



# 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. 2302/2013\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Juma Nazarov et al. (represented by counsels, Shane H. Brady and Philip Brumley)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Turkmenistan
<i>Date of communication:</i>	28 August 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure (now rule 92), transmitted to the State party on 7 November 2013 (not issued in document form)
<i>Date of adoption of Views:</i>	25 July 2019
<i>Subject matter:</i>	Conscientious objection to compulsory military service
<i>Procedural issue:</i>	State party's failure to cooperate
<i>Substantive issues:</i>	Freedom of conscience; inhuman and degrading treatment
<i>Articles of the Covenant:</i>	7 and 18 (1)
<i>Article of the Optional Protocol:</i>	2

1. The authors of the communication are Juma Nazarov (first author), born in 1992, Yadgarbek Sharipov (second author), born in 1992 and Atamurad Suvhanov (third author), born in 1986, all nationals of Turkmenistan.<sup>1</sup> They claim that Turkmenistan violated their

\* Adopted by the Committee at its 126th session (1–26 July 2019).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Shuichi Furuya, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

\*\*\* An individual opinion (partly dissenting) by Committee member Hélène Tigroudja is annexed to the present Views.

<sup>1</sup> Mr. Nazarov was released from prison on 29 August 2013, after serving an 18-month sentence, Mr. Sharipov was released on 25 December 2013, after serving a one-year sentence, and Mr. Suvhanov was released on 13 March 2014, after serving a full one-year term of imprisonment.



rights under articles 7 and 18 (1) of the Covenant. The Optional Protocol entered into force for the State party on 1 August 1997. The authors are represented by counsel.

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

2.1 The authors are Jehovah's Witnesses. In the spring of 2012, the first author was summoned by the Military Commissariat to enlist for military service. He explained orally and in writing to representatives of the Military Commissariat that, as a Jehovah's Witness, his religious beliefs did not permit him to perform military service. Furthermore, he provided evidence of medical conditions that would exempt him from service. His claims were ignored and he was charged under article 219 (1) of the Criminal Code of Turkmenistan, which makes "evading" military service a criminal offence.

2.2 The first author's trial took place in Azatlykyskiy District Court of Ashbagat. He testified that due to "his professing the religion of Jehovah's Witnesses, his reading of the Holy Scripture, and his personal principles in accordance with these scriptures, he cannot perform military service". His statement and the evidence of his medical conditions were ignored. On 23 July 2012, Azatlykyskiy District Court convicted him under article 219 (1) of the Criminal Code and sentenced him to one year and six months of imprisonment. Immediately after his conviction, his mother attempted to obtain a copy of the verdict from the judge and prison administration in order to file an appeal. His mother was denied this document, rendering the author unable to exercise his right to appeal.

2.3 In October 2012, the second author was summoned to perform military service. He explained orally and in writing to representatives of the Military Commissariat that, as a Jehovah's Witness, his religious beliefs did not permit him to perform military service. On 25 December 2012, Dashoguz City Court convicted him under article 219 (1) of the Criminal Code and sentenced him to one year of imprisonment. He received a copy of the verdict and was immediately placed in temporary detention, where he was beaten and humiliated because of his religious convictions every day for 10 days prior to being transferred to a prison. He did not file a complaint against the prison administration or other State agencies concerning the beatings he suffered for fear of retaliation and further physical abuse by the prison authorities. On 17 January 2013, Dashoguz Regional Court rejected the appeal filed by the second author against his imprisonment.

2.4 On 17 December 2004, the third author was convicted for refusing to perform military service under article 219 (1) of the Criminal Code and sentenced to a term of imprisonment of one year and six months. Four months later he was released on the basis of a Presidential Decree of Pardon, only to be called up again for military service on 13 December 2012. The third author once again explained orally and in writing to representatives of the Military Commissariat that, as a Jehovah's Witness, his religious beliefs did not permit him to perform military service. On 13 March 2013 Dashoguz City Court convicted the third author under article 219 (1) of the Criminal Code and sentenced him to one year of imprisonment. He received a copy of the verdict and was arrested immediately. The third author was then beaten and humiliated in detention because of his religious beliefs. He has not filed a complaint against the prison administration or other agencies concerning the beatings he suffered for fear of retaliation and further physical abuse by the prison authorities. On the same day as his conviction, the third author filed an appeal with Dashoguz Regional Court, which was forwarded to the City Court for consideration. He has not received a copy of the appeal decision and presumes that it was rejected, given that he remains in prison.

### **The complaint**

3.1 All three authors claim that their imprisonment has subjected them to inhuman and degrading treatment as described below, contrary to article 7 of the Covenant.

3.2 The authors claim that their imprisonment for their objection to military service must of itself be found to be inhuman and degrading treatment. The authors refer to the decision of the European Court of Human Rights in *Bayatyan v. Armenia* (application No. 23459/03) and other similar decisions, in which the Court noted great disrespect on the part

of the State party for denying members of minority religious groups the opportunity to serve society in the same way as other citizens.

3.3 The first and the second authors further submit that it is beyond dispute that the conditions of their imprisonment at LBK-12 prison in Seydi, Turkmenistan, have also subjected them to inhuman and degrading treatment or punishment. The conditions of detention have been described in detail in other communications before the Committee, such as *Nasyrlayev v. Turkmenistan* (CCPR/C/117/D/2219/2012). In its concluding observations of 2011, the Committee against Torture stated that it was deeply concerned about numerous and consistent allegations about the widespread practice of torture and ill-treatment of detainees in Turkmenistan (CAT/C/TKM/CO/1, para. 6). In a 2010 report, the national Independent Lawyer Association described the conditions in LBK-12 as overcrowded, with scarce supplies of food, medication and personal hygiene products. The report also indicated that physical abuse was used against inmates, who were at a high risk of contracting tuberculosis. That risk has been recognized by the International Committee of the Red Cross, which referred to Turkmen prisons as a “breeding ground for tuberculosis”.<sup>2</sup>

3.4 The second author adds that every day during his 10-day detention following his trial, he spent time in “temporary quarantine”, where he received terrible treatment, including being beaten up and humiliated for his convictions.

3.5 The third author claims that the conditions of his detention in DZ/D7 detention centre amounted to inhuman or degrading punishment or treatment. The third author’s brother, in a statement dated 21 March 2013 (prepared as part of the communication submitted to the Committee), claims that when he saw the third author on 19 March 2013, it was clear to him that his brother had been treated “horribly” and had been beaten and “humiliated for his convictions”. The third author also knew that his conversation with his brother had been monitored. He told his brother that he would not be sent to prison anytime soon, because the authorities needed to “break” him.

3.6 The third author claims that the State party violated his rights under article 14 (7) by charging him for the same crime for which he had been already convicted. The third author was convicted twice for his refusal to accept military service “based on the same constant resolve grounded in reasons of conscience”.

3.7 All three authors claim that their prosecution, conviction and imprisonment for refusing to perform compulsory military service owing to their religious beliefs and conscientious objection have violated their rights under article 18 (1) of the Covenant. They note that they have informed the Turkmen authorities of their will to fulfil their civil duty by performing genuine alternative service; however, the State party’s legislation does not provide for such an alternative.

3.8 The authors request that the Committee direct the State party to: (a) acquit them of the charges under article 219 (1) of the Criminal Code; and (b) provide them with suitable compensation for the moral damages they suffered as a result of persecution and conviction, and for their legal expenses.

3.9 Regarding the requirement to exhaust domestic remedies, the first author claims that he was not able to file an appeal upon his conviction, since the authorities refused to provide him with a copy of his verdict and sentence. The appeal would not have been accepted without such documentation. In any case, the first author claims that an appeal would have been totally ineffective and pointless. The second and third authors were able to file their appeals with Dashoguz Regional Court challenging their convictions based on their religious beliefs under article 18 of the Covenant, which, they consider, satisfies their obligation to exhaust domestic remedies regarding this claim. The second and third authors did not file any complaints regarding their treatment contrary to article 7 of the Covenant, as they feared such complaints would expose them to harsh retaliation and further physical abuse by the prison authorities. Therefore, the authors submit that they have exhausted domestic remedies for all their claims.

<sup>2</sup> See [www.icrc.org/en/doc/resources/documents/feature/2008/tb-feature-200308.htm](http://www.icrc.org/en/doc/resources/documents/feature/2008/tb-feature-200308.htm).

**State party's observations on admissibility and the merits**

4. By notes verbales dated 2 January 2014 and 23 February 2015,<sup>3</sup> the State party confirmed that all three authors had been charged and convicted under article 219 (1) of the Criminal Code, and that they had served their sentences in LBK-12 prison.

**Lack of cooperation from the State party**

5. On 15 May, 24 November and 30 October 2014 and on 10 March 2015, the Committee requested the State party to submit its detailed observations on the admissibility and merits of the communication. The Committee notes, however, that no such observations have been received to date, aside from the aforementioned confirmation that the authors were indeed charged and convicted for evading military service. The Committee regrets the State party's failure to provide any information with regard to the admissibility or the merits of the authors' claims. It recalls that, in accordance with article 4 (2) of the Optional Protocol, the State party is required to submit to the Committee written explanations or statements clarifying the matter and indicating the measures, if any, that have been taken by the State to remedy the situation. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they are sufficiently substantiated.<sup>4</sup>

**Issues and proceedings before the Committee***Considerations of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the case is admissible under the Optional Protocol.

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 notes the authors' claim that they have exhausted all domestic remedies available to them. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 As to the alleged violations of article 7 of the Covenant concerning the mistreatment of the authors during their deprivation of liberty, the Committee notes that the authors have not provided sufficient information or evidence of having been personally ill-treated or personally subjected to harsh prison conditions. Nor have they complained to the authorities about these alleged violations. The Committee considers that, even if the State party has not refuted the authors' allegations, the limited information contained on file and the absence of detailed explanations from the authors or their counsels implies that the authors' allegations have been insufficiently substantiated for the purposes of admissibility. The Committee also finds that the authors have failed to substantiate their claims pertaining to whether their detention in and of itself resulted in violation of their rights under article 7 of the Covenant. In the circumstances as presented by the authors, the Committee finds these allegations insufficiently substantiated for the purposes of admissibility. Therefore, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 The third author claims that he was charged and convicted twice for the same crime, once in December 2004, and a second time in March 2013, thus violating his rights under article 14 (7) of the Covenant. The Committee notes, however, that the third author failed to

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<sup>3</sup> In its submission of 23 February 2015, the State party submits information about Mr. Nazarov only. It again confirms that this author was convicted and sentenced based on his refusal to serve in the military forces, and in the absence of any lawful basis for refusal to perform such service. The State party also submits that Mr. Nazarov was released on 29 August 2013.

<sup>4</sup> *Abushaala v. Libya* (CCPR/C/107/D/1913/2009), para. 6.1; *Aboussedra v. Libya* (CCPR/C/100/D/1751/2008), para. 4; *Shikhmuradova v. Turkmenistan* (CCPR/C/112/D/2069/2011), para. 4; *Amarasinghe v. Sri Lanka* (CCPR/C/120/D/2209/2012), para. 4.

provide any documents, such as copies of the arrest warrants, court decisions or imprisonment records, confirming his 2004 conviction and establishing that he was convicted again for the same crime. Accordingly, the Committee considers that this part of the communication has been insufficiently substantiated and declares it inadmissible under article 2 of the Optional Protocol.

6.6 The Committee considers that the authors have sufficiently substantiated their claims under article 18 (1) of the Covenant for the purposes of admissibility. In the absence of any other challenges to the admissibility of the communication, the Committee declares the communication admissible insofar as it concerns the authors' claims under article 18 (1) of the Covenant, and proceeds with its consideration on the merits.

#### *Consideration of the merits*

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the authors' claims that their 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, and as a result, their refusal to perform military service because of their religious beliefs led to their criminal prosecution and subsequent imprisonment.

7.3 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 times of public emergency, as stated in article 4 (2) of the Covenant. The Committee recalls its prior jurisprudence to the effect 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 the freedom of thought, conscience and religion.<sup>5</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 and the right to manifest them. 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 be compatible with respect for human rights.<sup>6</sup>

7.4 In the present case, the Committee notes that it is uncontested that the authors' refusal to perform compulsory military service derives from their religious beliefs. 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>7</sup> It also recalls that during the

<sup>5</sup> *Yoon and Choi v. Republic of Korea* (CCPR/C/88/D/1321-1322/2004), para. 8.3; *Kim et al. v. Republic of Korea* (CCPR/C/106/D/1786/2008), para. 7.3; *Atasoy and Sarkut v. Turkey* (CCPR/C/104/D/1853-1854/2008), para. 10.4; *Kim et al. v. Republic of Korea* (CCPR/C/112/D/2179/2012), para. 7.4; *Abdullayev v. Turkmenistan* (CCPR/C/113/D/2218/2012), para. 7.7; *Hudaybergenov v. Turkmenistan* (CCPR/C/115/D/2221/2012), para. 7.5; *Hudaybergenov v. Turkmenistan* (CCPR/C/115/D/2222/2012), para. 7.5; *Japparow v. Turkmenistan* (CCPR/C/115/D/2223/2012), para. 7.6; *Nurjanov v. Turkmenistan* (CCPR/C/117/D/2225/2012 and Corr.1), para. 9.3; and *Uchetov v. Turkmenistan* (CCPR/C/117/D/2226/2012), para. 7.6.

<sup>6</sup> *Jeong et al. v. Republic of Korea* (CCPR/C/101/D/1642-1741/2007), para. 7.3; *Kim et al. v. Republic of Korea* (CCPR/C/106/D/1786/2008), para. 7.4; *Abdullayev v. Turkmenistan*, para. 7.7; *Hudaybergenov v. Turkmenistan* (CCPR/C/115/D/2221/2012), para. 7.5; *Hudaybergenov v. Turkmenistan* (CCPR/C/115/D/2222/2012), para. 7.5; *Japparow v. Turkmenistan*, para. 7.6; *Nurjanov v. Turkmenistan*, para. 9.3; and *Uchetov v. Turkmenistan*, para. 7.6.

<sup>7</sup> *Jeong et al. v. Republic of Korea*, para. 7.4; *Kim et al. v. Republic of Korea* (CCPR/C/106/D/1786/2008), para. 7.5; *Atasoy and Sarkut v. Turkey*, para. 10.5; *Kim et al. v. Republic of Korea* (CCPR/C/112/D/2179/2012), para. 7.4; *Abdullayev v. Turkmenistan*, para. 7.8; *Hudaybergenov v. Turkmenistan* (CCPR/C/115/D/2221/2012), para. 7.6; *Hudaybergenov v.*

consideration of the State party's second periodic report in March 2017, the Committee was concerned about the State party's continued failure to recognize the right to conscientious objection to compulsory military service and about the repeated prosecution and imprisonment of Jehovah's Witnesses who refused to perform compulsory military service.<sup>8</sup> The Committee concludes that, in the present case, the State party has violated the authors' 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 by the State party of article 18 (1) of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors 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 take appropriate steps to expunge their criminal records and to provide them with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this connection, the Committee reiterates that, pursuant to article 2 (2) of the Covenant, the State party should review its legislation with a view to ensuring the effective guarantee of the right to conscientious objection under article 18 (1) of the Covenant, for instance, by providing the possibility of exemption from service or alternative service of a civilian nature.

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 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 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. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.

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*Turkmenistan* (CCPR/C/115/D/2222/2012), para. 7.6; *Japparow v. Turkmenistan*, para. 7.7; *Nurjanov v. Turkmenistan*, para. 9.4; and *Uchetov v. Turkmenistan*, para. 7.7.

<sup>8</sup> CCPR/C/TKM/CO/2, paras. 40–41.

## Annex

[Original: French]

### Individual opinion (partly dissenting) of Committee member H el ene Tigroudja

1. While I agree with the Committee’s decision to find a violation of article 18 of the Covenant, I cannot support its decision to declare inadmissible all the claims made in relation to article 7 of the Covenant – the prohibition of ill-treatment – as I consider this to be at odds with the Committee’s well-established jurisprudence concerning the same types of allegations, the same context and the same State party.

2. With regard to article 7 of the Covenant, the authors’ claims in the present case are threefold: first, the authors claim that they were subjected to abuse during their arrest or detention; then, they raise the issue of the inhuman nature of their placement in detention, since it is their religious beliefs that prevented them from fulfilling their military obligations; and lastly, they complain about the conditions of detention in the labour camp (paras. 3.3, 3.4 and 3.5).

3. I support the conclusions of the Committee regarding the first two claims, which could have been more fully substantiated.<sup>1</sup> However, in the light of the Committee’s existing jurisprudence,<sup>2</sup> the issue of the conditions of detention merited closer examination.

4. In many of its Views,<sup>3</sup> the Committee has accepted evidence of a not substantially different nature which demonstrated that the labour camp in which the authors of the communications were held was situated in a desert, with extreme weather conditions in winter and summer; that hygiene and living conditions were deplorable; that it offered no access to organizations such as the International Committee of the Red Cross; and, above all, that prisoners were completely unable to complain about their treatment without facing reprisals.

5. In these cases, four fundamental elements stand out. First, the Committee accepted general information, such as a 2010 report by independent lawyers, as evidence of the nature of conditions of detention. Second, the Committee endorsed the concluding observations of the Committee against Torture on the initial report of Turkmenistan, which detail the inhuman conditions of detention in the labour camp. Third, the Committee noted that, in view of the risk of reprisals and the fact that there were no effective domestic remedies, the authors were under no obligation to exhaust domestic remedies. Fourth, the Committee repeatedly chose to raise *motu proprio* a violation of article 10 of the Covenant, even though the authors had not done so.<sup>4</sup>

6. It is therefore reasonable to infer from this previously established jurisprudence of the Committee that the objective conditions of detention in the labour camp are incompatible with the Covenant. However, in order to explain its finding of inadmissibility in the present case, the Committee tersely indicates that the authors have not provided sufficient information or evidence of having been personally ill-treated or subjected to harsh prison conditions and that they have not complained to the authorities about the alleged violations. The Committee considers that, given the limited information on file and

<sup>1</sup> In a previous case, the Committee rejected the claim under article 7 of the Covenant regarding prosecution for religious beliefs: *Nurjanov v. Turkmenistan*, para. 8.4.

<sup>2</sup> *Nasyrlayev v. Turkmenistan*, paras. 2.5 and 8.3.

<sup>3</sup> In addition to those discussed in footnote 2 above, see *Uchetov v. Turkmenistan*.

<sup>4</sup> See, for example, *Japparow v. Turkmenistan*, paras. 1.1, 3.2, 7.2 and 7.3; *Hudaybergenov v. Turkmenistan* (CCPR/C/115/D/2221/2012), paras. 1.1, 3.2 and 7.3; and *Abdullayev v. Turkmenistan*, paras. 1.1, 3.3 and 7.3. In this last case, the Committee described as “detailed” the authors’ evidence concerning the “deplorable living conditions” in the prison (para. 7.3), yet that evidence was the same as that provided in the present case, including the 2010 report by independent lawyers and the concluding observations of the Committee against Torture on the initial report of Turkmenistan.

the absence of detailed explanations from the authors and their counsels, the allegations have been insufficiently substantiated for the purposes of admissibility even though the State party has not refuted the authors' allegations (para. 6.4).

7. This passage is difficult to understand. On the one hand, the Committee itself recognizes that the domestic legal system does not offer any remedy. Therefore, it is not logical to consider the absence of a complaint to the national authorities as evidence of non-substantiation of the claim. The State party, which does not defend itself, also reports no improvements in its national procedures. Moreover, as the labour camp is located in an area subject to extreme weather conditions that have been recognized as such by the Committee in the above-mentioned cases, as well as suffering from a lack of hygiene – which is not refuted by the State party – it seems odd to require the authors to demonstrate having been “personally” subjected to such conditions, given that this extreme and unhealthy environment is imposed on all the detainees at the labour camp. The fact that the authors in this case have not contracted tuberculosis is irrelevant inasmuch as the Committee, in its previous decisions, has attached importance to the severe weather conditions associated with the intense heat of summer and the bitter cold of winter, as well as the failure to separate healthy inmates from those who have the disease.<sup>5</sup>

8. For these reasons, not only should the authors' claim under article 7 have been declared admissible, but the conditions of detention should have led the Committee to find a violation of the Covenant.

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<sup>5</sup> *Matyakubov v. Turkmenistan* (CCPR/C/117/D/2224/2012), para. 7.3.