

SUBMISSION

TO THE 134th SESSION OF THE HUMAN RIGHTS COMMITTEE

TURKMENISTAN

Contribution for the adoption of the List of Issues

Conscientious objection to military service and related issues

Updated January 2022

SUMMARY OF ISSUES OF CONCERN

- a. Non-recognition of the right to conscientious objection to military service.
- b. Imprisonment of conscientious objectors.
- c. Repeated imprisonment of conscientious objectors in violation of the *ne bis in idem* principle.
- d. Conditions of imprisonment and ill-treatment of conscientious objectors.

A) NON-RECOGNITION OF THE RIGHT TO CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

Turkmenistan applies conscription to all male citizens.

Military service for men between the ages of 18 and 27 is generally two years long.¹

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 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.²

Despite the above, as well previous Concluding Observations and numerous Views adopted by the Committee under the Optional Protocol, Turkmenistan still fails to recognise the right to conscientious objection to military service.

According to the third periodic Report submitted by Turkmenistan:

“136. The Constitution provides that every citizen has a sacred duty to defend Turkmenistan. Military service is compulsory for all male citizens. Article 41 of the Constitution provides that the defence of Turkmenistan is the sacred duty of every citizen. Military service is compulsory for all male citizens. Article 18 of the Military Duty and Military Service Act lists the grounds for exemption from conscription.”³

However, no details are provided about the grounds for exemption from conscription and there is no indication that there can be exemption on grounds of conscience, religion or belief.

To this date, Turkmenistan not only does not recognise the right to conscientious objection to military service as such, but also, in practice, does not offer any civilian alternative to its compulsory military service, in contravention of Article 18 (1) of ICCPR.

¹ Felix Corley, “TURKMENISTAN: 16 conscientious objectors freed, Muslim prisoners of conscience remain”, *Forum 18*, 10 May 2021. Available at: https://www.forum18.org/archive.php?article_id=2656

See also: The International Institute for Strategic Studies (IISS) - The Military Balance 2020, p. 210.

² See, *Min-Kyu Jeong et al. v. Republic of Korea* (CCPR/C/101/D/1642-1741/2007), 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; *Sunnet Japparow v. Turkmenistan*, para. 7.6; *Akmurad Nurjanov v. Turkmenistan*, para. 9.3; *Shadurdy Uchetov v. Turkmenistan*, para. 7.6; *Dawletow v. Turkmenistan*, para. 6.3 and others.

³ CCPR/C/TKM/3, 29 June 2020, [Date received: 27 March 2020], para. 136.

B) IMPRISONMENT OF CONSCIENTIOUS OBJECTORS

Turkmenistan not only does not recognise the right to conscientious objection to military service and does not provide a civilian alternative service to its compulsory military service, but also criminalises conscientious objectors who are punished with imprisonment.

Conscientious objectors to military service generally face prosecution under Criminal Code Article 219, Part 1. This punishes refusal to serve in the armed forces in peacetime with a maximum penalty of two years of imprisonment or two years of “corrective labour”.

Criminal Code Article 219, Part 2, punishes refusal to serve in the armed forces in peacetime "by means of inflicting injury to oneself, or by simulation of illness, by means of forgery of documents, or other fraudulent ways".

Punishment is a jail term of one to four years.

There have been at least two known cases of use of Article 219, Part 2, to punish a conscientious objector (Mr. Azat Ashirov and Mr. Serdar Dovletov).⁴

Furthermore, there has been at least one case of a conscientious objector who has been punished under Criminal Code Article 344, Part 2, Mr. Bahtiyar Atahanov, as he was first forcibly conscripted and then punished as a soldier trying to avoid his obligations and received a four-year ordinary regime labour camp term.⁵

Sentencing and imprisonment of conscientious objectors to military service, usually Jehovah’s Witnesses, is a longstanding practice in Turkmenistan. In December 2011, Conscience and Peace Tax International reported that “More than 30 conscientious objectors have been sentenced under Article 219(1) since 1999”.⁶

According to Forum 18, 6 conscientious objectors were freed under amnesty in 2014.

Since 2014, courts punished conscientious objectors with “corrective labour” or suspended prison terms, (and/or the state withheld 20 percent of their salary for one to two years as a penalty - as Mr. Kerven Kakabayev had experienced in 2014⁷ and Mr. Eldor Saburov in 2017⁸) rather than imprisonment. In February 2015 it released the last Jehovah’s Witness imprisoned for conscientious objection.⁹

⁴ Felix Corley, “TURKMENISTAN: 16 conscientious objectors freed, Muslim prisoners of conscience remain”, *Forum 18*, 10 May 2021. Available at: https://www.forum18.org/archive.php?article_id=2656

⁵ Felix Corley, “TURKMENISTAN: 16 conscientious objectors freed, Muslim prisoners of conscience remain”, *Forum 18*, 10 May 2021. Available at: https://www.forum18.org/archive.php?article_id=2656 And Felix Corley, “TURKMENISTAN: Conscientious objector jailed for four years”, *Forum 18*, 23 July 2019. Available at: https://www.forum18.org/archive.php?article_id=2495

⁶ Conscience and Peace Tax International, Submission to the 104th Session of the Human Rights Committee: March 2012, TURKMENISTAN, Conscientious objection to military service and related issues, Submission updated December 2011. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fTKM%2f104%2f10139&Lang=en

⁷ Turkmenistan Ignores the Right to Freedom of Conscience, *jw.org*, 28 March 2018. Available at: <https://www.jw.org/en/news/legal/by-region/turkmenistan/ignores-right-to-freedom-of-conscience/>

⁸ AL TKM 2/2020, 10 December 2020. Available at: <https://spcommreports.ohchr.org/TMResultsBase/Download-PublicCommunicationFile?gId=25740>

⁹ Turkmenistan Ignores the Right to Freedom of Conscience, *jw.org*, 28 March 2018. Available at: <https://www.jw.org/en/news/legal/by-region/turkmenistan/ignores-right-to-freedom-of-conscience/>

However, imprisonments resumed in January 2018. Courts handed down 32 known convictions and jailing of conscientious objectors since Turkmenistan resumed such jailing in January 2018.

Courts jailed 12 conscientious objectors in 2018, two of them for two years and 10 for one year. Courts jailed 7 conscientious objectors in 2019, one of them for four years, one for three years, one for two years and four for one year.

Courts jailed 5 conscientious objectors in 2020, four of them for two years and one for one year. Courts jailed 8 conscientious objectors in 2021, seven of them for two years and one for one year.¹⁰ This means that recently the jail terms for conscientious objectors to military service are between one and four years.

Imprisonment of conscientious objectors to military service, apart from a violation of art. 18 (1) of ICCPR, also constitutes a violation of art. 9 (1) of ICCPR.

The Human Rights Committee has repeatedly stated in recent years “*that just as detention as punishment for the legitimate exercise of the right to freedom of expression, as guaranteed by article 19 of the Covenant is arbitrary, so too is detention as punishment for legitimate exercise of freedom of religion and conscience, as guaranteed by article 18 of the Covenant.*”¹¹

On 8 May 2021, the authorities of the state party freed from prison all 16 of Turkmenistan known jailed conscientious objectors - all of them Jehovah's Witnesses- in a prisoner amnesty.¹²

To the date of the submission, IFOR does not have information of conscientious objectors currently imprisoned in Turkmenistan.¹³

The amnesty for conscientious objectors, while being a step in the right direction, should not obfuscate the situation. There is no information that the state party has made any moves towards offering a genuinely civilian alternative to those unable to perform compulsory military service on grounds of conscience. This means that conscientious objectors could be imprisoned again at any moment.

C) REPEATED IMPRISONMENT OF CONSCIENTIOUS OBJECTORS IN VIOLATION OF THE *NE BIS IN IDEM* PRINCIPLE

In Turkmenistan, punishment for failure to perform military service does not entail exemption from military duties. Therefore, those who have been punished, even if they have served prison sentence, remain subject to call-up and if they persist in their refusal may be sentenced for a second time. As

¹⁰ Felix Corley, “TURKMENISTAN: 16 conscientious objectors freed, Muslim prisoners of conscience remain”, *Forum 18*, 10 May 2021. Available at: https://www.forum18.org/archive.php?article_id=2656

¹¹ See Young-kwan Kim et al. v. Republic of Korea, para. 7.5, Petromelidis v. Greece, para. 9.8.

¹² “Turkmenistan Releases 16 Brothers From Various Prisons”, *jw.org*, 8 May 2021. Available at: <https://www.jw.org/en/news/jw/region/turkmenistan/Turkmenistan-Releases-16-Brothers-From-Various-Prisons/> See also Felix Corley, “TURKMENISTAN: 16 conscientious objectors freed, Muslim prisoners of conscience remain”, *Forum 18*, 10 May 2021. Available at: https://www.forum18.org/archive.php?article_id=2656

¹³ For example, the official website of the Jehovah's Witnesses does not provide information for imprisoned conscientious objectors in Turkmenistan as of December 2021. <https://www.jw.org/en/news/legal/by-region/world/jehovahs-witnesses-in-prison/>

Equally, War Resisters' International does not cite imprisoned conscientious objectors from Turkmenistan in its Prisoners for Peace List issued on the 1st of December 2021. Available at: <https://wri-irg.org/en/story/2021/december-1st-support-and-write-prisoners-peace>

this is seen as a repeat offence, such persons may be subject to a stricter prison or work-camp regime.¹⁴

The Human Rights Committee has repeatedly stated that “*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*” and has found a violation of Article 14 (7) of ICCPR in at least five different cases of conscientious objectors in Turkmenistan.¹⁵

On 10 December 2020, four UN Special Procedures including the Working Group on Arbitrary Detention wrote to Turkmenistan's government expressing "serious concern" about the second sentences handed down in August 2020 to 2 conscientious objectors, Sanjarbek Saburov and Eldor Saburov. Besides regretting the criminalisation of conscientious objection in the first place, they also pointed out: “*Furthermore, we note with concern that Mr. Sanjarbek Saburov and Mr. Eldor Saburov have been tried and convicted twice for the same alleged offence, for which they had been finally convicted in the past, in accordance with the national law and penal procedure, and which is a violation of the rule against double jeopardy, or non bis in idem, enshrined in article 14(7) of the International Covenant on Civil and Political Rights.*”¹⁶ To the date of this submission, no response of the authorities of Turkmenistan appears in the relevant UN website.

D) CONDITIONS OF IMPRISONMENT AND ILL-TREATMENT OF CONSCIENTIOUS OBJECTORS

Torture and other ill-treatment of conscientious objectors to military service, as well inappropriate conditions of imprisonment have been longstanding issues in Turkmenistan.¹⁷

The Human Rights Committee has found violations of articles 7 and/or 10 of ICCPR in at least 9 cases of conscientious objectors in Turkmenistan.¹⁸

Considering, also, the overall situation of conditions of imprisonment or in the labour camps, and especially during the Covid-19 pandemic, taking into consideration the failure of the authorities to

¹⁴ Conscience and Peace Tax International, Submission to the 104th Session of the Human Rights Committee: March 2012, TURKMENISTAN, Conscientious objection to military service and related issues, Submission updated December 2011. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fTKM%2f104%2f10139&Lang=en

¹⁵ See the Committee's general comment No. 32 (2007) on article 14: right to equality before courts and tribunals and to a fair trial, paras. 54–55. See also communication *Zafar Abdullayev v Turkmenistan* para 7.4 and 7.5. See also *Nasyrlayev v Turkmenistan*, para. 8.5, *Nurjanov v Turkmenistan*, para. 9.7, *Aminov v Turkmenistan*, para. 9.5, *Matyakubov v Turkmenistan*, para. 7.5.

¹⁶ AL TKM 2/2020, 10 December 2020. Available at: <https://spcommreports.ohchr.org/TMResultsBase/Download-PublicCommunicationFile?gId=25740>

¹⁷ For the situation in previous years see: Conscience and Peace Tax International, Submission to the 104th Session of the Human Rights Committee: March 2012, TURKMENISTAN, Conscientious objection to military service and related issues, Submission updated December 2011. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fTKM%2f104%2f10139&Lang=en

¹⁸ Communication No. 2218-2012 (*Abdullayev v Turkmenistan*), Communication No. 2219-2012 (*Nasyrlayev v Turkmenistan*), Communication No. 2220-2012 (*Aminov v Turkmenistan*), Communication No. 2221-2012 (*Hudaybergenov v Turkmenistan*), Communication No. 2222-2012 (*Hudaybergenov v Turkmenistan*), Communication No. 2223-2012 (*Japparow v Turkmenistan*), Communication No. 2224-2012 (*Matyakubov v Turkmenistan*), Communication No. 2226-2012 (*Uchetov v Turkmenistan*), Communication No. 2227-2012 (*Yegendurdyyew v Turkmenistan*)

protect the right to health,¹⁹ the above issues remain of great concern.

SUGGESTED QUESTIONS TO THE STATE PARTY FOR THE LIST OF ISSUES

- 1. Please, provide information on measures being taken, if any, to recognise the right to conscientious objection to military service and to put in place arrangements for conscientious objectors to military service to perform alternative civilian service.**
- 2. Please, provide information on measures being taken, if any, to implement the decisions of the Human Rights Committee in previous cases of conscientious objectors to military service.**
- 3. Please, provide information on measures to stop torture and/or other ill treatment and improve conditions in detention places.**
- 4. Please, provide statistical data on:**
 - (a) the number of persons who have been arrested, prosecuted, convicted or otherwise punished for their conscientious objection to military service.**
 - (b) the number of persons who have been repeatedly punished for their conscientious objection to military service.**

¹⁹ See for example Amnesty International Annual Report, part on Turkmenistan, available at: <https://www.amnesty.org/en/location/europe-and-central-asia/turkmenistan/report-turkmenistan/>