

OPINION No. 31/2005 (TURKMENISTAN)

Communication addressed to the Government on 31 March 2005.

Concerning Mr. Gurbandury Durdykuliyeu.

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of opinion No. 20/2004.)
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. (Same text as paragraph 3 of opinion No. 20/2004.)
4. According to the communication, Mr. Gurbandurdy Durdykuliev, resident of the village of Suvchy in the Balkan region of western Turkmenistan, was arrested and taken away on 13 February 2004 by some six medical personnel and another six in plain clothes. He was taken by ambulance to a psychiatric hospital in the town of Balkanabad (formerly Nebitdag), where he was forcibly confined. Shortly after this forced hospitalization he was transferred across the country to another psychiatric hospital located in a former Soviet pioneer camp in Garashsyzlyk District in the eastern Lebap region of Turkmenistan, where he is confined now.
5. It is reported that a commission at the psychiatric hospital in Balkanabad chaired by an official from the Ministry of Health announced that Mr. Durdykuliyeu was mentally ill. He was officially diagnosed as suffering from "wild paranoia in an aggressive form".
6. It is further reported that on 3 January 2004, Mr. Durdykuliyeu had sent a letter to President Niyazov and the Governor of the Balkan region, urging them to authorize a two-day peaceful demonstration on the main square of Balkanabad, which was scheduled for 18 and 19 February 2004, to coincide with the President's birthday, and to refrain from using force against the participants. Mr. Durdykuliyeu had earlier criticized President Niyazov's policies in interviews he gave to United States-funded Radio Liberty, and had openly spoken about the necessity of forming an opposition political party.
7. The source reports that while in detention at the hospital, Mr. Durdykuliyeu's access to his family was severely restricted. His wife was first permitted to visit him in April 2004 - two months after his detention - but was allowed to see him only in the presence of representatives of the hospital administration. One doctor - reportedly referring to instructions received from the authorities - told her that if she passed information about her husband's case on to media outlets abroad, she would not be allowed to visit him again. When Mr. Durdykuliyeu's wife travelled to the hospital in Garashsyzlyk with their 4-year-old son at the end of October 2004, she was refused permission to see her husband. Their son was only allowed to spend 10 minutes with his father.
8. The source further alleges that in February 2005, both Mr. Durdykuliyeu's wife and son were allowed to meet with him for 10 minutes under the supervision of a medical nurse. Mr. Durdykuliyeu's wife tried to visit him on 5 March 2005 in order to give him food, clothing and medicines. However, she was refused permission to see him. Although she has reportedly

travelled to the hospital in Garashsyzlyk many times since his confinement in the hope of being allowed to see him, Mr. Durdykulyev's wife has seen her husband only twice in more than a year and has never been allowed to meet with him without hospital staff being present.

9. It is also reported that the authorities have disconnected his family's telephone several times in an attempt to prevent their receiving information about his detention.

10. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments.

11. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.

12. The Government described in a general manner the legal framework of detention in the country since the changes brought about by the new democratic Constitution of 1992. It also described its continuous collaboration with all human rights bodies of the United Nations. It did not, however, make any statements in relation to the detention of Gurbandury Durdykulyev, a summary of whose case had been sent to the Government with the communication to which it was replying.

13. In the face of the Government's vague reply, the source reiterates its allegations.

14. The lack of a concrete response by the Government to the allegations of the source, as well as the way in which the latter describes the situation in which Mr. Durdykulyev finds himself, indicate that the deprivation of liberty he is subjected to does in fact amount to a form of detention.

15. The Working Group has stated on several occasions, most recently in its last report to the Commission on Human Rights (see E/CN.4/2005/6, para. 58 (e)), that the deprivation of a person's liberty on the ground of mental illness, against that person's will, requires objective control by a judge or independent Government official.

16. In the present case, the allegation that Mr. Durdykulyev was not allowed to appeal to a judge or independent organ against his internment in a psychiatric facility was not challenged. On the contrary, his activities critical of the Government and the manner in which his internment was carried out (the denial of communication with his family) indicate that he is not undergoing psychiatric treatment, but arbitrary detention, motivated by his having exercised his freedom of expression, and without the observance of the minimum safeguards required by the notion of a fair hearing.

17. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mr. Gurbandury Durdykulyev is arbitrary, as being in contravention of articles 9 and 19 of the International Covenant on Civil and Political Rights, and falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

18. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 2 September 2005