



## 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. 2219/2012\*, \*\*

<i>Communication submitted by:</i>	Navruz Tahirovich Nasyrlyayev (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>	15 July 2016
<i>Subject matter:</i>	Conscientious objection to compulsory military service
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of conscience; <i>ne bis in idem</i> ; inhuman and degrading treatment; conditions of detention
<i>Articles of the Covenant:</i>	7, 10, 14 (7) and 18 (1)
<i>Article of the Optional Protocol:</i>	5 (2) (b)

\* 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: Lazhari Bouzid, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Yuval Shany and Margo Waterval.  
A joint opinion by Committee members Yuji Iwasawa and Yuval Shany is annexed to the present Views.



1.1 The author of the communication is Navruz Tahirovich Nasyrlyayev, a national of Turkmenistan, born on 21 March 1991. He claims that the State party has violated his rights under articles 7, 14 (7) and 18 (1) of the Covenant owing to his repeated prosecution, conviction and imprisonment as a conscientious objector. Although the author does not specifically invoke article 10 of the Covenant, the communication also appears to raise issues under that article. The Optional Protocol entered into force for Turkmenistan on 1 August 1997. The author is represented by counsel, Shane H. Brady.

1.2 In his initial submission, the author requested that the Committee seek assurances from the State party that, as an interim measure, it would ensure his immediate release pending the examination of his communication before the Committee. On 7 December 2012, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to accede to that request. On 8 February 2013, the Committee recalled that the State party should abstain from any acts of pressure, intimidation or reprisal against the authors of communication and their relatives made in connection with communications brought before the Committee. The State party, however, did not respond.

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

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

2.2 On 16 April 2009, only weeks after turning 18, he was called up by the Military Commissariat to perform his compulsory military service. In compliance with the summons, he met with representatives of the Military Commissariat and explained orally and in writing that as a Jehovah's Witness, his religious beliefs did not permit him to perform military service. His call-up was deferred for six months.

2.3 On 13 October 2009, the author was summoned for the autumn call-up for military service. He again explained orally and in writing the reasons why he could not perform military service. On 23 November 2009, he was charged under article 219 (1) of the Criminal Code for refusing to perform military service. On 7 December 2009, he was tried before Dashoguz City Court. He testified that he had become a Jehovah's Witness three years earlier and that he had learned from the Bible that servants of God should not take up arms, learn warfare, or support the military or participate in military activity in any other way. He also testified that he respected the laws of Turkmenistan and was willing to fulfil his civil obligations by performing alternative civilian service.<sup>1</sup>

2.4 On 7 December 2009, Dashoguz City Court convicted the author and sentenced him to 24 months of imprisonment under article 219 (1) of the Criminal Code. He was arrested in the court room and placed in detention. The author appealed, but on 5 January 2010, his appeal was rejected by Dashoguz Regional Court.

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<sup>1</sup> See, for example, the Committee's concluding observations on the initial report of Turkmenistan (CCPR/C/TKM/CO/1), para. 16, in which it expressed concern that the Act, as amended on 25 September 2010, did not recognize a person's right to exercise conscientious objection to military service and did not provide for any alternative military service. The Committee regretted that due to the law, a number of Jehovah's Witnesses had been repeatedly prosecuted and imprisoned for refusing to perform compulsory military service. It requested that the State party take all necessary measures to review its legislation with a view to providing for alternative military service; ensure that the law clearly stipulated that individuals had the right to conscientious objection to military service; and halt all prosecutions of individuals who refused to perform military service on grounds of conscience and release those individuals who were currently serving prison sentences.

2.5 The author was held in custody for 32 days at the DZK-7 detention facility in Dashoguz. On 8 January 2010, he was transferred to the LBK-12 prison located near the town of Seydi in the Lebap region in the Turkmen desert. While in detention, as a Jehovah's Witness, the author was singled out for harsh treatment. Immediately upon his arrival at the LBK-12 prison, he was placed in quarantine and kept there for 10 days. On four separate occasions, he was confined in a punishment cell for periods of two to three days owing to the animosity of the prison administration towards his religious beliefs. On one occasion, he was isolated for a month in a so-called "control unit", a type of punishment cell. One day during his isolation, four masked officers from the Ashgabad special police forces entered the punishment cell and severely beat the author.

2.6 The author was released from prison on 7 December 2011, after serving his sentence. One month later, he was again called up for military service. He refused, again explaining to representatives of the Military Commissariat that his religious conscience did not permit him to perform military service. On 1 May 2012, he was again convicted by Dashoguz City Court under article 219 (1) of the Criminal Code to the maximum sentence of 24 months of imprisonment.<sup>2</sup> The author was considered a repeat offender and was imprisoned in a strict regime prison. At the time of the submission of his complaint to the Committee, the author was imprisoned in the strict regime prison LBK-11 in Seydi, where the conditions were worse than those he had experienced during his first prison term.

2.7 On 14 June 2012, Dashoguz Regional Court dismissed the author's appeal. The author filed a supervisory appeal before the Supreme Court of Turkmenistan even though, according to the jurisprudence of the Committee, such an appeal is a purely discretionary remedy that does not need to be pursued in order to exhaust domestic remedies.<sup>3</sup> On 13 July 2012, the Court dismissed the author's appeal.

2.8 As to the alleged violation of article 7 of the Covenant, the author maintains that there was no effective domestic remedy available to complain about the "inhuman or degrading treatment or punishment" he suffered while in detention and in prison. He refers to the concluding observations of the Committee against Torture on the initial report of Turkmenistan (CAT/C/TKM/CO/1), in which the Committee expressed concern about the lack of an independent and effective complaint mechanism in the State party for receiving and conducting impartial and full investigations into allegations of torture, in particular of convicted prisoners and pretrial detainees (para. 11 (a)).

2.9 As to the alleged violation of article 14 (7) of the Covenant, the author submits 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

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<sup>2</sup> 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-up only after he has received and served two criminal sentences. At the same time, articles 12 and 21 of the Constitution of Turkmenistan guarantee freedom of religion and conscience and stipulate that that right is subject to limitation only if it violates morality, law or public order or endangers national security.

<sup>3</sup> See, for example, communication No. 1100/2002, *Bandajevsky v. Belarus*, Views adopted on 28 March 2006, para. 10.13. See also European Court of Human Rights, *Kolesnik v. Russia* (application No. 26876/08), judgment of 17 June 2010, paras. 54-58, 68, 69 and 73), in which the Court indicated that appeals to the domestic courts in Turkmenistan are a pointless exercise. The author notes that Turkmenistan has repeatedly been requested 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. The State party, however, continues to prosecute and imprison conscientious objectors.

domestic remedy was available for him to obtain redress against his repeated prosecution and conviction as a conscientious objector to military service. The author claims that with the submission of a supervisory appeal to the Supreme Court of Turkmenistan, he has exhausted the available domestic remedies concerning the alleged violation of article 18 (1) of the Covenant.<sup>4</sup> He considers that the appellate court decision of Dashoguz Regional Court, dated 5 January 2010, on his first conviction, and the decision of the Supreme Court of Turkmenistan, dated 13 July 2012, on his second conviction, satisfy his obligation to exhaust all available domestic remedies prior to submitting his communication to the Committee.

2.10 In his additional submission dated 6 February 2013, the author informed the Committee that on 24 January 2013 at 10 p.m., weeks after the present communication and nine others had been transmitted to the State party by the Committee on 7 December 2012, the author's family home was raided by more than 30 police officers. The police subjected the family members and guests present that evening to beatings, threats of rape and serious mistreatment. After having submitted a complaint in that regard to the Prosecutor General and the President of Turkmenistan, the author requested the Committee's protection against reprisals (see para. 1.2 above).

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

### **The complaint**

3.1 The author claims that his prosecution and imprisonment on the ground 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>5</sup>

3.2 The author also claims a violation of article 7 of the Covenant on account of his inhuman or degrading treatment or punishment while in detention, including police brutality, and of the detention conditions in the LBK-12 prison. In that regard, he refers, inter alia, to the concluding observations of the Committee against Torture,<sup>6</sup> the jurisprudence of the European Court of Human Rights,<sup>7</sup> and the report of Turkmenistan

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<sup>4</sup> In other communications submitted to the Committee by conscientious objectors in Turkmenistan, it is argued that the national courts of Turkmenistan have never ruled in favour of a conscientious objector to military service. See, for example, communication No. 2222/2012, *Ahmet Hudaybergenov v. Turkmenistan*, Views adopted on 29 October 2015, para. 2.7.

<sup>5</sup> See, for example, European Court of Human Rights, *Feti Demirtaş v. Turkey* (application No. 5260/07), judgment of 17 January 2012, para. 91, in which the Court ruled that the applicant suffered inhuman and degrading treatment because he was subjected to "numerous criminal proceedings" and "criminal convictions," in addition to ill-treatment while in prison. That conclusion applies *mutatis mutandis* to the author's case.

<sup>6</sup> See CAT/C/TKM/CO/1, paras. 18 and 19, in which the Committee expressed its concern, inter alia, at ongoing physical abuse and psychological pressure carried out 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, that had reportedly motivated the suicides of several detainees. The Committee also expressed deep concern about the current 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>7</sup> The author cites *Kolesnik v. Russia* (application No. 26876/08), 17 June 2010, 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 a "serious risk" of being subjected to torture or inhuman or degrading treatment. The following factors were taken into account: credible and consistent reports from various reputable sources of widespread torture, beatings and use of force

Independent Lawyers Association of February 2010.<sup>8</sup> Those documents indicate that the practice of torture and ill-treatment of detainees in the State party is widespread. They also highlight the serious risk of being subjected to torture or inhuman or degrading treatment upon removal to Turkmenistan, and the fact that the LBK-12 prison is located in a desert where extreme temperatures are reached. The prison is overcrowded and prisoners with contagious diseases are kept together with healthy inmates, putting the author at a high risk of infection. The author therefore requests that the Committee require the State party to release him from prison immediately. Although the author does not invoke it specifically, the communication also raises issues under article 10 of the Covenant.

3.3 In the present case, the author has twice been prosecuted, convicted and imprisoned for his refusal to perform military service, based on the same constant resolve grounded in reasons of conscience, in violation of article 14 (7) of the Covenant.<sup>9</sup>

3.4 The author claims that his prosecution, conviction and imprisonment for refusing to perform compulsory military service owing to his religious beliefs and conscientious objection have violated his rights under article 18 (1) of the Covenant.<sup>10</sup> He notes that he repeatedly informed the Turkmen authorities that he was willing to fulfil his civil duty by performing genuine alternative service, but that the State party's legislation does not provide for such an alternative.

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

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against criminal suspects by the Turkmen law enforcement authorities, and very poor conditions of detention.

<sup>8</sup> The report of Turkmenistan Independent Lawyers Association of February 2010 (pp. 9-10) described the LBK-12 prison, popularly referred to as Shagal, as the largest in Turkmenistan in size and prison population, 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 offenders, prison conditions were very tough. The colony was located in the lifeless desert where in winter, temperatures reached minus 20°C and in the summer, 50°C. Due to the harsh climatic conditions, overcrowding, the fact that prisoners diagnosed with tuberculosis and skin diseases were kept together with healthy inmates, scarce supplies of food, medication and personal hygiene products, the institution reported a mortality rate of 5.2 per cent, the highest among the country's penitentiary facilities. Similar to other penitentiary facilities in Turkmenistan, physical abuse was 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 were placed in the colony for the first time and were consequently not aware of the unofficial prison rules, were subjected to violence. Similar observations on prison conditions in Turkmenistan were made in the United States of America State Department 2011 country report and the Amnesty International report of February 2012.

<sup>9</sup> See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, which indicates that 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 (para. 55). In the report on her mission to Turkmenistan in 2008, the Special Rapporteur on freedom of religion or belief recalled the principle of *ne bis in idem* and recommended that Turkmenistan revise the Military Service and Military Duty Act, which referred to the possibility of being sanctioned twice for the same offence (A/HRC/10/8/Add.4, para. 68).

<sup>10</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.

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

4. By note verbale of 17 March 2014, the State party informed the Committee 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 noted that according to article 41 of the Constitution, protecting Turkmenistan was the sacred duty of every citizen, and general conscription was compulsory for male citizens. The author did not meet the criteria of persons eligible to be exempted from military service, as provided for under article 18 of the Military Service and Military Duty Act.<sup>11</sup>

**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 had been 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 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 the Committee's jurisprudence, which upholds the right to conscientious objection to military service. Furthermore, the State party does not contest the author's allegations that he has suffered inhuman and degrading treatment at the hands of law enforcement officers and prison officers, contrary to article 7 of the Covenant.<sup>12</sup>

5.2 The author submits that the State party does not contest that on 24 January 2013 at 10 p.m., more than 30 police officers raided his family home in order to punish and intimidate him. He reiterates that the police repeatedly beat his family and friends, and threatened to rape one of the guests, a young married woman, while beating her husband in her presence. In the author's view, the State party has not taken any action to punish the police officers who took part in that brutal, illegal raid.

5.3 The author requests that the Committee conclude that his prosecution, conviction and imprisonment violate his rights under articles 7, 14 (7) and 18 (1) of the Covenant, and reiterates his request for remedies (see para. 3.5 above).

5.4 On 22 October 2014, the author submitted that he had been released from prison on 1 May 2014, after having served the full term of his second two-year sentence for conscientious objection. Upon his release, he provided further information in support of his claims that his rights under articles 7, 14 (7) and 18 (1) of the Covenant had been violated.

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<sup>11</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 entered into by Turkmenistan; (d) those who have been convicted twice of committing a minor crime or convicted of a crime of medium gravity, a grave crime or an 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; and (g) sons or brothers of those who, as a result of a 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>12</sup> See, for example, communication No. 1449/2006, *Umarova v. Uzbekistan*, Views adopted on 19 October 2010, para. 8.3.

He submitted that after the second trial, he spent 21 days in the DZD-7 detention facility in the city of Dashoguz, where he arrived on 2 May 2012. That day, the chief of the operative department ordered three cellmates to beat him in the head, the kidneys and the chest. On 23 May 2012, he was transferred to the LBK-11 colony in the city of Seydi. Upon his arrival, he was placed in isolation for 10 days. There he was beaten and threatened by one of the sergeants. On 13 September 2012, he was working in the industrial zone when an operative tossed him a broom, and told him to sweep a certain area, which is considered the most degrading work, which he did. As soon as he had finished, he was called to the operative department and was accused of having talked to a soldier in the lookout tower. He explained that he had been working all day and had not talked to anyone. Still, he was threatened and requested to sign a falsified document.<sup>13</sup> As he refused, he was put in the punishment cell for five days, from 13 to 18 September 2012. There he had to remain seated or standing because the walls and floor were bare concrete. He had to report to the authorities on various occasions, as if he were an especially dangerous inmate. In May 2013, while working in the industrial zone, he was led away by the prison officers who said that he had been reading a banned book. He was put in a punishment cell for three days. Since his release on 1 May 2014, he has been required to report to the local police department for an undetermined period of time. The author has had health problems, especially because of the intracranial pressure resulting from beatings to his head in colony DZD-7.

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

#### *Protection against intimidation and reprisals*

6. The Committee notes with concern the information provided by the author that, on 24 January 2013, his family home was raided by police officers and that family members and guests were subjected to mistreatment. The Committee also notes that the State party did not provide any information to the contrary following the call from the Special Rapporteur on new communications and interim measures dated 8 February 2013 to abstain from acts of pressure, intimidation or reprisal against the author of the communication and his relatives. The Committee recalls that any act of pressure, intimidation or reprisal against a person who has submitted a communication or his or her relatives constitutes a breach of the State party's obligations under the Optional Protocol to cooperate with the Committee in good faith in the implementation of the provisions of the Covenant.

#### *Consideration of admissibility*

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

7.2 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.

7.3 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>14</sup> The Committee notes the author's submission that

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<sup>13</sup> The author does not provide further details on the contents of the document.

<sup>14</sup> See, for example, communication No. 2097/2011, *Timmer v. the Netherlands*, Views adopted on 24 July 2014, para. 6.3.

there are no effective remedies available to him in the State party with regard to his claims under articles 7, 10 and 14 (7) of the Covenant, and that he has exhausted the available domestic remedies in regard to his claim under article 18 (1) of the Covenant, with the decisions of Dashoguz Regional Court and of the Supreme Court of Turkmenistan, which upheld his convictions and sentences. 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 that the State party has not contested the author's argumentation concerning the exhaustion of domestic remedies. In these circumstances, the Committee considers that in the present case it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

7.4 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*

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

8.2 The Committee notes the author's claim that, after his conviction, he was singled out as a Jehovah's Witness for harsh treatment during the first 10 days of his detention in quarantine, and he was put into a punishment cell for periods of two to three days. The Committee also notes that on another occasion, the author was isolated in a "control unit", a type of punishment cell, for one month, and that once during that period, four masked officers from the Ashgabad special police forces entered the cell and severely beat him. In addition, following his transfer on 23 May 2012 to the LBK-11 prison, the author was beaten and ill-treated during his placement in isolation for 10 days. The author claims that he was repeatedly placed in the punishment cell. The Committee notes the author's allegations regarding the lack of adequate mechanisms for investigation of the claims of torture in Turkmenistan, and recalls that complaints of ill-treatment must be investigated promptly and impartially by competent authorities.<sup>15</sup> The State party has not refuted those allegations, nor provided any information in that 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.

8.3 The Committee notes the author's claims concerning the deplorable prison conditions at the LBK-12 prison. He claimed, for example, that he was confined in a bare concrete cell for repeated periods of several days, and that in the cells under the general prison regime, he was exposed to extreme heat in summer and extreme cold in winter. He also claimed that the prison was overcrowded and that prisoners infected with tuberculosis and skin diseases were kept together with healthy inmates, putting him at a high risk of contracting tuberculosis. The Committee notes that the State party did not contest those 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

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<sup>15</sup> See the Committee's general comment No. 20 (1992) on the prohibition of torture and cruel, inhuman or degrading treatment or punishment.



the Treatment of Prisoners.<sup>16</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>17</sup>

8.4 The Committee 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 also notes that, on 7 December 2009, Dashoguz City Court convicted and sentenced the author to 24 months of imprisonment under article 219 (1) of the Criminal Code for his refusal to perform compulsory military service, and that on 1 May 2012 he was again convicted by the same court under article 219 (1) of the Criminal Code and sentenced to 24 months of imprisonment. The Committee further 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-up only after he has received and served two criminal sentences. It notes in addition that those claims were not refuted by the State party.

8.5 The Committee recalls its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, in which it states 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 (paras. 54-55). 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 his 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.

8.6 The Committee 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 because of his religious beliefs 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, that, pursuant to article 41 of the Constitution, the protection of Turkmenistan is the sacred duty of every citizen and that general conscription is compulsory for male citizens.

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<sup>16</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>17</sup> See, for example, communications No. 1530/2006, *Bozbey v. Turkmenistan*, Views adopted on 27 October 2010, para. 7.3; *Abdullayev v. Turkmenistan*, para. 7.3; No. 2221/2012, *Mahmud Hudaybergenov v. Turkmenistan*, Views adopted on 29 October 2015, para. 7.3; No. 2222/2012, *Ahmet Hudaybergenov v. Turkmenistan*, Views adopted on 29 October 2015, para. 7.3; and No. 2223/2012, *Japparow v. Turkmenistan*, Views adopted on 29 October 2015, para. 7.3.

8.7 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 stated in article 4 (2) of the Covenant. The Committee recalls its prior jurisprudence stating 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>18</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>19</sup>

8.8 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 prohibit the use of arms, is incompatible with article 18 (1) of the Covenant.<sup>20</sup> It also recalls that during the consideration of the State party's initial report under article 40 of the Covenant, the Committee 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 military service and recommended that the State party, inter alia, take all necessary measures to review its legislation with a view to providing for alternative service.<sup>21</sup> Accordingly, the Committee finds that, by prosecuting and convicting the author for the 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.

9. 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.

<sup>18</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; 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; 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 Hudaybergenov v. Turkmenistan*, para. 7.5; *Ahmet Hudaybergenov v. Turkmenistan*, para. 7.5; and *Japparow v. Turkmenistan*, para. 7.6.

<sup>19</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 Hudaybergenov v. Turkmenistan*, para. 7.5; *Ahmet Hudaybergenov v. Turkmenistan*, para. 7.5; and *Japparow v. Turkmenistan*, para. 7.6.

<sup>20</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 Hudaybergenov v. Turkmenistan*, para. 7.6; *Ahmet Hudaybergenov v. Turkmenistan*, para. 7.6; and *Japparow v. Turkmenistan*, para. 7.7.

<sup>21</sup> See CCPR/C/TKM/CO/1, para. 16.

10. 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 under article 7; to prosecute any person or persons 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), in particular the Military Service and Military Duty Act, as amended on 25 September 2010, with a view to ensuring the effective guarantee of the right to conscientious objection under article 18 (1) of the Covenant.<sup>22</sup>

11. 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 and 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, 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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<sup>22</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 *Abdullayev v. Turkmenistan*, appendix (joint opinion of Committee members Yuji Iwasawa, Anja Seibert-Fohr, Yuval Shany and Konstantine Vardzelashvili).