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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-seventh session, 26–30 August 2013

No. 22/2013 (Turkmenistan)

Communication addressed to the Government on 8 May 2013

Concerning Gulgeldy Annaniyazov

The Government replied to the communication on 10 July 2013.

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

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) 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 or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) 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);

(c) 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);

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(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case was submitted to the Working Group on Arbitrary Detention as follows:
4. Gulgeldy Annaniyazov, born in August 1960, a citizen of Turkmenistan and a political activist and opposition member, was arrested on 24 June 2008 at his parents' house in Ashgabat. He was reportedly accused of plotting to commit murder, assault, incitement to hooliganism, illegal currency dealings, and illegal possession of a weapon and drugs.
5. Mr. Annaniyazov has reportedly been detained by Turkmen authorities for more than 4 years and 10 months. He is a political activist who lived in exile in Norway from 2002 to 2008, when he returned to Turkmenistan hoping to establish a non-governmental organization that would work on Turkmen-related projects in Norway.
6. Mr. Annaniyazov had become well known in Turkmenistan after organizing the country's first anti-Government demonstration supporting democratic reforms. As one of eight men who organized the demonstration on 12 July 1995, later known as the "Ashgabat Eight", Mr. Annaniyazov was arrested and sentenced to 15 years in prison in January 1996. He was released under a presidential amnesty in January 1999. Following his release, he re-established his connections with Turkmen dissidents in the Russian Federation and later fled to Kazakhstan, applying for refugee status through the Office of the United Nations High Commissioner for Refugees and eventually resettling in Norway in 2002.
7. The source adds that, on 24 June 2008, Mr. Annaniyazov returned to Turkmenistan. That evening, while he was visiting with friends and family at his parents' home, plain-clothes officers entered the home without showing any identification or a warrant and arrested Mr. Annaniyazov. The officers did not disclose to the family where they were taking Mr. Annaniyazov.
8. Initially, Mr. Annaniyazov's family believed that he had been charged with illegal border crossing. However, when the trial started in July 2008, the Government reportedly brought additional charges. According to the source, the family suspects that these charges were brought in connection with the anti-Government demonstration he organized on 12 July 1995.
9. Mr. Annaniyazov was sentenced to 11 years in prison on 7 October 2008. The trial was closed and the court's verdict was reportedly not made available to Mr. Annaniyazov's family. The family has not been provided with any information about his whereabouts and well-being.
10. A former prisoner visited Mr. Annaniyazov's sister in Turkmenistan and told her that Mr. Annaniyazov was serving his sentence at the prison in Turkmenbashi (formerly known as Krasnovodsk and Kyzyl-Su). This is the prison where Mr. Annaniyazov served his first prison term from 1995–998 and contracted tuberculosis. Another source reported that he had been transferred to a prison called "Gorbatiy" ("Hunchback"). In 2009,

Mr. Annaniyazov managed to smuggle out a written note indicating that he did not think he would ever see his family again.

11. According to the source, Mr. Annaniyazov's detention constitutes arbitrary deprivation of his liberty. The Government of Turkmenistan imprisoned Mr. Annaniyazov for exercising his right to freedom of expression as provided in articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Article 19, paragraph 2, of the Covenant provides that "everyone shall have the right to freedom of expression". Freedom of expression includes freedom to seek, receive and impart information of all kinds, either orally or in writing. Article 19 of the Covenant is of special importance for the members of political opposition groups and human rights activists. Protection of free expression is broad enough to include the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment. Without such protection, members of political opposition and human rights activists will not be able to criticize, investigate, or expose corrupt and illegal practices by government officials. Neither will they be able to assemble peacefully and participate in demonstrations against the Government.

12. The source adds that Mr. Annaniyazov's detention is arbitrary, given that the Government's prosecution of him was based on his public activism. Mr. Annaniyazov's history of political opposition to the Turkmen Government made him a target for the authorities. There were no legitimate grounds for restricting his right to freedom of expression. Even if the Turkmen Government were to establish the existence of legitimate grounds for limiting Mr. Annaniyazov's right to freedom of expression, it would also have to demonstrate that these limitations were "necessary". The Turkmen Government has failed to demonstrate the necessity for restrictions.

13. The source recalls that article 21 of the Covenant guarantees everyone the right of peaceful assembly. The right to freedom of expression and freedom of assembly are closely interrelated. The right of peaceful assembly has a function in the process of forming, expressing and implementing political opinions. For this reason, commentators state that this imposes stronger obligations on the Government to ensure that the right to freedom of assembly is exercised freely and with no fear of persecution. The source contends that the Turkmen Government violated Mr. Annaniyazov's right to freedom of assembly. The expression of political opinions through demonstrations is a protected act and falls under the purview of article 21 of the Covenant.

14. As with freedom of expression, the right to freedom of assembly is not absolute. Article 21 states that the Government may place restrictions on this right when it is necessary to protect national security, public safety, public order, public health and morals, as well as the rights and freedoms of others. There were no legitimate grounds for restricting Mr. Annaniyazov's right to freedom of assembly. Even when one of the restrictions might have applied, the Turkmen Government would have had to demonstrate that such restrictions met the requirement of necessity.

15. The source further considers that Mr. Annaniyazov's detention constitutes arbitrary deprivation of liberty since Turkmenistan failed to observe the minimum international standards of due process. The Turkmen Government denied Mr. Annaniyazov the right to effective legal representation, a public hearing by an independent and impartial court, and humane treatment, in violation of articles 5, 8, 9 and 10 of the Universal Declaration of Human Rights and articles 7 and 14 of the Covenant.

16. The right to a public hearing is a necessary component of a fair trial. The Government denied Mr. Annaniyazov his right to a public hearing. The trial was closed and his relatives were denied access to the courtroom. While article 14, paragraph 1, of the Covenant provides that courts may exclude the public for reasons of morals, public order or

national security, or in the interests of the private lives of the parties or of justice, none of these interests was implicated in Mr. Annaniyazov's case.

17. The Government reportedly charged Mr. Annaniyazov with plotting to commit murder, assault, incitement to hooliganism and illegal possession of a weapon. As a criminal defendant facing ordinary criminal charges that do not involve any of the interests listed in article 14, paragraph 1, of the Covenant, Mr. Annaniyazov was entitled to the protection of his right to a fair and public hearing.

18. The source adds that the way in which the court conducted Mr. Annaniyazov's trial demonstrated bias and lack of independence. In Mr. Annaniyazov's case, an independent and impartial court would have conducted a public hearing. If there were reasons for having a closed trial, the court should have clearly stated such reasons and duly informed the relatives. In addition, an independent and impartial court would have made sure to provide Mr. Annaniyazov and his family with a copy of the verdict. Furthermore, Mr. Annaniyazov's family is aware neither of the exact charges against him nor of his current whereabouts.

19. According to the source, Mr. Annaniyazov is a victim of incommunicado detention, enforced disappearance, and unannounced detention. The State is under an obligation to provide family members and other interested persons with three main pieces of information about the detainee: (a) whether the person is in custody; (b) whether s/he is alive or dead; (c) location of imprisonment or detention. The source reports that there have been numerous attempts to establish Mr. Annaniyazov's whereabouts. The Norwegian Helsinki Committee inquired about his whereabouts and well-being by sending requests to the Presidential Administration, the Ministry of Justice and the Ministry of Internal Affairs in Turkmenistan but received no replies.

20. According to the source, there are grounds to believe that the authorities may be subjecting Mr. Annaniyazov to torture and/or ill-treatment in detention and that his physical health, psychological well-being and life may be in danger. The source requests that Mr. Annaniyazov receive adequate food, clean water and medical treatment, that he be protected from any ill-treatment and that his family receive information about his whereabouts and well-being.

Response from the Government

21. On 8 May 2013, the Working Group requested the Government's response to these allegations, and inquired about the current whereabouts of Mr. Annaniyazov and the reasons for his detention.

22. The Government responded on 10 July 2013, stating that Mr. Annaniyazov had been convicted for violation of articles 214 (2) and 217 (2) of the Criminal Code of Turkmenistan. He was sentenced to 11 years' imprisonment to be served in the detention centre of the Ministry of Internal Affairs. Article 214 (2), of the Criminal Code states that "illegal crossing of the State border of Turkmenistan, committed repeatedly or by a group of persons by prior conspiracy or by an organized group with violence or threat of violence, shall be punished by imprisonment for a term not exceeding ten years with or without provision to live in a particular area for a period of two to five years".

23. The Government also informs the Working Group that article 217 (2) of the Criminal Code of Turkmenistan provides that "theft, destruction, damage or concealment of official documents, stamps, seals or forms of special importance or resulting in serious consequences, shall be punishable by imprisonment for a term not exceeding two years".

24. The Government states that Mr. Annaniyazov's detention is the result of his violation of the law and has nothing to do with exercising the right to freedom of expression or arbitrary deprivation of liberty.

Further comments from the source

25. In its comments of 16 August 2013, the source maintains that the response of the Turkmen Government fails to address the violations, instead reiterating article 214 (2) of the Turkmen Criminal Code and making an unsubstantiated claim that Mr. Annaniyazov's detention had nothing to do with exercising the right to freedom of expression. The source states that the Turkmen Government's response did not address the serious due process violations, including allegations of the denial of a public hearing by an independent and impartial trial. The source also states that the Turkmen Government failed to address reports that Mr. Annaniyazov is a victim of incommunicado detention and possibly of enforced disappearance.

Discussion

26. The Working Group recalls its previous opinions No. 15/2010 (Turkmenistan) and No. 31/2005 (Turkmenistan) concerning violations of articles 9 and 19 of the Universal Declaration of Human Rights and the Covenant, falling within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group. It further recalls the critical review by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.¹ The Working Group notes that in the second cycle of the universal periodic review, Turkmenistan accepted several of the recommendations made by other States about enhanced cooperation with special procedures (A/HRC/24/3).

27. The compatibility of Turkmen law and practice on border crossings with international law, including article 12 of the Covenant, was raised by the Human Rights Committee in its 2012 concluding observations (CCPR/C/TKM/CO/1). Other issues of concern included torture, confessions and prison conditions. The jurisprudence of the Human Rights Committee relating to Turkmenistan mainly concerns arbitrary detention, including communications No. 1530/2006, *Bozbey v. Turkmenistan*, No. 1460/2006, *Yklymova v. Turkmenistan* and No. 1450/2006, *Komarovski v. Turkmenistan*.

28. In 2011 the Committee against Torture raised concerns about the trial and subsequent fate of Mr. Annaniyazov:²

“ The Committee is concerned about a number of persons who have been arrested and sentenced at closed trials without proper defence and imprisoned incommunicado, and the lack of information from the State party on progress made in ascertaining their fate and whereabouts. These persons include Gulgeldy Annaniyazov³, Ovezgeldy Ataev, Boris Shikhmuradov, Batyr Berdyev, and those imprisoned in connection with the assassination attempt on the former President in 2002, raised, inter alia, by the Special Rapporteur on torture (A/HRC/13/42, paras. 203-204; E/CN.4/2006/6/Add.1, para. 514). In particular, the Committee is concerned about the lack of: (a) effective, independent and transparent investigations into allegations of such practices, and prosecutions and convictions of perpetrators, where appropriate; and (b) due notification of the results of such investigations to the relatives of individuals who have disappeared, including confirmation of their

¹ A/HRC/13/42, paras. 203-204; E/CN.4/2006/6/Add.1, para. 514.

² Concluding observations of the Committee against Torture (CAT/C/TKM/CO/1, para. 15).

³ Spelling of Mr. Annaniyazov's name as used in previous Human Rights Council documents.

place of detention and whether they are alive. This lack of investigation and follow-up raises serious questions with respect to the State party's willingness to fulfil its obligations under the Convention and constitutes a continuing violation of the Convention with respect to the relatives of the victims (arts. 12 and 13).

The Committee urges the State party: (a) to take all appropriate measures to abolish incommunicado detention and ensure that all persons held incommunicado are released, or charged and tried under due process; (b) as a matter of priority, to inform the relatives of those who have been detained incommunicado of their fate and whereabouts, and facilitate family visits; (c) to take prompt measures to ensure prompt, impartial and thorough investigations into all outstanding cases of alleged disappearances, to provide remedy as appropriate and to notify relatives of the victims of the outcomes of such investigations and prosecutions; (d) Inform the Committee of the outcomes of the investigations into the aforementioned cases of Mr. Annaniyazov, Mr. Ataev, Mr. Shikhmuradov, Mr. Berdyev and those imprisoned in connection with the 2002 assassination attempt on the former President."

29. The Working Group is grateful for the Government's response and the translations of article 214(2) of the Turkmen Criminal Code.

30. In its response, the Government states that "Mr. Annaniyazov's detention had nothing to do with exercising the right to freedom of expression". This assertion is not sufficient when a serious allegation of this kind is made, and not satisfactory as a response to the communication from the Working Group, even less so after serious concerns have been raised by other United Nations bodies, such as the Committee against Torture. The source has submitted that there are violations of free speech and assembly rights. The Government has not rebutted the allegations of violations of articles 19 of the Universal Declaration of Human Rights and the Covenant and article 21 of the Covenant beyond the brief assertion as mentioned. The Government failed to indicate that there were restrictions on rights under articles 19 and 21, or that any such restrictions were necessary and proportionate.

31. The Working Group also notes that the Government did not respond to the serious allegations by the source about due process violations under articles 5, 8, 9 and 10 of the Universal Declaration of Human Rights and articles 7 and 14 of the Covenant, including allegations of the denial of a public hearing by an independent and impartial trial. Again, from the Government's submission, there seem to be no special circumstances justifying the holding of any part of the trial behind closed doors.

32. The Working Group concludes that there have been violations of articles 9, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 19 and 21 of the Covenant. The case falls into categories II and III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

Disposition

33. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Gulgeldy Annaniyazov is arbitrary and in contravention of articles 9, 19 and 20 of the Universal Declaration of Human Rights and of articles 9, 19 and 21 of the International Covenant on Civil and Political Rights. It falls into categories II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

34. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Annaniyazov and

bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

35. The Working Group is of the opinion that, taking into account all the circumstances of the case, the adequate remedy would be to release Mr. Annaniyazov and to accord him an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

36. In accordance with article 33 (a) of its revised methods of work, the Working Group refers the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the allegations of enforced disappearance to the Working Group on Enforced or Involuntary Disappearances, for appropriate action.

[Adopted on 27 August 2013]
