary.³ As for the lack of judicial supervision of the author's detention, the Committee reiterates that the length of custody without judicial authorization should not exceed a few days.⁴ The Committee thus concludes, in the absence of any challenge to these claims by the State party, that the circumstances in which the author was deprived of his liberty violate the provisions of article 9 (1) and (4) of the Covenant.

6.3 Regarding the author's claim that the conditions of his detention in prison No. AN-T/2 amounted to a violation of his rights under article 7 and 10 (1) of the Covenant, the Committee observes that the author has provided a detailed account of the conditions in which he was held (see para. 2.5 above). 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 humanely, in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).⁵ Pursuant to rules 13, 15–17, 19, 21 and 22 of the Nelson Mandela Rules, that includes minimum floor space and cubic content of air for each prisoner, adequate sanitary facilities, clothing that is in no manner degrading or humiliating, provision of a separate bed and provision of food of nutritional value adequate for health and strength.⁶ The Committee considers, as it has repeatedly found in respect of similar substantiated claims,⁷ that the author's conditions of detention as described violated his right to be treated with humanity and with respect for the inherent dignity of the human person. The Committee finds that the effect of the generally inadequate conditions of detention was even more unbearable for the author in view of his poor state of health, in particular his heart attack, stroke and partial paralysis, from which he suffered since his arrest on 30 January 2002. In the absence of any argument to the contrary from the State party, the Committee finds that the conditions of

³ *Komarovski v. Turkmenistan* (CCPR/C/93/D/1450/2006), para. 7.2.

⁴ General comment No. 35 (2014) on liberty and security of person, para. 33.

⁵ *Aminov v. Turkmenistan* (CCPR/C/117/D/2220/2012), para. 9.3; and *Bobrov v. Belarus* (CCPR/C/122/D/2181/2012), para. 8.2.

⁶ *Dafnis v. Greece* (CCPR/C/135/D/3740/2020), para. 8.4; and *Alakuş v. Türkiye* (CCPR/C/135/D/3736/2020), para. 10.8.

⁷ For example, *Komarovski v. Turkmenistan*, para. 7.5; *Bozbey v. Turkmenistan* (CCPR/C/100/D/1530/2006), para. 7.3; and *Uchetov v. Turkmenistan* (CCPR/C/117/D/2226/2012), para. 7.3.

detention in prison No. AN-T/2 amounted to a violation of articles 7 and 10 (1) of the Covenant.

6.4 The Committee also notes the author's claim that he was held incommunicado for five months in prison No. AN-T/2. His family did not know about his transfer to a new prison. He could not receive correspondence or visits from his family. The Committee recalls that incommunicado detention is inconsistent with the obligation to treat detained persons humanely and with respect for their dignity.⁸ The Committee thus finds that holding the author in incommunicado detention, without the possibility of communicating with his family, violated his rights under article 10 (1) of the Covenant.

6.5 The Committee notes the author's claims that he tried on several occasions to leave Turkmenistan, in particular for medical treatment, but was prevented from doing so. The Committee recalls its general comment No. 27 (1999) on freedom of movement, in which it stated that the liberty of movement is an indispensable condition for the free development of a person. Nevertheless, 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. The Committee also 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" (para. 14). In the present case, the State party has not provided any information to explain the necessity of the restriction or to justify it in terms of its proportionality. In the absence of such information from the State party, the Committee concludes that there has been a violation of article 12 of the Covenant.

7. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 7, 9 (1) and (4), 10 (1) and 12 (2) of the Covenant, and of article 1 of the Optional Protocol.

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 to provide the author with adequate compensation for the violation of his rights. The State party is also under an obligation to take all steps necessary 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.

⁸ *Berzig v. Algeria* (CCPR/C/103/D/1781/2008), para. 8.8; and *Ortikov v. Uzbekistan*, para. 10.4.

Annex

Joint opinion of Committee members Carlos Gómez Martínez and José Manuel Santos Pais (partially dissenting)

1. We concur with the finding by the Committee of a violation of the author's rights under articles 7, 9 (1) and (4), 10 (1) and 12 (2) of the Covenant, and of article 1 of the Optional Protocol to the Covenant.
2. However, we have doubts about whether, as stated in paragraph 6.4 of the Views, any incommunicado detention, irrespective of its duration, is inconsistent with the obligation to treat detained persons humanely and with respect for their dignity.
3. The practice of incommunicado detention seems to imply that nobody, apart from the authorities, knows where the detainee is kept. Without any access to family members, lawyers or doctors, victims are particularly vulnerable to torture, and the authorities, by denying the arrest, try to avoid any type of accountability.
4. In the present Views, the incommunicado detention was, in fact, inconsistent with the obligation to treat the author humanely, since the author remained incommunicado for five months, his family did not know about his transfer to a new prison and he could not receive correspondence or visits from his family during that time.
5. Nevertheless, there may be other situations in which the detained person is not immediately able to communicate with his or her lawyer or a relative and this does not necessarily amount to a violation of his or her dignity or to inhuman treatment.
6. The person may, for instance, be subject to solitary confinement for health, disciplinary or other justifiable reasons, or temporarily prevented from communicating with other persons, for instance other defendants, as in the case of highly complex organized crime, at the outset of the criminal investigation.
7. The person may also have been detained to be conducted before a judicial officer which, in some countries, may entail a considerable distance. During this period, although unable to communicate, the author is under the control and responsibility of law enforcement officers and therefore not exactly in an incommunicado situation, since the authorities do not try to conceal the detention.
8. The case law cited in the footnote to paragraph 6.4 of the Views in support of the point made in that paragraph does not seem to be particularly appropriate to support the assertion contained therein.
9. In *Berzig v. Algeria*, the Committee considered a case of enforced disappearance. The author's son disappeared following his arrest in November 1994 and the authorities have always denied detaining him, even though there were witnesses to his arrest. The Committee could therefore rightly indicate that in such a situation, incommunicado detention creates an unacceptable risk of violation of the right to life, since victims are at the mercy of their jailers who, by the very nature of the circumstances, are subject to no oversight.¹
10. In that case, the Committee recognized the degree of suffering involved in being held indefinitely without contact with the outside world. It recalled its general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, in which it recommended that States parties should make provision against incommunicado detention (para. 11).
11. The Committee therefore concluded, in *Berzig v. Algeria*, 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 with humanity and respect for their

¹ *Berzig v. Algeria* (CCPR/C/103/D/1781/2008), para. 8.4.

dignity. In view of the incommunicado detention verified in that communication, the Committee found a violation of article 10 (1) of the Covenant.²

12. In *Ortikov v. Uzbekistan*, the Committee reiterated the point 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 with humanity and respect for their dignity. It also observed that incommunicado detention is inconsistent with the obligation to treat detainees humanely and with respect for their dignity.³

13. In the present Views, we are thus using case law originating from situations of enforced disappearance and applying it to other situations where the degree of isolation and hardship are not comparable. The main concern with incommunicado detention is in fact the possibility it offers for the practice of torture or other inhuman treatment without the necessary oversight and monitoring, namely by judicial authorities.

14. In its general comment No. 20 (1992), the Committee was much more prudent in its approach, recommending that:

To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. To the same effect, the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings. Provisions should also be made against incommunicado detention (para. 11).

15. We would thus have preferred the following slightly different formulation in the third sentence of paragraph 6.4 of the Views: “The Committee recalls that keeping a person in incommunicado detention for five months, as in the present case, is inconsistent with the obligation to treat detained persons humanely and with respect for their dignity.”

² Ibid., para. 8.8.

³ *Ortikov v. Uzbekistan* (CCPR/C/118/D/2317/2013), para. 10.4.