



## 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. 2224/2012\*, \*\*

<i>Communication submitted by:</i>	Dovran Bahramovich Matyakubov (represented by counsel, Shane H. Brady)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Turkmenistan
<i>Date of communication:</i>	3 September 2012 (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 7 December 2012 (not issued in document form)
<i>Date of adoption of Views:</i>	14 July 2016
<i>Subject matter:</i>	Conscientious objection to compulsory military service; inhuman and degrading treatment; conviction for the same offence twice; conditions of detention
<i>Procedural issues:</i>	Admissibility — exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of conscience; inhuman and degrading treatment; <i>ne bis in idem</i> ; conditions of detention
<i>Articles of the Covenant:</i>	7, 10, 14 (7) and 18 (1)

\* Adopted by the Committee at its 117th session (20 June-15 July 2016).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Ladhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Yuval Shany and Margo Waterval.  
A joint opinion by Committee members Yuji Iwasawa and Yuval Shany is annexed to the present Views.



*Articles of the Optional Protocol:* 5 (2) (b)

1.1 The author of the communication is Dovran Bahramovich Matyakubov, a national of Turkmenistan born on 18 September 1992. He claims to be the victim of a violation by the State party of his rights under articles 7, 14 (7) and 18 (1) of the Covenant, due to his repeated prosecution, conviction and imprisonment as a conscientious objector. Although the author does not invoke this provision specifically, the communication also appears to raise issues under article 10 of the Covenant. The Optional Protocol entered into force for the State party on 1 August 1997. The author is represented by counsel, Shane H. Brady.

1.2 In his initial communication, dated 3 September 2012, the author requested that the Committee apply rule 92 of its rules of procedure and seek assurances from the State party as an interim measure that it would not subject him to a second round of criminal prosecution and conviction, pending examination of his communication by the Committee. On 7 December 2012, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to accede to the request to grant interim measures.

### **The facts as submitted by the author**

2.1 The author is a Jehovah's Witness. Before his repeated and unlawful criminal convictions as a conscientious objector, he had never been charged with any criminal or administrative offence.

2.2 On 17 September 2010, he was called by the Military Commissariat to perform his compulsory military service. He explained in detail to representatives of the Military Commissariat that, as a Jehovah's Witness, his religious beliefs did not permit him to perform military service. However, he was charged with refusing military service, under article 219 (1) of the Criminal Code.

2.3 The author's trial took place on 28 December 2010 in Boldumsaz District Court. He explained in detail the reasons why his religious beliefs did not permit him to perform military service and that he was willing to perform alternative civilian service.<sup>1</sup> On the same day, Boldumsaz District Court sentenced him to 18 months of imprisonment for refusing military service, under article 219 (1) of the Criminal Code, to be served in a "general regime" colony. He was arrested in the courtroom and was placed in the DZK-7 detention facility in Dashoguz, where he was held in custody for 71 days. On 8 March 2011, he was transferred to the LBK-12 prison, which is located near the town of Seydi, in the Lebap region, in the desert of Turkmenistan. While in detention, as a Jehovah's Witness, the author was singled out for harsh treatment. Immediately he arrived at the LBK-12 prison, he was placed in solitary confinement for 10 days.

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<sup>1</sup> See, for example, the Committee's concluding observations of 19 April 2012 (CCPR/C/TKM/CO/1, para. 16), in which the Committee expresses its concern that the Conscription and Military Service Act, amended on 25 September 2010 and now referred to as the Military Service and Military Duty Act, did not recognize a person's right to exercise conscientious objection to military service and did not provide for any alternative to military service. The Committee regretted that, due to that law, a number of persons belonging to the Jehovah's Witnesses had been repeatedly prosecuted and imprisoned for refusing to perform compulsory military service. The State party was requested: (a) to take all necessary measures to review its legislation with a view to providing for an alternative to military service; (b) to ensure that the law clearly stipulates that individuals have the right to conscientious objection to military service; and (c) to halt all prosecutions of individuals who refuse to perform military service on grounds of conscience and release those individuals who are currently serving prison sentences.

2.4 On 28 June 2012, the author was released from prison. He was required to report regularly to the Boldumsaz police department. At the time of submitting his communication, he faced the prospect of again being called up for military service and again being imprisoned as a conscientious objector.

2.5 The author considers that the 28 December 2010 decision of Boldumsaz District Court satisfies his obligation to exhaust all reasonable domestic remedies prior to filing the present communication. He did not appeal his first conviction to the higher courts in Turkmenistan.<sup>2</sup>

2.6 In a further submission, dated 1 May 2013, the author indicates that on 3 November 2012 he received a summons from the Military Commissariat to report for military service. He explained again to the Military Commissariat officials the reasons why he would not perform military service. He also stated that he now only had 30 per cent sight in his left eye, and that due to the extra load his right eye sometimes did not see anything. He stated that his doctor warned him that if he did not do something about the problem, he might go blind. On 24 December 2012, six months after he had been released from prison, he was brought to trial again, at Boldumsaz District Court, in the Dashoguz region. He told the judge that as a Jehovah's Witness, his religious conscience did not permit him, directly or indirectly, to bear arms or to learn war. He also told the judge about his eye problem and emphasized that he was ready to perform alternative civilian service. However, he was convicted for a second time as a conscientious objector and was sentenced to the maximum term of 24 months of imprisonment, under article 219 (1) of the Criminal Code. He was considered a repeat offender and was sent to a "strict regime" prison. On 17 January 2013, Dashoguz Regional Court dismissed the author's appeal against the first instance judgment. After the trial, he was held for approximately 15 days in the DZ-D/7 temporary detention centre located in Dashoguz, where he was subjected to additional mistreatment and threats by officers of the sixth police department of Dashoguz.<sup>3</sup> The author indicated that he was beaten for three days, that the detention officials tried to force him to renounce his faith, and that they humiliated him on account of his convictions. On 10 January 2013, the author was transferred to the LBK-11 strict regime colony in Seydi, where he served his sentence in conditions considered worse than those of the LBK-12 general regime colony where he had served his first term of imprisonment. The author claims that he was always monitored

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<sup>2</sup> The author did not appeal to supreme courts in the State party. He submits that, according to the jurisprudence of the Committee, a supervisory appeal to the Supreme Court is a purely discretionary remedy that does not need to be pursued in order to exhaust domestic remedies. See, for example, communication No. 1100/2002, *Bandajevsky v. Belarus*, Views adopted on 28 March 2006, para. 10.13. Furthermore, as detailed in the decision of the European Court of Human Rights in *Kolesnik v. Russia* (application No. 26876/08, judgment of 17 June 2010), at paras. 54-58, 68, 69 and 73, appeals to the domestic courts in Turkmenistan are a pointless exercise. This is confirmed in communications No. 2219/2012 (*Nasyrlyayev v. Turkmenistan*) and No. 2227/2012 (*Yegendurdyyev v. Turkmenistan*), in which appeals by conscientious objectors, to the appeal court and to the Supreme Court of Turkmenistan, were rejected. The author also considers that this is confirmed by the fact that Turkmenistan has repeatedly been admonished by the Special Rapporteur on freedom of religion or belief, the Working Group on Arbitrary Detention, the Committee against Torture, the Organization for Security and Cooperation in Europe and other international bodies to stop prosecuting conscientious objectors. However, the State party continues to prosecute and imprison conscientious objectors. Moreover, the Committee against Torture has stated (see CAT/C/TKM/CO/1, para. 10) that it is deeply concerned at the ineffective functioning of the justice system, apparently caused in part by the lack of independence of the prosecution and judiciary — a point that had also been noted by the Secretary-General in 2006 (see A/61/489, para. 46).

<sup>3</sup> As indicated in the statement by Tazegul Orazmedova, dated 14 February 2013 (annexed to the further submission).

when he was in LBK-11, and was not allowed to associate freely with his fellow believers who were in the same prison. He submits that he has twice been convicted and imprisoned for his refusal to accept military service, which is “based on the same constant resolve grounded in reasons of conscience”.

2.7 Specifically, as concerns the alleged violation of article 7 of the Covenant, the author states that filing a complaint with the prison administration or other State agencies for serious acts of mistreatment would only serve to expose the applicants to harsh retaliation and further physical abuse. He maintains that there was no effective domestic remedy available to him to complain about the “inhuman or degrading treatment or punishment” suffered while in detention and in prison. He refers to the concluding observations on Turkmenistan by the Committee against Torture, in which that Committee noted the lack of an independent and effective complaint mechanism in the State party for receiving torture allegations and conducting impartial and comprehensive investigations, particularly when the allegations were submitted by prisoners and pretrial detainees.<sup>4</sup>

2.8 As regards the alleged violation of article 14 (7) of the Covenant, and invoking similar argumentation to that used in *Navruz Nasyrlyayev v. Turkmenistan*, the author states that article 18 (4) of the Military Service and Military Duty Act expressly permits the repeated prosecution and imprisonment of conscientious objectors to military service. As a result, no domestic remedy was available for him to be able to obtain redress against his repeated prosecution, conviction and imprisonment for being a conscientious objector to military service. Moreover, on 17 January 2013, Dashoguz Regional Court dismissed the author’s appeal against the 24 December 2012 district court judgment in regard to his second conviction.

2.9 In relation to the alleged violation of his rights under article 18 (1) of the Covenant, the author submits that the national courts — trial courts, appeal courts and the Supreme Court — have never ruled in favour of a conscientious objector to military service.<sup>5</sup> These facts, together with the repeated rejection of international appeals to provide for alternative civilian service, which is compatible with the reasons for conscientious objection, and to release imprisoned conscientious objectors, confirm that there is no domestic remedy available in Turkmenistan for conscientious objectors to military service to challenge their criminal prosecution, conviction and imprisonment. The author thus maintains that he had exhausted the available domestic remedies concerning the alleged violation of article 18 (1) of the Covenant, prior to submitting his communication to the Committee.

2.10 The author has not submitted his communication to any other procedure of international investigation or settlement.

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<sup>4</sup> See CAT/C/TKM/CO/1, para. 11.

<sup>5</sup> It is also argued in the other communications relating to conscientious objectors and Turkmenistan (e.g. communication No. 2222/2012, *Ahmet Hidaybergenov v. Turkmenistan*, Views adopted on 29 October 2015, paras. 2.7 and 6.3), that the national courts of Turkmenistan have never ruled in favour of a conscientious objector to military service. This is confirmed by the cases of six other authors (*Navruz Nasyrlyayev*, *Zafar Abdullayev*, *Matkarim Aminov*, *Mahmud Hydaybergenov*, *Shadurdy Uchetov* and *Akmurat Yegendurdyev*), in which all appeals filed at all levels of court were rejected.

## The complaint

3.1 The author claims that his prosecution and imprisonment on account 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.<sup>6</sup>

3.2 The author also claims a violation of article 7 of the Covenant on account of the “inhuman or degrading treatment or punishment” he received while in detention, which included police brutality, and on account of the conditions of imprisonment at the LBK-12 prison. In this regard, he refers, inter alia, to the concluding observations on Turkmenistan by the Committee against Torture,<sup>7</sup> the jurisprudence of the European Court of Human Rights,<sup>8</sup> and the report of February 2010 by the country’s Independent Lawyers Association.<sup>9</sup> These documents indicate that the practice of torture and ill-treatment of detainees is widespread in the State party. They also highlight the serious risk of being subjected to torture or inhuman or degrading treatment or punishment upon removal to Turkmenistan, and the fact that the LBK-12 prison is situated in a desert where temperatures fall to -20°C in winter and rise to 50°C in the summer heatwaves. The prison is overcrowded, and prisoners with tuberculosis and skin diseases are kept together with healthy inmates, putting the author at a high risk of contracting tuberculosis and other

<sup>6</sup> See, for example, *Feti Demirtas v. Turkey*, in which the European Court of Human Rights held that the applicant suffered inhuman and degrading treatment because he was subjected to “numerous criminal proceedings” and “criminal convictions” as well as ill-treatment while in prison (para. 91). This conclusion applies mutatis mutandis to the author’s case.

<sup>7</sup> See CAT/C/TKM/CO/1, paras. 14, 18 and 19, in which the Committee against Torture expressed its concern at, inter alia, the ongoing physical abuse and psychological pressures 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 against Torture also expressed deep concern about the material and hygiene conditions in places of deprivation of liberty, such as inadequate food and health care, severe overcrowding, and unnecessary restrictions on family visits.

<sup>8</sup> See, for example, *Kolesnik v. Russia* (application No. 26876/08, judgment of 17 June 2010) at paras. 68, 69 and 72, in which the European Court of Human Rights concluded that an extradition order to Turkmenistan for criminal prosecution subjected the applicant in that case to “serious risk” of being subjected to torture or inhuman or degrading treatment or punishment. The factors taken into account included 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.

<sup>9</sup> The February 2010 report by the country’s Independent Lawyers Association describes the LBK-12 prison as follows: The penitentiary institution (popularly referred to as Shagal) is the largest in Turkmenistan in size and prison population. It is 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-time offenders, prison conditions are very tough. The colony is based in the lifeless desert, with winter temperatures falling to -20°C, and in the summer, heatwaves of up to 50°C. Due to the harsh climatic conditions, the overcrowding, the fact that prisoners diagnosed with tuberculosis and skin diseases are kept together with healthy inmates, and the scarce supplies of food, medications and personal hygiene products, the institution reports the highest mortality rate, of 5.2 per cent, among the country’s penitentiary facilities. Similarly to other penitentiary facilities in Turkmenistan, physical abuse is 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 have been placed in the prison for the first time and are consequently not aware of the unofficial prison rules are subjected to violence.

Similar observations on the conditions in prisons in Turkmenistan are made in the 2011 country report of the Department of State (United States of America) and the Amnesty International report of February 2012.

infections. Although the author does not invoke article 10 of the Covenant specifically, the communication also raises issues under that article.

3.3 In the present case, the author has twice been prosecuted, convicted and imprisoned for his refusal to accept military service — which is “based on the same constant resolve grounded in reasons of conscience” — in violation of article 14 (7) of the Covenant.<sup>10</sup>

3.4 The author further claims that his prosecution, conviction and imprisonment for refusing to perform compulsory military service due to his religious beliefs and his conscientious objection have violated his rights under article 18 (1) of the Covenant.<sup>11</sup> He notes that he repeatedly informed the Turkmen authorities that he was willing to fulfil his civic duties by performing genuine alternative service, but that the State party’s legislation does not provide for such an alternative.

3.5 The author requests the Committee to conclude that his repeated prosecution, conviction and imprisonment violate articles 7, 14 (7) and 18 (1) of the Covenant. He also requests the Committee to direct the State party: (a) to acquit him of the charges under article 219 (1) of the Criminal Code and to expunge his criminal record; (b) to provide him with appropriate compensation for the non-pecuniary damage that he suffered as a result of his convictions and imprisonment; and (c) to provide him with appropriate monetary compensation for his legal expenses, in accordance with article 2 (3) of the Covenant.

#### **State party’s observations on admissibility and the merits**

4. By means of a note verbale dated 17 March 2014, the State party advised, inter alia, that the author’s case had been “carefully considered by the relevant law enforcement bodies of Turkmenistan and no reason had been found to appeal the court decision”. According to the State party, the criminal offence committed by the author was “determined accurately according to the Criminal Code of Turkmenistan”. The State party also notes that according to article 41 of the Constitution, “protection of Turkmenistan is the sacred duty of every citizen”, and advises that general conscription is compulsory for male citizens of Turkmenistan. In addition, the author “did not meet the criteria of persons to be exempted from military service as provided for under article 18 of the Military Service and Military Duty Act”.<sup>12</sup>

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<sup>10</sup> See the Committee’s general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 55: “Repeated punishment of conscientious objectors for not having obeyed a renewed order to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience.” In the report on her mission to Turkmenistan (A/HRC/10/8/Add.4), the Special Rapporteur on freedom of religion or belief referred to the principle of *ne bis in idem* and recommended that Turkmenistan revise its Military Service and Military Duty Act (then cited as the Conscription and Military Service Act) which refers to the possibility of being sanctioned twice for the same offence (para. 68).

<sup>11</sup> See, for example, communications Nos. 1853/2008 and 1854/2008, *Atasoy and Sarkut v. Turkey*, Views adopted on 29 March 2012, paras. 10.4 and 10.5.

<sup>12</sup> Article 18 of the Military Service and Military Duty Act, as amended on 25 September 2010, stipulates that the following citizens shall be exempted from military service: (a) those who have been declared unfit for military service for health reasons; (b) those who have performed military service; (c) those who have performed military or another form of service in the armed forces of another State in accordance with international agreements of Turkmenistan; (d) those who have been convicted twice of committing a minor crime or convicted of a crime of medium gravity, grave crime or especially grave crime; (e) citizens with an academic degree, approved in accordance with the legislation of Turkmenistan; (f) sons or brothers of those who died as a result of carrying out military duties during military service or military training; (g) sons or brothers of those who, as a result of a

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

5.1 On 14 May 2014, the author submitted that the State party had not contested any of the facts set out in his communication. The only attempted justification raised by the State party was its assertion that the author was convicted and imprisoned as a conscientious objector to military service because he "did not qualify" for an exemption from military service under article 18 of the State party's Military Service and Military Duty Act. The author considers that the State party's observations show total disregard for its commitments under article 18 of the Covenant and for the Committee's jurisprudence, which uphold the right to conscientious objection to military service. Furthermore, the State party did not contest the author's allegations that he had suffered — contrary to article 7 of the Covenant — inhuman and degrading treatment at the hands of law enforcement officers and prison officers.<sup>13</sup>

5.2 The author requests that the Committee conclude that his prosecution, conviction and imprisonment violate his rights under articles 7 and 18 (1) of the Covenant, and that his repeated prosecution and imprisonment also violates article 14 (7) of the Covenant,<sup>14</sup> and he reiterates his request for remedies (see para. 3.5).

5.3 On 26 January 2015, the author provided further information that on 22 October 2014, the President of Turkmenistan amnestied eight imprisoned Jehovah's Witnesses, including the author, three of whom had communications pending with the Committee. When the author of the present communication was released, he had served 22 months out of his sentence of 24 months of imprisonment. Although the development was welcome, the author was not exonerated of his criminal conviction, nor was his criminal record expunged or any rehabilitation offered. The author adds that several other Jehovah's Witnesses had been convicted for refusing military service and been sentenced to "correctional labour" about three weeks before the amnesty. The author expresses hope that the State party will take steps to halt the prosecuting and convicting of Jehovah's Witnesses, including for their conscientious objection to military service, and requests that the State party propose a friendly settlement concerning the pending communications from the conscientious objectors.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

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

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disease contracted as a consequence of a wound or as a result of injury or contusion, have died within one year from the day of discharge from military service (after completion of military training) or of those who, as a result of performing military service, have become disabled during military service or military training.

<sup>13</sup> See, for example, communication No. 1449/2006, *Umarova v. Uzbekistan*, Views adopted on 19 October 2010, para. 8.3.

<sup>14</sup> The author of the present communication and the author of communication No. 2220/2012 (*Aminov v. Turkmenistan*, Views adopted on 14 July 2016, para. 2.5) were both convicted and sentenced to a second term of imprisonment, on 24 December 2012 and 8 January 2013 respectively, less than six months after they had completed their first term of imprisonment and after filing their communications with the Committee. Therefore, on 1 May 2013, an update was filed with the Committee on their behalf, adding a violation of article 14 (7) of the Covenant.

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 The Committee recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.<sup>15</sup> The Committee notes the author's submission that there are no effective remedies available to him in the State party with regard to his claims under articles 7, 10, 14 (7) and 18 (1) of the Covenant, and that he considers that he has exhausted the available domestic remedies with the decisions of Boldumsaz District Court and Dashoguz Regional Court in regard to his first and second convictions and sentences for being a conscientious objector. The Committee also notes the State party's assertion of 17 March 2014 that the author's case had been "carefully considered by the relevant law enforcement bodies of Turkmenistan and no reason had been found to appeal the court decision", and further notes that the State party has not contested the author's argumentation concerning the exhaustion of domestic remedies. In these circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

6.4 The Committee considers that the author's claims, raising issues under articles 7, 10, 14 (7) and 18 (1) of the Covenant, are sufficiently substantiated for the purposes of admissibility, declares them admissible and proceeds to their examination on the merits.

#### *Consideration of the merits*

7.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claim that, after his conviction, he was placed in the DZK-7 detention facility in Dashoguz for 71 days, and that he was placed in solitary confinement for 10 days immediately upon his arrival at the LBK-12 prison, where as a Jehovah's Witness he was singled out for harsh treatment. The Committee also notes that after the trial of 24 December 2012, the author was held for approximately 15 days in the DZ-D/7 temporary detention centre in Dashoguz, where officers of the sixth police department of Dashoguz reportedly beat him for three days in an attempt to get him to renounce his faith. The author felt humiliated on account of his convictions. In addition, the Committee notes the author's allegations regarding the lack of adequate mechanisms for investigation of claims of torture in Turkmenistan, and recalls that complaints of ill-treatment must be investigated promptly and impartially by competent authorities.<sup>16</sup> The State party has not refuted these allegations, nor has it provided any information in this respect. In the circumstances of the present case, the Committee decides that due weight must be given to the author's allegations. Accordingly, the Committee concludes that the facts as presented reveal a violation of the author's rights under article 7 of the Covenant.

7.3 The Committee further notes the author's claims concerning the deplorable conditions at the LBK-12 prison. He claimed, for example, that in the cells under the general prison regime, he endured harsh climatic conditions due to exposure to the hot summer and the cold winter. He also claimed that the prison was overcrowded and that

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<sup>15</sup> See, for example, communication No. 2097/2011, *Timmer v. Netherlands*, Views adopted on 24 July 2014, para. 6.3.

<sup>16</sup> See the Committee's general comment No. 20 (1992) on the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment.



prisoners with tuberculosis and skin diseases were kept together with healthy inmates, putting him at a high risk of contracting tuberculosis and other infections. The Committee notes the author's claims that he was always monitored when he was in the LBK-11 prison, and that he was not allowed to associate freely with his fellow believers who were in the same prison. The Committee notes that the State party did not contest these allegations. The Committee recalls that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; they must be treated in accordance with, inter alia, the Standard Minimum Rules for the Treatment of Prisoners.<sup>17</sup> In the absence of any other pertinent information on file, the Committee decides that due weight must be given to the author's allegations. Accordingly, 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 (1) of the Covenant.<sup>18</sup>

7.4 The Committee also notes the author's claim under article 14 (7) of the Covenant that he has been convicted and punished twice for his objection to performing compulsory military service, which is "based on the same constant resolve grounded in reasons of conscience". The Committee further notes that, on 28 December 2010, Boldumsaz District Court convicted and sentenced the author to 18 months of imprisonment, under article 219 (1) of the Criminal Code, for his refusal to perform compulsory military service, and that he was then convicted again by the same court under article 219 (1) of the Criminal Code on 24 December 2012 and sentenced to 24 months of imprisonment. The Committee notes the author's submission that article 18 (4) of the Military Service and Military Duty Act permits repeated call-up for military service and stipulates that a person refusing military service is exempt from further call-ups only after he has received and served two criminal sentences. The Committee notes that these claims were not refuted by the State party.

7.5 The Committee recalls its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, wherein, inter alia, it stated that article 14 (7) of the Covenant provides that no one shall be liable to be tried or punished again for an offence of which they have already been finally convicted in accordance with the law and penal procedure of each country. Furthermore, repeated punishment of conscientious objectors for not obeying a renewed order to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience.<sup>19</sup> The Committee notes that in the present case, the author has been tried and punished twice with lengthy prison sentences under the same provision of the Criminal Code of Turkmenistan on account of the fact that, as a Jehovah's Witness, he objected to, and refused to perform, compulsory military service. In the circumstances of the present case, and in the absence of contrary information from the State party, the Committee concludes that the author's rights under article 14 (7) of the Covenant have been violated.

<sup>17</sup> See, for example, communications No. 1520/2006, *Mwamba v. Zambia*, Views adopted on 10 March 2010, para. 6.4; and No. 2218/2012, *Abdullayev v. Turkmenistan*, Views adopted on 25 March 2015, para. 7.3.

<sup>18</sup> See, for example, communication No. 1530/2006, *Bozbey v. Turkmenistan*, Views adopted on 27 October 2010, para. 7.3; *Abdullayev v. Turkmenistan*, para. 7.3; communication No. 2221/2012, *Mahmud Hudaybergenov v. Turkmenistan*, Views adopted on 29 October 2015, para. 7.3; *Ahmet Hudaybergenov v. Turkmenistan*, para. 7.3; and communication No. 2223/2012, *Japparow v. Turkmenistan*, Views adopted on 29 October 2015, para. 7.3.

<sup>19</sup> See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 54 and 55.

7.6 The Committee also notes the author's claim that his rights under article 18 (1) of the Covenant have been violated, due 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 on account of his religious conscience led to his criminal prosecution and subsequent imprisonment. The Committee takes note of the State party's submission that the criminal offence committed by the author was "determined accurately according to the Criminal Code of Turkmenistan" and that, pursuant to article 41 of the Constitution, "protection of Turkmenistan is the sacred duty of every citizen" and general conscription is compulsory for male citizens.

7.7 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 is stated in article 4 (2) of the Covenant. The Committee recalls its prior jurisprudence 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 freedom of thought, conscience and religion.<sup>20</sup> The right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion. It 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.<sup>21</sup>

7.8 In the present case, the Committee considers that the author's refusal to be drafted for compulsory military service derives from his religious beliefs and that the author's subsequent conviction and sentence amounted to an infringement of his freedom of thought, conscience and religion in breach of article 18 (1) of the Covenant. In this context, 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.<sup>22</sup> It also recalls that during the consideration of the State party's initial report under article 40 of the Covenant, it already expressed its concern that the Military Service and Military Duty Act, as amended on 25 September 2010, does not recognize a person's right to exercise conscientious objection to military service and does not provide for any alternative to military service, and

<sup>20</sup> See communications Nos. 1321/2004 and 1322/2004, *Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Korea*, Views adopted on 3 November 2006, para. 8.3; and No. 1786/2008, *Jong-nam Kim et al. v. Republic of Korea*, Views adopted on 25 October 2012, para. 7.3; *Atasoy and Sarkut v. Turkey*, paras. 10.4 and 10.5; communication No. 2179/2012, *Young-kwan Kim et al. v. Republic of Korea*, Views adopted on 15 October 2014, para. 7.4; *Abdullayev v. Turkmenistan*, para. 7.7; *Mahmud Hidaybergenov v. Turkmenistan*, para. 7.5; *Ahmet Hidaybergenov v. Turkmenistan*, para. 7.5; and *Japparow v. Turkmenistan*, para. 7.6.

<sup>21</sup> See communications Nos. 1642-1741/2007, *Min-Kyu Jeong et al. v. Republic of Korea*, Views adopted on 24 March 2011, para. 7.3; *Jong-nam Kim et al. v. Republic of Korea*, para. 7.4; *Abdullayev v. Turkmenistan*, para. 7.7; *Mahmud Hidaybergenov v. Turkmenistan*, para. 7.5; *Ahmet Hidaybergenov v. Turkmenistan*, para. 7.5; and *Japparow v. Turkmenistan*, para. 7.6.

<sup>22</sup> 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 and 10.5; *Young-kwan Kim et al. v. Republic of Korea*, para. 7.4; *Abdullayev v. Turkmenistan*, para. 7.8; *Mahmud Hidaybergenov v. Turkmenistan*, para. 7.6; *Ahmet Hidaybergenov v. Turkmenistan*, para. 7.6; and *Japparow v. Turkmenistan*, para. 7.7.

recommended that the State party, inter alia, take all necessary measures to review its legislation with a view to providing for alternative service.<sup>23</sup> Accordingly, the Committee finds that, by prosecuting and convicting the author for his refusal to perform compulsory military service due to his religious beliefs and conscientious objection, the State party has violated his rights under article 18 (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 of the author's rights under articles 7, 10 (1), 14 (7) and 18 (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 reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to impartially, effectively and thoroughly investigate the author's claims falling under article 7 of the Covenant, to prosecute any person(s) found to be responsible, to expunge the author's criminal record, and to provide him with adequate compensation. The State party is under an obligation to avoid similar violations of the Covenant in the future. In this connection, the Committee reiterates that the State party should revise its legislation in accordance with its obligation under article 2 (2) of the Covenant, in particular the Military Service and Military Duty Act, as amended on 25 September 2010, with a view to guaranteeing effectively the right to conscientious objection under article 18 (1) of the Covenant.<sup>24</sup>

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 and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy when 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 the Committee's Views. The State party is also requested to publish the Committee's Views.

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<sup>23</sup> See CCPR/C/TKM/CO/1, para. 16.

<sup>24</sup> See communications No. 2019/2010, *Poplavny v. Belarus*, Views adopted on 5 November 2015, para. 10; and No. 1992/2010, *Sudalenko v. Belarus*, Views adopted on 27 March 2015, para. 10.

## **Annex**

### **Joint opinion of Committee members Yuji Iwasawa and Yuval Shany (concurring)**

We concur with the Committee's conclusion that the State party has violated the rights of the author under article 18 (1) of the Covenant, but for reasons different from the majority of the Committee.<sup>a</sup> We will retain our reasoning even though we may not find it compelling to repeat it in future communications.

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<sup>a</sup> For details, see communication No. 2218/2012, *Abdullayev v. Turkmenistan*, Views adopted on 25 March 2015 (joint opinion of Committee members Yuji Iwasawa, Anja Seibert-Fohr, Yuval Shany and Konstantine Vardzelashvili).