



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-sixth session
13 to 31 July 2009

VIEWS

Communication No. 1460/2006

<u>Submitted by:</u>	Ms. Maral Yklymova (represented by counsel, Mr. Kenneth Lewis)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Turkmenistan
<u>Date of communication:</u>	27 July 2005 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 6 March 2006 (not issued in document form)
<u>Date of adoption of Views:</u>	20 July 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Arbitrary arrest and detention, including house arrest

Procedural issues: Exhaustion of domestic remedies, admissibility *ratione materiae*

Substantive issues: Arbitrary arrest and detention, right to liberty and security of person, right to be informed of reasons for arrest and of charges against her, right to be brought promptly before a judge and to have lawfulness of detention considered by a judge, liberty of movement, freedom from arbitrary or unlawful interference

Articles of the Covenant: 9, paragraphs 1, 2, 3 and 4, article 12, article 17, and article 14, paragraph 3 (a) and (c)

Article of the Optional Protocol: 5, paragraph 2 (b)

On 20 July 2009, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No.1460/2006.

[Annex]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of
the Optional Protocol to the International Covenant on Civil and Political rights

Ninety-sixth session

concerning

Communication No. 1460/2006*

<u>Submitted by:</u>	Ms. Maral Yklymova (represented by counsel, Mr. Kenneth Lewis)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Turkmenistan
<u>Date of communication:</u>	27 July 2005 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 20 July 2009,

Having concluded its consideration of communication No. 1460/2006, submitted to the Human Rights Committee on behalf of Ms. Maral Yklymova under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Maral Yklymova, a Turkmen national, currently residing in Sweden. At the time of the submission of her communication to the Committee, she was under house arrest in Turkmenistan. She claims to be a victim of violations by Turkmenistan of article 9, article 12, article 14, and article 17, of the International Covenant on Civil and Political Rights. She is represented by counsel, Mr. Kenneth Lewis.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

The facts as presented by the author

2.1 The author is the daughter of Mr. Saparmurad Yklymov, a former deputy agricultural minister of Turkmenistan. In 1997, her parents were granted refugee status in Sweden, and became Swedish citizens in 2003. In 2001, while studying in the United Kingdom, the author filed several applications for a British residency permit, which were denied and she therefore had to return to the State party upon graduation.

2.2 On 25 November 2002, there was a murder attempt against the former Turkmen President Saparmurat Niyazov. In December 2002, Mr. Saparmurad Yklymov, along with three other former ministers, was convicted and sentenced *in absentia* to life imprisonment for “conspiracy to overthrow the President”.

2.3 On 25 November 2002, the author was arrested by the National Security Committee (the KNB) without a warrant and without being informed of any judicial charges against her¹. She was released on 30 December 2002 without charges. Within the next few months, her apartment, ID card and passport were confiscated. She did not receive a formal acknowledgement of her arrest or the confiscation of her property. As it is obligatory to have an ID card to stay in Ashgabat for more than three days, the author was prevented from staying in her home town. She did remain in the town for another few months but in her aunts’ house. However, during the summer of 2003, following the confiscation of her apartment, she was forced to leave and went to Mary, where she lived with and was supported by her grandmother until she left Turkmenistan in July 2007.

2.4 Despite the fact that no charges were brought against her, the author was under constant surveillance in her grandmother’s home. Armed officials guarded the house every day and she was required to report to her local police station on a regular basis. A group of between 10 and 12 armed officials searched the house nearly every day without any explanation or any document providing a legal basis for such searches. Her telephone line was tapped and when her parents telephoned her, the police answered the phone. Her parents did manage to speak to her on a few occasions during which she made it clear that she was under pressure not to accept any international phone calls.

2.5 Initially, she was allowed to leave the house to run errands, albeit under surveillance, but from September 2004, no one was allowed to enter or leave the premises. Seven officials remained inside and outside the building at all times and there was a food delivery twice a day. On 10 September 2004, the author’s family learnt that the KNB had cut off her telephone line. From that moment, she remained in an uncertain legal situation which resembled house arrest. She was under constant surveillance by armed officers but without any legal basis for such restrictions. In January 2003, the President demanded the extradition of Mr. Saparmurad Yklymov from Sweden.

2.6 On 20 May 2003, the author was granted a permanent residence permit in Sweden. Citizens are not allowed to leave the country without an exit visa and since 2000 they have been required to obtain special permission from the police even to travel to Turkmen areas in

¹ The OSCE Special Rapporteur characterised this arrest as arbitrary in his report on Turkmenistan of 13 March 2003.

neighbouring Uzbekistan. After September 2004, the procedures for obtaining this permission were tightened even further². The author had no possibility of receiving an exit visa. If she attempted to leave the country without this document it may have resulted in further retaliation against both her and her relatives. In any event, considering her constant surveillance and the fact that her physical appearance was well known to the authorities, such an escape would have been impossible. She did try to leave the State party in the summer of 2003, but was refused permission.

The complaint

3.1 On the issue of exhaustion of domestic remedies, the author argues that, as no formal judicial decisions had been taken in her case, it was impossible to make any application for redress. During the spring of 2003, the author and her aunt tried to contact the UN representative in Ashgabat, as a result of which they were summoned to the prosecutor's office, where they were informed that any further attempt to contact the UN would lead to imprisonment on the ground of "disturbing public peace".

3.2 The author claims a violation of article 9, paragraph 1, on account of the arbitrary deprivation of her liberty between 25 November and 30 December 2002. She claims a violation of article 9, paragraph 2, as she was not informed of the reasons for her arrest and of article 9, paragraph 4, regarding the lawfulness of her detention. From September 2004, she describes her situation as an arbitrary arrest, as she was not informed of the reason for her house arrest, and was not entitled to take proceedings to decide upon the lawfulness of her deprivation of liberty, thus violating article 9, paragraphs 1, 2, and 4.

3.3 The author claims that the obligation to report to her local police station violated her rights under article 12, paragraph 1, and as there was no criminal charge against her, there should be no exception to the right to liberty of movement set out in paragraph 3 of the same provision. She also claims a violation of article 12, paragraph 1, for having been forced to move from Ashgabat to Mary and from being prohibited from returning to her home village³.

3.4 The author also claims a violation of article 14, paragraphs 3 (a) and (c), as although her treatment appeared to imply that there were criminal charges against her, she was not informed of them nor tried without undue delay. Finally, the author claims a violation of article 17, with respect to the searches of her home without legal grounds, the deprivation of her telephone contacts, the confiscation of her apartment, passport, and ID⁴.

² Article 214 of the Criminal Code states that the (attempt) of illegal crossing of Turkmenistan's border (without the correct documents or authorisation) is punishable with penal labour or imprisonment up to two years.

³ In this regard, she refers to the jurisprudence of the Committee in the case of Communication no. 505/1992, *Ackla v. Togo*, Views adopted on 25 March 1996 and Communication no. 157/1983, *Mpaka Nsusu v. Zaire*, Views adopted on 26 March 1983.

⁴ The author refers to Communication no. 74/1980, *Estrella v. Uruguay*, Views adopted on 29 March 1983.

State party's submission on admissibility and the author's comments thereon

4. On 14 April 2008, the State party submitted that the author had not been charged with any crime and denied that she had been persecuted by the authorities. It states that in July 2007, the author voluntarily moved to Sweden with her grandmother Nurbibi Barabinskaya to join their relatives there.

5.1 On 28 August 2008, the author confirmed that she had been released from detention in July 2007, but only after four years of house arrest and after the death of President Niyazov on 21 December 2006. She fled to Turkey with her grandmother and from there to Sweden. She maintains her original claims and notes that the State party does not directly deny the fact that she was deprived of her liberty for a number of years. She considers the State party's explanations as vague: it has failed to rebut the facts presented by her. The author submits that by 2008 she was forced to leave the country, as she did not exist on the national register, had lost her job and all her assets, and her friends were afraid to be seen with her.

5.2 On 26 January 2009, the author provided a detailed list of events which occurred during the period in question in Turkmenistan, as well as a list of all the foreign diplomats who were aware of her case and with whom she was in contact during her house arrest. She provides details of the dates and times upon which she met with the diplomats concerned and submits that she received warnings to have no further contact with foreign diplomats. In the list of events provided, she states that she sent a letter of complaint to the general prosecutor's office and to the Ministry of Internal Affairs (it is not clear what her complaints related to).

Issues and proceedings before the Committee

Consideration of Admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its Rules of Procedure, decide whether or not it is admissible under the Optional Protocol.

6.2 The Committee notes the author's argument on non-exhaustion of domestic remedies to the effect that, as there were no formal judicial decisions taken against her it would have been judicially impossible to make any claim before the judicial authorities. The Committee notes that the State party has neither contested this claim, nor provided any information on available judicial remedies which would have been or remain at the author's disposal. It also notes the efforts made by the author (para. 5.2) to bring an end to her house arrest. Thus, the Committee considers that there is no reason to find the communication inadmissible for lack of exhaustion of domestic remedies and considers this communication in conformity with article 5, paragraph 2 (b), of the Optional Protocol.

6.3 As to the claims under article 9, paragraph 3, and article 14, paragraph 3 (a) and (b), the Committee notes that both the State party and author acknowledge that no charges were in fact made against her. For this reason, the Committee considers that these claims are inadmissible *ratione materiae*, under article 3 of the Optional Protocol.

6.4 As no other issues arise with respect to the admissibility of the communication, the Committee considers the claims under article 9, paragraphs 1, 2, and 4, article 12, paragraph 1, and article 17, to be admissible.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1 of the Optional Protocol.

7.2 The Committee recalls that under article 9, paragraph 1, of the Covenant everyone has the right to liberty and security of person, and no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law. The Committee further recalls that house arrest may also give rise to a finding of a violation of article 9⁵. The Committee notes that, apart from a mere denial that the author was ever charged or persecuted by Turkmen authorities, the State party does not dispute the author's claim that she was arrested and detained from 25 November 2002 to 30 December 2002, and was placed under house arrest from the summer of 2003 to July 2007, i.e. for nearly four years, without any legal basis. For this reason, the Committee considers that the author was deprived of her liberty during these two periods and that her detentions were arbitrary, which constitute a violation of article 9, paragraph 1, of the Covenant.

7.3 The Committee notes the claim that on neither occasion was the author informed of the reasons for her arrest or of the charges against her. The State party does not dispute this claim. For this reason, the Committee concludes that the author's rights under article 9, paragraph 2, of the Covenant were violated.

7.4 The Committee notes the author's allegations that she had no opportunity to challenge the lawfulness of either of her periods of detention. The State party did not respond to those allegations. The Committee recalls that under article 9, paragraph 4, judicial review of the lawfulness of detention must provide for the possibility of ordering the release of the detainee if his or her detention is declared incompatible with the provisions of the Covenant, in particular those of article 9, paragraph 1. Accordingly, and in the absence of any satisfactory explanations by the State party, the Committee concludes that the author's rights under article 9, paragraph 4, of the Covenant were violated.

7.5 As to the author's claims with respect to her freedom of movement, the Committee recalls that article 12 of the Covenant establishes the right to liberty of movement and freedom to choose residence for everyone lawfully within the territory of the State. In the absence of any pertinent explanation from the State party, other than a blanket denial that its authorities had targeted the author, justifying the restrictions to which the author was subjected, pursuant to paragraph 3 of article 12, the Committee is of the opinion that the restrictions on the author's freedom of movement and residence were in violation of article 12, paragraph 1, of the Covenant.

⁵ Communication no. 132/1982, *Monja Jaona v. Madagascar*, Views adopted on 1 April 1985; Communication no. 1134/2002, *Gorji-Dinka v. Cameroon*, Views adopted on 15 March 2005; and Communication no. 1172/2003, *Abbassi Madani v. Algeria*, Views adopted on 28 March 2007.

7.6 Finally, the Committee considers that the searches of the author's home without legal grounds, the deprivation of her telephone contacts, and the confiscation of her apartment, passport and ID (para. 3.4), in the absence of any pertinent explanation from the State party, amount to an arbitrary interference with her privacy, family, and home within the terms of article 17 of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose violations by Turkmenistan of article 9, paragraphs 1, 2, and 4, article 12, paragraph 1, and article 17 of the International Covenant on Civil and Political Rights.

9. Pursuant to article 2, paragraph 3 (a) of the Covenant, the Committee concludes that the author is entitled to an effective remedy, including adequate compensation. In addition, the State party is required to take steps to prevent further occurrences of such violations in the future.

10. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognised the competence of the Committee to determine whether there has been a violation of the Covenant or not 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 recognised in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The Committee is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
