



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. 2316/2013*, **

<i>Communication submitted by:</i>	Arslan Dawletow (represented by counsel, Shane H. Brady and Philip Brumley)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Turkmenistan
<i>Date of communication:</i>	1 May 2013 (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 11 December 2013 (not issued in document form)
<i>Date of adoption of Views:</i>	29 March 2019
<i>Subject matter:</i>	Conscientious objection to compulsory military service
<i>Procedural issue:</i>	State party's failure to cooperate
<i>Substantive issues:</i>	Freedom of conscience; inhuman and degrading treatment
<i>Articles of the Covenant:</i>	7 and 18 (1)
<i>Article of the Optional Protocol:</i>	2

1. The author of the communication is Arslan Dawletow, a national of Turkmenistan born in 1992. He claims that the State party has violated his rights under articles 7 and 18 (1) of the Covenant. The Optional Protocol entered into force for Turkmenistan on 1 August 1997. The author is represented by counsel.

The facts as submitted by the author

2.1 The author is a Jehovah's Witness. He has never been charged with a criminal or administrative offence other than his criminal conviction as a conscientious objector. The author's call-up for military service was deferred in 2010 and again in 2011 owing to his

* Adopted by the Committee at its 125th session (4–29 March 2019).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Christopher Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



suffering from epileptic seizures since childhood and to a confirmed diagnosis of “asthenic-depressive syndrome”.¹

2.2 In October 2012, the author was summoned for military service, contrary to his religious convictions and in disregard of his medical condition. He explained orally and in writing to representatives of the Military Commissariat that, as a Jehovah’s Witness, his religious beliefs did not permit him to perform military service. On 5 December 2012, the author was declared fit for military service.

2.3 On 7 December 2012, the author was summoned to report for military service, which he did. On 8 December 2012, he was arrested by employees of the Military Commissariat and placed in pretrial detention at the DZ-D/7 detention facility in Dashoguz. On 9 January 2013, the trial against him took place in Dashoguz City Court. The author explained that he had refused to perform military service for religious reasons and that his conscience did not allow him to perform military service, take an oath of allegiance, put on a military uniform or bear arms, but that he was willing to fulfil his civil obligations by performing alternative civilian service.²

2.4 On 9 January 2013, the author was convicted and sentenced by the Dashoguz City Court to 24 months of imprisonment under article 219 (1) of the Criminal Code for refusing to perform military service.³ He was taken into custody in the court room. His mother lodged an appeal on his behalf as he was unable to do so owing to his imprisonment. However, when she visited the author on 15 January 2013, the detention facility officers refused to permit the author to sign the appeal. On 18 January 2013, the author’s mother submitted a complaint to the Prosecutor General of Turkmenistan, in which she requested him to take urgent measures to enable the author to sign the appeal within the deadline for submitting the appeal, which was to expire on 19 January 2013. In a letter dated 5 February 2013, the Dashoguz City Prosecutor stated that a “brief meeting” between the author and his mother had taken place on 15 January 2013 and that an appeal could be submitted by a lawyer or by the author. The Prosecutor’s response ignored the main point of the complaint, namely, the fact that the detention personnel present at the meeting between the author and his mother had refused to permit the author to sign the appeal as well as the fact that he was not, at that point, represented by counsel. Because of the refusal by the detention officers to permit him to sign the appeal, the author was unable to appeal the judgment of the Dashoguz City Court. The author asserts that, since there was no effective domestic remedy available to him to complain about the alleged violation of his rights under the Covenant, the obligation to exhaust all available domestic remedies has been satisfied.

2.5 At the time of the complaint, the author was serving his prison sentence at the LBK-12 prison, located near the town of Seydi.

The complaint

3.1 The author claims that his prosecution and imprisonment on the ground of his religious beliefs expressed in his conscientious objection to military service in itself constitutes inhuman or degrading treatment within the meaning of article 7 of the Covenant. The author also claims a violation of article 7 of the Covenant on account of the detention conditions in the LBK-12 prison. In that regard, he refers to the concluding observations of

¹ The author refers to a letter dated 4 February 2013 from the Ministry of Health and Medical Industry of Turkmenistan to his mother, in which it is noted that he had been diagnosed with “asthenic-depressive syndrome” at a psychoneurological hospital.

² The Military Service and Military Duty Act does not recognize a person’s right to exercise conscientious objection to military service and does not provide for any alternative military service. For recommendations received by Turkmenistan in the context of the Act, see, inter alia, the report of the Special Rapporteur on freedom of religion or belief on her mission to Turkmenistan (A/HRC/10/8/Add.4, para. 68) and the Committee’s concluding observations on the second periodic report of Turkmenistan (CCPR/C/TKM/CO/2, paras. 40–41).

³ Article 219 (1) of the Criminal Code provides that evasion of the draft for military service in the absence of legal grounds for exemption from such service shall be punished with correctional labour for up to two years or imprisonment for up to two years.

the Committee against Torture,⁴ the jurisprudence of the European Court of Human Rights⁵ and the report of the Turkmenistan Independent Lawyers Association of February 2010.⁶ These documents indicate that the practice of torture and ill-treatment of detainees in the State party is widespread. They also highlight the serious risk of being subjected to torture or inhuman or degrading treatment and the fact that the LBK-12 prison is located in a desert where extreme temperatures are reached. The prison is overcrowded and prisoners with contagious diseases are kept together with healthy inmates.

3.2 The author claims that his prosecution, conviction and imprisonment for refusing to perform compulsory military service owing to his religious beliefs and conscientious objection have violated his rights under article 18 (1) of the Covenant.⁷ He notes that he informed the Turkmen authorities that he was willing to fulfil his civil duty by performing genuine alternative service, but that the State party's legislation does not provide for such an alternative.

3.3 The author requests that the Committee direct the State party to: (a) acquit him of the charges under article 219 (1) of the Criminal Code and expunge his criminal record; and (b) compensate him for moral damages and legal expenses, as required under article 2 (3) of the Covenant.

Lack of cooperation by the State party

4. On 11 December 2013, 30 October 2014 and 13 February and 27 August 2015, the Committee requested the State party to provide its observations on the admissibility and merits of the communication. The Committee notes, however, that no observations have been received to date. It 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, in accordance with article 4 (2) of the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and indicating the measures, if any, that have been taken by the State to remedy the situation. In

⁴ CAT/C/TKM/CO/1, paras. 18–19, in which the Committee expressed its concern, inter alia, at ongoing physical abuse and psychological pressure carried out by prison staff, including collective punishment, ill-treatment as a “preventive” measure, the use of solitary confinement and sexual violence and rape by prison officers or inmates, which had reportedly motivated the suicides of several detainees. The Committee also expressed deep concern about the material and hygienic conditions in places of deprivation of liberty, such as inadequate food and health care, severe overcrowding and unnecessary restrictions on family visits.

⁵ The author cites the European Court of Human Rights, *Kolesnik v. Russian Federation* (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 a “serious risk” of being subjected to torture or inhuman or degrading treatment. 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 the Turkmen law enforcement authorities and very poor conditions of detention.

⁶ In its report of February 2010 (pp. 9–10), the Turkmenistan Independent Lawyers Association described the LBK-12 prison, popularly referred to as Shagal, as the largest in Turkmenistan in size and prison population, designed to accommodate up to 2,100 inmates. At the time of the report, it housed 5,700 detainees. Despite the minimum security conditions for first offenders, prison conditions were very tough. The colony was located in the lifeless desert where temperatures reached minus 20°C in winter and 50°C in summer. Owing to the harsh climatic conditions, overcrowding, the fact that prisoners diagnosed with tuberculosis and skin diseases were kept together with healthy inmates and scarce supplies of food, medication and personal hygiene products, the institution reported a mortality rate of 5.2 per cent, the highest among the country's penitentiary facilities. As in other penitentiary facilities in Turkmenistan, physical abuse was used against inmates by the colony personnel and other individuals with the consent and often following the instructions of the colony's administration. Primarily, detainees who were placed in the colony for the first time and were consequently not aware of the unofficial prison rules were subjected to violence. Similar observations on prison conditions in Turkmenistan were made in the country report of the Department of State of the United States of America of 2011 and the report of Amnesty International of February 2012.

⁷ The author refers to *Atasoy and Sarkut v. Turkey* (CCPR/C/104/D/1853-1854/2008), paras. 10.4–10.5.

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 substantiated.⁸

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 93 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 reasonable domestic remedies" available to him. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

5.4 As to the alleged violations of article 7 of the Covenant, the Committee notes that the author has not provided any information on having been personally ill-treated or personally subjected to substandard prison conditions. The Committee considers that, even if the State party has not refuted the author's allegations, on the basis of the limited information on file, the author has insufficiently substantiated his claim under article 7 of the Covenant for the purposes of admissibility. Accordingly, the Committee declares the claim inadmissible under article 2 of the Optional Protocol.

5.5 The Committee considers that the author has sufficiently substantiated his claim under article 18 (1) of the Covenant for the purposes of admissibility. In the absence of any other challenge to the admissibility of the communication, the Committee declares the communication admissible insofar as it concerns the author's claims under article 18 (1) of the Covenant and proceeds with its consideration of the merits.

Consideration of the merits

6.1 The Committee has considered the communication 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 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 because of his religious beliefs led to his criminal prosecution and subsequent imprisonment.

6.3 The Committee recalls its general comment No. 22 (1993) on the right to 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 time of public emergency, as stated in article 4 (2) of the Covenant. The Committee recalls its prior jurisprudence stating that, 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.⁹ The right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion. It

⁸ See, inter alia, *Abushaala v. Libya* (CCPR/C/107/D/1913/2009), para. 6.1; *Aboussedra v. Libya* (CCPR/C/100/D/1751/2008), para. 4; *Shikhmuradov v. Turkmenistan* (CCPR/C/112/D/2069/2011), para. 4; and *Amarasinghe v. Sri Lanka* (CCPR/C/120/D/2209/2012), para. 4.

⁹ See *Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Korea* (CCPR/C/88/D/1321-1322/2004), para. 8.3; *Jong-nam Kim et al. v. Republic of Korea* (CCPR/C/106/D/1786/2008), para. 7.3; *Atasoy and Sarkut v. Turkey*, paras. 10.4–10.5; *Young-kwan Kim et al. v. Republic of Korea* (CCPR/C/112/D/2179/2012), para. 7.4; *Abdullayev v. Turkmenistan* (CCPR/C/113/D/2218/2012), para. 7.7; *Mahmud Hudaybergenov v. Turkmenistan* (CCPR/C/115/D/2221/2012), para. 7.5; *Ahmet Hudaybergenov v. Turkmenistan* (CCPR/C/115/D/2222/2012), para. 7.5; *Japparow v. Turkmenistan* (CCPR/C/115/D/2223/2012), para. 7.6; *Nurjanov v. Turkmenistan* (CCPR/C/117/D/2225/2012 and CCPR/C/117/D/2225/2012/Corr.1), para. 9.3; and *Uchetov v. Turkmenistan* (CCPR/C/117/D/2226/2012), para. 7.6.

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.¹⁰

6.4 In the present case, the Committee notes that it is uncontested that the author's refusal to perform compulsory military service derives from his religious beliefs. The Committee recalls that 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.¹¹ It also recalls that, during the consideration of the State party's second periodic report, in March 2017, the Committee stated that it remained concerned about the State party's continued failure to recognize the right to conscientious objection to compulsory military service and the repeated prosecution and imprisonment of Jehovah's Witnesses refusing to perform compulsory military service (see CCPR/C/TKM/CO/2, paras. 40–41). The Committee notes that it has dealt with similar cases in respect of the same laws and practices of the State party in a number of earlier communications.¹² In line with those precedents, the Committee concludes that, in the present case, the State party has violated the author's rights under article 18 (1) 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 of the author's rights under article 18 (1) 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 take appropriate steps to expunge the author's criminal record and to provide him with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this connection, the Committee reiterates that, in accordance with its obligation under article 2 (2) of the Covenant, the State party should review its legislation with a view to ensuring the effective guarantee of the right to conscientious objection under article 18 (1) of the Covenant, for instance, by providing the possibility of alternative service of a civilian nature.

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 or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable 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. 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.

¹⁰ See *Min-Kyu Jeong et al. v. Republic of Korea* (CCPR/C/101/D/1642-1741/2007), para. 7.3; *Jong-nam Kim et al. v. Republic of Korea*, para. 7.4; *Abdullayev v. Turkmenistan*, para. 7.7; *Mahmud Hudaybergenov v. Turkmenistan*, para. 7.5; *Ahmet Hudaybergenov v. Turkmenistan*, para. 7.5; *Japparow v. Turkmenistan*, para. 7.6; *Nurjanov v. Turkmenistan*, para. 9.3; and *Uchetov v. Turkmenistan*, para. 7.6.

¹¹ 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; *Atasoy and Sarkut v. Turkey*, paras. 10.4–10.5; *Young-kwan Kim et al. v. Republic of Korea*, para. 7.4; *Abdullayev v. Turkmenistan*, para. 7.8; *Mahmud Hudaybergenov v. Turkmenistan*, para. 7.6; *Ahmet Hudaybergenov v. Turkmenistan*, para. 7.6; *Japparow v. Turkmenistan*, para. 7.7; *Nurjanov v. Turkmenistan*, para. 9.4; and *Uchetov v. Turkmenistan*, para. 7.7.

¹² See, for example, *Abdullayev v. Turkmenistan*; *Mahmud Hudaybergenov v. Turkmenistan*; *Ahmet Hudaybergenov v. Turkmenistan*; *Japparow v. Turkmenistan*; *Nurjanov v. Turkmenistan*; *Uchetov v. Turkmenistan*; and *Nasyrlyayev v. Turkmenistan* (CCPR/C/117/D/2219/2012).