



## 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. 2078/2011\*, \*\*

<i>Communication submitted by:</i>	AnnakurbanAmanklychev (represented by counsel, Timur Misrikhanov)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Turkmenistan
<i>Date of communication:</i>	27 May 2009 (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 8 August 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	31 March 2016
<i>Subject matter:</i>	Torture; denial of fair trial procedural guarantees.
<i>Procedural issues:</i>	Admissibility – non-exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture, family rights, privacy, conditions of detention, arbitrary arrest – detention.
<i>Articles of the Covenant:</i>	2 (3) (b), 7, 9 (1), 10 (1) and (2), 14 (1) and (3) and 17 (1)
<i>Articles of the Optional Protocol:</i>	5 (2) (b)

\* Adopted by the Committee at its 116th session (7-31 March 2016).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

GE.16-07624(E)



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1. The author of the communication is Annakurban Amanklychev, a national of Turkmenistan born in 1971. He claims that the State party violated his rights under articles 2 (3) (b), 7, 9 (1), 10 (1) and (2), 14 (1) and (3) and 17 (1) of the Covenant. The Optional Protocol entered into force for the State party on 1 August 1997. The author is represented by counsel, Timur Misrikhanov.

**The facts as submitted by the author**

2.1 The author claims that he was unlawfully arrested by agents of the Ministry of National Security of Turkmenistan and put in the Ministry's detention centre. Although he was apprehended on 17 June 2006, his arrest was formally registered only on 21 June, when he was also officially charged with a crime. Thus, he was unlawfully detained for four days. He also claims that a lawyer was assigned to his case only on 21 June 2006, in violation of the provisions of the Criminal Procedure Code of Turkmenistan; that he was denied the right to meet his lawyer and to have legal assistance for more than a month, with no explanation; and that the investigator informed his family about the arrest only on 21 June 2006. Having no news of his whereabouts in the meantime, his family turned to different law enforcement bodies in belief that the author had gone missing.

2.2 The author claims that the reason for his arrest was his active participation in the work of non-governmental organizations (NGOs) and his activities as a human rights defender, specifically the assistance he provided to international journalists<sup>1</sup> in preparing reports about social life in Turkmenistan. The authorities had followed his work as a human rights defender closely long before his arrest and waited for an appropriate occasion to arrest him.

2.3 The author was arrested and charged with illegal acquisition, sale, storage, transportation, transfer, transmittal or carrying of firearms, ammunition, explosives or explosive devices committed by a group of individuals under article 287, paragraph 2, of the Criminal Code. During his unlawful detention, for a period of five days he was described on television and in media articles as being guilty of espionage. Before his trial, mass media again disseminated information portraying the author as an agent of foreign intelligence services.

2.4 The author further submits that opposition activists Sapardurdy Khadzhiev and Ogulsapar Muradova were also unlawfully arrested in the context of the same criminal case. They were threatened and forced to make defamatory statements about the author. In fact, his whole family was subjected to persecution. He submits that he is innocent and that agents of the Ministry of National Security planted bullets from a firearm in his car and subsequently "seized" them during a car search. The investigator repeatedly demanded that the author appear on television and publicly repudiate Mr. Khadzhiev and Ms. Muradova and defame other well-known opposition activists living abroad.

2.5 The author filed complaints with the investigative bodies of the Ministry of National Security and the Prosecutor's Office which, according to the law, is mandated to supervise the enforcement of laws in Turkmenistan. He also lodged complaints with domestic courts. The author was found guilty as charged and sentenced to seven years of imprisonment. After the first instance court had rendered its judgment, on 30 August 2006, the author appealed his sentence to the Supreme Court of Turkmenistan, to no avail.

2.6 He then submitted a motion to the President of Turkmenistan and to the Prosecutor-General's Office. In February 2007, he complained to the Commission on the examination of citizens' petitions on the activity of the law enforcement bodies, a new complaint

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<sup>1</sup> In particular, to a reporter for BBC and a French journalist for Galaxie Presse.

mechanism created by the new President. Despite his efforts to exhaust domestic remedies, his complaints remained unanswered. The author also requested the President on several occasions to consider his case for amnesty. However, he has not benefited from any amnesty acts that were adopted over the years. In February and April 2009, the author again submitted a motion to the President requesting a review of his criminal case and a presidential pardon, but received no answer. The author therefore claims that all domestic remedies have been exhausted.<sup>2</sup>

### **The complaint**

3.1 The author claims that he is innocent. His guilt was not established by the investigators or by the court, since no incriminating facts or evidence were collected, except for several bullets that were planted on him by the police. The author also claims that his arrest and detention on 17 June 2006 were unlawful. Accordingly, the author contends that his arrest amounted to a violation of article 9 (1) of the Covenant.

3.2 He further claims to be a victim of a violation of his right to a fair trial by a competent, independent and impartial tribunal. He submits that, although the judge declared the trial public, none of his friends or relatives or members of NGOs were allowed in the courtroom; representatives of foreign embassies were also prevented from attending the trial. Pressure was exerted on the author and his lawyer in order to obtain a confession of guilt. The trial was interrupted a number of times because the judge “needed to consult his superiors”. None of the witnesses for the prosecution identified the author as the perpetrator of the crime. None of the witnesses for the defence were notified of the date of the trial or summoned to testify. During the trial, the lawyer’s repeated requests to call and question witnesses and have their testimonies adduced were rejected by the court, without justification. The author was sentenced to seven years of imprisonment, and he claims that his conviction was ordered directly by the President and the Minister of National Security. In his view, these facts disclose a violation of his rights under article 14 (1) and (3) of the Covenant.

3.3 The author submits that he was detained in inhuman and degrading conditions, in violation of articles 7 and 10 (1) and (2). His cell measured 6 m<sup>2</sup> and accommodated 11 prisoners. He was denied the right to receive parcels of food, clothes and hygiene items from his family. He further states that it was humiliating to ask the prison guard to open the cell door to allow him to use the toilet. In the summer, when temperatures in the cell reached 50° C, he became extremely thirsty. The author also claims that during his arrest he was under constant pressure, including psychological pressure, to compel him to confess. Officials denied him access to his lawyer on the pretext that the latter was very busy or was sick. The author also claims that he was exposed to physical abuse: he was tormented by hunger and thirst, was threatened and had psychotropic substances administered against his will. He was also denied care for his medical conditions, which became worse. He claims that he was denied the right to family visits, to correspondence and to receive parcels for two years. He is still being denied the right to receive any outside information by way of the print press or television, and claims that he is still subjected to inhuman and degrading treatment on a daily basis.

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<sup>2</sup> The author has not provided any supporting documents verifying that he has exhausted domestic remedies (i.e., no copies of his complaints or of court decisions). He explains that it is not possible to obtain such documents from the authorities. His counsel confirms that the courts in Turkmenistan refuse to give any documents pertaining to the author’s case to his counsel or his relatives.

3.4 The author claims that during his arrest his apartment was searched, unlawfully, without official authorization. Furthermore, his correspondence was opened and was censored, in violation of article 17 (1) of the Covenant.

3.5 The author requests the Committee to find violations of the above-mentioned articles of the Covenant, to request the State party to discontinue the fabricated criminal proceedings against him, to release him and to direct the State party to provide him with appropriate compensation for his unlawful arrest and detention.

#### **State party's observations on admissibility and the merits<sup>3</sup>**

4.1 In a communication dated 11 June 2012, the State party submitted its observations on the merits of the case. It explains that Mr. Amanklychev was sentenced to seven years of imprisonment after having been found guilty of violating article 287 of the Criminal Code of Turkmenistan.

4.2 In a communication dated 24 September 2012, the State party, responding to the Committee's request for copies of the court documents, explained that in accordance with article 433 of the Criminal Procedure Code of Turkmenistan, a copy of the verdict is provided to the convicted person no later than five days after it has been announced. Copies of Mr. Amanklychev's verdict and sentence are "legal and [have] been handed to the convicted person".

4.3 Challenging the admissibility of the communication, the State party submits that the author has not asked the prosecutors to review his case.

4.4 In a communication dated 18 March 2013, the State party stated that in accordance with clemency proclaimed by the President of Turkmenistan on 15 February 2013, Mr. Amanklychev was released from serving the remainder of his sentence. The State party further asserts that while serving his sentence in a correctional facility in Akdash settlement in the Balkan region, the author was provided with adequate food and clean water and a daily walk in the fresh air, and that housing, medicine and other conditions in the facility met the international standards.

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

5.1 In communications dated 6 July 2012 and 12 December 2013, the author submits that the State party purposely avoided answering the substantive issues raised in the original communication. He further claims that the law enforcement agencies did not have any evidence of his guilt and that he was imprisoned unlawfully.

5.2 The author submits that although he was first accused of espionage, he did not provide any secret information to foreign journalists. There was no evidence against the author other than the bullets that were planted in his car by the police.

5.3 The State party has not explained why the author's family and friends were denied access to the author while he was in prison, nor why he was denied parcels of food and correspondence from his family. His release on 15 February 2013 was just three months before the end of his sentence.

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<sup>3</sup> On 25 July 2012, 5 February 2013 and 6 November 2013, the State party was requested to provide the Committee with copies of relevant decisions pertaining to the author's case. The Committee did not receive these documents.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 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.

6.3 With regard to the exhaustion of domestic remedies, the Committee notes the State party's claim that the author has failed to request the prosecutor's office to review his case. The Committee recalls its jurisprudence, according to which a petition to a prosecutor's office to initiate supervisory review of court decisions that have taken effect does not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.<sup>4</sup> Accordingly, it considers that it is not precluded by article 5 (2) (b) from examining this part of the communication.

6.4 With regard to the alleged violation of article 14 (3), the Committee notes that the State party has not specifically refuted the author's allegations. The Committee considers, however, that the information on file regarding these claims is very limited. For example, the author failed to name any of that witnesses who he claims could have testified in his defence. Accordingly, and in the absence of any further pertinent information on file, the Committee considers that this particular claim has been insufficiently substantiated for the purposes of admissibility and therefore considers it inadmissible under article 2 of the Optional Protocol.

6.5 With regard to the author's claims under article 2 (3) (b) of the Covenant, the Committee recalls its jurisprudence, which indicates that the provisions of article 2 lay down general obligations for States parties and that they cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.<sup>5</sup> The Committee therefore considers that the author's claims in this regard are incompatible with article 2 of the Covenant and inadmissible under article 3 of the Optional Protocol.

6.6 In the view of the Committee, the author has sufficiently substantiated for the purposes of admissibility his claims under articles 7, 10 (1) and (2), 9 (1), 14 (1) and 17 (1) of the Covenant and therefore proceeds with its consideration 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 under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the claims under article 7 of the Covenant that the author was subjected to physical and psychological pressure to force him to confess guilt in the commission of a crime.<sup>6</sup> The Committee observes that these allegations have not been

<sup>4</sup> See communications No. 1873/2009, *Alekseev v. Russian Federation*, Views adopted on 25 October 2013, para. 8.4; and No. 1985/2010, *Koktish v. Belarus*, Views adopted on 24 July 2014, para. 7.3.

<sup>5</sup> See communications No. 2202/2012, *Rodríguez Castañeda v. Mexico*, Views adopted on 18 July 2013, para. 6.8; No. 1834/2008, *A.P. v. Ukraine*, decision of inadmissibility adopted on 23 July 2012, para. 8.5; and No. 1887/2009, *Peirano Basso v. Uruguay*, Views adopted on 19 October 2010, para. 9.4.

<sup>6</sup> See paragraph 3.3 above.

refuted by the State party. The Committee recalls that once a complaint of ill-treatment contrary to article 7 has been filed, a State party must investigate the complaint promptly and impartially.<sup>7</sup> In the circumstances, the Committee decides that due weight must be given to the author's allegations. Accordingly, the Committee concludes that the facts before it disclose a violation of the author's rights under article 7 of the Covenant. Having thus come to a conclusion regarding a violation of the author's rights under article 7, the Committee decides not to examine his claims under article 10 (1) and (2) separately.

7.3 The Committee further notes the author's claims that his rights under article 9 (1) were also violated as he was unlawfully detained for four days, from 17 to 21 June 2006, in violation of the provisions of the Criminal Procedure Code of Turkmenistan. He was held in detention until 21 June 2006 without being able to initiate any form of legal process through which his apprehension and the lawfulness of his detention could be reviewed and challenged and without his relatives being informed of his whereabouts, in violation of his rights under articles 53 and 100 of the Criminal Procedure Code. In the absence of any pertinent explanation from the State party, the Committee decides to give due weight to the author's allegations. Accordingly, it concludes that the facts as submitted disclose a violation of the author's rights under article 9 (1) of the Covenant.

7.4 Regarding the author's contention that although the hearings were formally announced as being public none of his friends or relatives or members of NGOs were allowed in the courtroom, the Committee recalls its general comment No. 32 in which it stated that all trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly and that the publicity of hearings ensured the transparency of proceedings and thus provided an important safeguard for the interest of the individual and of society at large.<sup>8</sup> In the present case, the author contends that his friends and relatives as well as members of the public, such as members of NGOs and representatives of embassies, were not allowed to be present. In the absence of any refutations by the State party, the Committee considers that due weight must be given to the author's allegations. The Committee therefore concludes that the facts as submitted disclose a violation of the author's rights under article 14 (1) of the Covenant.

7.5 The Committee finally notes the author's claim that he was denied his right to see his family and relatives while in prison or to exchange correspondence with them. The Committee recalls its jurisprudence according to which prisoners shall be allowed, under necessary supervision, to correspond with their families and reputable friends on a regular basis without interference,<sup>9</sup> as stipulated by the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which also provide for communication "by corresponding in writing" (rule 58). Noting that the State party has not specifically refuted the author's allegations regarding his first two years of imprisonment, the Committee concludes that the facts as submitted by the author reveal a violation of the author's rights under article 17 (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 by the State party of articles 7, 9 (1), 14 (1) and 17 (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

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<sup>7</sup> See general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14.

<sup>8</sup> See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 28.

<sup>9</sup> See communication No. 74/1980, *Estrella v. Uruguay*, Views adopted on 29 March 1983, para. 9.2.

reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to take appropriate steps to conduct an impartial, effective and thorough investigation into the torture allegations and to prosecute those responsible; and to provide the author with adequate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future.

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 or 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 Committee's Views. In addition, it requests the State party to publish the Views.

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