

OPINION No. 15/2010 (TURKMENISTAN)

Communication addressed to the Government on 19 March 2010.

Concerning: Messrs. Annakurban Amanklychev and Sapardurdy Khadzhied.

The State is a Party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the former Commission on Human Rights. Its mandate was clarified and extended by Commission's resolution 1997/50. The Human Rights Council assumed the Working Group's mandate by its decision 2006/102 and extended it for a further three-year period by resolution 6/4 of 28 September 2007. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.
2. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - I. When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);
 - II. When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - III. When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III).
3. The Working Group regrets that the Government has not replied within the 90-days deadline.
4. The case summarised hereinafter was reported by the source to the Working Group on Arbitrary Detention as follows:
5. Mr. Annakurban Atabalovich Amanklychev, born on 7 February 1971, a citizen of Turkmenistan, usually resident in Ashgabat, is an independent journalist, who has participated in human rights trainings focused on prison reform in Poland and Ukraine.
6. Mr. Sapardurdy Karlievich Khadzhiiev, born on 15 August 1959, a citizen of Turkmenistan, usually resident in Ashgabat, is an independent journalist and a human

rights defender, who has advocated for prison reform in Turkmenistan. Mr. Khadzhiyev has denounced the alleged practice of arbitrary detention of opposition leaders and political dissidents. He has conducted interviews of former Turkmen political prisoners who were granted amnesty by the Turkmen Government, and investigated the whereabouts of political prisoners who have allegedly disappeared. Mr. Khadzhiyev has also interviewed former prison employees about the conditions on which political prisoners are detained.

7. Both persons are members of the Turkmenistan Helsinki Foundation (THF), a Bulgaria-based human rights non-governmental organization which was established in 2003 to watch and protect human rights of the people of Turkmenistan and to sharp the attention to the human rights situation in the country.

8. Before their arrests, both persons worked with foreign journalists. At the time of their arrest, Mr. Amanklychev and Mr. Khadzhiyev were working with French producers from Galaxie Presse on a documentary which criticized the Turkmen health care and education systems, and the then-President Niyazov's personality cult, which was broadcasted on *France 2* on 28 September 2006. Previously, Mr. Amanklychev had also assisted the *British Broadcasting Corporation (BBC)* with recording a radio program on Turkmen health care and human rights which was broadcasted by the radio station on 17 November 2005.

9. According to the source, Mr. Amanklychev was arrested on 16 June 2006 at his home in Ashgabat by officials of the Ministry of National Security without being presented with an arrest warrant or informed about the reason of his arrest. Mr. Khadzhiyev was arrested on 18 June 2006 at his home in Ashgabat by officials of the Ministry of National Security without being presented with an arrest warrant or informed on the reason of the arrest.

10. The source adds that a third individual, Ms. Ogulsapar Muradova, (Mr. Khadzhiyev's sister), a reporter for *Radio Free Europe/Radio Liberty* and a former THF member, was also arrested on 18 June 2006. Ms. Muradova was allegedly tortured and died in Government custody. On 14 September 2006, Turkmen authorities informed Ms. Muradova's family that she had died of natural causes. However, her body shown signs of having been badly beaten, with a head wound, bruises from strangulation, puncture marks from injections, and a broken leg.

11. Mr. Khadzhiyev and Mr. Amanklychev were held in *incommunicado* detention for over two months at the pretrial detention center of the Ministry of National Security. They were allegedly subjected to torture and other physical abuse while in government custody. The two individuals were held in solitary confinement and deprived of food, water, medical treatment, and often prohibited from using the lavatory. They were administered psychotropic drugs, and threatened with harm to their families if they did not cooperate. Soon after their arrests, an official from the Interior Ministry told Mr. Amanklychev's family that 'you wouldn't recognize him. After three days of uninterrupted questioning, he is simply unrecognizable.'

12. Mr. Amanklychev's private attorney, Mr. Kakazhan Kadyrov, and Mr. Khadzhiyev's private attorney, Mr. Ata Mukhamedov, were deprived of basic information related to their clients. Both attorneys learned of the espionage charges

brought against their clients on 18 June 2006, from a televised broadcast by the Minister of National Security. They only learned of the munitions-related charges against their clients a few days before the trial. In addition, Mr. Kadyrov and Mr. Mukhamedov were not informed of the trial date of these persons until just before it occurred.

13. On 12 July 2006, the two individuals were formally charged with possession of illegal munitions. According to the source, the attorneys appointed to Mr. Amanklychev and Mr. Khadzhiiev by the Turkmen Government did not act in their interests. They avoided meeting with their clients and tried to convince them to confess to the reportedly false charges.

14. On 25 August 2006, the two individuals were tried in Court. It was a brief *in camera* trial which reportedly lasted only some minutes. The Court denied Mr. Amanklychev and Mr. Khadzhiiev's requests to call witnesses on their behalf. Soldiers and police officers controlled the Court preventing the defendants' relatives and other members of the public from accessing. Mr. Amanklychev and Mr. Khadzhiiev were summarily convicted and sentenced to six to seven years of imprisonment.

15. Mr. Khadzhiiev and Mr. Amanklychev were both accused by the then-President Saparmyrat Niyazov and the then Minister of National Security Geldimukhammet Asyrmukhammedov of 'conspiring with foreigners to destabilize the State'.

16. Mr. Amanklychev was accused by the then-Minister of National Security Mr. Asyrmukhammedov in a television broadcast of 'trying to collect defamatory information about Turkmenistan and to cause discontent among people on instructions of traitors of the Motherland and foreign-based centers of destabilization.' He was further accused by Mr. Asyrmukhammedov of being trained in Ukraine for 'intelligence gathering and sabotage in Turkmenistan, as well as on the methods used in the 'Orange Revolution' in Ukraine.' In a Government-sponsored news article, Mr. Amanklychev was accused of involvement in 'subversive acts and collection of defamatory information in Turkmenistan in order to create public dissatisfaction'.

17. In a speech on television, President Niyazov announced: 'We don't know why (Mr. Khadzhiiev and Mr. Amanklychev) are engaged in such dirty business in Turkmenistan, a peaceful country where justice is ruling and where nobody is disgraced...Let people condemn the traitors. The entire population is proud of their Motherland, whereas they are trying to harm it. Go ahead with your fight against such people.'

18. The two above-mentioned persons were denied to receive visitors until 2009. Currently, Mr. Amanklychev is allowed to be visited by his wife solely twice per year. Mr. Khadzhiiev is only allowed to be visited by his sister once a year. Mr. Amanklychev and Mr. Khadzhiiev are currently detained in the Caspian Sea desert area in Turkmenistan, known for its extreme climate.

19. The source asserts that the detention of Mr. Khadzhiiev is related to his family relations. Mr. Khadzhiiev's brother, Mr. Annadurdy Khadzhiiev, is an opposition leader, and his sister-in-law, Ms. Tajigul Begmedova, is the head of the THF. Both of

them currently are living in exile in Bulgaria. The source asserts that the arrests of the two individuals were ordered and directed by high officials in the Turkmenistan Government, including the then-President of Turkmenistan Saparmyrat Niyazov and the then-Minister of National Security Geldimukhammet Asyrmukhammedov.

20. Moreover, the source alleges that the individuals are detained based on false accusations and fabricated evidence. Even the Government accused them of espionage and treason in public, they were never charged with such crimes. The public statements by Government officials mentioned above confirm that the arrest and detention of the individuals result from their journalism-related and human rights activities. The statements further suggest that the munitions-related charges were fabricated. It was reported that Mr. Amanklychev's family members observed security officers tossing a parcel into Mr. Amanklychev's car on the day of his arrest.

21. The source concerns about the health conditions of Mr. Amanklychev and Mr. Khadzhiev. It was reported that both persons are suffering from ailments affecting the stomach, kidneys, legs and joints. Mr. Amanklychev has also a blood pressure's problem.

22. The above-summarized allegations were transmitted to the Government by letter dated 19 March 2010. The Government has not responded to these allegations within the 90-days period established in the Working Group's methods of work. The Government has neither requested an extension of that period, a possibility available to all Governments established in paragraph 16 of the Methods of Work. Consequently, the Working Group esteems it is in a position to issue an Opinion on the basis of all the elements brought to its attention.

23. The Working Group notes that both Mr. Amanklychev as Mr. Khadzhiev are independent journalists and human rights defenders. Both are militants in a non-governmental organization (NGO) which tries to improve the human rights situation in the country. Before their arrests, they were working with foreign journalists in the elaboration of press articles, documentary films and radio programs on some aspects related to their activities.

24. At the moment of their arrests, they were not presented with legal arrest warrants nor informed about the reasons for their detention. They were held in *incommunicado* detention in inhuman conditions. Their defence lawyers were not allowed to have access to the judicial files and learned the charges brought against their clients from a television broadcast by the Minister of National Security. They were not informed of the trial date until just before it occurred. According to the source, the public defenders, assigned by the authorities in substitution of the lawyers, avoided meeting with their clients and tried to convince them to confess to the false charges. In addition, the public defenders were not allowed to call witnesses on behalf of their clients.

25. Messrs. Amanklychev and Khadzhiev were finally charged with possession of illegal munitions and later with espionage and conspiracy with foreign Powers to destabilize the country. Their trial was held *in camera*, in a small court room, without listening witnesses in favor of the defendants. They were summarily sentenced to six to seven years of imprisonment. At the same time, a vast television campaign was

launched by the authorities against them, in order to affect their image and their human rights work before the general public.

26. The Government took knowledge of these particular serious and detailed allegations but has not provided the Working Group with information on this case. In these conditions, the Working Group esteems that the detention of Mr. Amanklychev and Mr. Khadzhiev is arbitrary because it results from the individuals' exercise of their fundamental rights to freedom of expression, freedom of association and of their right to work in favor of the protection and promotion of human rights.

27. Mr. Amanklychev and Mr. Khadzhiev have also been denied of their rights to a fair trial which is in violation of articles 9 and 14 of the International Covenant on Civil and Political Rights and articles 10 and 11 of the Universal Declaration of Human Rights.

28. Consequently, the Working Group considers that the detention of Messrs. Amanklychev and Khadzhiev is arbitrary, being in violation of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights, falling within categories II and III of the categories applied by the Working Group.

29. The Working Group ask the Government to cooperate with the Working Group as established in its resolution 6/4 of 28 September 2007, and in particular :

- (a) To proceed to the immediate release of the above-mentioned two persons;
- (b) To proceed to the reparation of the occasioned damages, through the correspondent economic compensation

Adopted on 31 August 2010.