



# 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. 2448/2014\*, \*\*

<i>Communication submitted by:</i>	Vladimir Nuryllayev and Aibek Salayev (represented by counsel, Shane Brady and Philip Brumley)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Turkmenistan
<i>Date of communication:</i>	5 May 2014 (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 11 August 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	29 March 2019
<i>Subject matter:</i>	Unfair trial and conviction of Jehovah's Witnesses on fabricated pornography charges; ill-treatment in custody (second author)
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Freedom of religion; fair trial; discrimination; torture; cruel, inhuman or degrading treatment or punishment
<i>Articles of the Covenant:</i>	7, 14 (1) and (3) (d) and (e), and 18 read in conjunction with 26
<i>Article of the Optional Protocol:</i>	2

\* Adopted by the Committee at its 125th session (4–29 March 2019).

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



1. The authors of the communication are Vladimir Nuryllayev, born in 1972, and Aibek Salayev, born in 1979, nationals of Turkmenistan who are both Jehovah's Witnesses. They claim that the State party has violated their rights under article 14 (1), (3) (d) and (e) and (5), and article 18 read in conjunction with article 26, of the Covenant. In addition, Mr. Salayev claims to be the victim of a violation of article 7 of the Covenant. The authors are represented by counsel. The Covenant and its Optional Protocol entered into force for Turkmenistan on 1 August 1997.

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

2.1 On 22 September 2011, police officers forcibly and without any warrant entered the home of the first author, Mr. Nuryllayev, and seized his Bible and other religious literature. On 25 September 2011, the first author was summoned by representatives of the Ashgabat city administration and questioned about his religious activities. On 18 October 2011, he was convicted by Berkararlyk (Azatlykskiy) District Court in Ashgabat for illegal distribution of religious material, under article 205 of the Code of Administrative Violations, and was sentenced to a fine of approximately €95. On 20 October 2011, three police officers entered his house again and seized his laptop and other personal items, without sealing/protecting them to prevent possible tampering. On 15 November 2011, the first author was arrested and taken into custody for distribution of pornography. He was charged and placed in pretrial detention on 19 November 2011.

2.2 The first author alleges that the charge against him was fabricated by the police. The charge and conviction were based on the testimonies of two persons. Each claimed that the first author had given him a CD at the market, and each claimed then to have discovered, after arriving home, that the CD contained pornographic material. The two witnesses, who allegedly do not know each other, explained that they both decided on the exact same day to go back to the market to return the CD to the first author. The first author considers that their testimonies are illogical and suspiciously identical. The story of each witness is exactly the same, word for word.

2.3 On 18 January 2012, the first author was convicted by Berkararlyk (Azatlykskiy) District Court in Ashgabat for distribution of pornography and was sentenced to four years' imprisonment. He did not have a lawyer and his conviction relied solely upon the written summary of the testimonies of the two witnesses, who did not appear before the court. On 14 February 2012, Ashgabat City Court rejected an appeal made by the first author. On 15 May 2012, a supervisory appeal was filed with the Supreme Court on behalf of the first author, by his fiancé. On 17 May 2012, the first author was amnestied and released from prison without having his conviction expunged from his criminal record. On 28 May 2012, the Supreme Court rejected the supervisory appeal made on 15 May 2012. On 28 August 2012, a new supervisory appeal was filed with the Presidium of the Supreme Court. That appeal was rejected on 10 October 2012.

2.4 On 7 March 2012, the second author, who is a Jehovah's Witnesses minister, without any previous criminal record, was arrested by two police officers while taking part in a gathering in a private apartment in the city of Dashoguz to read and discuss the Bible. He was taken to a police station and detained. Later that day, the police went to his apartment and, without any warrant, requested his mother to give them his religious literature. They seized his computer, some CDs and a micro memory card, without sealing/protecting these items to prevent possible tampering. The police allege that on 8 March 2012, some officers called randomly on three persons in Dashoguz, and that they all claimed that the second author had sold them CDs containing pornography.

2.5 On 11 March 2012, the second author was transferred from the police station to a remand facility. He says that, while on remand, he was repeatedly beaten by officials of the facility on his head and in his stomach and kidneys until he was left unconscious. The officials threatened that he would be raped when transferred to the prison colony. Afterwards he was beaten by a group of prisoners who, he states, were collaborators of the prison administration. His family was at first denied permission to see him. When finally

permitted to visit him,<sup>1</sup> they could see that his face was swollen. They officially lodged with the authorities a complaint of ill-treatment,<sup>2</sup> which yielded no results.

2.6 On 12 April 2012, Dashoguz City Court convicted the second author for distribution of pornography and sentenced him to four years' imprisonment. On 1 May 2012, Dashoguz Regional Court dismissed the second author's appeal without hearing his testimony or any witnesses. The second author was not authorized to attend the appeal hearing. On 24 May 2012, the Supreme Court dismissed the second author's supervisory appeal. On 9 October 2012, the Supreme Court rejected his supervisory appeal to the Presidium of the Supreme Court. At the time that the present communication was submitted, the second author was serving his sentence at the LBK-12 prison colony.

2.7 On 26 January 2015, the authors' counsel provided an update to the Committee, notifying that on 22 October 2014 the President of Turkmenistan had amnestied eight Jehovah's Witnesses, among whom was the second author, who, according to counsel, had been condemned and imprisoned on the basis of fabricated charges. When he was released, he had served 31.5 months of his 48-month sentence. However, the amnesty did not exonerate the second author of his criminal conviction, nor did it expunge his criminal record or offer reparation.

### **The complaint**

3.1 The authors claim that the State party has violated their rights under article 14 (1), (3) (d) and (e) and (5) of the Covenant, as they were denied a fair trial, that is, they were tried in the absence of a lawyer, and their rights to have witnesses cross-examined, and to have their convictions reviewed by a higher court, were violated.

3.2 They also claim to be victims of a violation of article 18 read in conjunction with article 26 of the Covenant, as they allege that the pornography charges brought against them were fabricated by the police in order to convict them because of their religion. They recall that Jehovah's Witnesses are regularly subjected to various forms of intimidation and punishment by the authorities of the State party and that this religious organization was denied permission to be registered officially in Turkmenistan.

3.3 In addition, the second author claims that the repeated beatings and the threats he was subjected to during his detention at the Dashoguz remand centre constituted a violation of article 7 of the Covenant. He also considers that the inhuman conditions of his detention at the LBK-12 prison colony – the country's largest in terms of size and prison population, known for its overcrowdedness, harsh climatic conditions, scarce supplies of food, medication and personal hygiene products, and for tuberculosis, skin diseases, its very high mortality rate, and physical abuse – constitute a violation of article 7 of the Covenant.

### **State party's observations on the merits**

4.1 On 16 November 2015, the State party submitted its observations on the merits of the communication. The State party asserts that both authors were found guilty of committing the crime specified in article 164 (preparation or distribution of pornographic material) of the Criminal Code and each one was sentenced to four years of deprivation of liberty.

4.2 The State party argues that it is evident from the case materials that the two authors each independently obtained pornographic movies with the intention of showing, distributing and selling them. Their guilt was established by the totality of the evidence examined in court (witness testimonies, CD-R compact discs with video recordings of pornographic movies admitted as physical evidence, and other case materials).

4.3 The State party adds that the penalties imposed on them, which take into account the mitigating and aggravating circumstances of the cases, are within the sanctions permitted by the law.

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<sup>1</sup> The date was not provided by the authors.

<sup>2</sup> No further information.

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

5.1 On 18 January 2016, the authors noted that the State party did not contest the facts as set out in the communication. Neither did the State party dispute that both authors had been denied their right to obtain a copy of the case materials for their respective cases, which included the documents and "evidence" obtained during the criminal investigation as well as all materials from the judicial proceedings. Therefore, the authors consider that the Committee should accept the facts as stated by them.<sup>3</sup>

5.2 The authors note that the State party takes no position on the admissibility of the communication and reiterate that all available domestic remedies have been exhausted.

5.3 The authors refer to the detailed and credible arguments in their initial submission. They claim that the State party does not dispute or respond to any of their arguments that prove a violation of their rights under article 14 (1), (3) (d) and (e) and (5) and article 18 read in conjunction with article 26, and article 7 claimed separately by the second author.

5.4 Finally, the authors reiterate their request to the Committee to conclude that their prosecution, conviction and imprisonment under article 164 of the Criminal Code has violated their rights under the Covenant, as stated above, and to direct the State party to provide them with an effective remedy, giving full recognition to their rights, notably: to disclose fully their respective criminal files, to acquit them of the charges brought under article 164 (2) of the Criminal Code, to expunge their criminal records, and to provide suitable monetary compensation for the moral damages they have suffered as a result of their wrongful conviction and imprisonment and for the legal expenses and fees they have incurred.

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

#### *Consideration of admissibility*

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

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

6.4 The Committee has noted the authors' claims under article 14 (5) of the Covenant. In the absence of any further pertinent information on file, the Committee considers that the authors have failed to sufficiently substantiate, for the purposes of admissibility, these allegations. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers that the authors have sufficiently substantiated, for the purposes of admissibility, their remaining claims under article 7, article 14 (1) and (3) (d) and (e), and article 18 read in conjunction with article 26, declares them admissible, and proceeds to consider them on their 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 under articles 14 (1) (3) (d) and (e) and 18 of the Covenant that by prosecuting, convicting and imprisoning them on fabricated charges

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<sup>3</sup> The authors refer to *Abdullayev v. Turkmenistan* (CCPR/C/113/D/2218/2012), paras. 7.3–7.5.

for distribution of pornographic materials, the State party violated their right to a fair trial and to freedom of religion, and that such treatment discriminated against them on the basis of their religious belief. The Committee notes that both authors did not have lawyers to represent them during their trials, which is uncontested by the State party. The Committee also notes both authors' allegation that the pornography charges against them were fabricated by the police in order to intimidate and punish them for their religious belief and activities as Jehovah's Witnesses. In this connection, the Committee notes that the State party does not dispute that both authors are known to the law enforcement authorities as Jehovah's Witnesses; the first author was initially sentenced to a fine for illegal distribution of religious material, while the second author, a Jehovah's Witnesses minister, was arrested during a gathering held in a private apartment to read and discuss the Bible. The Committee also notes the authors' statements, uncontested by the State party, that police officers entered their houses without warrants and seized religious literature and their laptops without sealing/protecting the items against possible tampering. Furthermore, it notes the information that their religious organization is regularly the subject of intimidation and punishment by the authorities and was denied permission to be registered officially in Turkmenistan.

7.3 The Committee notes the first author's argument that the testimonies of the two witnesses against him are illogical and suspiciously identical, as the stories of the witnesses, who allegedly did not know each other, are exactly the same. It notes that his conviction relied only on the written summary of the testimonies of the two witnesses, who did not appear before the court. The Committee observes that the first author was not able to examine, or to have examined, the witnesses, or the reliability of the statements made, which is not refuted by the State party. The Committee also notes that, throughout the procedure, he had no counsel.

7.4 The Committee notes the State party's claims that the authors' sentencing and imprisonment are lawful, since their guilt was established by the evidence examined in court and their punishment was in accordance with the law. In this connection, the Committee notes that the President subsequently amnestied both authors, the second author having served a significant portion of his sentence. However, the Committee observes that the authors were not acquitted of the charges against them and nor did they have their criminal records expunged.

7.5 The Committee also notes the second author's claim that he was ill-treated while on remand, notably that he was repeatedly beaten by prison officials on his head and in his stomach and kidneys until he was left unconscious, and that the officials threatened that he would be raped when transferred to the prison colony. Afterwards he was beaten by a group of prisoners who, according to the author, were collaborators of the prison administration in the LBK-12 prison colony. The Committee further notes that his family was at first denied permission to see him and when finally permitted to visit him could see that his face was swollen. The Committee notes that the family officially lodged a complaint with the authorities for the ill-treatment that the second author had suffered, without this yielding any results. The Committee recalls that complaints of ill-treatment must be investigated promptly and impartially by competent authorities.<sup>4</sup> The Committee also notes that the State party has not refuted the allegations of torture and ill-treatment, nor has it provided any information in this respect. Therefore, in the circumstances of the present case, the Committee decides that due weight must be given to the second author's allegations. Accordingly, the Committee concludes that the facts as presented reveal a violation of the second author's rights under article 7 of the Covenant.

7.6 In the light of the above, and considering the significant consequences for both authors of their sentencing, their imprisonment and the impediments to their religious activities as Jehovah's Witnesses, the Committee concludes that the authors' rights under article 14 (1) and (3) (d) and (e) and article 18 of the Covenant have been violated. In the light of this conclusion, the Committee decides not to examine the authors' claims under article 18 read in conjunction with article 26 of the Covenant.

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<sup>4</sup> See, for example, *Timmer v. Netherlands* (CCPR/C/111/D/2097/2011), para. 6.3; and *Aminov v. Turkmenistan* (CCPR/C/117/D/2220/2012), para. 9.2.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the authors' rights under article 14 (1) and (3) (d) and (e) and article 18 of the Covenant, and of the second author's rights under article 7 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*: (a) to disclose fully the second author's criminal files to him; (b) to expunge the authors' criminal records related to the charges under article 164 (2) of the Criminal Code; (c) to provide the authors with adequate compensation, including for the legal expenses and fees they have incurred. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.

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