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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-first session, 6–10 September 2021

Opinion No. 22/2021 concerning Alisher Achildiev (Uzbekistan)

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 42/22.
2. In accordance with its methods of work,¹ on 13 April 2021 the Working Group transmitted to the Government of Uzbekistan a communication concerning Alisher Achildiev. The Government has not replied to the communication. 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).

¹ A/HRC/36/38.

Submissions

Communication from the source

4. Alisher Normuradovich Achildiev is an Uzbek national, born in 1972, who usually resides in Tashkent Region. Prior to his arrest, he was a lieutenant colonel in the military of Uzbekistan and was part of the Ministry of Defence.

5. The source alleges that the arrest and detention of Mr. Achildiev as described below were the result of his tense relationship with a particular official of the National Security Service, which today is known as the State Security Service. At the time of his arrest, Mr. Achildiev was serving in the military as a lieutenant colonel, and his official duties involved ensuring security in military areas. Under the laws relating to military service and official duties, a person is required to show his or her identification before entering the area of a military unit or a military community. As such, Mr. Achildiev would explain to the National Security Service official that he must display his identification upon entering such areas. However, the National Security Service official reportedly did not appreciate such rules being enforced on him. The source adds that the relationship further deteriorated when Mr. Achildiev refused to accede to the National Security Service official's demand that Mr. Achildiev ensure that his wife, who worked in the same military unit as Mr. Achildiev, should never work night shifts.

6. According to the source, the National Security Service official's ill feeling towards Mr. Achildiev manifested itself in a plan to arrest and detain him under false pretences. This plan began with an attack on a military serviceman who worked as a translator for foreign delegates and had come to know Mr. Achildiev, who was his commander. In December 2005, the military serviceman resigned from military service due to family circumstances, and he had no contact with Mr. Achildiev thereafter.

7. The source reports that for reasons unknown, other than to play a role in Mr. Achildiev's arrest and detention, the National Security Service official targeted the military serviceman. On 11 August 2006, masked National Security Service officers forcibly arrested him by using physical violence on him and rendering him unconscious. They then detained him at a National Security Service detention centre in Termez. To justify the arrest and detention, the officers allegedly fabricated evidence, planting drugs, a weapon cartridge and a photograph of a military unit. They then accused the military serviceman of giving State secrets to employees of a foreign embassy and bribing Mr. Achildiev.

8. The source also reports that the National Security Service official ultimately demanded that the military serviceman implicate Mr. Achildiev in a bribery case where Mr. Achildiev purportedly extorted a bribe from the military serviceman in exchange for helping him resign from military service. Mr. Achildiev reportedly played no role in the military serviceman's resignation and could not have, as he had no authority to allow or disallow a resignation. Therefore, the military serviceman initially refused to accede to the National Security Service official's demands. However, in response to his refusal, the National Security Service official allegedly subjected him to intolerable torture using electric wires and assault and threatened to put his family in prison. Eventually, the military serviceman was forced to write out a statement attesting to the "bribe". On 15 August 2006, while still detained, he was taken to a room and given a phone by the National Security Service official, who instructed him to call Mr. Achildiev. The source adds that in order to ensure that the military serviceman acted "in accordance with the instructions", electric wires were plugged into his ears so that if he began to say something to Mr. Achildiev that was not in line with the instructions, the electric current would be switched on to deliver shock and pain. Under such duress, the military serviceman called Mr. Achildiev.

9. According to the source, no discussion of a bribe or exchange of money ever took place during this phone conversation. Reportedly, the military serviceman merely stated generally that he wanted to thank Mr. Achildiev for being a good commander and to give him a gift as a show of his gratitude. The source adds that Mr. Achildiev was surprised to suddenly receive such a call from the military serviceman, as he had had no contact with him since he had left the military. Mr. Achildiev insisted that no gift was necessary, but since the military serviceman kept pushing, he told him just to leave the gift with a family member

who lived elsewhere. After the call ended, Mr. Achildiev's instincts told him that there was something strange about the conversation, so he called that family member to say not to open the door to anyone and not to accept anything from anyone. In fact, neither Mr. Achildiev nor his family member received anything from the military serviceman. The source notes that the military serviceman continued to remain in National Security Service detention following the call.

a. Arrest, detention and investigations

10. The source reports that on 23 August 2006, Mr. Achildiev's office in the military unit of the Ministry of Defence, and his home, were searched pursuant to a warrant authorized by the military prosecutor of the Surxondaryo Region. The grounds for the warrant were reportedly the military serviceman's false and coerced testimonies regarding the alleged bribe, and the search was carried out by the National Security Service official referred to above together with a National Security Service investigator and at least four to five other persons. According to the source, the National Security Service investigator had no authority to conduct the search. Nevertheless, the "evidence" that was seized from the search of Mr. Achildiev's office and home reportedly served as the foundation for his convictions. The search of Mr. Achildiev's office took place at or about 4 p.m., from where, allegedly, a computer containing a file holding secrets relating to the work and operations of the military unit of the Ministry of Defence was seized. Then, at some point between 4 and 5 p.m., Mr. Achildiev's home was searched. From this search, hard copies of two documents containing classified information were allegedly seized.

11. According to the source, only Mr. Achildiev and those conducting the search were in the apartment throughout the search. Following this search, Mr. Achildiev was arrested and taken away by the officers, who did not present an arrest warrant to him at the time of his arrest. It was not until or about 27 August 2006 that an arrest warrant was issued by the Deputy Chairman of the Office of the Military Prosecutor of Uzbekistan and presented to Mr. Achildiev. The source adds that this arrest warrant was also based on the military serviceman's false and coerced testimonies regarding the alleged bribe.

12. Following his arrest on 23 August 2006 and until 22 November 2006, Mr. Achildiev was reportedly held in the basement of a National Security Service detention centre in Tashkent, where the "investigation" took place. Each day, National Security Service officials allegedly tortured and interrogated Mr. Achildiev, as well as threatening him and his family members, to force him to cooperate in incriminating himself and to admit to crimes that he had not committed. The source adds that National Security Service officials threatened to plant drugs on Mr. Achildiev's siblings so that they would be charged and sent to prison, to inflict harm on his family, and threatened to make Mr. Achildiev's children orphans. The source also adds that Mr. Achildiev's isolation from the world and his family during this time heightened the effects of the threats and the torture. The investigators involved in the investigation ensured that Mr. Achildiev had no one on his side throughout it.

13. According to the source, authorities alleged that Mr. Achildiev: (a) was offered a bribe in exchange for securing the resignation of another military service member; and (b) unlawfully possessed classified information with the intent to distribute such information. He was reportedly charged with attempted bribery under articles 25 and 210 of the Criminal Code of Uzbekistan, disclosure of State secrets under article 162, and high treason under article 157.

14. The source reports that four days after his arrest, on 27 August 2006, Mr. Achildiev obtained access to a lawyer for the first time, who was an appointed State defence lawyer. However, the source adds that merely because the lawyer was exercising a lawyer's duties diligently in building a defence for Mr. Achildiev, thereby interfering with the National Security Service officials' agenda of falsely accusing and convicting him, Mr. Achildiev was forced to take on a new lawyer approximately three days later, on 30 August 2006.

15. The source reports that at one point, Mr. Achildiev discovered that the second lawyer was colluding against him with the investigators. Mr. Achildiev had told the lawyer how he could prove his innocence by demonstrating that the hard copies of the two documents containing classified information had, in fact, been planted in his home. Mr. Achildiev

reportedly explained that he could not have had access to either of those two documents, because one of the documents had never been received by the ministry he worked for, and the other document contained markings that were not unique to the ministry he worked for. Instead, the document had marks that appeared to be from a different ministry. The source adds that Mr. Achildiev's proposed legal strategy was to determine which ministry the document came from by gathering different versions of the document from each government ministry, thus being able to identify the ministry that used similar markings to those on the document in question. However, soon after Mr. Achildiev informed the second lawyer about this defence strategy, the original, marked-up hard copy of that document was reportedly replaced with a different copy that was clear of any markings. This "new" document was used at Mr. Achildiev's trial. At some point prior to his trial, Mr. Achildiev replaced the second lawyer with a new counsel. On 22 November 2006, nearly four months after his arrest, Mr. Achildiev – still being held in detention – was finally allowed a visit from his family, though only for 30 minutes.

b. Trial proceedings

16. The source notes that because Mr. Achildiev was a member of the military, he was tried by a military court, and the trial proceedings were thus conducted in secret, by law. However, the source has been able to gather the following limited information.

17. Mr. Achildiev's trial reportedly began on 15 December 2006 and concluded on 8 January 2007. The only individuals present at the trial were the judge as the sole fact-finder, the accused, the lawyers for the accused, the prosecutor, the court reporter, and the testifying witnesses. Mr. Achildiev and the military serviceman were among the accused present at trial. During the trial, Mr. Achildiev's colleagues reportedly testified on his behalf and stated that he could not have possessed the documents that he had been accused of illegally possessing because he did not have the requisite security clearance to even access those documents. The source adds that the military serviceman also testified that he had been tortured and coerced into giving testimony against Mr. Achildiev regarding the bribe and that such testimony was entirely false. However, according to the source, this testimony fell on deaf ears. In addition, the prosecution reportedly presented no evidence regarding who might have given the classified documents to Mr. Achildiev in the first place since he lacked the necessary security clearance, and nor was any investigation conducted to find the source of the "leak".

18. The source reports that on 8 January 2007, the Military Court of the Republic of Uzbekistan sentenced Mr. Achildiev to 20 years of imprisonment based on his conviction for attempted bribery under articles 25 and 210 of the Criminal Code, disclosure of State secrets under article 162, and high treason under article 157. His prison sentence is reportedly set to expire on or about 23 August 2026.

19. The source adds that the main evidence supporting the conviction for attempted bribery was the military serviceman's coerced testimony. The key pieces of evidence supporting the remaining convictions were the three items that constituted the alleged planted evidence found in Mr. Achildiev's office and apartment: the computer containing a file holding secrets relating to the work and operations of the military unit of the Ministry of Defence and the (replaced) hard copies of the two documents containing classified information.

20. According to the source, Mr. Achildiev appealed his convictions to the Court of Cassation through a new lawyer. On or about 26 June 2013, the Court of Cassation held a hearing regarding his appeal without either Mr. Achildiev or his lawyer being present. The Court of Cassation subsequently denied his petition for appeal, without providing any reasons for its decision.

21. Thereafter, Mr. Achildiev retained another lawyer and on 22 November 2019 filed a supervisory appeal of the Court of Cassation's ruling. The source notes that in Uzbekistan, when a supervisory appeal is filed, it is first considered by a judge of the Supreme Court. This judge makes one of two decisions: either to send the appeal to the Judicial Collegium of the Supreme Court for review on the merits, or to reject the appeal in its entirety so that the Judicial Collegium does not have a chance to review it.

22. In the case of Mr. Achildiev, the Supreme Court judge rejected the appeal on 20 April 2020. On 29 September 2020, Mr. Achildiev appealed the judge's decision. The source adds that if this appeal had been granted, then Mr. Achildiev's 22 November 2019 supervisory appeal of the Court of Cassation's ruling would have been sent to the Judicial Collegium for review on the merits. However, on 9 November 2020, the appeal was denied.

c. Conditions of detention and current situation

23. Following his trial, Mr. Achildiev was held in prison colony UYA 64/49 in Karshi from 2007 to 2015. In 2015, Mr. Achildiev was transferred to prison colony No. 64/71 in Jaslyk, which was notoriously known as the "House of Torture" and was subsequently shut down due to international pressure. The source adds that there had been reports of prisoners being tortured in Jaslyk by immersion in boiling water, and use of electric shocks, and of prisoners having their fingernails removed, or being given long stints in solitary confinement. The source also adds that because Jaslyk was in the middle of a desert and far from Tashkent where his family resided, the travelling distance and financial burden that the trip required meant that Mr. Achildiev could rarely see his family. They had not seen him in the three years leading up to his transfer in 2018, and Mr. Achildiev's father saw him for the last time nearly nine years before he passed away in April 2020.

24. On 11 July 2018, Mr. Achildiev was transferred to a facility that is associated with but sits outside of penal colony No. 46 in Zangiota District, and he remains detained there at the time of the source's submissions. Individuals detained at this facility are reportedly subjected to hard labour and work under surveillance. Mr. Achildiev works in a pipeline factory for 12 to 13 hours a day, except Sundays, carrying heavy materials. He is paid around \$55 (600,000 sum) per month. However, he is not always paid on time or in full. Mr. Achildiev and his family have to buy his clothes and shoes, as he is not provided with clothing. As regards meals, he is only provided with two meals per day – lunch and dinner – and the meals are typically the same: some rice, meat, and potatoes.

25. The source reports that in addition to pursuing legal remedies, beginning in 2014, Mr. Achildiev as well as his family members and local lawyers have been writing to a variety of government representatives and organizations in Uzbekistan asking for an appeal of Mr. Achildiev's case and his release. Despite these efforts, the replies received so far have been unresponsive on the merits of his case and/or have avoided addressing the case altogether.

d. Analysis of violations

26. The source submits that the arrest and detention of Mr. Achildiev is arbitrary under categories I and III as established by the Working Group.

i. Category I

27. The source submits that as far as it is aware, the National Security Service officials failed to show any warrant or other order issued by a lawful authority to authorize Mr. Achildiev's arrest at the time of his arrest. It was not until four days after his arrest that a warrant was issued and presented to Mr. Achildiev. But even then, this arrest warrant was reportedly based on the military serviceman's false and coerced testimonies regarding the alleged bribe, and it alleged no facts supporting the offences of disclosure of State secrets and high treason – though the Government had claimed to have "discovered" evidence to support these offences by that point in time, from the search. The source adds that given these circumstances, there was no reason for the Government to have delayed presenting the arrest warrant to Mr. Achildiev, since the Government already had the military serviceman's so-called testimony prior to the date of the search and arrest. The source submits that the failure to adequately provide Mr. Achildiev with an arrest order or warrant and an explanation for his arrest constitutes a category I detention.

28. The source also submits that the National Security Service held Mr. Achildiev incommunicado for approximately 90 days, from 23 August 2006 to 22 November 2006. When National Security Service officials arrested him on 23 August 2006, they did not provide his family with any information on where he would be held or how to contact him. Moreover, he was not allowed any contact with his family until 22 November 2006.

According to the source, such isolation increased the impact of the threats that the National Security Service officials made against Mr. Achildiev's family, as he had no way of warning or protecting them. During this 90-day period, Mr. Achildiev reportedly had no access to judicial review of his detention, and was only allowed legal representation by a counsel who was colluding with the National Security Service against him. The source adds that Mr. Achildiev was thus held incommunicado and that his detention is arbitrary under category I.

29. According to the source, article 9 (3) and (4) of the Covenant provides that an individual arrested or detained on a criminal charge must be afforded the opportunity for a review of the lawfulness of his or her pretrial detention. Likewise, article 225 of the Criminal Procedure Code of Uzbekistan requires a review of the validity of the detention within 24 hours of the detention, while the international standard is 48 hours. The source notes that at the time of Mr. Achildiev's arrest and detention, an inquiry officer or investigator with jurisdiction over the criminal case was responsible for conducting such review. However, the source submits that no such review ever took place or could have taken place in the present case. Despite what the law prescribes, in practice, officials reportedly ignore or avoid these legal requirements. The source adds that although a National Security Service investigator illegally carried out the search, arrest and initial detention on 23 August 2006, he was not officially assigned to the case until on or about 18 September 2006. Furthermore, even if he did review the validity of the detention as the Criminal Procedure Code required him to do, he had no jurisdiction to do so. As a result, Mr. Achildiev was held in pretrial detention for approximately 90 days after his arrest without an independent review of the lawfulness of his detention, and thus his detention is arbitrary under category I.

30. The source further submits that the Government's conviction and detention of Mr. Achildiev is not founded on any reasonable evidence against him. Mr. Achildiev was convicted of attempted bribery, disclosure of State secrets, and high treason. However, according to the source, the Government possessed no evidence that he had engaged in any activity that would reasonably fall under the legal definitions of these crimes. The source adds that the only "evidence" was that fabricated by the National Security Service officials and that the sole basis for the conviction for attempted bribery was the military serviceman's testimony, which he had been tortured into giving. The National Security Service official allegedly left the military serviceman no choice but to make false accusations against Mr. Achildiev, by throwing him into a cell with three prisoners who beat him up and were ready and willing to kill him if he failed to cooperate. In addition, there is no evidence that money was ever exchanged, or that there was an attempted exchange. Any such act was impossible because the military serviceman reportedly continued to be detained following his coerced call to Mr. Achildiev.

31. The source adds that the underlying "evidence" for the convictions for disclosure of State secrets and high treason are unreliable. The computer containing a secret file was reportedly seized during the search of Mr. Achildiev's office in the military unit of the Ministry of Defence. However, this computer had reportedly originally been assigned to a co-worker of Mr. Achildiev, and was suddenly reassigned to Mr. Achildiev on the date of the search. As with the secret file found on the computer, as well as the hard copies of the two documents containing classified information, Mr. Achildiev would not have had the requisite security clearance to access such documents. The source also notes that the prosecution failed to provide a complete theory regarding how Mr. Achildiev would have come into possession of these documents in the first place because, at trial, the prosecution provided no evidence regarding who might have given them to Mr. Achildiev in light of his lack of security clearance. According to the source, this only goes to show that the investigators were less concerned with punishing those responsible for the "leak" and more concerned with targeting Mr. Achildiev. In addition, the original hard copy of one of the two documents was reportedly also replaced prior to trial in order to put a stop to the possibility of Mr. Achildiev proving his innocence. The source submits that the lack of a legitimate evidentiary basis to justify Mr. Achildiev's arrest and detention further supports the conclusion that his detention is arbitrary under category I.

ii. Category III

32. The source submits that Mr. Achildiev's arrest and continued detention post-conviction is arbitrary because it is unjust, inappropriate and unreasonable. As noted above, he was targeted for investigation and arrest merely because the official of the National Security Service did not like him enforcing the laws on military service and official duties where the official was concerned. In other words, Mr. Achildiev was reportedly targeted for doing his job. The source asserts that the pretextual nature of this targeting, and the trial that followed, render Mr. Achildiev's detention unjust and unreasonable. Accordingly, his pretrial detention is unfounded, in violation of article 9 (1) of the Covenant and article 9 of the Universal Declaration of Human Rights.

33. The source also submits that Mr. Achildiev was never brought before a judge throughout his pretrial detention and that there is no evidence that the investigator who was supposed to review the validity of his arrest ever did. The source adds that even if a court had attempted to provide a justification for keeping Mr. Achildiev in detention, the court would not find any legitimate reasons for detention. According to the source, he has no history of violence, and thus is not a threat to society. His home and family are in Uzbekistan, and thus he does not pose a flight risk. In addition, there is no evidence which he might destroy if he were released, especially given that all evidence was fabricated. Accordingly, the source asserts that the pretrial detention of Mr. Achildiev is unfounded, and the denial of his pretrial release is a violation of article 9 (3) of the Covenant and principles 38 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

34. The source further submits that based on its limited knowledge of the trial proceedings, Mr. Achildiev's trial did not meet the standard of fairness required under international law. The Government reportedly failed to give equal weight to the defence evidence or to any prosecution evidence that favoured the defendant's case. In addition, the fact-finder did not consider evidence that the original hard copies of the two documents had been tampered with. Moreover, the trial judge failed to consider the in-court testimony of Mr. Achildiev's colleagues, who testified that he could not have possessed the documents that he was accused of illegally possessing because he did not have the requisite security clearance to access them, or that the testimony regarding the bribe was coerced and false. The source submits that the failure to consider strong evidence in favour of the defence demonstrates a clear bias on the part of the fact-finder in favour of the prosecution. Accordingly, the trial judge's selective consideration of the evidence reportedly demonstrates a lack of equality of arms, the absence of a presumption of innocence, and unfairness in proceedings. The source adds that the conviction of Mr. Achildiev amounts to a violation of his right to the presumption of innocence, and that the Government for these reasons violated article 14 (1), (2) and (3) (d) of the Covenant and article 11 (1) of the Universal Declaration of Human Rights.

35. The source also submits that from the outset, the Government's prosecution of Mr. Achildiev was based on coerced testimony. As reiterated above, the military serviceman's false and coerced testimony regarding the alleged bribe served as the basis for the search that led to Mr. Achildiev's alleged arbitrary arrest and detention. The National Security Service officials allegedly obtained such testimony by brutally torturing the military serviceman, and at trial, this same testimony was used to convict Mr. Achildiev of attempted bribery. According to the source, the Government has thus failed to comply with the prohibition under international law against the use of testimony obtained in violation of article 7 of the Covenant.

36. Furthermore, the source asserts that the Government violated Mr. Achildiev's rights under both article 14 (3) (b) and article 14 (3) (d) of the Covenant. Firstly, article 14 (3) (d) was reportedly violated when the Government pressured Mr. Achildiev to replace his first lawyer, because that lawyer was unwilling to go along with the investigators. Secondly, the Government violated article 14 (3) (b) when it replaced the first lawyer with a second lawyer, and essentially held Mr. Achildiev incommunicado without access to a lawyer of his own choosing. This violation began on 30 August 2006 and lasted until Mr. Achildiev was able to finally replace the second lawyer with a lawyer of his choice. The source adds that throughout the period when the second lawyer "represented" Mr. Achildiev, that lawyer acted more as a lawyer for the Government, as evidenced by the collusion that took place which eradicated Mr. Achildiev's chance at any sort of defence. Therefore, Mr. Achildiev was

effectively without counsel until he brought in the third lawyer – at which point it was too late. Accordingly, the source submits that these violations stood in the way of Mr. Achildiev adequately defending himself against the charges and, ultimately, avoiding the situation he is in now.

Response from the Government

37. On 13 April 2021, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 14 June 2021, detailed information about the current situation of Mr. Achildiev and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Uzbekistan under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Uzbekistan to ensure Mr. Achildiev's physical and mental integrity.

38. The Working Group regrets that it has not received any reply from the Government, and nor did the Government seek an extension in accordance with paragraph 16 of the Working Group's methods of work.

Discussion

39. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

40. In determining whether Mr. Achildiev's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal 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.² In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

41. The source has argued that the detention of Mr. Achildiev is arbitrary and falls under categories I and III. The Working Group will proceed to examine the submissions in turn.

Category I

42. The source has submitted, and the Government has chosen not to contest, that Mr. Achildiev was arrested following a search of his apartment carried out pursuant to a warrant, on 23 August 2006. The source has alleged that this arrest falls under category I, as the search was carried out by the authorities which were not duly authorized to do so, on the basis of a warrant that was based on, inter alia, a coerced confession, and that Mr. Achildiev was thus arrested without a warrant.

43. The Working Group reiterates that it has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the judiciary's or other authorities' application of domestic law.³ It is outside the mandate of the Working Group to examine whether the search was carried out by the officials duly authorized to do so under national law. It is also not for the Working Group to assess whether there was a sufficient evidentiary basis for issuing the search warrant in the first place, as that would place the Working Group in a position akin to that of a supranational body by requiring it to reassess the sufficiency of the evidence. In addition, the Working Group is able to accept that an arrest of an individual may be prompted by the discovery of evidence during a duly authorized search and that such arrest may not necessarily require an arrest warrant as long as such a warrant is promptly issued thereafter and other safeguards against arbitrary detention encapsulated in article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant are observed.

44. In the present case, however, while Mr. Achildiev appears to have been arrested following discoveries made during the search on 23 August 2006, an arrest warrant was not

² A/HRC/19/57, para. 68.

³ See, for example, opinions No. 58/2019, No. 49/2019, No. 16/2017, No. 15/2017 and No. 40/2005.

issued until some four days later, on 27 August 2006. The Working Group is mindful of the lack of an explanation by the Government as to the reasons for such a delay in formalizing the arrest of Mr. Achildiev.

45. As the Working Group has previously stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to 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.⁴ Indeed, international law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation, under articles 3 and 9, respectively, of the Universal Declaration of Human Rights, and article 9 of the Covenant, as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁵ Any form of detention or imprisonment should be ordered by, or be subjected to the effective control of, a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the above-mentioned Body of Principles. The Working Group considers that Mr. Achildiev was arrested without a properly and promptly constituted arrest warrant, in violation of his rights under article 9 (1) of the Covenant.

46. Moreover, it is not contested that the arrest warrant was issued by the prosecutorial authority, and that Mr. Achildiev in fact did not appear before a judicial authority until December 2006 when his trial commenced.

47. The Working Group recalls that legal safeguards against arbitrary deprivation of liberty, as encapsulated in article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant, require anyone arrested or detained on a criminal charge to be brought promptly before a judge to exercise judicial power. As the Working Group has reiterated in its jurisprudence, and the Human Rights Committee has specified, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee “promptly” before a judge or other officer authorized by law following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances.⁶ The Working Group finds that Mr. Achildiev was not brought promptly before a judicial authority, in blatant violation of his rights under article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant. As a result, the authorities failed to establish the legal basis for his detention in accordance with the provisions of the Covenant.

48. Furthermore, the Working Group recalls that according to the United Nations Basic 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.⁷ This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty,⁸ and applies “to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures ...”.⁹ 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.”¹⁰ This was denied to Mr. Achildiev.

⁴ See, for example, opinions No. 79/2018, No. 35/2018, No. 93/2017, No. 75/2017, No. 66/2017 and No. 46/2017.

⁵ Opinions No. 30/2018, para. 39; No. 3/2018, para. 43; and No. 88/2017, para. 27.

⁶ See, for example, opinions No. 66/2020, No. 60/2020, No. 49/2019, No. 30/2017 and No. 6/2017. See also Human Rights Committee, general comment No. 35 (2014), para. 33.

⁷ A/HRC/30/37, paras. 2–3.

⁸ *Ibid.*, annex, para. 11.

⁹ *Ibid.*, annex, para. 47 (a).

¹⁰ *Ibid.*, annex, para. 47 (b).

49. The Working Group notes that in order to ensure an effective exercise of this right, the detained persons should have access, from the moment of arrest, to legal assistance of their own choosing, as stipulated in the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings Before a Court.¹¹ This was also denied to Mr. Achildiev, as he was not allowed legal assistance until 27 August 2006. This right was then interfered with by the authorities, so that Mr. Achildiev had to dismiss his lawyer on 30 August 2006 and was forced to appoint a new lawyer who did not fulfil his duties properly. All this seriously and adversely impacted Mr. Achildiev's ability to effectively exercise the right to challenge the legality of his detention, denying him his rights under article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant.¹²

50. Noting all the above, the Working Group concludes that since the detention of Mr. Achildiev took place without a duly and promptly issued arrest warrant, and since he was not promptly presented before a judicial authority and was prevented from challenging the legality of his detention, his arrest and detention is arbitrary and falls under category I of the categories established by the Working Group.

51. The Working Group notes the allegations of the source that Mr. Achildiev was held incommunicado from 23 August 2006 – the day of his arrest – until 22 November 2006. However, as the source itself notes, while Mr. Achildiev was indeed denied family contact during this time, he was still able to meet with his lawyer. He was appointed a State lawyer on 27 August 2006 and was forced to dismiss that lawyer only three days later. Mr. Achildiev was then forced to appoint a new lawyer, and the source provides accounts of their interactions (see, for example, para. 15 above). On that basis, the Working Group is unable to conclude that Mr. Achildiev was held incommunicado. However, he was denied family contact from the moment of his arrest until 22 November 2006, which is a violation of principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Category III

52. The source has argued, and the Government has chosen not to contest, that the detention of Mr. Achildiev is arbitrary under category III, as he was sentenced to 20 years' imprisonment following a trial that fell short of numerous fair trial guarantees. Thus, Mr. Achildiev's conviction was based on testimony coerced from another individual who testified during the proceedings with regard to this coercion, he was convicted on the basis of planted evidence and he was denied the right to legal representation of his choice.

53. The Working Group is disturbed to note that the essence of the case against Mr. Achildiev rests on a coerced confession of another person who was forced to implicate Mr. Achildiev. It is also alleged that once arrested on 23 August 2006, Mr. Achildiev was held in a basement and was himself ill-treated and tortured repeatedly to force him to confess to the alleged crimes.

54. The Working Group recalls that its mandate extends to alleged ill-treatment and torture that negatively affects the ability of detainees to prepare their defence as well as their chances of a fair trial.¹³ As the Working Group has stated before, confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings,¹⁴ however this is exactly what happened to Mr. Achildiev. Furthermore, the admission into evidence of a statement allegedly obtained through torture or ill-treatment renders the entire proceedings unfair, regardless of whether other evidence was available to support the

¹¹ A/HRC/30/37; and annex, principle 9, paras 12–15.

¹² Opinions No. 61/2020, para. 70; and No. 40/2020, para. 29.

¹³ See, for example, opinions No. 47/2017, para. 28; and No. 29/2017, para. 63. See also E/CN.4/2004/3/Add.3, para. 33.

¹⁴ A/HRC/45/16, para. 53. See also opinions No. 73/2019, para. 91; No. 59/2019, para. 70; No. 14/2019, para. 71; and No. 1/2014, para. 22; as well as E/CN.4/2003/68, para. 26 (e).

verdict.¹⁵ The burden is on the Government to prove that statements were given freely,¹⁶ but in this case it has not done so.

55. In the view of the Working Group, the treatment of Mr. Achildiev described by the source reveals a prima facie breach of the absolute prohibition of torture and ill-treatment – a peremptory norm of international law – as well as of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and of rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Furthermore, the above-mentioned Body of Principles specifically prohibits taking undue advantage of the situation of detention to compel confession or incriminating statements (see principle 21).¹⁷ Moreover, not only was Mr. Achildiev himself coerced into making a confession, another person was equally coerced, which also violated Mr. Achildiev's rights.¹⁸

56. The Working Group also notes that the use of a confession extracted through ill-treatment that is tantamount if not equivalent to torture may also constitute a violation by Uzbekistan of its international obligations under articles 12, 13 and 15 of the Convention against Torture. The Working Group will refer the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

57. Moreover, Mr. Achildiev also has the right to be presumed innocent under article 14 (2) of the Covenant and the right not to be compelled to confess guilt under article 14 (3) (g) of the Covenant, which were violated in the present case.

58. Furthermore, the Working Group is disturbed that the whole case against Mr. Achildiev appears to be based on confessions forced out of various individuals, including Mr. Achildiev. It is even more disturbed at the unchallenged allegations that the court was made aware of these forced confessions, as well as of the allegations that the evidence had been tampered with and planted in Mr. Achildiev's apartment, but took no action. The Working Group therefore also finds a breach of article 14 (1) of the Covenant, as the failure of the court to halt the proceedings when allegations of ill-treatment were made means that the court failed to act in a fair and impartial manner.

59. Moreover, the source has alleged, and the Government has not contested, the selectivity of the court in considering the evidence presented to it, as the judge did not act impartially and showed bias against exculpatory evidence (see, for example, para. 34 above). In these circumstances, the Working Group finds that the court violated the principle of equality of arms, as well as Mr. Achildiev's rights under article 14 (1) and (2) of the Covenant. In addition, the duty of the prosecutor to act with respect and protect human dignity and uphold human rights, thereby contributing to ensuring due process and the smooth functioning of the criminal justice system,¹⁹ was also violated in the present case. The Working Group refers the case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

60. The source has further alleged, and the Government has chosen not to contest, that Mr. Achildiev was denied the right to legal representation of his choice, in violation of article 14 (3) (b) of the Covenant.

61. The Working Group notes that Mr. Achildiev was initially appointed a State lawyer who, according to the source, acted diligently in challenging his detention, and that this caused Mr. Achildiev to be pressured by the authorities into letting that lawyer go and appointing a different lawyer. The Working Group considers such interference with Mr. Achildiev's right to legal assistance entirely unacceptable and in fact a violation of article 14 (3) (b) of the Covenant. It is also a violation of principle 9 of the United Nations Basic

¹⁵ Opinions No. 54/2020; No. 73/2019, para. 91; No. 59/2019, para. 70; No. 32/2019, para. 43; No. 52/2018, para. 79 (i); No. 34/2015, para. 28; and No. 43/2012, para. 51.

¹⁶ Opinion No. 86/2020; see also Human Rights Committee, general comment No. 32 (2007), para. 41.

¹⁷ See also opinions No. 2/2018; and No. 48/2016, para. 52.

¹⁸ Opinions No. 32/2019 and No. 46/2017.

¹⁹ Guidelines on the Role of Prosecutors, guideline 12.

Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.

62. Thereafter, Mr. Achildiev was forced to appoint a new lawyer, who was not discharging his duties properly and in fact was discovered to be colluding with the authorities against Mr. Achildiev. The Working Group considers that the Government thus further violated Mr. Achildiev's rights under article 14 (3) (b) of the Covenant. The Working Group is also of the view that the conduct of this lawyer was in breach of the Basic Principles on the Role of Lawyers, and of principle 15 in particular, and once again refers the case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

63. In addition, the Working Group notes the uncontested allegations of fair trial violations during the appeals process, which was not only significantly delayed without a reason, but also was carried out in absentia, and that Mr. Achildiev's petition for appeal was denied without any reasons being provided. In these circumstances, the Working Group finds a breach of article 14 (5) of the Covenant.

64. The Working Group places on record its disturbance at the allegations presented in the present case. Mr. Achildiev has been sentenced to 20 years' imprisonment on entirely fabricated allegations, with an incredible collusion by military and justice authorities who, as established in the present opinion, have acted entirely outside the international legal framework and in total disregard for Mr. Achildiev's rights arising from the legal obligations clearly binding upon Uzbekistan. At the time of the source's submission, Mr. Achildiev had been held in detention for over 15 years. Noting the very serious violations of Mr. Achildiev's fair trial rights in the present case, the Working Group considers that these violations are of such gravity as to give his detention an arbitrary character, falling under category III.

65. Finally, the Working Group notes that for some three years, between 2015 and 2018, Mr. Achildiev was held in a remote detention facility, Jaslyk, the remoteness of which was such that his family was only able to visit him very infrequently. This is a violation of the Nelson Mandela Rules, and of rules 43, 58 and 59 in particular,²⁰ and, noting the arbitrary nature of his detention as established in the present opinion, also of his rights under article 10 of the Covenant.

Disposition

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

The deprivation of liberty of Alisher Achildiev, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9, 10 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

67. The Working Group requests the Government of Uzbekistan to take the steps necessary to remedy the situation of Mr. Achildiev without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

68. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Achildiev immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Mr. Achildiev.

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

70. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to: (a) the Special Rapporteur on torture and other cruel, inhuman or

²⁰ See also opinion No. 5/2021.

degrading treatment or punishment; and (b) the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

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

Follow-up procedure

72. 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. Achildiev has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Achildiev;
- (c) Whether an investigation has been conducted into the violation of Mr. Achildiev'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 Uzbekistan with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

73. 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.

74. 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. However, the Working Group 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.

75. 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.²¹

[Adopted on 6 September 2021]

²¹ Human Rights Council resolution 42/22, paras. 3 and 7.