

Mandates of the Special Rapporteur on freedom of religion or belief; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on minority issues

REFERENCE:
AL TKM 2/2020

10 December 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on freedom of religion or belief; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 40/10, 42/22, 43/4 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the detention of Messrs. Sanjarbek Saburov and Eldor Saburov, two members of the Jehovah's Witnesses religious minority, who were convicted in August 2020 for the second time for their conscientious objection to perform the mandatory military service in Turkmenistan.**

According to the information received:

On 6 August 2020, the S. A. Niyazov District Court of the Dashoguz Region informed Messrs. Sanjarbek Saburov and Eldor Saburov, two brothers who are members of the Jehovah's Witnesses religious minority in Turkmenistan, about the issued summons for their appearance to the Temporary Detention Facility (DZ-E/7) in Dashoguz. They were both convicted under article 219(1) of the Criminal Code and sentenced to two years' imprisonment for refusing to perform military service.

In April 2020, they had been summoned by the Military Conscription Office to report for military service. Both filed then a declaration stating that they are Jehovah's Witnesses and that religious conscience does not permit them to perform military service. Instead, they stated that they were willing and ready to perform an alternative civilian service. Their request was rejected on the grounds that Turkmenistan does not offer alternative civilian service, and that military service is compulsory. In early July 2020, they were informed by the prosecution that a case was opened against them under article 219(1) of the Criminal Code, which punishes refusal to serve in the armed forces in peacetime with a maximum penalty of two years' imprisonment or two years' corrective labour. They were convicted following a hearing conducted behind closed doors due to the coronavirus pandemic, with the only non-court staff present being their parents. The S. A. Niyazov District has yet to provide them or their families with copies of the verdicts, despite the submission of a written request by the family as well as the payment of the required administrative expenses.

This is the second time that the two brothers have been convicted for their conscientious objection to serve in the armed forces. Mr. Sanjarber Saburov had first refused military service during the 2016 spring call-up and on 9 August 2016 he was sentenced by the S. A. Niyazov District Court to two years' conditional sentence, with a two-year probation. Mr. Eldor Saburov was convicted for the first time on 19 December 2017 and was sentenced by the same court to two years of correctional labour and a 20% salary deduction in favour of the state. They did not appeal these past convictions for fear of a possible harsher sentence.

On 11 and 18 August 2020, the brothers appealed against their second conviction and the two-year prison sentence to the Dashoguz Regional Court. On 28 August, they filed a supplementary motion to their respective appeals. On 1 September 2020, the Dashoguz Regional Court rejected their appeals and provided their family with a copy of its decision.

On 10 November 2020, the two brothers were transferred from the Temporary Detention Facility (DZ-E/7) of Dashoguz to the camp LB-E/12 in Seydi.

While we do not wish to prejudge the accuracy of information made available to us, we express our serious concern at the conviction and detention of Messrs. Sanjarbek Saburov and Eldor Saburov for their refusal, based on their religious conscience and opinion, to perform military service in Turkmenistan. We deeply regret the criminalization of conscientious objection under article 219 of the Criminal Code of Turkmenistan and the absence of alternatives to military service, and we recall the numerous affirmations by the international human rights mechanisms of the absolute right to conscientious objection. The State must provide meaningful alternative service, that is, it must be compatible with the reasons for the conscientious objection, of a non-combatant or civilian character, in the public interest and must not be punitive of character.

Furthermore, we note with concern that Messrs. Sanjarbek Saburov and 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. We also express our serious concern at the fact that the S. A. Niyazov District Court of the Dashoguz Region has yet to share with the family of the two brothers copies of its July 2020 decision, which sentenced them to two years' imprisonment.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide information on the legal and factual grounds of the past and recent convictions as well as detention of Messrs. Sanjarbek Saburov and Eldor Saburov, and how these comply with Turkmenistan's obligations under international law.
3. Please explain the reason for the second trial and conviction of Messrs. Sanjarbek Saburov and Eldor Saburov for the same alleged offence, for which they had been finally convicted and sentence in 2016 and 2017 respectively, and how this practice is compatible with international law, and in particular with the rule against double jeopardy enshrined in article 14(7) of ICCPR.
4. Please provide detailed information on the measures undertaken to ensure that persons, including those who are members of religious or belief minorities, who refuse to perform military service based on their conscience, religion or belief are not criminally prosecuted and punished, and that their right to freedom of religion or belief is respected and protected.
5. Please indicate what measures have been taken to implement the recommendations addressed to your Excellency's Government by the human rights mechanisms, including the Human Rights Committee, regarding the recognition of conscientious objection and the provision of an alternative civilian service, as well as the views expressed with regard to conscientious objectors belonging to the religious minority of Jehovah's Witnesses.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and to the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Fernand de Varennes
Special Rapporteur on minority issues

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation above.

We would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), acceded by Turkmenistan on 1 May 1997, and in particular articles 2, 9, 10, 14, 18, 19, 26, 27, which provide for the right to liberty and security, the right to an effective remedy by the competent national tribunals for acts violating their fundamental rights, freedom of thought, conscience, religion or belief, freedom of expression, the protection against arbitrary arrest or detention, non-discrimination, and the rights of persons belonging to minorities.

Article 18 of the ICCPR guarantees the right of freedom of thought, conscience, religion or belief and protects against any coercion which would impair one's freedom to have or to adopt a religion or belief of his choice.

Article 19 of the ICCPR guarantees the right to freedom of opinion. It protects the right to hold opinions of any kind, including religious opinions. The Human Rights Committee has affirmed that "no person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions ... It is incompatible with paragraph 1 to criminalize the holding of an opinion" (General Comment no. 34 para. 9).

In this respect, we wish to remind your Excellency's Government that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the ICCPR is arbitrary, including the right to freedom of opinion and expression (article 19), freedom of assembly (art. 21), freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17) (CCPR/C/GC/35, para. 17).

In *Min-Kyu Jeong et al. v. Republic of Korea* and *Cenk Atasoy and Arda Sarkut v. Turkey*, the Human Rights Committee affirmed that the right to conscientious objection is an absolute right. In the first case it found that "[t]he 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 this 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." (Jeong et al., para 7.3). In the second case, the Committee confirmed 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, paragraph 1, of the Covenant." (Atasoy and Sarkut, para. 10.5)

In addition, we wish to draw the attention of your Excellency's Government to the fundamental due process principle of double jeopardy, or *non bis in idem*, as contained in article 10 of the Universal Declaration of Human Rights and article 14(7)

of the Covenant, whereby no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Furthermore, we refer to the observations and recommendations on Turkmenistan issued by the Human Rights Committee on 20 April 2017, which called for the revision of the legislation without undue delay with a view to clearly recognizing the right to conscientious objection to military service; the provision of an alternative civilian service, outside the military sphere and not under military command and the halt of all prosecutions of individuals who refuse to perform military service on the grounds of conscience and the release of all those who are serving prison sentences (CCPR/C/TKM/CO/2, paragraph 41). We also refer your Excellency's Government to the recent report of the Working Group on Arbitrary Detention to the Human Rights Council, which addresses the issue of deprivation of liberty in the context of conscientious objection to military service (A/HRC/42/39, paras. 59 to 64).

We wish also to refer to the Human Rights Council resolutions 23/51 of 8 October 2013, which calls on States to take the necessary measures to refrain from subjecting individuals to imprisonment solely on the basis of their conscientious objection to military service and to repeated punishment for refusing to perform military service. The resolutions recall that repeated punishment of conscientious objectors for refusing a renewed order to serve in the military may amount to punishment in breach of the legal principle *ne bis in idem*. The Human Rights Council recommends States to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection to military service is genuinely held in a specific case, taking account of the requirement not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs. States should provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature; to release individuals imprisoned or detained solely on the basis of their conscientious objection to military service. States should further ensure availability of information about the right to conscientious objection to military service, and the means of acquiring conscientious objector status, to all persons affected by military service (A/HRC/RES/24/17).

Finally, we would like to bring to your Excellency's Government's attention the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (article 4).