



## 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. 2220/2012\*,\*\*

<i>Communication submitted by:</i>	Matkarim Aminov (represented by counsel, Shane H. Brady)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Turkmenistan
<i>Date of communication:</i>	3 September 2012 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 7 December 2012 (not issued in document form)
<i>Date of adoption of Views:</i>	14 July 2016
<i>Subject matter:</i>	Conscientious objection to compulsory military service; inhuman and degrading treatment; conviction for the same offence twice; conditions of detention
<i>Procedural issues:</i>	None
<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>Articles 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: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Yuval Shany and Margo Waterval.

A joint opinion by Committee members Yuji Iwasawa and Yuval Shany is appended to the present Views.



1. The author is Matkarim Aminov, a national of Turkmenistan born on 17 April 1991. He claims to be the victim of a violation by the State party of his rights under articles 7, 14 (7) and 18 (1) of the Covenant. Although the author did not invoke article 10 of the Covenant specifically, the communication also appears to raise issues under that provision. The Optional Protocol entered into force for the State party on 1 May 1997. The author is represented by counsel, Shane H. Brady.

### **Factual background**

2.1 The author has been a Jehovah's Witness since 2009. He was first called by the Military Commissariat in the spring of 2009 to perform his compulsory military service. In compliance with the summons, he met with representatives of the Military Commissariat in Dashoguz 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 twice, in the autumn of 2009 and the spring of 2010. On 3 October 2010, the author was again summoned by the Military Commissariat for military service. He explained again, several times, to the Military Commissariat officers that due to his religion, he was not able to perform military service, as his faith did not allow him to take part in any kind of military activity, including the use of weapons. His case was transferred to the prosecutor's office. The author explained to the prosecutor that his religious conscience did not allow him to perform military service, and he indicated that he would be willing to perform an alternative form of service.

2.2 The author was charged under article 219 (1) of the Criminal Code<sup>1</sup> for refusing to perform military service. His case was transferred to Dashoguz City Court for the proceedings. On 29 December 2010, the Court convicted the author of evading military service and sentenced him to 18 months' imprisonment, under article 219 (1) of the Criminal Code. The Court indicated that the author completely admitted his guilt, as he accepted that he was a Jehovah's Witness and for that reason could not perform military service. The Court also stated that according to a medical report, the author was fit for military service and concluded that he had refused, without any legal basis, to serve in the army.<sup>2</sup> The author was arrested in the courtroom. He had never previously been charged with any criminal or administrative offence.

2.3 On 18 January 2011, Dashoguz Regional Court dismissed the author's appeal, confirming that he had violated article 219 (1) of the Criminal Code as he had refused, without any legal basis, to perform military service. The Regional Court also indicated that, as provided in article 41 of the State party's Constitution, the author should perform military service, like every man in Turkmenistan.

2.4 The author alleges that, immediately after his arrest, he was detained for 69 days in a temporary holding facility in Dashoguz. On 30 December 2010, he was beaten by the director of the facility for refusing to perform military service. On 21 January 2011, he was kicked and beaten by the Chief of the Investigative Department for being a "traitor". Then, on 10 March 2011, he was transferred to the LBK-12 prison, located near the town of Seydi. Immediately after his transfer, he was put in solitary confinement for 10 days. The author states that although the weather was freezing, all his clothes were taken away from him and he was obliged to sleep on the bare concrete floor. He also alleges that he was beaten once again by the Chief of the Investigative Department.

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<sup>1</sup> According to an unofficial translation of article 219 (1) of the Criminal Code, the crime of evasion of the draft without legal grounds for exemption from military service is punishable by up to two years of corrective labour or up to two years of deprivation of freedom.

<sup>2</sup> The author provided an unofficial translation of the ruling of Dashoguz City Court.

2.5 On 29 June 2012 the author was released, after having completed his sentence. He was requested to report weekly to the Dashoguz police department. On 14 December 2012, officers of the Military Commissariat attempted to deliver a call-up letter to his mother, but she refused to receive it. On 15 December 2012, the author reported to the Military Commissariat, underwent a medical examination and was declared fit for military service. He claims that he explained orally and in writing to the officers of the Military Commissariat that due to his religious beliefs, he could not perform military service. On 8 January 2013, six months after being released from prison, the author was again convicted under article 219 (1) of the Criminal Code and sentenced to 24 months of prison, by Dashoguz City Court. The author was arrested in the courtroom. On 29 January 2013, Dashoguz Regional Court dismissed his new appeal.

2.6 The author alleges that he was subjected to torture and ill-treatment while detained. In a statement dated 12 February 2013, his mother indicated that she had visited him on 11 February 2013 in the DZ-D/7 temporary detention centre in Dashoguz and he had informed her that he was being tortured, threatened and questioned by officers of the city's sixth police department. She also mentioned that his health had deteriorated.<sup>3</sup> Subsequently, the author was transferred to the LB-K11 prison in Seydi.

2.7 The author also claims that the fact that he was convicted twice for refusing to perform military service due to his religious convictions amounts to a violation of article 14 (7) of the Covenant. In this regard, he notes that the Special Rapporteur on freedom of religion or belief has urged Turkmenistan to revise its legislation, which allows defendants to be sentenced twice for the same offence, and notes that the State party has failed to act on these recommendations.<sup>4</sup>

2.8 The author submits that the State party's judicial authorities, including trial courts, appeal courts and the Supreme Court, have never ruled in favour of conscientious objectors to military service. He therefore argues that he has exhausted all available domestic remedies as regards article 18 (1) of the Covenant.<sup>5</sup> Regarding the claims under articles 7 and 14 (7) of the Covenant, the author states that there were no effective domestic remedies available to him.

### **The complaint**

3.1 The author claims that his imprisonment on account of his religious beliefs in itself constitutes inhuman or degrading treatment within the meaning of article 7 of the Covenant.

3.2 The author also claims a violation of article 7 of the Covenant on account of the treatment he received while in detention, which amounted to torture and ill-treatment,<sup>6</sup> and on account of the conditions of imprisonment at the LBK-12 prison. In this regard, he refers to the concluding observations on Turkmenistan by the Committee against Torture, from 2011, in which the Committee expressed concern regarding ongoing physical abuse and psychological pressure by prison staff in Turkmenistan, including collective punishment, ill-treatment as a "preventive" measure, the use of solitary confinement, and sexual violence and rape by prison officers or inmates.<sup>7</sup> The author also refers to the February 2010 report of the country's Independent Lawyers Association, in which it is noted that the LBK-12 prison is situated in a desert where temperatures fall to -20°C in winter and can rise to 50°C in the summer heatwaves. The prison is overcrowded, and prisoners with

<sup>3</sup> The author provided an unofficial translation of his mother's statement.

<sup>4</sup> See A/HRC/10/8/Add.4, para. 68; and A/HRC/16/53/Add.1, para. 391.

<sup>5</sup> The author refers to his appeals to Dashoguz Regional Court of the decisions of Dashoguz City Court dated 29 December 2010 and 8 January 2013.

<sup>6</sup> See paras. 2.4 and 2.6 above.

<sup>7</sup> See CAT/C/TKM/CO/1, para. 18.

tuberculosis and skin diseases are kept together with healthy inmates, putting the author at a high risk of contracting tuberculosis and other infections. Although the author does not invoke article 10 of the Covenant specifically, the communication also appears to raise issues under that article.

3.3 The author further claims that his repeated prosecutions, convictions and imprisonment for refusing to perform compulsory military service due to his religious beliefs and his conscientious objection have violated his rights under article 18 (1) of the Covenant.<sup>8</sup> He notes that he repeatedly informed the Turkmen authorities that he was willing to fulfil his civic duties by performing genuine alternative service, but that the State party's legislation does not provide for such an alternative.

3.4 Furthermore, the author claims a violation of his rights under article 14 (7) of the Covenant, as his refusal to perform military service owing to his religious beliefs led to him being convicted twice.<sup>9</sup>

3.5 The author requests the Committee to direct the State party: (a) to acquit him of the charges under article 219 (1) of the Criminal Code and to expunge his criminal record; and (b) to provide him with appropriate compensation for the non-pecuniary damage that he suffered as a result of his convictions and imprisonment.

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

4.1 On 14 August 2013, the State party submitted its observations on the admissibility and merits of the communication. The State party recalls that on 29 December 2010, the author was convicted and sentenced to 18 months of imprisonment under article 219 (1) of the Criminal Code for refusing to perform military service, and that he refused a second time in December 2012 to perform such service. Consequently, on 8 January 2013, he was convicted and sentenced to 24 months of imprisonment under the same article of the Criminal Code. The State party informs the Committee that the author never requested any medical assistance during his detention, and that according to national legislation, particularly article 219 of the Criminal Code, the investigation of criminal offences is carried out by the prosecutor's office. Therefore, contrary to the author's assertions, police officers had no reason to interrogate him.

4.2 The State party also notes that pursuant to article 41 of the Constitution, "protection of Turkmenistan is the sacred duty of every citizen" and general conscription is compulsory for male citizens. In addition, the State party notes that the author did not meet the criteria of persons to be exempted from military service as provided for under article 18 of the Military Service and Military Duty Act. Therefore, the domestic courts' decisions fully complied with the State party's legislation.

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

5.1 On 15 October 2013, the author submitted his comments on the State party's observations. The author notes that the State party does not disagree with any of the facts set out in the communication. In addition, he considers that the State party has failed to provide any evidence rebutting his claim that he was subjected to inhuman or degrading

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<sup>8</sup> See, for example, communications Nos. 1853/2008 and 1854/2008, *Atasoy and Sarkut v. Turkey*, Views adopted on 29 March 2012, paras. 10.4 and 10.5.

<sup>9</sup> The author refers to the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, in which it was stated 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).

treatment contrary to article 7 of the Covenant while in detention,<sup>10</sup> as the State party does not provide any response to his detailed allegations regarding the inhuman and degrading treatment he suffered.<sup>11</sup>

5.2 The author concludes that his repeated prosecution, conviction and imprisonment violated his rights under articles 7, 14 (7) and 18 (1) of the Covenant. He reiterates his request for remedies to be provided by the State party.

#### **Additional observations by the State party**

6.1 On 23 December 2013 and 17 March 2014, the State party reiterated its observations regarding the admissibility and the merits of the communication.

6.2 In addition, the State party indicated on 17 March 2014 that the author's case had been carefully considered by the relevant law enforcement bodies and no reason had been found to appeal the court's decision, as the author had committed a criminal act punishable by the Criminal Code.

#### **Additional observations by the author**

7.1 On 14 May 2014, the author reiterated that the State party had not contested any of the facts set out in his communication. The only attempted justification raised by the State party was its assertion that the author was convicted and imprisoned as a conscientious objector to military service because he "did not qualify" for an exemption from military service under article 18 of the Military Service and Military Duty Act. According to the author, the State party's submission shows total disregard for its commitments under article 18 of the Covenant and for the Committee's jurisprudence, which uphold the right to conscientious objection to military service. Furthermore, the State party did not contest the author's allegations that he had suffered — contrary to article 7 of the Covenant — inhuman and degrading treatment at the hands of law enforcement officers and prison officers. The author concludes once again that his prosecutions, convictions and imprisonment violated his rights under articles 7, 14 (7) and 18 (1) of the Covenant, and reaffirms his request for remedies to be provided by the State party.

7.2 On 26 January 2015, the author provided further information that on 22 October 2014, the President of Turkmenistan amnestied eight imprisoned Jehovah's Witnesses, including the author, who was released after having served twenty-one and a half months of his 24-month prison term that had resulted from his second conviction under article 219 of the Criminal Code.<sup>12</sup> The author indicated that although he welcomed this development, he understood that the amnesty did not exonerate him of the charges, did not expunge his criminal record and did not offer any type of rehabilitation.

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

##### *Consideration of admissibility*

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

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<sup>10</sup> See paras. 2.4 and 2.6 above.

<sup>11</sup> The author refers to *Umarova v. Uzbekistan*, in which the Committee considered that the burden of proof in regard to torture and ill-treatment could not rest on the author alone and that due weight must be given to the author's allegations (communication No. 1449/2006, Views adopted on 19 October 2010, para. 8.3).

<sup>12</sup> No information was provided on the date of the release.

8.2 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.

8.3 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>13</sup> The Committee notes the author's submission that there are no effective remedies available to him in the State party with regard to his claims under articles 7 and 14 (7) of the Covenant, and that he has exhausted the available domestic remedies in regard to the alleged violation of article 18 (1) of the Covenant as he appealed the decisions of Dashoguz City Court of 29 December 2010 and 8 January 2013. The Committee also notes the State party's assertion of 17 March 2014 that the author's case had been carefully considered by the relevant law enforcement bodies of Turkmenistan and no reason had been found to appeal the court decision, and further notes that the State party has not contested the author's argumentation concerning the exhaustion of domestic remedies. In these circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

8.4 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*

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

9.2 The Committee notes the author's claim that he was ill-treated while detained in the temporary holding facility in Dashoguz, on 30 December 2010 when he was beaten by the director for refusing military service and on 21 January 2011 when he was kicked and beaten by the Chief of the Investigative Department who accused him of being a "traitor". The Committee takes note of the statement by the author's mother indicating that on 11 February 2013 he informed her that he was being tortured, threatened and questioned by officers of the sixth police department in the DZ-D/7 temporary detention centre in Dashoguz. The Committee also notes the author's allegation regarding the lack of adequate mechanisms for investigation of torture and ill-treatment in the State party, and recalls that complaints of ill-treatment must be investigated promptly and impartially by competent authorities.<sup>14</sup> The Committee takes note of the State party's statement that police officers were not responsible for the interrogation of the author. However, 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 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.

9.3 The Committee further notes the author's claims concerning the deplorable conditions at the LBK-12 prison, including the placement of the author on his arrival on 10 March 2011 in solitary confinement for 10 days, the harsh climatic conditions that he was exposed to during an extremely hot summer and an extremely cold winter, and the fact that

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<sup>13</sup> See, for example, communication No. 2097/2011, *Timmer v. Netherlands*, Views adopted on 24 July 2014, para. 6.3.

<sup>14</sup> See the Committee's general comment No. 20 (1992) on the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment.

for several days he was obliged to sleep on the bare concrete floor with no clothes on. The author also claimed that the prison was overcrowded and that prisoners with tuberculosis and skin diseases were kept together with healthy inmates, putting him at a high risk of contracting tuberculosis and other infections. The Committee notes that these allegations were not contested by the State party and that they are consistent with the findings of the Committee against Torture in its most recent concluding observations with regard to the State party.<sup>15</sup> The Committee recalls that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; they must be treated in accordance with, inter alia, the Standard Minimum Rules for the Treatment of Prisoners.<sup>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>

9.4 The Committee also notes the author's claim under article 14 (7) of the Covenant that he has been convicted and punished twice for his objection to performing compulsory military service, which is "based on the same constant resolve grounded in reasons of conscience". The Committee further notes that, on 29 December 2010, Dashoguz City Court convicted and sentenced the author to 18 months of imprisonment, under article 219 (1) of the Criminal Code, for his refusal to perform compulsory military service, and that he was then convicted again by the same court under article 219 (1) of the Criminal Code on 8 January 2013 and sentenced to 24 months of imprisonment. The Committee notes that these claims were not refuted by the State party.

9.5 The Committee recalls its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, wherein, inter alia, it stated that article 14 (7) of the Covenant provides that no one shall be liable to be tried or punished again for an offence of which they have already been finally convicted in accordance with the law and penal procedure of each country. Furthermore, repeated punishment of conscientious objectors for not obeying a renewed order to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience.<sup>18</sup> The Committee notes that in the present case, the author has been tried and punished twice, with lengthy prison sentences, under the same provision of the Criminal Code of Turkmenistan on account of the fact that, as a Jehovah's Witness, he objected to, and refused to perform, compulsory military service. In the circumstances of the present case, and in the absence of contrary information from the State party, the Committee concludes that the author's rights under article 14 (7) of the Covenant have been violated.

9.6 The Committee also notes the author's claim that his rights under article 18 (1) of the Covenant have been violated, due to the absence in the State party of an alternative to the compulsory military service, as a result of which his refusal to perform military service on account of his religious conscience led to his criminal prosecution and subsequent

<sup>15</sup> See CAT/C/TKM/CO/1, para. 19.

<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, *Bozbej v. Turkmenistan*, Views adopted on 27 October 2010, 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.

<sup>18</sup> See the Committee's general comment No. 32, paras. 54 and 55.

imprisonment. The Committee takes note of the State party's submission that the criminal offence committed by the author was determined accurately according to the Criminal Code of Turkmenistan and that, pursuant to article 41 of the Constitution, "protection of Turkmenistan is the sacred duty of every citizen" and general conscription is compulsory for male citizens.

9.7 The Committee recalls its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, in which it considers that the fundamental character of the freedoms enshrined in article 18 (1) is reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as is stated in article 4 (2) of the Covenant. The Committee recalls its prior jurisprudence that although the Covenant does not explicitly refer to a right of conscientious objection, such a right derives from article 18, inasmuch as the obligation to be involved in the use of lethal force may seriously conflict with freedom of thought, conscience and religion.<sup>19</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>20</sup>

9.8 In the present case, the Committee considers that the author's refusal to be drafted for compulsory military service derives from his religious beliefs and that the author's subsequent conviction and sentence amounted to an infringement of his freedom of thought, conscience and religion in breach of article 18 (1) of the Covenant. In this context, the Committee recalls that repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibits the use of arms, is incompatible with article 18 (1) of the Covenant.<sup>21</sup> It also recalls that during the consideration of the State party's initial report under article 40 of the Covenant, it had expressed its concern that the Military Service and Military Duty 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 to 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>22</sup> Accordingly, the Committee finds that, by prosecuting and convicting the author for his refusal to perform compulsory military service due to his religious beliefs and conscientious objection, the State party has violated his rights under article 18 (1) of the Covenant.

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<sup>19</sup> See *Bozbey v. Turkmenistan*, para. 7.3; *Abdullayev v. Turkmenistan*, para. 7.3; *Mahmud Hudaybergenov v. Turkmenistan*, para. 7.3; *Ahmet Hudaybergenov v. Turkmenistan*, para. 7.3; and *Japparow v. Turkmenistan*, para. 7.3.

<sup>20</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; and No. 1786/2008, *Jong-nam Kim et al. v. Republic of Korea*, Views adopted on 25 October 2012, para. 7.4; and *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>21</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; communication No. 2179/2012, *Young-kwan Kim et al. v. Republic of Korea*, Views adopted on 15 October 2014, para. 7.4; and *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>22</sup> See CCPR/C/TKM/CO/1, para. 16.

10. 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.

11. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to impartially, effectively and thoroughly investigate the author's claims falling under article 7 of the Covenant, to prosecute any person(s) found to be responsible, to expunge the author's criminal record, and to provide him with adequate compensation. The State party is under an obligation to avoid similar violations of the Covenant in the future. In this connection, the Committee reiterates that the State party should revise its legislation in accordance with its obligation under article 2 (2) of the Covenant, in particular the Military Service and Military Duty Act, as amended on 25 September 2010, with a view to guaranteeing effectively the right to conscientious objection under article 18 (1) of the Covenant.<sup>23</sup>

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

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<sup>23</sup> See communications No. 2019/2010, *Poplavny v. Belarus*, Views adopted on 5 November 2015, para. 10; and No. 1992/2010, *Sudalenko v. Belarus*, Views adopted on 27 March 2015, para. 10.

## Annex

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

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

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