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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021

Opinion No. 48/2021 concerning Sharofiddin Gadoev (Russian Federation and 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 42/22.

2. In accordance with its methods of work,¹ on 19 March 2021, the Working Group transmitted to the Governments of the Russian Federation and Tajikistan a communication concerning Sharofiddin Gadoev. The Government of the Russian Federation replied to the communication on 17 May 2021, and the Government of Tajikistan submitted a late response. Both States are parties 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. Sharofiddin Gadoev is a citizen of Tajikistan, born in 1985. Mr. Gadoev is a political opposition activist and leader of the People's Movement for Reform and Development in Tajikistan. He usually resides in exile in the Netherlands.

a. Context

5. According to the source, Mr. Gadoev served as deputy head of Group 24, an opposition movement formed in 2012 by Tajik anti-corruption activists seeking free and fair elections, respect for the rule of law and recognition for victims of violent suppression by Tajik security services. Two years after its formation, the Government of Tajikistan outlawed the movement, referring to it as an "extremist" group. Group 24 members have reportedly been subsequently threatened, attacked, arrested and arbitrarily detained by Tajik authorities. In March 2015, the head of Group 24 was allegedly murdered in Istanbul by the Tajik intelligence services.

6. The source adds that Mr. Gadoev paid a high price for his involvement with Group 24. Faced with threats of imprisonment and death, he reportedly fled Tajikistan to continue his activism in exile in the Netherlands. In 2018, Mr. Gadoev, along with other exiled activists, founded the People's Movement for Reform and Development in Tajikistan, with the aim of mobilizing Tajik citizens in the lead-up to the elections held in Tajikistan in 2020. To advance the Movement's objectives, after being contacted by the Russian intelligence services to discuss his work, Mr. Gadoev arranged to meet with high-level government officials in Moscow, where almost 2 million Tajiks live and work. Mr. Gadoev was reportedly promised meetings with individuals such as the Secretary of the Security Council of the Russian Federation.

b. Arrest and detention

7. The source reports that, on 13 February 2019, Mr. Gadoev left for the Russian Federation. In the evening on 14 February 2019, in Moscow, he was met by two individuals from the Security Council of the Russian Federation, who said that they would take him to a meeting with an authority in the Presidential Administration, but instead they allegedly abducted Mr. Gadoev in a premeditated joint operation by the Russian and Tajik intelligence services.

8. According to the source, members from the Ministry of Internal Affairs and Federal Security Service of the Russian Federation stopped Mr. Gadoev's car in a parking lot, handcuffed him, placed a plastic bag over his head, sealed the bag over his head with tape and forced him into another vehicle without any arrest warrant or reasoning provided. The source adds that Mr. Gadoev was beaten by members of the Ministry of Internal Affairs and the Security Service, who confiscated his personal documents and belongings, including his Dutch residence permit and mobile phone.

9. With his personal belongings confiscated, Mr. Gadoev was reportedly driven to an airport in Moscow where, bypassing passport control, he was placed on a commercial flight of Somon Air to Dushanbe. For the duration of the flight, Somon Air personnel reportedly joined Tajik intelligence agents in beating Mr. Gadoev, who was kept bent at the waist for the duration of the flight; passengers sat behind them in economy class while the abuse continued. According to the source, Somon Air is owned by the chief of Tajikistan's largest commercial bank, who is the brother-in-law of the President of Tajikistan.

10. The source notes that, upon landing in Dushanbe, Mr. Gadoev was taken to the basement of a building run by the Ministry of Internal Affairs of Tajikistan, where he was reportedly detained outside the criminal justice system, against the norms of international law, and without a warrant, as required by domestic and international law.

11. The source adds that, due to the dangerous nature of his work, approximately one week before his trip, Mr. Gadoev had recorded a video stating: "If you see this video, it means [that] I have been murdered, kidnapped or that I have gone missing ... If I suddenly turn up

[...] declaring that I am in Tajikistan and that I have returned of my own free will, you must not believe this.”

12. The source reports that, on 15 February 2019, the day after Mr. Gadoev’s abduction, the Ministry of Internal Affairs of Tajikistan publicly announced that he had voluntarily returned to Tajikistan. Under threat from an operations group commanded by generals of the National Security Council, Mr. Gadoev and two of his relatives were allegedly forced to appear in staged videos, stating that he had returned to Tajikistan of his own accord. The source adds that that was not the first example of the Government’s campaign of open persecution against Mr. Gadoev’s relatives. On 13 June 2016, Mr. Gadoev’s father died, allegedly as a result of physical torture at the hands of Tajik law enforcement interrogators. Subsequently, an elderly relative of Mr. Gadoev became seriously ill, while living in a constant state of fear and pressure, and his family members’ health, families and property have come under threat by the Government.

13. The source alleges that Mr. Gadoev was continuously beaten and denied access to legal representation and due process. He also endured severe psychological torment, given that he was provided three options as an ultimatum: to be tortured and killed; to be imprisoned; or to cooperate with the officials and remain under their control.

14. The source reports that, on 16 February 2019, the head of the State Committee for National Security of Tajikistan told Mr. Gadoev that his future work would be financed if he cooperated with Tajik officials by condemning the activists of opposition groups globally. He outlined a proposal by which 17 global activists would be forcibly returned to Tajikistan to be inducted into a new group, led by Mr. Gadoev but controlled by the Government of Tajikistan. Furthermore, five women were allegedly to be used as sexual pawns through which to seduce the activists. Mr. Gadoev was reportedly also told that he must support the policies of the President of Tajikistan and his son, who would partake in the presidential election in 2020.

15. According to the source, during his entire detention, Mr. Gadoev was never once taken to a police station for formal documentation or arrest proceedings. He was held without any formal charges and without due process for over two weeks. It was reportedly only after persistent intervention by the global human rights community, including European diplomatic corps, that Mr. Gadoev was released on 2 March 2019.

16. The source alleges that the kidnapping operation and Mr. Gadoev’s detention were both approved at the highest levels in the Russian Federation and Tajikistan and served as direct retaliation for Mr. Gadoev’s work in protesting against the Government of Tajikistan and revealing its rampant corruption. The source adds that such incidents are an all too common experience for activists in Tajikistan, who are plagued by authoritarian rule and battle corruption at every level of the Government.

17. The source adds that, while Mr. Gadoev is no longer in detention, his life reportedly remains in peril, and he cannot freely visit his remaining family members who are in Tajikistan, given that he is continuously experiencing pressure from the Government. In addition, Mr. Gadoev has received word from various sources, on several occasions, that Tajik authorities are allegedly gathering information on his movements to prepare an assassination plot against him abroad, along with at least two other individuals, a blogger and journalist and an opposition leader.

c. Analysis of violations

18. The source asserts that the detention of Mr. Gadoev constituted an arbitrary deprivation of his liberty falling within categories I, II and III and V of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

i. Category I

19. The source submits that the Government of Tajikistan did not invoke any legal basis for Mr. Gadoev’s arrest and detention. It is alleged that Tajik authorities arbitrarily kidnapped and arrested him and failed to promptly inform him of the reasons for doing so, either verbally

or in writing, or of any charges against him, as prescribed by article 19 of the Constitution of Tajikistan. In fact, no charges were ever brought against Mr. Gadoev.

20. According to the source, the circumstances in the present case clearly violate international and domestic law, namely, article 9 of the Universal Declaration of Human Rights, articles 9 (2) and 14 (3) of the International Covenant on Civil and Political Rights and article 19 of the Constitution of Tajikistan, thereby rendering Mr. Gadoev's arrest legally baseless and his detention arbitrary under category I.

ii. Category II

21. The source submits that Mr. Gadoev was transnationally arrested and kidnapped based on his status as a political opposition activist and his membership in Group 24 and the People's Movement for Reform and Development in Tajikistan, political groups that do not have any terrorist characteristics or affiliations. The source adds that the denunciation by Tajikistan of those groups has been widely acknowledged by the international community as having been motivated by political, rather than true national security, reasons. Under international free expression principles, such a designation does not fall within the recognized exceptions to freedom of expression and association and cannot be considered a legal basis for detaining a person.

22. The source therefore asserts that, by depriving Mr. Gadoev of his freedom of expression through his work with political opposition groups, the Government of Tajikistan has violated article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant, as well as articles 28 and 30 of the Constitution of Tajikistan, giving Mr. Gadoev's deprivation of liberty an arbitrary character under category II.

iii. Category III

23. The source submits that the Government of Tajikistan has violated several norms of international human rights law relating to fair trial guarantees in relation to Mr. Gadoev, including the principle of the presumption of innocence enshrined in article 11 of the Universal Declaration of Human Rights, article 14 (2) of the Covenant and article 20 of the Constitution of Tajikistan. The source adds that torture is prohibited by article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant and article 18 of the Constitution.

24. The source specifies that the arbitrary character of Mr. Gadoev's deprivation of liberty by the Government of Tajikistan is established by the nature of his transnational kidnapping and arrest, wherein he was not presented with an arrest warrant or charges against him, the denial of his right to a prompt legal defence and the non-observance of his right to an effective remedy and the presumption of innocence, under articles 8 and 11 of the Universal Declaration of Human Rights and article 14 of the Covenant.

25. The source notes that articles 9 (2) and 14 (3) (a) of the Covenant enshrine the right of a detainee to be informed of the charges against him or her. The source refers to the Human Rights Committee's general comment No. 35 (2014) on liberty and security of person, in which the Committee sets out two additional requirements for the benefit of a person being detained, namely, that the detainee must be informed, at the time of arrest, of the reasons for the arrest and that the detainee must be promptly informed of any charges against him or her. The source notes that principles 10 to 13 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment state that those arrested must be informed of the reason for arrest.

26. The source submits that Mr. Gadoev was not informed at the time of arrest of the reasons for his arrest, nor was he ever informed of any charges against him that would justify his arrest.

27. The source submits that Mr. Gadoev was never, either after his alleged kidnapping and arrest in the Russian Federation or during his detention in Tajikistan, provided with legal assistance, nor was he informed of that right as mandated by article 14 (3) (d) of the Covenant, principle 11 of the Body of Principles and principle 3 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

28. According to the source, article 11 of the Universal Declaration of Human Rights and article 14 of the Covenant enshrine the right to a fair trial and the right to be presumed innocent until proven guilty, whereas article 8 of the Universal Declaration of Human Rights provides for an individual's right to an effective remedy. In addition, article 20 of the Constitution of Tajikistan states that no one is considered guilty of committing a crime until the entry of the court verdict into legal force.

29. The source submits that, despite the established international law outlining those requirements, the observance of norms relating to trials in Tajikistan repeatedly fail to meet international fair trial standards. Tajikistan is allegedly not a democratic country in which the fundamental rights of citizens are respected, or where there is independence and separation of powers, but it is rather ruled by a fully authoritarian regime. The source notes that the Government has increasingly cracked down on civil society and dissenters, thereby violating the constitutionally recognized freedom of expression. The source adds that the Government has denied detained individuals the rights surrounding a fair trial and immediate access to a defence attorney.

30. The source submits that Mr. Gadoev's kidnapping and detention were carried out within that context of full authoritarianism, given that the State of Tajikistan failed to observe the minimum international standards of due process guaranteed by the Universal Declaration of Human Rights. Tajikistan was therefore required to provide Mr. Gadoev a fair hearing before an impartial and independent judicial body. The source notes that the right to be tried by an impartial and independent tribunal is absolute and cannot afford any exceptions, and the requirement of independence includes the independence of the judiciary from political interference by the executive branch or the legislature.²

31. According to the source, Mr. Gadoev was treated as guilty prior to being provided an opportunity for a hearing, and before an investigating judge had heard him as required by law. The very act of detaining him in such a way, without access to legal due process of any kind, did not accord him his right to the presumption of innocence. He was treated as though already found guilty of the most heinous crime, when he was allegedly subjected to physical abuse and psychological torture; from the moment of his kidnapping, members of the Ministry of Internal Affairs and the Security Service beat Mr. Gadoev, Somon Air personnel joined Tajik intelligence agents in beating him during his forcible transfer to Tajikistan, and he was continuously beaten throughout the duration of his detention in Tajikistan. The source adds that Mr. Gadoev also endured severe psychological torment, including through the ultimatum with three options of torture and death, imprisonment, or complete control by government officials, with no opportunity for relief. The source adds that the Government of Tajikistan has failed to uncover and produce any clear and sufficient evidence against Mr. Gadoev to support his transnational arrest or his detention in Tajikistan.

32. The source submits that the sole reason for detaining Mr. Gadoev was to punish him for his opinions and support for opposition movements, in violation of his freedom of expression, guaranteed under both domestic and international law. Due to the aforementioned reasons, Mr. Gadoev's wrongful detention lacked any basis and violated international legal principles, thereby rendering his detention arbitrary under category III.

iv. Category V

33. The source notes that equality before the law and non-discrimination are vital principles of international human rights law and adds that discrimination based on divergent political opinions is a violation of both international law and the domestic law of Tajikistan.

34. The source submits that, in the present case, Mr. Gadoev made public his political opinions that contested the alleged corrupt and authoritarian Government of the President of Tajikistan. Mr. Gadoev used peaceful means of sharing his opinions and first-hand accounts, in order to facilitate a campaign of awareness among the Tajik people. He was specifically targeted by the Government of Tajikistan, because he held and shared political opinions that those in power perceived as a threat. The source adds that Mr. Gadoev's illegal kidnapping

² Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 19.

and detention are representative of forms of discrimination based on his political opinions and his status as a human rights and political opposition activist.

35. The source therefore submits that the Government of Tajikistan violated article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant, as well as articles 17 and 30 of the Constitution of Tajikistan, giving Mr. Gadoev's deprivation of liberty an arbitrary character under category V.

Response from the Government

36. On 19 March 2021, the Working Group transmitted the allegations from the source to the Governments of the Russian Federation and Tajikistan under its regular communications procedure.

37. The Working Group requested the Government of the Russian Federation to provide, by 18 May 2021, detailed information about the arrest of Mr. Gadoev on 14 February 2019 and to clarify the legal provisions justifying Mr. Gadoev's arrest and subsequent transfer to Tajikistan, as well as the compatibility thereof with the obligations of the Russian Federation under international human rights law, in particular with regard to the treaties ratified by the State.

38. The Working Group requested the Government of Tajikistan to provide, by 18 May 2021, detailed information about the circumstances surrounding the detention of Mr. Gadoev and to clarify the legal provisions justifying his deprivation of liberty, as well as the compatibility thereof with the obligations of Tajikistan under international human rights law, in particular with regard to the treaties ratified by the State.

39. The Government of Tajikistan submitted its reply on 1 June 2021. The reply was late, and the Working Group notes that the Government did not request an extension of the time limit for its reply, as provided for in paragraph 16 of the Working Group's methods of work. Therefore, the Working Group cannot accept the reply as if it had been submitted within the time limit.

40. The Government of the Russian Federation submitted its reply on 17 May 2021. It explains that, after conducting an internal audit through the database of the Ministry of the Interior of the Russian Federation, it established that Mr. Gadoev was on an international wanted list and that an arrest warrant by the authorities in Tajikistan was issued against him for a number of alleged offences. He was also wanted by the authorities in Kyrgyzstan.

41. However, the Government explains that, while there are records of Mr. Gadoev having been in the territory of the Russian Federation in 2010, as well as in the period 2012–2013, there are no further records of him being present in the territory of the State since that time. More specifically, there is no record of him crossing the border of the Russian Federation since then, and no aeroplane tickets with his name were issued for a flight to Dushanbe during the period of interest to the Working Group. The Government also notes that there were no extradition requests in respect of Mr. Gadoev and that there have therefore been no decisions taken concerning his extradition or deportation. The Government adds that no complaints have been received from Mr. Gadoev or his legal representatives concerning his alleged abduction or threats of forceful removal from the Russian Federation. The Government respectfully submits that the allegations concerning the treatment of Mr. Gadoev in Tajikistan fall outside the jurisdiction of the Russian Federation.

Additional comments from the source

42. The reply of the Government of the Russian Federation was transmitted to the source on 20 May 2021, and the reply of the Government of Tajikistan was transmitted to the source on 3 June 2021. In a response dated 16 June 2021, the source reiterated that Mr. Gadoev had travelled to Moscow from 28 to 29 November 2018, a trip that was related to his subsequent trip to Moscow on 13 February 2019. The source confirms that Mr. Gadoev was subsequently arrested in Moscow on 14 February 2019 and forcibly transferred to Tajikistan. While reiterating the points made in the initial submissions, in relation to the replies of both the Russian Federation and Tajikistan, the source maintains that the detention of Mr. Gadoev was arbitrary and in violation of international law under categories I, II, III and V.

Additional comments from the Government of the Russian Federation

43. In a letter dated 7 September 2021, as an exceptional measure, the Working Group asked the Government of the Russian Federation for further clarifications, explaining that it had transmitted a similar letter to the Government of Tajikistan in relation to the present case. The Working Group informed the Government that, in its response, the Government of Tajikistan had noted, inter alia, that Mr. Gadoev arrived by plane in Dushanbe from the Russian Federation in February 2019. The Working Group explained that, in accordance with paragraph 15 of the Working Group's methods of work, the response from the Government of the Russian Federation had been sent to the source for further comments. In those comments, the source reiterated that Mr. Gadoev had travelled to Moscow from 28 to 29 November 2018, a trip that was related to his subsequent trip to Moscow on 13 February 2019. The Working Group requested the Government of the Russian Federation to submit any additional information on those submissions by 8 November 2021.

44. On 17 September 2021, the Government of the Russian Federation submitted further comments reiterating its initial reply, namely, that the register of foreign nationals of the Ministry of the Interior noted the presence of Mr. Gadoev in the Russian Federation only in 2010 and during the period 2012–2013. According to the Government, there is no further information on the register of Mr. Gadoev having subsequently crossed the border of the Russian Federation. The Government argues that its internal systems have no record of aeroplane tickets having been purchased in the name of Mr. Gadoev for the period of interest to the Working Group.

Discussion

45. Taking into account that the allegations submitted by the source concern two Governments, the Working Group will examine allegations in relation to each of them in turn.

46. Before moving to such consideration, as a preliminary issue, the Working Group wishes to address the fact that Mr. Gadoev is no longer deprived of his liberty and has in fact left Tajikistan. Notwithstanding that fact, the Working Group notes that, in accordance with paragraph 17 (a) of its methods of work, it reserves the right to render an opinion as to whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. In the present case, the Working Group is of the view that the allegations made by the source are extremely serious and therefore will proceed to deliver its opinion thereon.

a. Allegations concerning the Russian Federation

47. The Working Group thanks the source and the Government of the Russian Federation for their timely submissions.

48. In determining whether the deprivation of liberty of Mr. Gadoev was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of the international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.³

49. The Working Group takes note of the diametrically opposing submissions that it has received from the source and the Government. The source has argued that Mr. Gadoev was abducted by the Russian and Tajik intelligence services in a premeditated operation carried out in Moscow on 14 February 2019. The source alleges that Mr. Gadoev was effectively kidnapped by those authorities and reportedly driven to an airport in Moscow where, bypassing passport control, he was placed on a commercial flight to Dushanbe and forcibly removed from the Russian Federation. The Working Group observes that, in its late reply,

³ A/HRC/19/57, para. 68.

the Government of Tajikistan indicated that Mr. Gadoev had arrived in Dushanbe by plane from the Russian Federation, although it provided no further details of the events.

50. The Government of the Russian Federation, in turn, explains that, after conducting an internal audit through the database of the Ministry of the Interior of the Russian Federation, it established that, although there are records of Mr. Gadoev being in the territory of the Russian Federation in 2010, as well as in the period 2012–2013, there are no further records of him being present in the territory of the Russian Federation since that time. More specifically, there is no record of him crossing the border of the Russian Federation since then and no aeroplane tickets with his name were issued for the flight to Dushanbe for the period of interest to the Working Group. The Government notes that there are no extradition requests in respect of Mr. Gadoev and that there have therefore been no decisions taken concerning his extradition or deportation. The Government adds that no complaints have been received from Mr. Gadoev or his legal representatives concerning his alleged abduction or threats of forceful removal from the Russian Federation. The Working Group notes that the Government provided the same reply to the Working Group's second enquiry, in which the Working Group pointed out that both the Government of Tajikistan and the source maintained that Mr. Gadoev arrived in Dushanbe from the Russian Federation on 14 February 2019.

51. This is a considerable discrepancy between the two accounts; the source alleges the presence of Mr. Gadoev in the Russian Federation, whereas the Government of the Russian Federation denies it. However, the Working Group notes the carefully chosen wording of the denial by the Government, which indicated that there was no official record of Mr. Gadoev having been in the Russian Federation during the time in question. Given that the source's allegations involve a secret de facto collusion of Russian and Tajik authorities to kidnap Mr. Gadoev, the Working Group is not surprised that official records do not reflect his presence in the country. The Government of the Russian Federation does not appear to have conducted any investigation into those very serious allegations.

52. Notably, although the Government of Tajikistan does not provide any details of Mr. Gadoev's arrival in Dushanbe, it is clear from its late response that he arrived there by aeroplane from the Russian Federation, which confirms the submission of the source that Mr. Gadoev was indeed in the territory of the Russian Federation prior to his arrival in Tajikistan. The Government of the Russian Federation provides no explanation to rebut the source's submissions as to how Mr. Gadoev came to be in Dushanbe on 14 February 2019.

53. The Working Group therefore accepts as credible the allegations that Mr. Gadoev was in the Russian Federation prior to his arrival into Dushanbe on 14 February 2019 and, noting the absence of any information from the Government of the Russian Federation concerning the circumstances of his departure from the Russian Federation and arrival in Tajikistan, accepts as credible the submissions made by the source.

54. The Working Group recalls the following section on State responsibility in cases of secret detention by proxy from the joint study on global practices in relation to secret detention in the context of countering terrorism:

Secret detention, involving the denial or concealment of a person's detention, whereabouts or fate has the inherent consequence of placing the person outside the protection of the law. The practice of "proxy detention", where persons are transferred from one State to another outside the realm of any international or national legal procedure ("rendition" or "extraordinary rendition") for the specific purpose of secretly detaining them, or to exclude the possibility of review by the domestic courts of the State having custody of the detainee, or otherwise in violation of the well-entrenched principle of non-refoulement, entails exactly the same consequence. The practice of "proxy detention" involves the responsibility of both the State that is detaining the victim and the State on whose behalf or at whose behest the detention takes place.⁴

⁴ A/HRC/13/42, para. 36. See also opinions No. 11/2018, No. 23/2020 and No. 42/2020.

55. Moreover, in its resolution 37/3, the Human Rights Council stressed that no one should be held in secret detention, and urged States to ensure that all persons held in detention under their authority were provided with access to the courts and to investigate all alleged cases of secret detention, including under the pretext of countering terrorism.⁵

56. As the Working Group has previously observed,⁶ international law regarding extradition provides for procedures that must be observed by countries in arresting, detaining and returning individuals to face criminal proceedings in another country and in ensuring that their right to a fair trial is protected. Furthermore, individuals should not be expelled to another country when there are substantial grounds for believing that their life or freedom would be at risk.⁷ The risk of arbitrary detention in the receiving State must be among the elements taken into consideration.⁸

57. Moreover, the Working Group specifically refers to its call upon all States to refrain from the forcible transfer of individuals, which circumvents due process established by international human rights law and disregards the safeguards against arbitrary detention.⁹

58. In the present case, Mr. Gadoev was de facto kidnapped by the Russian and Tajik authorities, which completely ignored all extradition procedures, on 14 February 2019, after being lured by the pretence of a meeting with a high-level official; he was handcuffed, had a plastic bag put over his head and taped in place, was forced into a vehicle, was taken to the airport and was forcibly removed from the Russian Federation to Tajikistan. The Working Group concludes that that placed Mr. Gadoev entirely outside the protection of the law, in violation of his right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.

59. Every aspect of Mr. Gadoev's right to liberty and security of person was violated, and he was subjected to arbitrary deprivation of liberty in breach of his rights under article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant, violations which fall under category I.

60. The Working Group recalls that the State which forcibly removes an individual from its jurisdiction cannot absolve itself from responsibility over what happens to that person in the jurisdiction to which he or she has been forcibly removed. It has therefore consistently held that the removing State is fully responsible for the human rights violations suffered by the individual in the receiving State.¹⁰ In the present case, the Government of the Russian Federation is therefore also responsible for the violations of Mr. Gadoev's rights in Tajikistan.

b. Allegations concerning Tajikistan

61. In the absence of a timely response from the Government of Tajikistan, the Working Group has decided to render its opinion on the allegations concerning Tajikistan, in conformity with paragraph 15 of its methods of work.

62. In determining whether Mr. Gadoev'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 law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.¹¹ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source in a timely manner.

63. The source has argued that the detention of Mr. Gadoev in Tajikistan from 14 February to 2 March 2019 was arbitrary and falls under categories I, II, III and V. In its late

⁵ Human Rights Council resolution 37/3, paras. 8–9.

⁶ See, e.g., opinions No. 57/2013, No. 2/2015, No. 11/2018 and No. 23/2020.

⁷ A/HRC/4/40, paras. 44–45.

⁸ See opinions No. 23/2020 and No. 42/2020; see also A/HRC/48/55, paras. 51–60.

⁹ A/HRC/48/55, paras. 51–60.

¹⁰ See, for example, opinions No. 23/2020, 47/2020, 51/2020, 84/2020 and 88/2020. See also A/HRC/48/55, para. 60.

¹¹ A/HRC/19/57, para. 68.

response, the Government denied those allegations and argued that Mr. Gadoev was not detained during that period of time in Tajikistan, but rather was placed under a recognizance not to leave the country or change his domicile. The Government adds that, while he was in Tajikistan during that period, he freely moved around the country and that, on 2 March 2019, upon the receipt of a new passport for overseas travel, he fled from the territory of the State. Consequently, the Government denies the allegations of the detention of Mr. Gadoev during the period between 14 February and 2 March 2019.

64. The Working Group, however, observes that, in its late response, the Government has failed to explain the alleged criminal offences that Mr. Gadoev was charged with, which would warrant his being placed under the recognizance as described by the Government. The Government has also failed to explain the process that led to the imposition of the recognizance or how that process satisfied due process guarantees. The only explanation provided relates back to an investigation initiated in 2012 concerning alleged economic crimes, but no information concerning the results of that investigation, or indeed any charges against Mr. Gadoev, were provided.

65. Moreover, the Government argues that Mr. Gadoev arrived in Dushanbe voluntarily on 14 February 2019 and presented himself to the police. The Government, however, provides no explanation as to why someone who has chosen to live in exile, who has clearly expressed a fear of being forcibly removed to Tajikistan and even pre-recorded a video statement to clarify that he would never voluntarily enter Tajikistan, would then proceed to do just the opposite.

66. The Working Group notes that it has already established that Mr. Gadoev was forcibly removed from the Russian Federation to Tajikistan through secret collusion between the Russian and Tajik authorities. In that regard, the Working Group wishes to emphasize that Tajikistan is therefore responsible for the violations of Mr. Gadoev's rights in the Russian Federation.

67. The Working Group accepts as credible the source's submissions that, following Mr. Gadoev's forced transfer to Tajikistan, he was deprived of his liberty. Furthermore, the Working Group considers that Mr. Gadoev's right to liberty and security of person was severely violated, because he was detained without a warrant, was never informed of the reasons for his arrest, denied legal assistance from the moment of his detention and denied the right to challenge the legality of his detention, which constitutes multiple violations of every aspect of article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant. The Working Group therefore finds that his detention was arbitrary and falls under category I.

68. Furthermore, although the Government has denied that Mr. Gadoev was persecuted for his political activities, and in fact in its late reply argued that Mr. Gadoev has never engaged in politics and was not considered to be a political opponent, the Working Group recalls the concluding observations of the Human Rights Committee on the third periodic report of Tajikistan submitted under the Covenant, in which the Committee noted with concern the persecution of members of the opposition movement, Group 24, which had been declared as "extremist", including prosecutions and convictions.¹² It is therefore clear that Group 24 in Tajikistan, which the Government does not deny Mr. Gadoev was a part of, is in fact an opposition movement in the country.

69. The Working Group recalls that, when arguing that Mr. Gadoev was not involved in politics and has not been persecuted for political activities, but rather because of alleged economic crimes, the Government in its late reply provided no account of the alleged actions of Mr. Gadoev that might be construed as criminal activity in the context of economic or other crimes. As noted above, the only explanation provided related back to an investigation initiated in 2012 concerning alleged economic crimes, but no information concerning the results of that investigation of, or indeed any charges against, Mr. Gadoev were provided.

70. In the light of the foregoing, the Working Group recalls Human Rights Council resolution 24/5, in which the Council reminded States of their obligation to respect and fully

¹² CCPR/C/TJK/CO/3, para. 53.

protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others.

71. Detention purely due to the peaceful exercise of rights protected by the Covenant is arbitrary,¹³ and that is exactly what happened to Mr. Gadoev; the Working Group considers that the sole reason for his detention in the Russian Federation and Tajikistan was his peaceful exercise of his rights under articles 19 and 21 of the Universal Declaration of Human Rights and articles 19 and 25 of the Covenant. The right to freedom of opinion and expression protects expression even when it may shock, offend or disturb,¹⁴ or which may insult an individual or group,¹⁵ or criticize an institution.¹⁶ As stated by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression:

Freedom of expression can be exercised through any sort of medium. This includes the right to participate in demonstrations and peaceful protests staged by social sectors or organizations that wish to show their discontent with public policies, natural resource development contracts, the attitudes adopted by civil servants or some other situation.¹⁷

72. Moreover, there is no information before the Working Group to suggest that the exceptions to the freedom of expression as stipulated in article 19 (3) of the Covenant, namely, respect for the rights, freedoms or reputations of others, national security, public safety, public order or public health or morals, would apply in the present case. The Government has provided no explanation as to how the arrest and detention of Mr. Gadoev was necessary to protect any of those interests. Importantly, there is no information to suggest that Mr. Gadoev has ever advocated violence or incited discrimination or hostility. There has been no evidence provided that he has ever been accused of any form of violence or incitement to violence. The Working Group therefore finds the arrest of Mr. Gadoev to have been the result of his exercise of rights under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant.

73. The Working Group considers that the right of Mr. Gadoev under article 21 of the Universal Declaration of Human Rights and article 25 of the Covenant, to take part in the conduct of public affairs, has been violated, given that his arrest was directly linked to his engagement in the opposition party to 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 took 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.¹⁸ The Working Group finds the arrest of Mr. Gadoev to be the result of his exercise of rights under article 21 of the Universal Declaration of Human Rights and article 25 of the Covenant.

74. Taking note of the foregoing, the Working Group concludes that the arrest and detention of Mr. Gadoev resulted from his peaceful exercise of his rights under articles 19 and 21 of the Universal Declaration of Human Rights and articles 19 and 25 of the Covenant and were therefore arbitrary, falling under category II. The Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression for appropriate action.

75. Given its finding that the deprivation of liberty of Mr. Gadoev was arbitrary under category II, the Working Group wishes to emphasize that no trial of Mr. Gadoev should take place. However, while Mr. Gadoev has fled Tajikistan, he remains a wanted man there and, while he was in the custody of Tajik authorities, the source alleges that serious violations of his fair trial rights were perpetrated and argues that his detention therefore falls under category III of the Working Group.

¹³ Human Rights Committee, general comment No. 35 (2014), paras. 17 and 35.

¹⁴ See, for example, opinion No. 33/2019.

¹⁵ See, for example, opinions No. 46/2013 and No. 4/2019.

¹⁶ See, for example, opinions No. 7/2008 and No. 35/2012.

¹⁷ [A/HRC/23/40/Add.1](#), para. 71.

¹⁸ See also opinions No. 2/2018, No. 17/2019 and No. 66/2019.

76. The source has argued that Mr. Gadoev was never informed of the charges against him, in violation of his rights under article 14 (3) (a) of the Covenant, and that he was denied legal assistance, in breach of his rights under article 14 (3) (d) of the Covenant. The source alleges that Mr. Gadoev's right to be presumed innocent was denied, given that he was ill-treated and tortured through severe beatings during his abduction and forcible transfer and while in custody in Tajikistan. The Government denies the allegations, in its late reply, arguing that Mr. Gadoev voluntarily returned to Tajikistan and was never detained while there.

77. The Working Group has already established as credible the submissions by the source that Mr. Gadoev was indeed forcibly returned to Tajikistan and subsequently detained there. Given that and given its findings under category I, the Working Group concludes that the rights of Mr. Gadoev to be promptly informed of the charges against him and to legal assistance, as encapsulated in articles 14 (3) (a) and (d) of the Covenant, were violated.

78. Although the Government denies the very fact of having detained Mr. Gadoev, the Working Group is concerned about the allegations of torture and ill-treatment made by the source in relation to Mr. Gadoev. The treatment described reveals a prima facie breach of the absolute prohibition of torture, which is a peremptory norm of international law and encapsulated in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, principle 6 of the Body of Principles and rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for further consideration.

79. The source has also argued that Mr. Gadoev was denied the right to be tried by an independent and impartial tribunal, noting that all courts in Tajikistan lack the requisite degree of independence from the executive. The Working Group cannot accept that argument, given its sweeping nature. Moreover, the Working Group notes that Mr. Gadoev was never presented before a judicial authority in Tajikistan. It is therefore unable to draw any conclusions on the matter.

80. However, taking note of all the findings above, the Working Group finds that the violations of Mr. Gadoev's fair trial rights were of such gravity as to give his detention an arbitrary character, falling under category III.

81. The source submits that, when detaining Mr. Gadoev, the Government of Tajikistan violated article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant, giving Mr. Gadoev's deprivation of liberty an arbitrary character under category V, because his detention was a result of discrimination based on his political or other opinion.

82. Although the Government, in its late reply, strongly contested that Mr. Gadoev was a political opponent, the Working Group has already highlighted the concluding observations of the Human Rights Committee, in which the Committee noted with concern the persecution of members of the opposition movement, Group 24, which was declared as "extremist", including prosecutions and convictions.¹⁹

83. It is indeed clear to the Working Group that Mr. Gadoev is a political opponent who has been forced into exile due to persecution by the Tajik authorities. The authorities resorted to the extraordinary measure of de facto abduction of Mr. Gadoev in another country and his forcible transfer to Tajikistan; they subjected him to harsh treatment. There is no other reason for that other than the political opinions of Mr. Gadoev. The Working Group therefore concludes that the detention of Mr. Gadoev constituted a violation of international law on the grounds of discrimination based on his political or other opinion, in breach of article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant, falling under category V.

84. The Working Group is mindful of the allegations by the source that a number of other Group 24 activists have been subjected to various forms of persecution by the Tajik authorities (see para. 5 above). Although the Government has argued that Group 24 members are not political opponents, the Working Group has already established, on the basis of the

¹⁹ CCPR/C/TJK/CO/3, para. 53.

views of the Human Rights Committee, that that is in fact the case. The Working Group therefore calls upon the Tajik authorities to be mindful of the findings in the present case as they may relate to the circumstances of cases of other Group 24 activists.

c. Concluding remarks

85. Although the Working Group has not been asked to address the situation of Mr. Gadoev's family, it cannot help but notice that the allegations presented by the source concerning the harsh treatment of, and persecution against, Mr. Gadoev's family, which has even, allegedly, led to the death of his elderly father and left an elderly relative of Mr. Gadoev with serious health problems, while living in a constant state of fear and pressure. While the Government of Tajikistan, in its late reply, denied those allegations, arguing that Mr. Gadoev's father had passed away due to natural causes, caused by the weakness of his heart, the Working Group wishes to express its concern for the physical and psychological integrity of the members of Mr. Gadoev's family, and it reminds the Government of its duty to respect the inherent dignity of all human beings.

Disposition

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

Regarding both the Russian Federation and Tajikistan:

The deprivation of liberty of Sharofiddin Gadoev, being in contravention of articles 6, 9, 10, 11, 19 and 21 of the Universal Declaration of Human Rights and articles 9, 14, 19, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

87. The Working Group requests the Governments of the Russian Federation and Tajikistan to take the steps necessary to remedy the situation of Mr. Gadoev 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.

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

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

90. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, for appropriate action.

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

Follow-up procedure

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

(a) Whether compensation or other reparations have been made to Mr. Gadoev;

(b) Whether an investigation has been conducted into the violation of Mr. Gadoev's rights and, if so, the outcome of the investigation;

(c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Russian Federation and Tajikistan with their international obligations in line with the present opinion;

(d) Whether any other action has been taken to implement the present opinion.

93. The Governments are invited to inform the Working Group of any difficulties that they 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.

94. The Working Group requests the source and the Governments 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.

95. 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.²⁰

[Adopted on 15 November 2021]

²⁰ Human Rights Council resolution 42/22, paras. 3 and 7.