



International Covenant on Civil and Political Rights

Distr.: General
4 June 2012

Original: English

Human Rights Committee

Communication No. 1883/2009

Views adopted by the Committee at its 104th session, 12–30 March 2012

<i>Submitted by:</i>	Svetlana Orazova (represented by counsel, Timur Misrikhanov)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Turkmenistan
<i>Date of communication:</i>	1 March 2009 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 13 July 2009 (not issued in document form)
<i>Date of adoption of Views:</i>	20 March 2012
<i>Subject matter:</i>	Unjustified restrictions on travelling abroad and within the country, unlawful police surveillance, including unauthorized home searches, phone tapping and interference with correspondence
<i>Procedural issues:</i>	Non-substantiation of claims
<i>Substantive issues:</i>	Effective remedy; liberty of movement/free to leave any county, including one's own; restrictions necessary to protect national security, public order, public health or morals or the rights and freedoms of others; right to a fair hearing by an independent and impartial tribunal; arbitrary or unlawful interference with privacy, family, home or correspondence
<i>Articles of the Covenant:</i>	2, para. 3 (a) and (b); 12, paras. 1 and 2; 14, para. 1; 17, para. 1
<i>Articles of the Optional Protocol:</i>	2

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (104th session)

concerning

Communication No. 1883/2009*

Submitted by: Svetlana Orazova (represented by counsel, Timur Misrikhanov)

Alleged victim: The author

State party: Turkmenistan

Date of communication: 1 March 2009 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 20 March 2012,

Having concluded its consideration of communication No. 1883/2009, submitted to the Human Rights Committee by Ms. Svetlana Orazova under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Ms. Svetlana Orazova, a national of Turkmenistan born in 1964. She claims to be a victim of a violation by Turkmenistan of her rights under article 2, paragraph 3 (a) and (b); article 12, paragraphs 1 and 2; article 14, paragraph 1; and article 17, paragraph 1, of the International Covenant on Civil and Political Rights.¹ The author is represented by counsel, Mr. Timur Misrikhanov.

The facts as presented by the author

2.1 In January 2004, the author was prevented by border officials of Turkmenistan from boarding a flight departing from Ashgabat to Tashkent, without being provided with any

* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kaelin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

¹ The Optional Protocol entered into force in relation to Turkmenistan on 1 May 1997.

explanation.² Since then, she has not been able to travel abroad and within the country. In June 2008, her husband, Mr. A.O., was prevented from boarding a flight departing from Ashgabat to Moscow, where he was supposed to undergo medical treatment for heart disease. The authorities also prevented their daughter, Ms. A.S., a student of the Beijing University at that time, from leaving the country.³

2.2 In July 2004, the author's father, resident of Dashoguz region, visited Ashgabat city for medical treatment. In Ashgabat, both the author and her father were unlawfully arrested and detained at the police station for eight hours. After the incident, the author's father was sent back to Dashoguz, while the author and her family were banned from visiting him in Dashoguz. The author claims that her mother, who was living with her in Ashgabat city, passed away in 2005 and her father could not even attend the funeral of his wife because of the travel ban imposed by authorities. In September 2005, when the author's father died, she was not allowed to go to Dashoguz to attend his funeral.

2.3 On 24 November 2007, the author and her daughter were prevented from boarding a plane to Moscow. Following all these events, the author had attempted to seek clarifications from the authorities about the travel ban imposed on her and her family. On 17 December 2007, she addressed a complaint to the State Agency for the Registration of Foreigners (the State Migration Service of Turkmenistan as of 2007), but did not receive any written response. However, during the conversation with the employees of the agency she learned that the restrictions in questions were instructed by the Ministry of National Security. She then contacted the Ministry of National Security to clarify the reasons for the restrictions, but did not receive any response. Nonetheless, during the author's conversation with one of the employees of the Ministry, Mr. G. K., she was unofficially informed that the restrictions to travel abroad and within the country were imposed due to the fact that the author's brother, the former Deputy Prime Minister of the Cabinet of Ministers of Turkmenistan, Mr. Khudaiberdy Orazov, had left Turkmenistan in 2001 and had joined opposition groups abroad.

2.4 After her complaints to the Ministry of National Security, the Ministry of Interior and the Prosecutor's Office remained unanswered, the author seized the courts. On 16 February 2008, the Kopetdag District Court refused to examine her case on grounds that she had failed to make use of the non-judicial settlement, as provided for by law, before turning to courts and advised her to address her petitions directly to the State Agency for the Registration of Foreigners or the organ which is hierarchically superior. The author's cassation appeal was rejected by the Ashgabat City Court on 16 April 2008 on the same grounds. On 20 May 2008, the Supreme Court upheld the decisions of previous courts. The author further appealed to the President of Turkmenistan, however no response followed.

2.5 On 16 January 2009, the author submitted a petition to the General Prosecutor's Office of Turkmenistan complaining about the violation of her family's right to leave the country. In a letter dated 3 February 2009, the General Prosecutor's Office informed the author that, pursuant to article 32 of the Law on Migration of 7 December 2005, their right to leave the country was temporarily restricted and that at that moment there were no grounds to lift the restrictions. On 20 February 2009, the author filed another petition, requesting clarifications as to the legal grounds for the restriction imposed on their right to leave the country. In a letter of 10 March 2009, the General Prosecutor's Office invoked the

² As it transpires from the materials on file, the author addressed a complaint to the Ministry of National Security on 8 April 2004, but it appears that she received no response.

³ Although in the communication reference is made to other family members of the author's family, the communication is submitted only on author's own behalf. Accordingly, she is regarded as the only alleged victim.

same provision of article 32 of the Law on Migration, however failing to refer to any of the legal grounds that would have justified the restrictions in question. It also advised that at that moment there were no restrictions on the right of their daughter S. to leave the country.

2.6 The author submits that, according to article 26, para. 1, of the Law on Migration of 7 December 2005 and article 1 of the Law on the Procedure of Exiting and Entering Turkmenistan by Turkmen nationals of 18 June 1995, the nationals of Turkmenistan have the right to leave and enter the country. The same provisions states that a Turkmen national cannot be deprived of his/her right to leave and enter the country, however the right to leave it may be temporarily restricted in accordance with article 32 of the Law on Migration. The restrictions imposed on the right to leave the country must satisfy two requirements: (1) they must be temporary, i.e. there should be a concrete time limit for the validity of the restriction; (2) such restrictions shall be imposed for any of the 11 grounds listed in article 32, paragraph 1, of the same law, namely when (1) he or she is aware of information constituting State secrets – until expiration of the term established by the legislation; (2) criminal proceedings are instituted against the applicant – until completion of the proceedings; (3) an applicant is convicted of a crime – until completion of the sentence or exemption from criminal liability; (4) an applicant avoids fulfillment of obligations imposed by a court judgment – until such obligations are honoured; (5) an applicant has knowingly submitted false information about himself/herself; (6) he or she is subject to conscription – until completion of active military service or exemption thereof, except for in cases of departure for permanent residence abroad; (7) an applicant is defendant in a civil suit – until completion of legal procedure; (8) an applicant is declared, by sentence of a court, as a repeat offender who has committed a particularly dangerous offence or is under the administrative police supervision – until cancellation of conviction or termination of supervision; (9) there are reasons to believe that a Turkmen national will become victim of human trafficking or slavery while abroad; (10) an applicant during his or her previous stay abroad has violated the legislation of the host State; (11) his or her departure is contrary to the interests of the State's national security.

2.7 The author claims that she and her family do not fall under any of the categories of persons whose travel may be restricted by law. The authorities have not provided any official explanations for the restrictions. The only evidence she has is the instruction by the Ministry of National Security to the police stations ordering to detain her and her family in case of any attempt to leave the territory of the city. She claims that such instructions are usually issued for search of criminals. The author claims that, since 2004, all their correspondence is opened and subject to censorship. Her family is under around-the-clock surveillance and their phones are tapped.

2.8 The author further claims that national security officers or police can show up at their door any time in order to carry out searches. She has complained to various State agencies since 2004, including migration authorities and the President of the country, to no avail. She also submits that she does not have access to qualified legal aid. The lawyers have refused to take on her case following the instructions given by officials of the intelligence service and the Ministry of Justice.

The complaint

3. The author claims that the facts, as reported, amount to a violation by the State party of her rights under article 2, paragraph 3 (a) and (b); article 12, paragraphs 1 and 2; article 14, paragraph 1; and article 17, paragraph 1, of the Covenant and requests the Committee to grant compensation for moral and material damages she suffered as a result of the unlawful actions of the authorities.

State party's observations on admissibility and merits

4.1 On 26 March 2010, the State party provided its observations. It refutes as unfounded the author's allegations of restrictions imposed on the liberty of movement. It submits that the author's daughter S. had been admitted to the State University of Beijing and had freely entered China on several occasions. On 19 January 2010, after graduation, she returned to Turkmenistan and she is not subject to any restrictions on her right to leave and enter the country.

4.2 In 2007, the author's son, M., was admitted to a specialized musical school in the Russian Federation. He is temporarily living in the Russian Federation and visits periodically his family in Turkmenistan. There are no restrictions imposed on his right to leave and enter the country. As regards the author's husband, Ovez, he left Turkmenistan in 2007 in order to undergo a heart surgery in Moscow. However, he had never registered with the Cardiologic Centre and was instead working on construction sites in Moscow and returned to Turkmenistan in 2008.

4.3 The State party refutes the author's allegation that she was prevented from attending her father's funeral in 2005 (see para. 2.2 above), claiming that she and other close relatives did not attend the funerals deliberately because of a property-related conflict they had with their father. It adds that with the exception of Mr. Khudaiberdy Orazov, neither the author nor her relatives' names appear on the authorities' lists of persons whose right to leave Ashgabat is restricted.

4.4 The State party also submits that it has no information in its possession that would indicate that the author had attempted to leave the country legally and that she was prevented from doing so by the national competent authorities. It also rejects the author's allegation that she was unofficially informed by Mr. G. K., an employee of the Ministry of National Security, that the restrictions to travel abroad and within the country were imposed on all the relatives of the author's brother, Mr. Khudaiberdy Orazov (see para. 2.3 above). In this respect, the State party submits that Mr. G.K. denied this fact during questioning.

4.5 With regard to the author's claim that she and her father had been arrested by the police of Ashgabat city and detained for eight hours without being charged with any crime (see para. 2.2 above), the State party states that there are no records documenting their arrest or detention. It also adds that none of the author's relatives are subject of a search warrant by the Ministry of Interior of Turkmenistan, excepting her brother, Mr. Khudaiberdy Orazov.

4.6 As to the author's allegations of telephone-tapping, surveillance by domestic law enforcement bodies and unauthorized home searches (see paras. 2.7 and 2.8), the State party states that any such actions, according to national legislation, are subject to prior authorization by a prosecutor; there are no materials documenting that such actions have been carried out in relation to the author.

4.7 As regards the author's claim that she does not have access to qualified legal aid since lawyers are instructed to refuse to represent her, the State party submits that she has the opportunity to seek legal assistance provided by private lawyers (there are around 40 such lawyers and law firms in Turkmenistan) if she distrusts the activity of State institutions.

4.8 The State party concludes that the author's allegations are unfounded.

Author's comments on the State party's observations

5.1 In her comments dated 23 June 2008, the author submits that the State party still provided no information as to the legal basis for the restrictions imposed on her and her family right to leave Turkmenistan. Furthermore, it is not clear whether the authorities

would lift the respective restrictions imposed by the Ministry of National Security. She further submits that the State party misleads the Committee by claiming that no such restrictions have been imposed on her right to move freely within the country.

5.2 As regards the private lawyers that practise in Turkmenistan, the author states that there are only 40 such lawyers in a country with a 5 million population. Therefore, their assistance is unavailable and most people simply do not know about their existence. Moreover, these lawyers from the outset refuse to represent such complainants as the author because they are under pressure by officials of the Ministry of National Security and may risk losing their licence.

5.3 With reference to the State party's contention that any investigative measures are conducted only with the authorization of the prosecutor, the author maintains that, when persons like her are concerned, there are no limitations to telephone-tapping, surveillance and unauthorized searches.

5.4 The author confirms the information provided by the State party that the authorities allowed the departure of her daughter to China and of her son to the Russian Federation for study purposes, but this was done only after the submission of her complaint to the Human Rights Committee. The author herself has never been permitted to leave the country.

5.5 The author further reiterates her claims and requests the Committee to restore their rights to leave the country and their freedom of movement within the country. She submits that, as a result of the restriction to leave the country imposed on her husband, he was unable to undergo a heart surgery in Moscow and, as a consequence, died at the end of 2009.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a) and (b), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement, and that domestic remedies have been exhausted.

6.3 The Committee has noted the author's claims that her liberty of movement within the country, as guaranteed under article 12, paragraph 1, of the Covenant, has been restricted, and her allegations under article 17, paragraph 1, that her family is under around-the-clock surveillance, their correspondence is opened and subject to censorship and that they are victims of unauthorized telephone-tapping and home searches. In the light of the information before it, the Committee considers that these claims have not been sufficiently substantiated, for purposes of admissibility. Accordingly, the Committee declares these claims, raising issues under article 12, paragraph 1, and 17, paragraph 1, of the Covenant, inadmissible under article 2 of the Optional Protocol.

6.4 The Committee further notes that the author invokes a violation of article 14, paragraph 1, of the Covenant, without however providing any information or arguments in support of this claim. In the absence of any pertinent information, the Committee considers that this part of the communication is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers that the author's remaining allegations under article 12, paragraph 2, of the Covenant, have been sufficiently substantiated, for purposes of admissibility, and proceeds to their examination on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered this communication in the light of all the information received, in accordance with article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee takes note of the author's claims that national authorities have imposed unjustified restrictions on her right to liberty of movement, as a result of which she has been prevented from leaving the country freely, in violation of article 12, paragraph 2, of the Covenant. The State party refutes these allegations as unfounded. The Committee observes that, as it transpires from the materials available to it, the Prosecutor's Office has confirmed in its replies of 3 February and 10 March 2009 that the author's and her family's right to leave the country had been temporarily restricted pursuant to article 32 of the Law on Migration, without however specifically indicating the legal grounds that would have justified the imposition of the respective restrictions (see para. 2.5 above).

7.3 The Committee recalls its general comment No. 27 (1999) on freedom of movement, according to which the liberty of movement is an indispensable condition for the free development of the individual.⁴ It notes, however, that the rights covered by article 12, paragraph 2, are not absolute and may be restricted in conformity with the permissible limitations set out in article 12, paragraph 3, according to which any such restrictions shall be provided by law and necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and shall be consistent with the other rights recognized in the Covenant. In its general comment No. 27 the Committee also notes that "it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them" and that "restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function".⁵

7.4 In the light of the letters of the General Prosecutor's Office of 3 February and 10 March 2009 (see para. 2.5 above), which seem to clearly confirm the author's contention that her right to leave the country was temporarily restricted by the authorities, and in the absence of any explanations advanced by the State party in this regard, the Committee is of the view that the author's right under article 12, paragraph 2, of the Covenant, has been violated.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated the author's rights under article 12, paragraph 2, of the International Covenant on Civil and Political Rights.

9. Pursuant to article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy. The remedy should entail measures to immediately restore Ms. Orazova's freedom to leave the country at her own will, as well as appropriate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future.

⁴ *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 40*, vol. I (A/55/40 (Vol. I)), annex VI, sect. A, para. 1.

⁵ See general comment No. 27, paras. 11 and 14; communication No. 1472/2006, *Sayadi and Vinck v. Belgium*, Views adopted on 22 October 2008, para. 10.5; communication No. 1585/2007, *Batyrov v. Uzbekistan*, Views adopted on 30 July 2009, para. 8.3.

10. Bearing in mind that, by becoming a State 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, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the present Views, to have them translated in the official language of the State party, and widely disseminated.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
