

CONSCIENCE AND PEACE TAX INTERNATIONAL

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TURKMENISTAN

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Executive Summary

- 1. This submission highlights linked human rights concerns in Turkmenistan**
- 2. The submission was prepared in March 2023 and incorporates the latest information available to CPTI at that time.**
- 3. This submission relates to the non-recognition of conscientious objection to military service in Turkmenistan and the consequent imprisonment and repeated imprisonment of conscientious objectors.**

Military service and conscientious objection

4. The Turkmen Constitution describes military service as the “sacred duty” of all Turkmen citizens. Subject to limited exemptions and deferments all males are liable to obligatory military service, the detailed arrangements for which have been spelled out in a series of Acts on Conscription and Military Service, with intermittent modification by presidential decree.

5. The legislation has not at any time contained provision for conscientious objectors. Those who express a conscientious objection and refuse to perform military service are liable to prosecution for “evading” such service under Article 219(1) of the Criminal Code, which stipulates a penalty (in “peacetime”) of up to two years of either corrective labour or imprisonment. Those who have served one such sentence remain subject to call-up and if they persist in their refusal may be sentenced for a second time. As this is seen as a repeat offence, such persons may be subject to a stricter prison or work-camp regime. Article 16(3) of the Conscription and Military Service Act stipulates that those who have served two sentences for evasion are thereafter exempt from military service, and are issued with a “military certificate” to this effect. If the evasion of military service is by deception or by self-harm, Article 219(2) applies, and the maximum penalty is doubled.

6. More than seventy conscientious objectors have been imprisoned under Article 219(1) since 1999, all from the Jehovah's Witnesses community. Typical sentences under Article 219(1) have varied from year to year in severity, being sometimes of imprisonment for 12, 18, or 24 months, sometimes non-custodial (probation, suspended sentences or community labour, in which 20% of the salary is deducted by the State. Non-custodial sentences have generally gone unreported except where the same person was on a different occasion sentenced to imprisonment. It is however known that in 2016, during a period of three years when no conscientious objectors were sentenced to imprisonment, there were seven convictions of conscientious objectors.ⁱ

History in the Human Rights Committee

7. In its concluding observations on Turkmenistan’s Initial Report under the International Covenant on Civil and Political Rights, the Committee expressed its concern “that the Conscription and Military Service Act (...) does not recognize a person’s right to exercise conscientious objection to military service and does not provide for any alternative military service. The Committee regrets that due to this law, a number of persons belonging to the Jehovah’s Witness have been repeatedly

prosecuted and imprisoned for refusing to perform compulsory military service”, and recommended:

“The State party should take all necessary measures to review its legislation with a view to providing for alternative military service. The State party should also ensure that the law clearly stipulates that individuals have the right to conscientious objection to military service. Furthermore, the State party should halt all prosecutions of individuals who refuse to perform military service on grounds of conscience and release those individuals who are currently serving prison sentences.”ⁱⁱ

8. The Human Rights Committee subsequently, before the consideration of Turkmenistan’s Second Periodic Report and between that and the Third issued Views on fourteen communications concerning a total of sixteen conscientious objectorsⁱⁱⁱ. At dates between 2004 and 2017, all sixteen had been called up by their local Military Commission to perform obligatory military service. In two cases, the original call-up had come in 2012 at the age of 20; in all others at the age of 18 (in one case on the day before the 18th birthday), generally during the first six-monthly recruitment campaign after their eighteenth birthday). In one case service had been deferred in two years on medical grounds, but the third year these were rejected, although it is claimed that the condition had not changed; another case was delayed while the author made an unsuccessful claim for medical exemption.

9. All sixteen had “explained orally and in writing (...) that his religious beliefs as a Jehovah’s Witness did not permit him to undertake military service.” All had been prosecuted and convicted under article 219 (1) of the Criminal Code; all had during their trials again explained their reasons for refusing military service – most made a point in their communications of reporting that they had stressed their willingness to perform a civilian alternative service.

10. All except three had been sentenced immediately to periods of imprisonment – 12 months in two cases, 18 months in six, 24 months in four. In one case, the Court imposed a fine equivalent to something over \$2,000 US – although the objector had received further call-up notices, he had not again been prosecuted. Two trials led to conditional sentences, on the expiry of which the objectors were again prosecuted and sentenced to 24 months imprisonment. Three others had been called up for a second time in the recruitment period following their first sentences of imprisonment, on refusal again prosecuted and sentenced to 24 months’ imprisonment – in two cases it is recorded that as “repeat offenders” they were sentenced to “strict regime” incarceration. The final case was unique in that having been sentenced to 18 months’ imprisonment at the age of eighteen in 2004, but released in an amnesty, the objector had next been called up in 2012 at the age of 26, and on refusal sentenced to twelve months’ imprisonment. (In the absence of any documentary evidence of the first conviction, the Committee did not take the first imprisonment into consideration.)

11. In all cases, the Committee, using identical wording, found a violation of Article 18.1 of the Covenant. (Concurring opinions to some of the earlier decisions holding that the violation was of conviction a violation of was not a justified limitation of a under Article 18.3 (manifestation of belief rather than Article 18.1.) In each case, the Committee ruled “that the State party is under an obligation to provide the author with an effective remedy (including) expunging of his criminal record; and full reparation, including appropriate compensation. The State party is under an obligation to avoid similar violations of the Covenant in the future, including the adoption of legislative measures guaranteeing the right to conscientious objection.”

12. In the five cases where it was convinced there had been a repeated conviction, the Committee, citing General Comment 32 on the principle of *ne bis in idem*, found also a violation of Article 14.7. (One member dissenting in the instances where the first conviction had resulted in a conditional sentence.)

13. In a number of cases, the Committee also found violations of Article 7 (torture or inhuman or degrading treatment), and of Article 10.1 regarding the general conditions of imprisonment (not unique to conscientious objectors).

14. Finally, in the most recent case the Committee found also a violation of Article 9.1 (arbitrary detention) as the imprisonments had resulted from the exercise of a Convention right – the earlier cases had not cited that article. For good measure it also found a violation of Article 9.3, as the objector had been held in pre-trial detention for some 15 days without good reason.

15. In its Concluding Observations on Turkmenistan's Second Periodic Report, the Committee cited its views in the first ten of these cases in reiterating its previous recommendations:

“The State party should revise its legislation without undue delay with a view to clearly recognizing the right to conscientious objection to military service, provide for alternative service of a civilian nature outside the military sphere and not under military command for conscientious objectors, and halt all prosecutions of individuals who refuse to perform military service on grounds of conscience and release those who are currently serving prison sentences.”^{iv}

Recent developments

16. In 2019, for the first time, two conscientious objectors were sentenced under Article 219.2, for fraudulently evading military service; in the case of one who had claimed medical reasons for exemption, in addition to his conscientious objection, this led to a sentence of 36 months, longer than could have been imposed under 219.1.

17. Also in 2019, an objector who had refused call-up with a statement similar to that of other Jehovah's Witnesses, was, according to the Jehovah's Witnesses, “fraudulently” taken to the conscription office, whence he was “forcibly transferred (...) to Military Unit No. 37243 into which he was, despite his refusal to swear the military oath in front of the country's flag or put on a military uniform. He was subsequently charged under Article 344.2 of the Penal Code, which is equivalent to article 219.2, but applies to serving members of the military and carries a sentence of up to seven years' imprisonment. He was subsequently sentenced to four years' imprisonment.

18. Two brothers sentenced to imprisonment in 2020 referred their cases to the United Nations, and on 10th December 2020 a communication^v regarding their case was addressed to Turkmenistan by the Special Rapporteurs on the Freedom of Religion or Belief, Freedom of Expression, and Minorities and the Working Group on Arbitrary Detention, expressing concerns regarding the criminalisation of conscientious objection, and the repeated conviction of the brothers, who had received non-custodial sentences in 2016 and 2017, respectively. No reply was received from the State.

19. In May 2021, all sixteen currently-imprisoned conscientious objectors among over a thousand persons released under as part of the prisoner amnesty to mark the Muslim Night of Omnipotence,^{vi} No new imprisonments of conscientious objectors have subsequently been reported, although it is known that at least three of those amnestied had been called up for a second time later in 2021 and believed that there have been non-custodial sentences, some of which may have been repeated. It would be unwise to read too much into this; Turkmenistan's review in the Third Cycle of the UPR came just after three years when only non-custodial sentences had been handed down, but these were in some cases later followed by imprisonment following a second conviction. The legislation not having changed, there is no guarantee that this will not be repeated.

20. In March 2023, the Human Rights Committee considered Turkmenistan's Third Periodic Report. In the List of Issues, it had, citing previous recommendations and views, asked:

"(...) please report on any steps taken or envisaged to recognize the right to conscientious objection to compulsory military service and to provide alternatives to military service. (...) Please provide statistics for the reporting period on the number of cases involving conscientious objectors to military service and prosecutions and convictions of such individuals, including information on repeated punishment of these individuals. (...) Please provide information on steps taken to expunge past convictions under article 219 (1) of the Criminal Code for conscientious objection to military service occurring after the Covenant came into force for the State party."^{vii}

22. During the dialogue with the committee, Turkmenistan reported that there had been 26 convictions since the previous report. The number had been steadily declining, and there had been only one in 2022. It was claimed that discussions were under way with the Jehovah's Witnesses as to whether they would find unarmed military service, perhaps in the "migration service" (? border guards) an acceptable alternative to military service. (It has not however been reported, as it surely would have been, that this option has actually been offered in any case. Moreover, it seems that the proposal as currently described would not be acceptable to Jehovah's Witnesses, who ask for a purely civilian service.) Finally, the delegation explained that under paragraph 5 of Article 319, convictions are considered spent after two years. (It might be observed that this is not however quite the same as expunging past convictions on the grounds that prosecutions should not have occurred in the first place.)

23. In its concluding observations, "the Committee notes the information provided by the State party delegation indicating that the number of criminal prosecutions under article 219 (Draft evasion) of the Criminal Code had decreased tenfold during the reporting period. However, the Committee regrets the lack of recognition of the right to conscientious objection to compulsory military service and the lack of provision of alternatives to military service, as previously communicated in the Views adopted by the Committee" and recommends that it "adopt the legislation necessary to recognize the right to conscientious objection to compulsory military service and ensure that alternative service is not punitive or discriminatory in nature or duration in comparison with military service."^{viii}

Previous cycles of the UPR

24. In the First Cycle of the UPR (2008) Slovenia "commended the visit by the Special Rapporteur on freedom of religion or belief, [... and] enquired about the Government's recognition of conscientious objection to military service. It recommended that Turkmenistan recognize this and stop prosecuting, imprisoning and repeatedly punishing conscientious objectors."^{ix} Before the consideration of the review by the Tenth Session of the Human Rights Council, Turkmenistan did provide written responses to a number of recommendations, but this particular recommendation was in fact addressed only orally during the adoption of the report, so that the record is buried deep in the Annexes to the Final Report on the Tenth Session of the Human Rights Council, delivered to the General Assembly in November 2009.

25. The response was: "Concerning the recommendation to recognize conscientious objection to military service and with respect to recognizing the right of persons renouncing military service on religious grounds, Turkmenistan provided information that conditions existed that allowed for guaranteeing the right to freedom of religion and the fulfilment of military duty by serving in non-military structures of the Ministry of Defence, such as medical and construction units."

26. In 2013, during the Second Cycle, Turkmenistan received a recommendation from the USA that it “Call for and support reform to laws that restrict freedoms of religion and expression; in particular protect the rights of conscientious objectors and ensure that individuals are not punished for expressing their opinions.^x Turkmenistan accepted this recommendation and stated that the matters therein were currently being examined.^{xi} However recommendations from Slovenia and Norway^{xii} that it release all prisoners of conscience had been rejected during the Working Group.

27. Despite the accepted recommendation, on the issue of conscientious objection at least there had been no progress by the time of the Third Cycle in 2018, and the recommendation from Argentina that Turkmenistan “Adopt the necessary measures in order to recognize the right to conscientious objection to compulsory military service^{xiii} was rejected on the grounds that “Article 58 of the country’s Constitution provides that the defence of Turkmenistan is the sacred duty of each citizen. Male citizens of Turkmenistan are obliged to perform universal military service”^{xiv}

Suggested recommendation

28. That the State Under Review recognise the right of conscientious objection to military service ensuring that any alternative civilian service is neither punitive nor discriminatory.

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- ii CCPR/C/TKM/CO/1, 19th April 2012, para 16.
- iii *Zafar Abdullayev v Turkmenistan* (CCPR/C/113/D/2218/2012), 19th May 2015,
Sunnet Japparow v Turkmenistan (CCPR/C/115/D/ 2223/2012), 17th December, 2015,
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Arslan Begenchovich Begenchov v Turkmenistan, (CCPR/C/134/D/3272/2018), 5th August 2022
- iv CCPR/C/TKM/CO/2, 20th April 2017, paras 40,41
- v TKM 2/2020
- vi Corley, F. “Turkmenistan: 16 conscientious objectors freed, Muslim prisoners of conscience remain.” Forum 18, 10th May 2021, https://www.forum18.org/archive.php?article_id=2656
- vii CCPR/C/TKM/Q/3, 25th August, 2022, para 22.
- viii CCPR/C/TKM/CO/3, 24th March 2023, paras 40,41
- ix A/HRC/10/79, 6th January 2009, Para 30.
- x A/HRC/24/3, 5th July 2013, Para 113.75
- xi A/HRC/24/3/Add.1, 4th September 2013.
- xii A/HRC/24/3, Para 114.3
- xiii A/HRC/39/3, 6th July, 2018, Para 116.59
- xiv A/HRC/39/3/Add.1, 13th September 2018, Para 6.