



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninety-third session
7 – 25 July 2008

VIEWS

Communication No. 1450/2006

<u>Submitted by:</u>	Leonid Komarovski (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	Turkmenistan
<u>Date of communication:</u>	25 November 2005 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 16 February 2006 (not issued in document form)
<u>Date of adoption of Views:</u>	24 July 2008

* Made public by decision of the Human Rights Committee.

Subject matter: Arbitrary arrest and detention of the author

Substantive issues: Arbitrary arrest and detention, torture, attack on author's honour and reputation, absence of effective domestic remedies

Articles of the Covenant: 7; 9, paragraphs 1 to 4; 10, paragraphs 1 and 2 (a); 17, paragraph 1

On 24 July 2008, 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. 1450/2006.

[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-third session

concerning

Communication No. 1450/2006*

<u>Submitted by:</u>	Leonid Komarovski (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	Turkmenistan
<u>Date of communication:</u>	25 November 2005 (initial submission)

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

Meeting on 24 July 2008,

Having concluded its consideration of communication No. 1450/2006, submitted to the Human Rights Committee by Mr. Leonid Komarovski for consideration 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,

Adopts the following:

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

1.1 The author of the communication is Mr. Leonid Komarovski, national of the United States of America. He claims to be victim of a violation by Turkmenistan of articles 7, 9, 10 and 17 of the International Covenant on Civil and Political Rights.

1.2 Both the Covenant and the Optional Protocol entered into force for the State party on 1 August 1997.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

The facts as submitted by the author

2.1 On 25 November 2002, the motorcade with the State party's President, Saparmurad Niyazov, was fired at while driving through Ashgabat, the capital. The President survived what appeared to be an assassination attempt. The same day, the President accused three opposition leaders of being involved in the attack against him. Large-scale investigations began immediately and 16 persons were arrested between 26 and 27 November, including the author.

2.2 The author arrived in Turkmenistan on 23 November 2002. He states that the only purpose of his trip was to deal with matters related to the beer trade, a business he had started in Turkmenistan in 1991. He stayed at the house of Guvanch Dzumaev, a friend and business partner. On 25 November 2002, the author – who is also a professional journalist – went with Mr. Dzumaev to a peaceful rally organized in front of the Parliament (Mejlis) by the Turkmen Popular Democratic Movement (NDDT), to protest against President Niyazov's regime.

2.3 On the way to Parliament, the author and Mr. Dzumaev picked up one of the leaders of NDDT, Mr. Shikhmuradov, former Minister for Foreign Affairs of Turkmenistan between 1995 and 2000. At the Parliament building, having realized that only a few people had gathered in front, Mr. Shikhmuradov decided to postpone the demonstration. The author and Mr. Dzumaev then drove back home.

2.4 In the afternoon of the same day, local TV channels broadcasted a public speech by President Niyazov announcing that he had been the victim of an assassination attempt in the morning. He openly accused Mr. Shikhmuradov and other NDDT leaders of having organized the assassination attempt.

2.5 Mr. Dzumaev was arrested at his house together with his son, father and brother on 26 November 2002. The author was also arrested at Mr. Dzumaev's house in the early morning of 27 November 2002 by three men in civilian clothes, who declared that they belonged to the General Prosecutor's Office. Once the author handed over to them his US passport, armed men jumped from the surrounding trees and houses, tackled him down and started to beat him. The reasons for his arrest were not explained to the author and he was put into the back seat of a car where he continued to be beaten every time he dared to ask for explanations for his arrest. He was taken to the National Security Ministry (MNB) building and interrogated.

2.6 During the first hours of interrogation, the author was asked to write down "everything he had done". As he did not write what they wanted he was declared to be under arrest. He was neither shown an arrest warrant nor given reasons for his arrest. Only on the third day of detention, 29 November 2002, he was presented with a list of fourteen criminal charges, including attempted assassination of the President, attempted coup d'état and smuggling of drugs and arms.

2.7 During the following five months the author was detained at the MNB "inner jail". Despite his requests, he was never brought before a judge or tried in court and was not given the opportunity to contact a lawyer of his choice. Instead, he was assigned an *ex officio* lawyer, Ms. Djumagul, appointed by the Office of the General Prosecutor. However, she was not helpful and refused to file a complaint regarding the ill-treatment he suffered in detention. She appeared

scared when the author showed her the bruises and scars on his body and said that she would not risk her life for him.

2.8 During the entire detention period, the author was not allowed to contact his family in writing or over the phone, or receive their visit. He was held incommunicado for the first seven days of detention, before the US embassy in Ashgabat was notified of his detention.

2.9 The author claims that he was severely beaten several times by MNB officers and at times injected with psychotropic substances in order to extract his confession. On the day of his arrest, after refusing to confess his participation in the assassination attempt, he was beaten by two men in military uniform with rubber sticks and military boots before losing consciousness. On another occasion, at the beginning of December, after the meeting with a representative from the US embassy, he was woken up by guards in the middle of the night and brought to the interrogation room, where he was immobilized and hit on his heels with a rubber stick. He lost consciousness and when he woke up, the officers continued the beating until he fainted again. On 10 December, he was awoken again and taken to another room where he was immobilized on a chair. A woman who was dressed like a nurse administered an injection in his arm. He does not remember what happened after this injection. Only after his release, he was shown a video of himself admitting to be a drug addict and to have participated in the plot against the President. He does not remember having made this statement, which was broadcast on 18 December 2002 on Turkmen Public Television.

2.10 The conditions of detention in the MNB inner jail were inhumane and degrading, including lack of natural light, cold temperatures and very bad hygiene conditions. He was detained in cell n° 30 together with a prisoner convicted and sentenced to 25 years' imprisonment for the attempted assassination of President Niyazov. He was transferred to cell n° 33 at the end of February 2003, which he shared with an Iranian citizen convicted and sentenced to 25 years' imprisonment for drug smuggling. He was also denied repeated requests to see a doctor, despite his diabetic condition.

2.11 On 15 April 2003, following the intervention of the United States Embassy, the author was released by Presidential Pardon. At the end of 2003, the Turkmen authorities published a book, allegedly written by the author, in which he admits his participation in the attempted assassination of the President. The author denies having written this book.

The complaint

3.1 The author claims that the facts described disclose violations of article 7; article 9, paragraphs 1 to 4; article 10, paragraphs 1 and 2 (a); and article 17, paragraph 1, of the Covenant.

3.2 The author alleges that he was a victim of arbitrary arrest and detention in violation of article 9, paragraph 1, of the Covenant. Under the State party's legislation, officials from the General Prosecutor's Office do not have the power to arrest people. Furthermore, he was arrested without a proper arrest warrant. He remained unlawfully in detention for 150 days, out of which seven days completely incommunicado.

3.3 The author also claims to be a victim of a violation of article 9, paragraph 2, since despite his requests he was not informed at the time of the arrest of the reasons for it. He was informed of the charges against him only on the third day of detention. He was never informed of his right to contact the consular or diplomatic authorities of the United States. He explains that, according to changes in the Penal Code and Criminal Procedure Code that had recently been adopted, the authorities may detain individuals for 72 hours without a formal arrest warrant, but a formal indictment is needed within 10 days to keep a person in detention longer. These provisions were not respected in his case.

3.4 The author claims to be a victim of violations of article 9, paragraphs 3 and 4. During the five months he spent in prison, and despite his numerous requests, he was never brought before a judge who could determine the lawfulness of his detention. He was neither tried nor convicted on any charges against him. He was not allowed to appoint a lawyer of his choice. The *ex-officio* lawyer appointed by the General Prosecutor's Office advised him to cooperate with the investigation, admit the charges and sign all the documents presented to him. Despite his repeated requests, she refused to file a complaint on his behalf for ill-treatment in detention, for fear of reprisals. She visited him occasionally but he did not have the possibility to contact her on his own initiative.

3.5 The author claims that conditions of detention in the MNB inner jail were inhuman and degrading, in violation of article 10, paragraph 1. The cell was very small, lacked natural light and water in the toilet and was infested by roaches. Showers were allowed only once every two weeks and the temperature was very cold (below 0° centigrade in winter). The food quality was very poor and he was not allowed to do physical exercise outside the cell. The author was also denied medical care in spite of his diabetes.

3.6 The author claims a violation of article 10, paragraph 2 (a), due to the fact that, despite being only an accused person, he was detained together with convicted persons and always treated as such.

3.7 The author claims that the treatment received during his detention in the inner MNB jail amounts to torture and cruel, inhuman or degrading treatment or punishment under article 7 of the Covenant. He was severely beaten on different occasions with rubber sticks and kicked on his head with boots. On 10 December 2002 and on two other occasions, he was also injected, against his will, with a psychotropic substance, to force him to confess.

3.8 The author further claims to be a victim of a violation of article 17, paragraph 1 of the Covenant in that, at the end of 2003, the State party's government published a book, allegedly written by him, containing the official version of the events of 25 November 2002. On several occasions the author has publicly stated that he did not write the book, is unfamiliar with its contents and does not have copyright in it, despite the copyright symbol appearing next to his name. He never signed any contract with the State party's authorities allowing them to use his name on any publication or to publish or sell anything under his name. The existence of this book constitutes an unlawful attack on his honour and reputation. The official version of the events of 25 November 2002 contained in the book is a falsification aiming at eliminating the opposition movement in the country. The existence of such a book jeopardizes his professional

career as a journalist and misleadingly places him in the eyes of Turkmen people as a devoted defender of the regime.

3.9 The author submits that there are no domestic remedies available to him and, even if there were, they would be ineffective due to the lack of independence of the State party's judiciary, which is at the mercy of the President. While article 101 of the Constitution guarantees the independence of the judiciary, such independence does not exist in practice. Furthermore, article 102 of the Constitution provides that judges of all courts are appointed by the President and article 112 states that the Attorney General is subordinate to the President. The lack of an independent Constitutional Court means that the principles of separation of powers and legality are not effectively protected. The lack of independence of the judiciary and the total lack of respect for any basic procedural rule is exemplified by the summary trials of those who were accused of the alleged plot of November 2002. The author reports that these violations include, among others: lack of access to an independent lawyer; no access to prosecution material; violation of the right to call witnesses on the accused's behalf; violation of the prohibition of "*reformatio in pejus*"; violation of the prohibition of non-retroactivity of criminal law; no right to family visits and the visit of consular authorities. The author submits various reports from international governmental and non governmental organizations and other sources in corroboration of these allegations.

State party's observations

4. On 15 April 2008, the State party informed the Committee that the author was arrested on 27 November 2002 and charged with committing a crime in accordance with the criminal legislation of the country. No acts of torture were used against him in the course of the investigation. In compliance with international and national law, access to him by the consular section of the US Embassy in Turkmenistan was granted. Based on the principles of humanity and justice and taking into account the request of the US Government, the author was handed over to the representatives of the US Government on 24 April 2003.

Author's comments

5. The author did not provide comments to the State party's observations.

Issues and proceedings before the Committee

Considerations of admissibility

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

6.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2(a), of the Optional Protocol.

6.3 The Committee notes that the State party does not challenge admissibility, nor provide information on available and effective remedies. In the absence of any apparent obstacle to

admissibility the Committee concludes that the claims are sufficiently substantiated and the communication is admissible insofar as it raises issues with respect to articles 7; 9, paragraphs 1 to 4; 10, paragraphs 1 and 2(a); and 17, paragraph 1, of the Covenant.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information available to it, as provided in article 5, paragraph 1, of the Optional Protocol. It notes that the State party has not addressed in detail the author's allegations. In the circumstances, due weight must be given to such allegations to the extent that they have been sufficiently substantiated.

7.2 With respect to the author's allegation that he was subjected to arbitrary arrest or detention in violation of article 9, paragraph 1 of the Covenant, the Committee recalls that deprivation of liberty is permissible only when occurring on such grounds and in accordance with such procedures as are established by law. In this case, the fact that the author was arrested by officers belonging to the General Prosecutor's Office who reportedly did not have the power to arrest individuals under the State party's legislation and held incommunicado for at least 7 days makes his detention arbitrary. The Committee thus concludes, in the absence of any challenge to this claim by the State party, that the circumstances in which the author was deprived of his liberty violate the prohibition of arbitrary arrest and detention in article 9, paragraph 1, of the Covenant.

7.3 As to the claim related to article 9, paragraph 2, the Committee notes that at the time of his arrest, the author was apparently not informed of the reasons for his arrest and the charges against him, which were presented to him only during the third day of detention. Again, in the absence of relevant State party's information on this claim the Committee considers that the facts as presented constitute a violation of article 9, paragraph 2, of the Covenant.

7.4 With regard to the possible violation of article 9, paragraphs 3 and 4, of the Covenant, the Committee notes that the author was not brought before a judge or any other officer authorized by law to exercise judicial power for the entire duration of his detention, i.e. almost five months. The Committee reiterates that the length of custody without judicial authorization should not exceed a few days¹. It also notes that the author, despite having been assigned an ex officio lawyer, was prevented from taking proceedings before a court to assess the lawfulness of his detention. The Committee considers that in the circumstances, and in the absence of any explanation from the State party, these facts amount to a violation of article 9, paragraphs 3 and 4 of the Covenant.

7.5 As to the claims related to the conditions of detention in the MNB inner jail, described by the author in detail (see paragraph 3.5 *supra*), the Committee concludes that he was treated inhumanely and without respect for his inherent dignity, in violation of article 10, paragraph 1, of the Covenant². Equally, and in the absence of information from the State party, the Committee concludes that article 10, paragraph 2 (a), was violated, since the author was detained on two

¹ General Comment No. 8 regarding Article 9 of the Covenant, paragraph 2.

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.

occasions together with convicted persons, without any indication of exceptional circumstances justifying such detention.

7.6 As to the alleged violation of article 7 of the Covenant, the Committee notes the State party's general statement that no acts of torture were used against the author in the course of the investigation. However, the author's specific allegations that he was subjected to severe beatings and intimidation with the purpose of coercing him to confess, and that he was administered unidentified substances against his free will for the same purposes, have not been rebutted by the State party. Accordingly, the Committee concludes that these facts, as reported by the author, constitute a violation of article 7.

7.7 Finally, the publication of a book confirming the official version of the events of 25 November 2002 which falsely portrays the author as the writer of the book, constitutes, in the absence of relevant information from the State party, an unlawful interference with the author's privacy and an unlawful attack against his honour and reputation, in violation of article 17, paragraph 1, of the Covenant.

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 facts before it reveal a violation by the State party of article 7; article 9; paragraphs (1), (2), (3), and (4); article 10, paragraphs (1) and (2) (a); and article 17 (1) of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy and, to that effect, take appropriate steps to: (a) institute criminal proceedings for the prosecution and punishment of the persons responsible for the violations to which the author was subjected; (b) provide the author with appropriate reparation, including compensation; and (c) make a public retraction of the imputed authorship of the book referred to above. The State party is also under an obligation to take measures to prevent similar violations in the future.

10. By becoming a party to the 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 and enforceable remedy in case a violation has been established. In this respect, 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.

[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.]