



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

One hundredth session

11 to 29 October 2010

Views

Communication No. 1530/2006

<u>Submitted by:</u>	Omar Faruk Bozbey (represented by counsel, Timur Misrikhanov)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Turkmenistan
<u>Date of communication:</u>	27 September 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 27 November 2006 (not issued in document form)
<u>Date of adoption of Views:</u>	27 October 2010

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Inhuman treatment, right to have the free assistance of an interpreter if one cannot understand or speak the language used in court
<i>Substantive issues:</i>	Degree of substantiation of claims
<i>Procedural issues:</i>	None
<i>Article of the Covenant:</i>	Articles 2, paragraph 1, 9 paragraphs 1 and 4, 10, paragraph 1, 14, paragraphs 1 and 4, 26
<i>Articles of the Optional Protocol:</i>	2

On 27 October 2010 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. 1530/2006.

[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 (one hundredth session)**

concerning

Communication No. 1530/2006

Submitted by: Omar Faruk Bozbey (represented by counsel, Timur Misrikhanov)

Alleged victim: The author

State party: Turkmenistan

Date of communication: 27 September 2006 (initial submission)

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

Meeting on 27 October 2010,

Having concluded its consideration of communication No. 1530/2006, submitted to the Human Rights Committee on behalf of Mr. Omar Faruk Bozbey 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 authors 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 Mr. Omar Faruk Bozbey, a Turkish national, born in 1944, who worked in Turkmenistan between 1998 and 2005 and who currently resides in Mersin (Turkey). He claims a violation by Turkmenistan of his rights under article 2, paragraph 1, article 9 paragraphs 1 and 4, article 10, paragraph 1, article 14, paragraphs 1 and 4 and article 26 of the International Covenant on Civil and Political Rights. He is represented by a counsel, Mr. Timur Misrikhanov.¹

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, 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. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

¹ The Optional Protocol entered into force in relation to Turkmenistan on 1 May 1997.

The facts as presented by the author

2.1 The author, owner and president of the Bozbey Company (a construction company) arrived in Turkmenistan in 1998, to construct an agro-industrial complex. Pursuant to a Presidential Decree 3644 of 16 March 1998, the company concluded a contract with Saparmyrat Turkmenbashi, the Turkmen President's Foundation. According to the author, the same Decree exempted his company from taxes and customs duties. To implement the contract, in October 1998 he created a subsidiary enterprise in the country.

2.2 The author claims that in 2003, on an unspecified date, he received a call from the chief of the State Tax Service who demanded a bribe of two hundred thousand US dollars and the construction of a heliport for the President of Turkmenistan at the expense of the company. The author refused to comply. The next day, tax inspectors searched his office and seized all the company's documents. The Tax Service claimed that his companies owed the State 6.769.443.500 Turkmen manats (1.3 million US Dollars) in taxes and fines.

2.3 Since the author refused to pay this amount, criminal proceedings were instituted against him. On 21 April 2004, the Ashgabat District Court found him guilty of several economic offences, including tax evasion and ordered the confiscation of all his property, including his company and sentenced him to 14 years of imprisonment. The same day, he was detained. According to the author, criminal proceedings were initiated on the order of the President himself.

2.4 The author claims that all the court proceedings were conducted and the verdict was delivered in the Turkmen language, which he did not understand. He had to ask for help from other prison inmates to translate the verdict and to prepare his appeal. Both during the trial and after he started serving his sentence, the author unsuccessfully complained to the courts regarding the violation of his right to have an interpreter during the proceedings.

2.5 The author claims that he was subject to degrading and humiliating conditions of detention because of the size and the conditions of the cell in which he was kept, the insufficient quantity of food and water provided, and of the way prisoners were treated by prison guards.

2.6 On 26 April 2004, the author filed a cassation appeal before the criminal panel of the Ashgabat City Court. On 2 June 2004, the City Court confirmed the first instance verdict and dismissed the appeal. The author then filed a complaint before the Supreme Court, which was rejected on 16 November 2004.

2.7 The author complained about the conditions of his detentions to different authorities, including the Director of the prison, prosecutors responsible for supervising the lawfulness of detention conditions, the Prosecutor General of Turkmenistan and the Turkish embassy in Ashgabat. Therefore, the author contends that he exhausted all available domestic remedies.

2.8 While he was in detention, representatives of the Secret Services and law enforcement officers twice asked him to sign a confession and promised to free him if he did so. The author refused to sign. He affirms that he was released on 29 October 2005.

The complaint

3.1 The author contends that he has exhausted all available and effective domestic remedies.

3.2 The author claims that the State party violated his rights under article 2, paragraph 1, article 9 paragraphs 1 and 2, article 10, paragraph 1, article 14, paragraphs 1 and 4 and article 26 of the Covenant.

State party's observations on admissibility and merits

4.1 The State party confirms that, on 21 April 2004, the author was convicted to 14 years of imprisonments for various economic crimes. The State party restates the main points of the verdict and maintains that the author's guilt was proven beyond doubt by numerous witnesses and documentary evidence. It also states that in accordance with international law the Turkish Embassy in Turkmenistan had unimpeded access to the author and that the State party on several occasions expressed willingness to allow representatives of international organizations to have access to the investigation.

4.2 The State party states that no violence was inflicted on the author while he was serving his sentence. It submits that in October 2005 the author received a presidential pardon and returned to his home country.

Authors' comments

5.1 The author submits that the hearings of the Ashgabat District Court were not transparent, unbiased and just, and that neither that court, nor the higher instance took into consideration any of the documents proving his innocence. He also submits that the seizure of the assets of his company was illegal. He further submits that he was subjected to psychological pressure by the secret police to "accept the tax claims" and that interrogation officers of the Finance Department of the Ministry of Internal Affairs used "physical force" against him and tortured him in order to compel him "to withdraw his objections to taxation".

5.2 The author explains at length that his company was supposed to be exempted from taxation based on a Presidential Decree 3644 and that according to him the subsidiary company, created by him in Turkmenistan should also have been exempted from taxation. He refutes in detail the criminal charges on which he was convicted by the domestic courts.

5.3 The author submits that following the announcement of the court verdict on 21 April 2004, he had immediately been taken to a dirty dungeon, which had no windows and where there was no "possibility to receive air and light". The dungeon had no toilet and there were 35 people in it in 25 square meters. The author claims that he had been stripped naked and left without food and water for three days. He also claims that he was denied medicines for his hearth condition, even though the medication was delivered to the prison and that his medication was sold on the market by the prison staff. During his stay in the dungeon he was visited by a prosecutor, whose name he did not know and who offered to transfer him elsewhere if he "accepted the taxation", signed a confession and did not attempt to appeal to international courts. When the author refused, he was threatened that he would be kept in prison for 15 years and would die there.

5.4 After being kept in the dungeon for an unspecified period of time, the author was transferred to the Tecen prison, 220 kilometers away from the city where his wife resided. He was again tortured. When he refused to sign a confession, he was placed in a cell two by three meters, which he had to share with two other prisoners. His brothers and his Turkish solicitor who wanted to visit him were denied entry visas to Turkmenistan.

5.5 On 9 November 2004, the author was transferred to the Bayramali prison in Mary province, a further 250 kilometers away from his residence and his wife. He was kept in a section called "isolator". In the isolator there were rats, insects and dirt. The authorities continued to exercise pressure on him to sign the "confession" that he agrees to pay the taxes due by selling his commodities and to state that he would not claim any rights or complain. He was threatened with a permanent transfer to the Ovadantepe prison, where prisoners are kept in underground cells. The author was tortured again and denied medical treatment by the prison staff.

5.6 The author claims that when an amnesty, in which he was included, was declared by the President on 20 October 2005, the authorities again attempted to force him to sign a “confession”. He was transferred to the prison in Ashgabat. Around midnight on 28 October 2005, he was visited by three officers from the National Security Service. They wanted him to sign legal documents revoking a contract, concluded in the name of his company, to “accept the taxes which have been collected” and to undertake that he would not make any complaints and apply to any international arbitration institution regarding his investments in the country. He refused.

5.7 In the interim the author’s wife had learned that he was in the Ashgabat prison and had alerted the Turkish Embassy. An official of the Embassy requested to see him and eventually was allowed to accompany him to the airport. The author was repatriated to Turkey in the early morning hours of 29 October 2005 with the assistance of the Turkish Embassy’s official.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes, as required by article 5, paragraph 2 (a) of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement. In the absence of any objection by the State party, the Committee considers that the requirements of article 5, paragraph 2(b), of the Optional Protocol have been met.

6.3 The author claims that he is a victim of violations of article 2, paragraph 1, article 9, paragraphs 1 and 2 and article 26 of the Covenant. The author, however, has provided no detail and no supporting documents in substantiation of these claims. In the circumstances, the Committee considers that this part of the communication is unsubstantiated, for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

6.4 The Committee notes the author's claim that his rights under article 14, paragraph 4, of the Covenant were violated in relation to his conviction for economic crimes by the Ashgabat city District Court. Since article 14, paragraph 4 applies only to juvenile persons, and the author is not a juvenile, the Committee considers that the above article is not applicable to the instant case.

6.5 The Committee takes note of the State party's arguments that the author had been convicted in accordance with the domestic legislation. The Committee, however, observes the author’s allegation that his right to the assistance of an interpreter was violated. This allegation has not been refuted by the State party. The Committee considers that this claim gives raise to fair trial issues under article 14, paragraphs 1 and 3 (f) of the Covenant. Accordingly, the Committee declares this part of the communication admissible and proceeds to the consideration of its merits.

6.6 Regarding the author's claims under article 10, paragraph 1 of the Covenant, the Committee observes that the author has provided a detailed account of the conditions in which he was held following his conviction and notes that the State party has limited its submission to a blanket statement that no violence was inflicted on the author while he was serving his sentence. The Committee considers this part of the communication sufficiently substantiated and, not finding other obstacles to admissibility, declares it admissible..

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information received, in accordance with article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee takes note of the author's claim, not contested by the State party, that all court proceedings were conducted and the verdict was delivered in the Turkmen language, which he did not understand. The Committee considers that not providing the author with an interpreter when he could not understand and speak the language used in court, constitutes a violation of article 14, paragraph 1 read in conjunction with article 14, paragraph 3 (f) of the Covenant.

7.3 With respect to the author's claims regarding his conditions of detention in Ashgabat and in the Tecen and Bayramali prisons, the Committee notes the detailed description made by the author (see *supra* paragraphs 5.3 to 5.5), which has not been contested by the State party. The Committee finds that confining the author in such conditions constitutes a violation of his right to be treated with humanity and with respect for the inherent dignity of the human person under article 10, paragraph 1, of the Covenant.²

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it disclose violations by the State party of article 14, paragraph 1, read in conjunction with article 14, paragraph 3(f) and article 10, paragraph 1 of the Covenant.

9. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee considers that the State party is under an obligation to provide the author with an effective remedy and, to that effect, take appropriate steps to: institute criminal proceedings for the prosecution and punishment of the persons responsible for the treatment to which the author was subjected; and provide the author with appropriate reparation, including compensation. The State party is also under an obligation to take steps to prevent similar violations occurring 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 or not 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 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.]

² See for instance Communications No. 590/1994, *Bennet v. Jamaica*, paragraphs 10.7 and 10.8; No. 695/1993, *Simpson v. Jamaica*, paragraph 7.2; No. 704/1996, *Shaw v. Jamaica*, paragraph 7.1; and No. 734/1997, *McLeod v. Jamaica*, paragraph 6.4.