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**Human Rights Council**  
Working Group on Arbitrary Detention

## **Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 23 April–3 May 2019**

### **Opinion No. 17/2019 concerning Buzurgmehr Yorov (Tajikistan)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.
2. In accordance with its methods of work (A/HRC/36/38), on 15 November 2018 the Working Group transmitted to the Government of Tajikistan a communication concerning Buzurgmehr Yorov. The Government submitted a late response on 18 January 2019. The State is a party to the International Covenant on Civil and Political Rights.
3. 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 him or her) (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 Covenant (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);
  - (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 on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

## Submissions

### *Communication from the source*

4. Buzurgmehr Yorov, a Tajik citizen, was born in 1971, and usually resides in Dushanbe. Mr. Yorov is a human rights lawyer and member of the opposition Social Democratic Party.

5. The source reports that, in 2007, Mr. Yorov founded the Sipar law firm and was frequently involved in high-profile cases, representing individuals prosecuted on allegedly politically motivated charges, as well as citizens and entrepreneurs whose businesses were raided or seized. Mr. Yorov quickly earned a reputation as a fearless human rights lawyer in Tajikistan. He publicly condemned human rights abuses on numerous occasions by making statements, publishing articles and taking on clients who were victims of governmental abuses. Because Mr. Yorov's law firm consistently took a stance against the Government's interest, the Government reportedly targeted it in multiple specious criminal actions and civil law suits. Nonetheless, Mr. Yorov continued to provide dedicated representation and advocacy to political leaders and opposition figures.

### *Arrest and detention*

6. According to the source, in 2015, the Government launched a crackdown on the Islamic Renaissance Party of Tajikistan, an opposition political party. Before, during and after the elections held in March 2015, members of the party were beaten, harassed and imprisoned. On 4 September 2015, an armed clash between government forces and militants loyal to a general allegedly provided the Government with the pretext necessary to ban the Islamic Renaissance Party of Tajikistan altogether. The Government alleged that the clash was an act of Islamic terrorism by the party, and the Supreme Court declared it a terrorist organization.

7. In September 2015, following the Government's raids, arrest and detention of opposition members on unsubstantiated allegations, Mr. Yorov took on the representation of high-level officials of the Islamic Renaissance Party of Tajikistan. On 26 September 2015, he met with a client and several other members of the party leadership, who were being held in a detention facility, and learned about the abuse that several of them had endured. On 28 September 2015, Mr. Yorov made a public statement alleging that one of his clients had been tortured while in custody. Mr. Yorov announced that he would file a claim for illicit conduct against the officials involved.

8. The source reports that Government officials arrested Mr. Yorov, on 28 September 2015, at the offices of the Police Unit for Combating Organized Crime, and demanded that he withdraw his representation of members of the Islamic Renaissance Party of Tajikistan. Mr. Yorov was interrogated for 10 hours, during which time he was beaten and questioned about and accused of alleged complicity in the uprising of 4 September 2015. Mr. Yorov's attorney was present for only one and a half hour of the interrogation, after which he left and withdrew from representation, likely because of fear of reprisal. Mr. Yorov was not given access to any other legal counsel during the interrogation. The government authorities also conducted raids of Mr. Yorov's office and home, without warrants, seizing books and privileged and confidential legal documents.

9. On 29 September 2015, Mr. Yorov was transported from the police offices to a SIZO, a pretrial temporary detention facility. That day, the Government seized, without a warrant, Mr. Yorov's laptop, which contained privileged legal information, including client case files and documents. According to the source, Mr. Yorov was officially informed that he had been arrested on suspicion of fraud and forgery, not for his alleged involvement in the events of 4 September. At the time, the Ministry of the Interior published an article on its website that an "attorney-fraudster" had been detained. Mr. Yorov was kept for nine days in the SIZO before being moved to the Dushanbe detention facility, where he was allegedly subjected to poor living conditions, abused by detention officers and placed in solitary confinement on multiple occasions, from 3 to 15 days at a time.

10. In the SIZO, authorities repeatedly demanded that Mr. Yorov stop defending political opposition figures, with the promise of a reprieve. To put pressure on him, officials

arranged for members of his family to meet with him to persuade him to cease defending members of the opposition and, in general, to end his professional activities as an attorney. Aside from these closely monitored visits, the authorities denied family visits to Mr. Yorov.

11. On 1 October 2015, three days after his arrest, Mr. Yorov was brought before a judge to adjudicate the legality of his arrest. The Government requested a “preventative measure” of detention against Mr. Yorov, even though no charges had yet been filed against him. The hearing was closed to the public and only one of Mr. Yorov’s attorneys was allowed to participate. The source reports that the Government did not present any evidence to support its position that Mr. Yorov was a flight risk or likely to falsify evidence, influence witnesses or destroy documents that were relevant to his criminal case. The Court nonetheless granted the petition.

12. For two months following the hearing, Mr. Yorov was not permitted to see his family. Similarly, for around 44 days, Mr. Yorov’s two attorneys were not permitted to meet with him.

13. On 9 November 2015, Mr. Yorov published a letter announcing a hunger strike to protest against the violation of his right to legal representation. A week later, the government authorities permitted him to speak privately with his attorneys. In December 2015, however, the Government arrested one of Mr. Yorov’s attorneys and fellow partner at his law firm. The source reports that the other attorney was able to meet with Mr. Yorov privately; however, he became increasingly afraid of reprisals and began to avoid Mr. Yorov’s family.

14. On 2 March 2016, the government authorities concluded the investigation, and Mr. Yorov’s remaining lawyer ceased his representation, allegedly because the Government had threatened him. On 5 March 2016, Mr. Yorov’s family hired another lawyer to represent him.

15. On 5 April 2016, the cases of Mr. Yorov and a co-defendant were classified as secret after Mr. Yorov began to publish materials documenting inconsistencies in the charges. The proceedings were henceforth closed to the public. Mr. Yorov was subjected to three trials between 2016 and 2017.

#### *First trial*

16. The source reports that, on 5 May 2016, a closed trial began against Mr. Yorov and his co-defendant, who were charged as co-conspirators. Mr. Yorov was regularly brought into the courtroom wearing handcuffs and placed inside a metal cage. He was tried for fraud (art. 247 of the Criminal Code), forgery (art. 340), arousing national, racial, local or religious hostility (art. 189) and extremism (arts. 307 and 307.1). The source notes that the charge of fraud was based on Mr. Yorov’s alleged failure to represent clients from whom he had accepted legal fees. The charge of forgery stemmed from a 2011 incident in which Mr. Yorov reported to the police that the technical inspection certificate for his car had been forged. The charges for “arousing hostility and extremism” were based on allegations that Mr. Yorov had published extremist articles or posts online.

17. According to the source, the prosecution provided scarce evidence to substantiate the above-mentioned charges. Its witnesses provided identical and, at times, non-sensical testimony, or denied the Government’s allegations while on the stand; some witnesses even declared to the court that they were being forced to testify against Mr. Yorov. The allegedly extremist articles were never presented at trial, allowing Mr. Yorov no opportunity to review them; the prosecution presented instead an “expert” opinion confirming that the articles were extremist in nature, without naming Mr. Yorov as the author of the articles.

18. Mr. Yorov’s lawyer was reportedly not allowed to prepare for or present any meaningful defence. The prosecution removed 85 pages of evidence from the case file, preventing the defence from examining the alleged proof of Mr. Yorov’s extremism. In addition, the evidence against Mr. Yorov was not disclosed to him before the trial. The Court denied the defence’s motions calling for additional witnesses, and refused to allow the defence team to submit an expert report.

19. The source adds that Mr. Yorov's brother was arrested during the trial. On 28 September 2016, the prosecutor interrupted Mr. Yorov as he was addressing the jury, cautioning him to speak less while reminding him of his brother's arrest. During the trial, Mr. Yorov read a portion of an 11th-century poem, which both the judge and prosecutor interpreted as an insult. As a result, he was charged with contempt of court (art. 355 of the Criminal Code) and insulting a government official (art. 330). The judge, prosecutor and three jury members of the first trial were identified as victims. None of these victims recused themselves from Mr. Yorov's trial.

20. On 6 October 2016, Mr. Yorov was sentenced to 23 years of imprisonment. His appeal was denied on 11 April 2017. Mr. Yorov's attorney was allegedly threatened, stalked and spied on. Consequently, in December 2016, she ceased her representation of him, fled Tajikistan and applied for asylum in Europe, fearing for her safety. Thus, during parts of the first trial, Mr. Yorov had no legal representation.

#### *Second trial*

21. The source reports that the second trial, for contempt of court and insulting government officials, was also closed to the public. The trial hearings were held in the temporary detention facility where Mr. Yorov was being held. The defence was reportedly not afforded the opportunity to call any witnesses or experts or to introduce evidence. Once again, the Government's evidence was lacking, based only on the Attorney General's report of the poem reading. In addition, the Court denied the defence's motion for its own expert report.

22. The source notes that Mr. Yorov lacked effective representation. He was nominally represented by a government-appointed intern, who had no work experience and routinely failed to attend the hearings. Mr. Yorov's wife therefore had to act as his defence counsel during parts of the second trial, although she lacked legal experience.

23. On 16 March 2017, Mr. Yorov was sentenced to two years of imprisonment and one year of community service, thereby extending his sentence to 25 years.

#### *Third trial*

24. According to the source, on 28 March 2017, Mr. Yorov was further charged with fraud (art. 247 of the Criminal Code) and with publicly insulting the President in the media or on the Internet (art. 137). The trial was also closed and Mr. Yorov was not permitted to present any evidence. Given the Government's persecution of independent lawyers, Mr. Yorov's only available legal representation during the trial was his wife.

25. The source submits that, to substantiate its fraud allegations, the prosecution presented no witness testimony and relied on witness statements identical to the prosecution's witness statements from the first trial, which alleged that Mr. Yorov received money to represent certain clients, despite allegedly not representing them. One witness statement on which the prosecution relied had been altered to implicate him. The government authorities also argued that Mr. Yorov publicly insulted the President in an online publication on 8 March 2016 by stating that the status of an attorney was higher than that of the President, and relied on expert opinions to bolster these claims. Mr. Yorov's request to cross-examine the experts was denied.

26. On 18 August 2017, Mr. Yorov was found guilty and sentenced to 12 years in a maximum security prison. The combined sentence for Mr. Yorov was extended to 28 years.

#### *Imprisonment and alleged abuse*

27. In September 2017, Mr. Yorov was allegedly beaten so severely that he was admitted to the detention centre hospital. He had several broken bones, and he was unable to walk. At least until October 2017, he was regularly placed in solitary confinement, possibly to hide the brutality of the beatings he was receiving.

28. On 15 December 2017, Mr. Yorov was transferred to the maximum security colony No. 1 of Dushanbe. According to the source, information regarding his current detention

conditions is difficult to obtain, even though the conditions at his pretrial detention centre were reportedly very harsh.

29. The source notes that Mr. Yorov's siblings faced significant harassment and criminal charges as they advocated for his release. This harassment has continued even after they fled to Europe, seeking asylum.

30. The source asserts that the detention of Mr. Yorov constitutes arbitrary deprivation of his liberty under categories I, II, III and V.

#### *Category I*

31. The source argues that the detention of Mr. Yorov is arbitrary under category I, as he was arrested without a warrant, without information on why he was being arrested, without charges for some 12 days following his arrest, and without being presented before a judicial authority for a habeas corpus hearing for three days. This is a violation of his rights under articles 9 (2), (3) and (4) of the Covenant.

32. The source also submits that Mr. Yorov was convicted under overly vague provisions of the Criminal Code, and he was retroactively convicted for "publicly insulting the President", as article 137 was passed seven months after he allegedly committed the "crime". This violated his rights under articles 9 (1) and 15 (1) of the Covenant and article 11 (2) of the Universal Declaration of Human Rights.

33. The source adds that the prosecution failed to present sufficient evidence to justify Mr. Yorov's arrest, detention and conviction. The evidence presented at each trial lacked authenticity, was tainted by coercion, was not tied to Mr. Yorov's authorship or possession, and was even exculpatory.

#### *Category II*

34. The source submits that Mr. Yorov's detention is arbitrary under category II because he was arrested, detained and convicted for exercising his rights to freedom of expression, association and political participation, protected by articles 19 (2), 22 (1) and 25 (a) of the Covenant and articles 19 and 20 (1) of the Universal Declaration of Human Rights. The source adds that imprisonment of human rights defenders, including lawyers, for speech or association-related reasons, should be subject to heightened scrutiny.

35. The source highlights the fact that the Government targeted Mr. Yorov as a means of preventing him from continuing to represent opposition leaders and government critics. The source adds that the Government had intimidated and harassed Mr. Yorov for more than 10 years. Similarly, it had harassed and imprisoned other attorneys who represented political dissidents and detained members of opposition political groups.

36. In addition, the source refers to the suspicious timing of Mr. Yorov's arrest, which was made shortly after he announced that he would file a claim against a government official who allegedly abused one of his clients. The source also refers to the Government's repeated requests to Mr. Yorov to cease representing leaders of the Islamic Renaissance Party of Tajikistan during his interrogation; the Government's pressure on Mr. Yorov's family by promising his release, provided that he permanently cease defending political opposition figures; and intense animosity towards Mr. Yorov with multiple trumped-up charges and trials that added an additional five years to his initial sentence. The source submits that this reveals the Government's true motive in imprisoning Mr. Yorov: to punish him for his critical expression, association and legal representation of politically sensitive cases.

#### *Category III*

37. The source further asserts that the detention of Mr. Yorov is arbitrary under category III, because the Government's violations of fundamental international norms and minimal standards for due process in its arrest, detention, trial and conviction were so grave as to render the deprivation of liberty arbitrary.

38. According to the source, the Government violated Mr. Yorov's right not to be subjected to arbitrary arrest, as protected by article 9 (1) of the Covenant, article 9 of the Universal Declaration of Human Rights and principles 2 and 36 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The right requires that arrest comply with domestic procedures established in law for carrying out the legal deprivation of liberty. However, in the case of Mr. Yorov, his arrest was not based on a genuine suspicion that he had committed a crime.

39. According to the source, the Government has further violated article 9 (2) of the Covenant and principle 10 of the Body of Principles. In the present case, the authorities did not show Mr. Yorov a warrant for his arrest nor did they accurately explain why he was arrested. The Government's justification for detaining Mr. Yorov changed repeatedly, and official charges were not filed until some 12 days after his arrest.

40. The source also submits that the Government has violated Mr. Yorov's right to challenge the legality of his detention, as protected by article 9 (3) and (4) of the Covenant and principles 4, 11, 32 and 37 of the Body of Principles. Mr. Yorov was arrested on 28 September 2015, but he was not brought before a judge until 1 October 2015, a time frame that exceeds the requirement that a detainee be brought "promptly" (within 48 hours) before a judge.

41. The source refers to article 9 (3) of the Covenant and principles 38 and 39 of the Body of Principles, whereby an individual has the right to be released pending trial. In this respect, the source submits that, in denying Mr. Yorov's release pending his trial, based on unsupported allegations and without evidence, the court impermissibly defaulted to treating pretrial detention as a general rule.

42. According to the source, the Government prevented Mr. Yorov from communicating with his attorneys from the outset of his detention. Furthermore, it created such a climate of intimidation that Mr. Yorov could not find competent attorneys to represent him. These acts violated article 14 (3) (b) and (d) of the Covenant, rules 41 (3) and 61 of the Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) and principles 11 (1), 15, 17 (1) and 18 of the Body of Principles.

43. The source refers to article 14 (3) (b) of the Covenant and principles 11 (1) and 18 (2) of the Body of Principles, whereby a criminal defendant has the right to adequate time and facilities for the preparation of his or her defence. In the present case, Mr. Yorov's right to the assistance of counsel was reportedly violated by the refusal to allow him to speak with an attorney, the intimidation of his attorneys, and the refusal to grant sufficient time to the defence to familiarize itself with the case. In addition, the authorities actively prevented the defence from gaining access to the prosecution's materials, and the court impeded the defence to fully present its case.

44. The source also refers to article 14 (1) of the Covenant and article 10 of the Universal Declaration of Human Rights, whereby an individual has the rights to equality of arms before the courts and to a fair and public hearing by a competent, independent and impartial tribunal established by law. In Mr. Yorov's case, these rights were allegedly violated because his trials were partially or fully closed. The source adds that the court system in Tajikistan is not independent but rather controlled by the executive branch, so the courts defer to the prosecution. Furthermore, following Mr. Yorov's reading of a poem at trial, the judge, the prosecutor and two jury members alleging insult were treated as victims, provided evidence against Mr. Yorov, for use in a future trial, without recusing themselves in the first trial.

45. According to the source, the Government also violated Mr. Yorov's right to the presumption of innocence, as protected by article 14 (2) of the Covenant, article 11 (1) of the Universal Declaration of Human Rights and principle 36 (1) of the Body of Principles. Although this right requires that an accused be treated as innocent, the Government treated Mr. Yorov as if his guilt was a foregone conclusion. In particular, the Government publicized Mr. Yorov as guilty before his conviction, presented him to the court in a manner that suggested his guilt, held his trial within a detention centre, criminally convicted Mr. Yorov on the basis of poor-quality evidence and refused to afford him fair trial rights.

46. The Government reportedly also violated article 14 (3) (e) of the Covenant by not permitting Mr. Yorov to fully challenge the Government's case against him and prohibiting him from presenting his own witnesses and evidence.

47. The source stresses that prisoners have the right to human dignity and to not be tortured or subjected to cruel, inhuman or degrading treatment under articles 7, 10 (1) and 14 (3) (g) of the Covenant, article 5 of the Universal Declaration of Human Rights and articles 1, 2 and 16 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In the present case, the beatings, abuse, prolonged solitary confinement and prison conditions endured by Mr. Yorov constitute violations of these rights.

48. The source further submits that the appellate court, reviewing the sentence from Mr. Yorov's first trial, ignored the allegations or facts of his case and upheld the lower court's verdict without engaging in a meaningful review, in violation of Mr. Yorov's right to review under article 14 (5) of the Covenant.

49. The source also notes that several charges raised against Mr. Yorov in the first and third trials related to an alleged failure to meet contractual obligations. These should have been tried in a civil court, not a criminal one, and any imprisonment due to these claims violates the prohibition of imprisonment from breach of contractual obligation under article 11 of the Covenant.

#### *Category V*

50. The source further submits that Mr. Yorov's detention is arbitrary under category V because the government authorities detained him due to its discriminatory intent against him as a human rights lawyer and a perceived supporter of his clients' causes.

51. The source refers to article 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, which enshrine an individual's right to freedom from discrimination, without distinction of any kind, such as ethnic or social origin. Although the status of lawyers is not an explicitly enumerated ground, lawyers have been treated by international instruments (such as the Basic Principles on the Role of Lawyers) as a distinct class in need of particular protections because of their role in upholding fundamental human rights of individuals. Furthermore, the Declaration on Human Rights Defenders guarantees the right to offer and provide professionally qualified legal assistance in defence of human rights, and the right to the lawful exercise of the occupation of profession of human rights defender.

52. In the present case, Mr. Yorov's arrest, detention and treatment took place in the context of the Government's relentless attack on the legal profession and on those lawyers representing members of the opposition. The interrogators' insistence that Mr. Yorov cease his representation of opposition leaders, the Government's inducements aimed at his family with the same demand and his arrest shortly after he made a public statement in relation to the mistreatment of his client provides evidence of the Government targeting him as a human rights lawyer. The Government's pattern of targeting Mr. Yorov and his law firm, including past fabricated charges, the evolving nature of the charges and continued abuse, clearly demonstrates that prejudicial hostility towards Mr. Yorov, resulting from his status and his perceived identity, lay at the root of his arrest, trial and conviction, in violation of his right to non-discrimination before the law.

#### *Response from the Government*

53. On 15 November 2018, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure, requesting the Government to provide, by 14 January 2019, detailed information about Mr. Yorov's current situation and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the State's obligations under international human rights law, in particular with regard to the treaties ratified by Tajikistan. The Working Group called upon the Government to ensure Mr. Yorov's physical and mental integrity.

54. On 18 January 2019, the Working Group received a late reply from the Government, and regrets that an extension of the time was not requested, as provided for in the methods of work. The reply could not be accepted as if presented within the time limit. In accordance with paragraph 16 of its methods of work, the Working Group will render its opinion based on all the information it has obtained.

### **Discussion**

55. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68). The Government has not challenged the prima facie credible allegations made by the source.

56. The source submits that the arrest and detention of Mr. Yorov is arbitrary and falls under categories I, II, III and V. These will be examined in turn.

#### *Category I*

57. The source submits that the arrest and subsequent detention of Mr. Yorov fall under category I, as the arrest and the searches of his home and office were carried out without warrants and he was not presented before a judge until three days after his arrest. Even in its late response, the Government did not address these allegations, but simply stated that “all appropriate procedures were followed”.

58. The Working Group notes that Mr. Yorov was arrested on 28 September 2015 and was not presented with an arrest warrant. As has been previously stated, for a deprivation of liberty to have a legal basis, it is not sufficient that there be a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.<sup>1</sup> In the present case, the authorities failed to do so, violating the rights of Mr. Yorov under article 9 (1) of the Covenant.

59. Moreover, Mr. Yorov was not provided with any information regarding the reasons for his arrest or charges against him until he was presented before the court three days after his arrest, and no charges were notified until some 10 days after the arrest. Article 9 (2) of the Covenant requires that anyone who is arrested is not only promptly informed of the reasons at the time of arrest but also promptly informed of any charges against them. As explained by the Human Rights Committee in its general comment No. 35 (2014) on liberty and security of person, the obligation encapsulated in article 9.2 has two elements: information about the reasons for arrest must be provided immediately upon arrest, and there must be prompt information about the charges provided thereafter.

60. It is true that the requirement of prompt information about the charges is not to be equated with the requirement to provide information at the time of the arrest.<sup>2</sup> However, in the present case, Mr. Yorov was arrested on 28 September 2015, which was not a public holiday. The Government has chosen not to explain the delay of three days to inform Mr. Yorov of reasons for his arrest, which should have been immediately provided, and why it took some 10 days to inform Mr. Yorov of the charges against him. The right to be promptly informed of charges concerns notice of criminal charges and, as the Human Rights Committee has noted, that right “applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment”.<sup>3</sup> The Working Group therefore finds that there has been a breach of article 9 (2) of the Covenant.

61. Furthermore, to establish that detention is legal, anyone detained has the right to challenge the legality of their detention before a court, as provided for by article 9 (4) of the Covenant. The Working Group recalls that, according to the United Nations Basic

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<sup>1</sup> Opinions No. 75/2017, No. 66/2017, No. 46/2018, No. 35/2018 and No. 79/2018.

<sup>2</sup> See Human Rights Committee general comment No. 35, para. 30.

<sup>3</sup> *Ibid.*, para. 29.



Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society (A/HRC/30/37, paras. 2–3). This right is, in fact, a peremptory norm of international law (*ibid.*, para. 11). It applies to all situations of deprivation of liberty, including not only criminal detention but also detention under administrative and other laws, such as military, security and counter-terrorism detention, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, house arrest, detention for vagrancy or drug addiction and detention of children for educational purposes (*ibid.*, para. 47 (a)). Moreover, it also applies irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary (*ibid.*, para. 47 (b)).

62. The source submits that Mr. Yorov was not brought before the judge until three days after his arrest. In its late reply, the Government simply stated that Mr. Yorov was brought before the judge after the period of time prescribed by law for initial detention had passed. The Working Group cannot accept such an argument, as its mandate is not to ascertain whether the Tajik authorities complied with the national legislation, but rather to examine whether these actions were compatible with the State's international obligations. Indeed, the Government itself, in its late reply, notes that its authorities are bound by the international treaties and agreements to which Tajikistan is a party.

63. The Working Group considers that judicial oversight of detention is a fundamental safeguard of personal liberty (*ibid.*, para. 3), essential in ensuring that detention has a legal basis. As the Human Rights Committee noted in its general comment No. 35, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay must remain exceptional and properly justified. This was not the case for Mr. Yorov; the Working Group therefore finds a breach of article 9 of the Covenant.

64. Moreover, in the present case, Mr. Yorov was held in detention for three days before being brought before a judge. During that time, he was prevented from challenging the legality of his detention. Without the judicial control of the legality of the detention, the detention cannot be assumed to have a legal basis. The Working Group reiterates that the right to challenge the legality of detention belongs to everyone; this right was denied to Mr. Yorov for the first three days of his detention, in breach of article 9 (4) of the Covenant.

65. In order to ensure the effective exercise of the right to challenge the legality of detention, detainees should have access, from the moment of arrest, to legal assistance of their own choosing, as stipulated in the Basic Principles and Guidelines (*ibid.*, paras. 12–15). This was denied to Mr. Yorov, with consequent adverse impact on his ability to exercise his right to challenge the legality of his detention, in breach of article 9 (4) of the Covenant.

66. According to article 9 (1) of the Covenant, no one may be deprived of liberty except on such grounds and in accordance with such procedure as established by law. In the present case, Mr. Yorov's private residence and office were searched without a warrant and various items, including computers and documents, seized by the authorities. The confiscation of Mr. Yorov's property without a search warrant was particularly serious, as it violated lawyer-client confidentiality.<sup>4</sup> Accordingly, the Working Group finds that Mr. Yorov's right under article 9 (1) of the Covenant was violated.

67. It is a well-established norm of international law that pretrial detention should be the exception, not the rule, and that it should be ordered for as short a time as possible.<sup>5</sup> Article 9, paragraph 3, of the Covenant sets forth two cumulative obligations, namely, to be promptly brought before a judge within the first days of the deprivation of liberty, and to

<sup>4</sup> See opinions No. 36/2018, paras. 39–40, No. 79/2018 and No. 83/2018.

<sup>5</sup> See opinions No. 28/2014, No. 49/2014 and No. 57/2014. See also A/HRC/19/57, paras. 48–58, A/HRC/25/60/Add.1, para. 84, A/HRC/30/19, E/CN.4/2004/56, para. 49, *Zhanna Kovsh v. Belarus* (CCPR/C/107/D/1787/2008), CAT/C/TGO/CO/2, para. 12 and CCPR/C/TUR/CO/1, para. 17.

have a judicial decision rendered without undue delay, in the absence of which the person is to be released (A/HRC/19/57, para. 53).

68. The above provision is completed by the second part of article 9 (3), according to which it should not be the general rule “that persons awaiting trial are to be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement”. Liberty is recognized as a principle and detention as an exception in the interests of justice.

69. The provisions contained in article 9 (3) of the Covenant may be summarized as follows: any detention must be exceptional and of short duration, while release may be accompanied by measures intended only to ensure representation of the defendant in judicial proceedings (*ibid.*, para. 56).

70. The Working Group refers to general comment No. 35 of the Human Rights Committee, according to which subjecting defendants to pretrial detention should not be the general practice. Detention pending trial should be based on an individualized determination that it is reasonable and necessary, taking into account all circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. The relevant factors should be specified in law and should not include vague and expansive standards such as “public security”. Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.

71. In the case of Mr. Yorov, the Working Group notes that, in its late response, the Government chose not to examine the reasons leading to the decision to remand Mr. Yorov to custody pending his trial. The source had alleged that, during the pretrial detention hearing, no evidence of him being a flight risk or likely to falsify evidence, influence witnesses or destroy documents was presented. The Working Group therefore concludes that the pretrial detention of Mr. Yorov breached article 9 (3) of the Covenant.

72. The source has also alleged that the conviction of Mr. Yorov, for failure to represent his clients properly, breaches his rights under article 11 of the Covenant, as several charges brought against Mr. Yorov in the first and third trials related to an alleged failure to meet his contractual obligations. According to the source, these should have been tried as a civil suit, not a criminal case, and therefore any imprisonment resulting from these claims violates Mr. Yorov’s rights under article 11 of the Covenant. The Working Group observes that the Government has failed to address this allegation.

73. Article 11 of the Covenant is a non-derogable right; in the view of the Working Group, any deprivation of liberty for inability to fulfil a contractual obligation will always be arbitrary.<sup>6</sup> The Working Group emphasizes that, in the present case, the charges of alleged failure to represent clients indeed stemmed from private contracts rather than any statutory obligation.<sup>7</sup>

74. If indeed Mr. Yorov failed to represent his clients properly, the matter should have been addressed through the professional misconduct proceedings of the bar association or a similar body, or pursued through civil litigation for breach of contract. The Working Group also observes that, in its late response, the Government made no attempt to explain why the alleged breaches of private contracts would be considered criminal offences. The Working Group therefore finds that there has been a violation of article 11 of the Covenant.

75. The source has also claimed that Mr. Yorov was retroactively convicted of a crime under article 137 of the Criminal Code; this provision was adopted seven months after Mr. Yorov allegedly committed the crime of publicly insulting the President. The Working Group observes that the Government has failed to address this allegation.

76. The Working Group notes that article 15 of the Covenant guards against *ex post facto* application of criminal law and, in the absence of any submissions from the Government, must accept the submissions of the source. The Working Group therefore

<sup>6</sup> See opinions No. 31/2001 and No. 38/2013.

<sup>7</sup> *Liberto Calvet Ràfols v. Spain* (CCPR/C/84/D/1333/2004), para. 6.4.

concludes that the conviction of Mr. Yorov under article 137 of the Criminal Code was in violation of article 15 (1) of the Covenant.

77. Considering that Mr. Yorov was detained without an arrest warrant, that his private residence and office were subjected to searches without a warrant, that no formal charges were brought against him for some 10 days, that he was effectively prevented from exercising his right to challenge the legality of detention and since his pretrial detention was imposed as a rule, and that he was convicted for inability to fulfil a contractual obligation, and considering also that one of Mr. Yorov's convictions breached the prohibition of ex post facto application of criminal law, the Working Group concludes that Mr. Yorov's arrest and detention are arbitrary and fall under category I.

#### *Category II*

78. The source further submits that the arrest and detention of Mr. Yorov resulted from his legitimate exercise of his rights to freedom of expression, association and political participation, protected by articles 19 (2), 22 (1) and 25 (a) of the Covenant and 19 and 20 (1) of the Universal Declaration of Human Rights. In its late reply, the Government merely rejects those submissions, stating that Mr. Yorov was not prosecuted and sentenced for his political views or expressions but rather because of a number of criminal acts.

79. The Working Group notes, however, that the Government failed to specify what Mr. Yorov had actually done that could have amounted to such crimes, as no description of any actions undertaken by him that could be construed as criminal activity has been provided. The Working Group observes the similarity of the Government's late response in this case to the response that the Government submitted to the Working Group recently in another case.<sup>8</sup> The Working Group also observes the similarity of the fact pattern between the present case and previous one.

80. The Working Group notes that the Human Rights Committee, in its general comment No. 34 (2011) on the freedoms of opinion and expression, stated that such rights, as enshrined in article 19 of the Covenant, are indispensable conditions for the full development of the person and essential for any society and, in fact, constitute a foundational stone for every free and democratic society.

81. Also in its general comment No. 34, the Committee further stated that the freedom of expression includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers; this includes the expression and receipt of communications of every form of idea and opinion, capable of transmission to others, including political opinions. Moreover, the permitted restrictions to that right may relate either to respect of the rights or reputations of others, or to the protection of national security or of public order or of public health or morals. The Committee went on to stipulate that restrictions are not allowed on grounds not specified in paragraph 3 of the general comment, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed, and must directly relate to the specific need on which they are predicated. It should be noted that article 21 of the Covenant permits restrictions to the right of assembly on the same three grounds.

82. In the present case, the Government has chosen not to invoke any of the permitted restrictions; it has cited a number of criminal acts allegedly committed by Mr. Yorov, without any explanation of the actions that led to those violations. It is quite clear to the Working Group that the basis for the arrest and subsequent detention of Mr. Yorov was in fact his exercise of freedom of expression and freedom of assembly. The Working Group observes that those allegations follow the pattern of harassment to which Mr. Yorov, and others, have been subjected for years, even prior to the events of September 2015.<sup>9</sup>

83. While the freedom of expression and freedom of assembly are not absolute rights, the Human Rights Committee clarified in its general comment No. 34 that, when a State party imposes restrictions on the exercise of freedom of expression, these may not put in

<sup>8</sup> Opinion No. 2/2018.

<sup>9</sup> Ibid.

jeopardy the right itself. Moreover, such restrictions cannot justify the suppression of any advocacy for multiparty democracy, democratic tenets or human rights.

84. Moreover, the Working Group also finds that the right of Mr. Yorov to take part in the conduct of public affairs, pursuant to article 25 of the Covenant, has been violated since his arrest was directly linked to his work as a lawyer and defender of political opponents of the Government. The Working Group recalls that the Human Rights Committee, in its general comment No. 25 (1996) on participation in public affairs and the right to vote, emphasized that citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. That participation is supported by ensuring freedom of expression, assembly and association. Noting the essential link between the rights to freedom of expression, assembly and association, the Committee also emphasizes that the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25. The Working Group therefore also finds the arrest of Mr. Yorov to be the result of his exercise of rights under article 25 of the Covenant.

85. The Working Group therefore concludes that Mr. Yorov was detained because of the exercise of his freedom of expression, freedom of assembly and his right to take part in the conduct of public affairs, falling under category II. In making this finding, the Working Group is mindful of the similarities of the present case with the case that it examined in its opinion 2/2018, and also with the findings of the Committee against Torture in its concluding observations on Tajikistan (CAT/C/TJK/CO/3, paras. 21–22), which specifically mention the case of Mr. Yorov.

### *Category III*

86. Given its finding that the deprivation of liberty of Mr. Yorov is arbitrary under category II, the Working Group emphasizes that no trial should have been held. Nonetheless, the trial was held, and the source has submitted that the detention of Mr. Yorov was arbitrary and falls under category III, given the violation of a number of fair trial guarantees.

87. The Working Group observes that the Government has failed to respond to any of the above specific allegations, except for a general statement, made in its late reply, that numerous lawyers represented Mr. Yorov at various trials. The Working Group cannot accept such a vague response to the specific and very serious allegations made by the source. The Working Group therefore accepts that Mr. Yorov was denied access to a lawyer for the first two months of his detention, with the exception of the pretrial detention hearing on 1 October 2015; that he was unable to communicate freely with his lawyers, and that his lawyers were subjected to various forms of intimidation, leading one of them to seek asylum abroad and resulting into Mr. Yorov's interests being represented in the court by his wife, who is not a lawyer. The Working Group is mindful that Mr. Yorov was charged with very serious offences, with very heavy penalties, and that he was ultimately sentenced to a lengthy prison term. The sentencing of Mr. Yorov in such circumstances is in blatant disregard of the guarantees enshrined in article 14 (3) (b) and (d) of the Covenant.

88. The Working Group also expresses its concern at the allegations of harassment sustained by the lawyers of Mr. Yorov, and stresses that it is the legal and positive duty of the State to protect everyone on its territory or under its jurisdiction against any human rights violation and to provide remedies whenever a violation is perpetrated. The Working Group especially recalls that, according to the Basic Principles and Guidelines, legal counsel should be able to carry out its functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment. In the view of the Working Group, this also constitutes a further violation of article 14 (3) (b) of the Covenant.

89. Furthermore, the Government has not responded to the submission made by the source that neither Mr. Yorov nor his lawyers were notified of the charges for some 10 days. Such a situation cannot be reconciled with article 14 (3) (a) of the Covenant, which requires prompt and detailed notification of charges. The Working Group therefore finds that this provision has been violated.

90. The Working Group must also accept the allegations made by the source that the court denied the requests of Mr. Yorov for sufficient time to familiarize with the case. Article 14 (3) (b) of the Covenant requires that everyone charged with a criminal offence be given adequate time and facilities to prepare a defence. The Working Group notes that this guarantee was not observed in the present case, and that the time given to defence was insufficient to study charges, particularly in such a complex case where the accused faced more than a dozen charges and a lengthy term of imprisonment. The Government has failed to present any reasons why the defence's requests for further time were denied. The Working Group therefore finds a further breach of article 14 (3) (b).<sup>10</sup>

91. The Working Group also notes the failure of the Government to explain the reasons for the confidentiality imposed on Mr. Yorov's case files. The Government only notes that the prosecutor shared the case materials with the defence counsel as stipulated by law. The Working Group cannot accept such a vague reply. As it has already stated, every individual deprived of liberty has the right to have access to material relating to detention or presented to the court by the State in order to preserve the equality of arms.<sup>11</sup> The disclosure of information may, however, be restricted if necessary and proportionate in pursuing a legitimate aim, such as protecting national security or if the State has demonstrated that less restrictive measures would be unable to achieve the same result, such as providing redacted summaries that clearly point to the factual basis for the detention.<sup>12</sup> In the present case, the Government has failed to demonstrate as much; the Working Group therefore finds that Mr. Yorov was denied the right to equality of arms, in further breach of article 14 (3) (b) of the Covenant.

92. Moreover, Mr. Yorov was denied the possibility to examine any witnesses or evidence in his defence. As the Human Rights Committee stated in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, there is a strict obligation to respect the right to have witnesses admitted that are relevant for the defence and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings. In the present case, that right was denied to Mr. Yorov; such a blanket refusal bears the hallmarks of serious denial of equality of arms and is in fact a violation of article 14 (3) (e) of the Covenant.

93. The Government has also failed to address the submissions made by the source that Mr. Yorov's right to be presumed innocent was denied. The Working Group is mindful of the article that was published on the website of the Ministry of the Interior that an "attorney-fraudster" had been detained, alluding to Mr. Yorov; that Mr. Yorov was presented to the court in handcuffs, and that one of his trials was held in the detention facility. In this regard, the Working Group observes that the Human Rights Committee, in its general comment No. 32, also explained that all public authorities have a duty to refrain from prejudging the outcome of a trial, for example, by abstaining from making public statements affirming the guilt of the accused. Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals. The media should avoid news coverage undermining the presumption of innocence.

94. The Working Group notes that, in this particular case, it was the State media that reported on the alleged guilt of Mr. Yorov. It also notes that the Government has failed to provide any explanation of what warranted the need to keep Mr. Yorov handcuffed during his court appearance, and why was it necessary to hold one of his trials within the detention facility. The Working Group therefore concludes that there has been a breach of article 14 (2) of the Covenant.

95. Furthermore, the Working Group observes that the Government has simply argued that the investigation, as well as the court hearing, was conducted openly. Mr. Yorov was, however, subject to three trials; the Working Group cannot accept such a general response,

<sup>10</sup> See *Sawyers and McLean v. Jamaica* (CCPR/C/41/D/226/1987), *Sawyers and McLean v. Jamaica* (CCPR/C/41/D/256/1987) and *Peter Grant v. Jamaica* (CCPR/C/56/D/597/1994).

<sup>11</sup> A/HRC/30/37, principle 12 and guideline 13.

<sup>12</sup> *Ibid.*, guideline 13, paras. 80–81. See also opinion No. 18/2018.

submitted late by the Government, to specific allegations. In its general comment No. 32, the Human Rights Committee further clarified that article 14, paragraph 1 acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons.

96. The Working Group notes that Mr. Yorov's case clearly did not fall into any of the prescribed exceptions to the general obligation of public trials under article 14 (1) of the Covenant, and that the Government had not invoked any of those exceptions to justify the closed trial. The Working Group thus finds a violation of article 14 (1) of the Covenant.

97. The source submits a twofold argument that Mr. Yorov did not receive a trial by an impartial and independent tribunal under article 14 of the Covenant, another allegation only summarily dismissed by the Government in its late reply. The Working Group is unable to accept the blanket submission by the source alleging that "the court system in Tajikistan is not independent and is controlled by the executive branch and, as such, the courts defer to the prosecution" without a specific explanation of how this manifested in Mr. Yorov's trials.

98. The Working Group does, however, accept the allegation made by the source that, following Mr. Yorov's reading of a poem at trial, the judge, the prosecutor and two jury members were treated as victims of insult, provided evidence against Mr. Yorov for use in a future trial and did not recuse themselves from the first trial. In this regard, the Working Group recalls that the Human Rights Committee, in its general comment No. 32, stated that the requirement of competence, independence and impartiality of a tribunal is an absolute right that is not subject to any exception. It further observed that the requirement of impartiality has two aspects: first, judges must not allow their judgment to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other; and second, the tribunal must also appear to a reasonable observer to be impartial. For instance, a trial substantially affected by the participation of a judge who, under domestic statutes, should have been disqualified cannot normally be considered to be impartial.

99. It is clear for the Working Group that those who have been accorded the status of a victim in another case, involving the same defendant, cannot also serve as judges in the first case. The allegations by the source present a clear conflict of interest for the judge, the prosecutor and the two jury members which, therefore, constitutes a breach of article 14 (1) of the Covenant.

100. The Working Group also notes the Government's failure to address the submissions made by the source concerning the appeal trial of Mr. Yorov. The Working Group observes that article 14 (5) of the Covenant enshrines the right of anyone convicted of a crime to have their sentence reviewed by a higher tribunal. The requirements of independence and impartiality of the tribunal, embodied in article 14 (1) of the Covenant, apply also to the appeal process, which cannot be satisfied by a review carried out by an executive. Moreover, article 14, paragraph 5 imposes on States a duty substantially to review conviction and sentence both as to sufficiency of the evidence and of the law,<sup>13</sup> which can only be satisfied by a meaningful review of the whole case. This did not take place in the case of Mr. Yorov. The Working Group therefore concludes there has been a violation of article 14 (5) of the Covenant.

101. The Working Group expresses its serious concern at the allegations that Mr. Yorov was beaten during his interrogation after arrest, and again after he was sentenced in 2017. In the view of the Working Group, the treatment described by the source reveals a prima

<sup>13</sup> *Yuri Bandajevsky v. Belarus* (CCPR/C/86/D/1100/2002), para. 10.13. See also opinions No. 28/2018 and No. 76/2018.

facie breach of the absolute prohibition of ill-treatment and torture, which is a peremptory norm of international law, as well as of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Body of Principles and the Standard Minimum Rules for the Treatment of Prisoners.

102. With regard to the beatings following Mr. Yorov's arrest, in 2015, the Working Group notes that the use of confessions extracted through ill-treatment that is tantamount if not equivalent to torture is a breach of article 14 (3) (g) of the Covenant and may also constitute a violation of the State's obligations under article 15 of the Convention against Torture. Furthermore, the Body of Principles specifically prohibits taking undue advantage of the situation of detention to compel confession or incriminating statements.<sup>14</sup> The Working Group reiterates the concluding observations of the Committee against Torture in relation to Tajikistan, which specifically mention the case of Mr. Yorov (CAT/C/TJK/CO/3, paras. 21–22).

103. The Working Group also notes the summary dismissal by the Government of the allegations made by the source concerning the denial to Mr. Yorov of contact with his family, and the acts of intimidation against them, in violation of principle 19 of the Body of Principles.

104. Lastly, the Working Group also notes that, since his detention, Mr. Yorov has been subjected to solitary confinement on a number of occasions. The Government has provided only a vague reply to this allegation, noting that, owing to a gross breach of internal regulations, Mr. Yorov had been placed in solitary confinement for up to 15 days. The Working Group observes that the Government had the opportunity but failed to explain what those breaches were, or indeed the safeguards that were observed by the detaining authorities to ensure that the solitary confinement of Mr. Yorov would not be arbitrary.

105. The Working Group has held that the imposition of solitary confinement must be accompanied by certain safeguards.<sup>15</sup> It must only be used in exceptional cases, as a last resort, for as short a time as possible, subject to independent review and authorized by a competent authority. These conditions do not appear to have been observed in the present case. Prolonged solitary confinement, in excess of 15 consecutive days, is prohibited under rules 43 (1) (b) and 44 of the Standard Minimum Rules for the Treatment of Prisoners. In the present case, the Working Group finds that Mr. Yorov has been placed in solitary confinement for 15 days repeatedly, without any proper justification. The Working Group therefore concludes that there has been a breach of these provisions.

106. In sum, the Working Group finds that the trials of Mr. Yorov were carried out in total disregard for the guarantees enshrined in article 14 of the Covenant, being of such gravity as to give the deprivation of liberty of Mr. Yorov an arbitrary character, under category III.

#### *Category V*

107. Lastly, the source alleges that Mr. Yorov's arrest and detention also fall under category V, given that the Government authorities detained him in part because of its discriminatory intent against him, as a human rights lawyer and a perceived supporter of his clients' causes. The Government has simply stated that Mr. Yorov's actions amounted to serious crimes, and that this was the only reason for his prosecution, denying any political reasons for his arrest, detention and conviction.

108. The Working Group noted that the present case is strikingly similar to another case that it considered a year ago, with facts, allegations and even the Government's response following the same pattern. Moreover, the Working Group also notes that, in its concluding observations on Tajikistan, the Committee against Torture expressed deep concern at allegations that individuals who complained of torture, members of their families, human rights defenders, including lawyers representing victims of torture, and journalists reporting

<sup>14</sup> Opinions No. 48/2016, No. 3/2017, No. 6/2017 and No. 29/2017.

<sup>15</sup> Opinion No. 83/2018.

on allegations of torture frequently faced reprisals by officials of the State party, referring to the case of Mr. Yorov specifically (CAT/C/TJK/CO/3, paras. 21–22).

109. The Working Group therefore considers that there is a distinct pattern in the attitude of the authorities towards those who belong to opposition parties or represent their interests, as is the case of Mr. Yorov. The Working Group considers that this distinction discriminates on the basis of political or other opinion, in a manner that ignores the equality of human rights, a prohibited ground of discrimination under articles 2 (1) and 26 of the Covenant. The Working Group considers that the facts in the present case disclose a violation under category V.

### **Disposition**

110. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Buzurgmehr Yorov, being in contravention of articles 2, 3, 7, 9, 10, 11, 12, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2 (1), 9 (1), (2), (3) and (4), 14 (1), (2), (3) (b), (d), (e) and (g) and (5), 15, 19, 21, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

111. The Working Group requests the Government of Tajikistan to take the steps necessary to remedy the situation of Mr. Yorov without delay and to bring it into conformity with the relevant international norms, including those set out in the Universal Declaration and the Covenant.

112. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Yorov immediately, and to accord him an enforceable right to compensation and other reparations, in accordance with international law.

113. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Yorov and to take appropriate measures against those responsible for the violation of his rights.

114. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers and to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

115. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

### **Follow-up procedure**

116. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Yorov has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Yorov;
- (c) Whether an investigation has been conducted into the violation of Mr. Yorov's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Tajikistan with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

117. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.



118. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. The Working Group, however, reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

119. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>16</sup>

*[Adopted on 30 April 2019]*

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<sup>16</sup> See Human Rights Council resolution 33/30, paras. 3 and 7.