
Advance Edited Version

Distr.: General
16 March 2023

Original: English

Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fifth session, 14–18 November 2022

Opinion. 83/2022 concerning Otabek Sattoriy (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 51/8.

2. In accordance with its methods of work,¹ on 18 July 2022 the Working Group transmitted to the Government of Uzbekistan a communication concerning Otabek Sattoriy. 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. Otabek Sattoriy is a national of Uzbekistan, who usually resides in Surxondaryo Province, Uzbekistan. He was 40 years old at the time of his arrest.

5. According to the source, Mr. Sattoriy is an independent blogger and investigative journalist who has investigated and reported on allegations of corruption and human rights violations against local authorities in the Surxondaryo Province in south-eastern Uzbekistan. He hosted channels on Telegram, YouTube and Facebook, where he regularly posted videos on issues of local concern.

6. The source adds that Mr. Sattoriy publicly advocated on behalf of victims of human rights violations and corruption. For example, he frequently raised the issue of illegal land seizures, whereby local farmers would be wrongfully dispossessed of their land for development or other purposes. As part of this advocacy, Mr. Sattoriy reportedly organized meetings between aggrieved farmers and parliamentary members, and accompanied and represented the farmers in bringing their claims to the Government.

a. Context

7. The source notes that the Constitution of Uzbekistan and the International Covenant on Civil and Political Rights, to which Uzbekistan is a party, contain provisions to protect against arbitrary arrests and detention. However, the country's Code of Criminal Procedure reportedly provides loopholes that allow law enforcement officials to continually ignore such safeguards. According to the source, the Government has historically detained suspects for longer than the period provided for under the law of Uzbekistan through various means, including by filing false charges or detaining suspects as witnesses in other cases. The source adds that although the Government has recently reduced the number of new alleged arbitrary detentions, particularly concerning persons targeted on the basis of their religion, alleged arbitrary arrests of activists and bloggers continue to occur.

8. According to the source, the current Government uses criminal defamation laws, such as article 139 of the Criminal Code, to silence voices critical of the Government. Moreover, the Government reportedly continues to engage in persistent and intrusive surveillance of activists and critics. The source adds that recently, in response to the global coronavirus disease (COVID-19) pandemic, the Government has accorded more prosecutorial attention to critical and dissident speech by amending legislation criminalizing speech and creating new agencies to monitor and prosecute expression.

9. The source reports that these events have led to a more hostile environment for those seeking to exercise their right to freedom of expression in Uzbekistan.

b. Circumstances precipitating the arrest

10. The source reports that on 19 March 2020, in response to the increased risk of price gouging resulting from supply shortages caused by the COVID-19 pandemic, Uzbekistan passed Presidential Decree No. UP-5969 mandating price controls on certain consumer goods to prevent artificially inflated prices.

11. Following enactment of the Presidential Decree, Mr. Sattoriy began preparing an investigative report to determine whether the decree was being implemented and enforced at local markets. On 20 December 2020, Mr. Sattoriy and a fellow blogger visited the Sherobod District market with the intent of filming the market to gather evidence regarding the market's compliance with the newly-enacted price regulations. The source adds that once Mr. Sattoriy arrived at the market and attempted to film the premises, he was forcefully stopped by market security officers, who seized his phone, damaging the phone and his coat in the process. He was subsequently ejected from the premises without his phone.

12. The source notes that immediately following his ejection from the market, Mr. Sattoriy reported the incident to the office of the Sherobod District chief administrator (*hokim*). He reported how he was treated by the market security officers and the seizure and damage to his phone. Furthermore, he asked that the owner of the market return his phone

and replace it with one in a working condition. The source adds that the assistant to the district chief administrator intervened in the dispute between market security and Mr. Sattoriy, and the assistant aided Mr. Sattoriy in retrieving his damaged phone from the market security officers. The source also adds that at the time, the market did not provide Mr. Sattoriy with a new phone to replace the one damaged by security officers.

c. Arrest, pretrial detention and administrative trial

13. The source reports that on 28 January 2021, the owner of the Sherobod District market contacted Mr. Sattoriy and stated that he intended to replace the phone that had been damaged by market security on 20 December 2020. The men agreed to meet outside Mr. Sattoriy's home in Termiz on 30 January 2021 to transfer the phone. The owner of the market visited Mr. Sattoriy's home on that day and gave him a new phone.

14. According to the source, the owner of the market promptly left after handing over the phone. Within minutes after he had left, plain-clothes police officers from the Surxondaryo Provincial Department of Internal Affairs reportedly arrived at Mr. Sattoriy's home and arrested him. The source notes that the arrest was captured on video and subsequently circulated widely online.

15. At the time, officers reportedly claimed that the arrest related to allegations that the phone that Mr. Sattoriy had received from the owner of the market had been provided as part of an extortion scheme. The source notes that the officers did not provide a warrant at the time of arrest, as it is the position of the Government that a warrant is not required for such arrests under the law of Uzbekistan.

16. Additionally, at the time of Mr. Sattoriy's arrest, officers reportedly searched his car and home. Although they allegedly read aloud a warrant for the search, they did not provide a copy of a warrant or authorization from a prosecutorial office. They reportedly seized two computers, a computer tablet, five flash storage devices and some coats.

17. Following the arrest, officers reportedly transported Mr. Sattoriy to the temporary detention facility of the Termiz police department. The deputy head of the department allegedly told Mr. Sattoriy: "This is what happens when you interfere in politics, we can imprison you at any time."

18. On 1 February 2021, the Criminal Court of Termiz City, in a closed session, authorized Mr. Sattoriy's pretrial detention on suspicion of violating article 165 of the Criminal Code, which criminalizes extortion. Following the decision to hold Mr. Sattoriy in remand, he was reportedly transported to pretrial detention facility No. 9, where he would remain until the conclusion of his trial.

19. On 11 February 2021, the Criminal Court of Termiz City, in a closed session, found Mr. Sattoriy guilty of committing several administrative offences under the Administrative Liability Code. He was found responsible for violating articles 40 (slander), 41 (insult) and 202² (dissemination of false information) of that Code. The source notes that the administrative charges related to materials that Mr. Sattoriy had published on social media in January 2021 accusing employees at a local coal depot and a zoo of embezzlement and other crimes. As a result of the administrative charges, Mr. Sattoriy was reportedly fined 9.8 million sum (approximately \$918). The source adds that authorities continued to hold Mr. Sattoriy in detention under investigation for criminal charges.

20. On 24 February 2021, the Investigation Department of the Surxondaryo Province Department of Internal Affairs reportedly filed formal criminal charges against Mr. Sattoriy under article 165 (the crime of extortion), article 139 (the crime of slander) and article 140 (criminal insult) of the Criminal Code. He was reportedly charged with seven counts of extortion, two counts of criminal slander and one count of criminal insult.

21. According to the source, the prosecution charged Mr. Sattoriy over allegations concerning several stories that he had investigated and published between 2018 and 2020. In addition to charging him for extortion related to the events of 20 December 2020, the prosecution's charges were reportedly related to several published stories covering various issues, including a housing project in Termiz, the liquified gas company Hududgazta'minot

and the Republican Specialized Scientific-Practical Medical Center of Oncology and Radiology.

22. The source notes that prior to the announcement of charges on 24 February 2021, Mr. Sattoriy had not been permitted to meet with his family. Following the announcement of charges, his family was provided access to him at the pretrial detention facility.

d. Criminal trial

23. On 11 March 2021, Mr. Sattoriy's trial began at the Muzrabot District Court in Surxondaryo Province. Trial hearings took place in March, April and May. During a hearing on 4 May 2021, the prosecution requested a sentence of 11 years in prison. At the same hearing, the prosecution also moved to drop three of the charges against Mr. Sattoriy, two of which concerned extortion under article 165 of the Criminal Code and one of which concerned criminal insult under article 140. During the trial, Mr. Sattoriy reportedly maintained his innocence, and his attorney argued that the charges against him had been fabricated. Among other arguments, Mr. Sattoriy's attorney observed that all the applications collected by investigators in this criminal case had been filed almost simultaneously, and interrogations had been carried out at the same time as the applications were submitted, which, according to the attorney, demonstrated that all the cases had been carried out in a deliberately planned manner.

24. The source reports that on 10 May 2021, the Court convicted Mr. Sattoriy on five counts under the Criminal Code: four under article 165 (extortion) and one under article 139 (slander). The Court sentenced him to six and a half years in prison.

i. First count of extortion (article 165 of the Criminal Code)

25. The first count of extortion is reportedly related to the events of 20 December 2020 at Sherobod District market. The prosecution alleged that Mr. Sattoriy visited the market to film scenes of the market on his phone, which he used to extort a new phone from the owner of the market under the threat of publishing the negative material.

26. As noted above, Mr. Sattoriy reportedly visited the market with the intention of preparing a report, as part of his blogging activities, but was unable to do so because market security officers stopped him and damaged his coat and phone in the process. A fellow blogger, who had accompanied Mr. Sattoriy to the market that day, testified to those events at trial, and claimed that he had seen the market security officers try to prevent Mr. Sattoriy from filming. Both security officers testified that they had taken Mr. Sattoriy's phone, but claimed they did not break it.

27. At trial, Mr. Sattoriy reportedly did not hide the fact that he had demanded that the market administration buy him a new phone to replace the broken one. Two witnesses who appeared in court, notably the fellow blogger and a journalist, confirmed that Mr. Sattoriy, immediately following the altercation, had gone to the district chief administrator's office to complain about the events and the damage to his phone. These witnesses confirmed that Mr. Sattoriy was not seeking to extort the owner of the market.

ii. Second count of extortion (article 165 of the Criminal Code)

28. According to the source, the second count of extortion is related to allegations by the prosecution that Mr. Sattoriy filmed videos revealing problems in the construction of high-rise housing on Istiklol Street in Termiz to blackmail the director of the construction firm and the chief administrator of Termiz. The prosecution alleged that Mr. Sattoriy had attempted to induce the construction firm director to sell him two apartments in a new high-rise building, below market rate, in exchange for not publishing negative reports about the building.

29. The source notes that, according to court documents and court testimony, Mr. Sattoriy acquired two apartments as part of compensation provided to his family following the Government's appropriation and demolition of their property in 2018.

30. The director of the construction firm reportedly testified at trial that the city's chief administrator had ordered him to transfer ownership of the two apartments to Mr. Sattoriy's family in 2018, when the State had appropriated the Sattoriy family's property (which

included two separate houses). In exchange for the property, the Government had paid the family \$23,000, which was not sufficient for the family to purchase an equivalent property in Termiz. The source adds that the Sattoriy family had repeatedly appealed to the chief administrator's office to be granted fair compensation for the demolition of their property.

31. According to documentation provided at trial, on 4 October 2018, following the Sattoriy family's multiple appeals to the chief administrator's office, the chief administrator of Termiz, the Sattoriy family and the construction firm signed a tripartite agreement, whereby the family received the two apartments as additional compensation for the demolition of their two houses. The director of the construction firm reportedly testified that he had transferred two apartments to Mr. Sattoriy in exchange for the \$23,000 under pressure from the city's chief administrator, and that the chief administrator had promised to pay him the difference for the true cost of the apartments, an additional sum of approximately \$52,000.

32. According to the source, the two apartments were notarized in Mr. Sattoriy's name, and the Sattoriy family moved into the apartments after the agreement was reached. On 4 February 2020, the director of the construction firm appealed to the investigating authorities demanding that the apartments be returned to him, as he had allegedly still not received outstanding payment from the office of the city's chief administrator. The purchase agreement for the two apartments was then cancelled, and the construction company returned the \$23,000 to the Sattoriy family.

33. The source notes that there was no investigation into the legality of this transaction until after Mr. Sattoriy's arrest in January 2021.

iii. Third and fourth counts of extortion (article 165 of the Criminal Code)

34. The prosecution reportedly made two allegations of extortion relating to the Hududgazta'minot company, a supplier of liquefied gas.. Mr. Sattoriy had published multiple video reports between December 2020 and January 2021, prior to his arrest, in which he had criticized Hududgazta'minot company managers. He had also publicly confronted the chief administrator of Surxondaryo Province about corruption in the company at a public event in December 2020.

35. The third count reportedly related to events on 11 December 2020, when Mr. Sattoriy published a video on the Hududgazta'minot liquified gas supply company in which he criticized the work of the Surxondaryo deputy branch director. In a statement submitted to the investigating authorities after Mr. Sattoriy's arrest, an employee of Hududgazta'minot purportedly claimed that Mr. Sattoriy had demanded \$10,000 from the deputy branch director in early December in exchange for not publishing a critical video report. At trial, the deputy branch director himself reportedly denied that Mr. Sattoriy had extorted money from him. The source submits that the court relied exclusively on the employee's claim to convict Mr. Sattoriy on this count of extortion; no material evidence of wrongdoing was reportedly cited in any court materials. The source adds that Mr. Sattoriy denied demanding any money from the deputy branch director and did not receive any.

36. According to the source, the fourth count related to events on 21 January 2021, when Mr. Sattoriy published a video blog on his Telegram and Facebook channels about a gas supply employee at Hududgazta'minot, alleging that he had embezzled the money for payment from clients who had purchased liquefied gas cylinders. In a statement made to the investigating authorities after Mr. Sattoriy's arrest, the gas supply employee alleged that Mr. Sattoriy had extorted \$200 from him on 19 January before publishing the video report. The source notes that aside from this statement, no physical evidence of extortion in this episode was presented either during the investigation or at the trial. The source adds that Mr. Sattoriy denied demanding any money from this employee and did not receive any.

iv. Count of slander (article 139 of the Criminal Code)

37. According to the source, the prosecution's allegation of slander is related to public reporting that Mr. Sattoriy conducted on a human resource specialist at the Republican Specialized Scientific-Practical Medical Center of Oncology and Radiology. In June 2020, Mr. Sattoriy prepared a video interview with a doctor employed at the centre, who alleged

that the human resource specialist had misappropriated the monthly wages of “dead souls” she had employed, that is, employees who were in the record books but not really employed by the company or receiving a monthly wage. The source notes that the report was uploaded to Mr. Sattoriy’s YouTube channel and was supported by financial documentation.

38. The source reports that at trial, the human resource specialist could not answer lawyers’ questions concerning which statements of Mr. Sattoriy were slanderous. Furthermore, the verdict does not indicate which specific elements of Mr. Sattoriy’s report were considered by the court to be “slanderous” but rests solely on the claims of the human resource specialist. The source notes that the video that Mr. Sattoriy published contained interviews with a doctor at the centre and are supported by documentary evidence.

e. Appeals

39. At the end of May 2021, Mr. Sattoriy appealed his conviction to the Surxondaryo Provincial Court of Appeal. The appeal trial began on 29 June 2021. On 15 July 2021, the appeal court panel reportedly upheld Mr. Sattoriy’s conviction and prison sentence, but overturned the decision to confiscate the two apartments. On the overturning of the decision to confiscate, the court held that the matter of the ownership of the apartments was a civil, not criminal, matter, and the parties had the right to appeal to a civil court with the relevant documents on compensation for non-pecuniary damage caused by the crime. The apartments were subsequently returned to the Sattoriy family.

40. According to the source, Mr. Sattoriy further appealed his case to the Supreme Court of Uzbekistan. The first hearing in the appeal occurred on 2 March 2022. On 5 April 2022, the Judicial Collegium for Criminal Cases of the Supreme Court upheld Mr. Sattoriy’s conviction and the sentence of six and a half years in prison.

f. Current status

41. Following the entry into force of the trial verdict of 10 May 2021, Mr. Sattoriy was transferred to Navoiy provincial penitentiary No. 4, where he remained at the time of the submission by the source. His family is reportedly permitted to visit him once every two months.

g. Analysis of violations

42. The source submits that the arrest and detention of Mr. Sattoriy is arbitrary under categories I, II and III.

i. Category I

43. The source submits that the Government’s detention of Mr. Sattoriy amounts to a category I detention because the Government has failed to present any substantive evidence to support the charges leading to his detention.² The Government’s purported impetus for arresting him concerned the events of 20 December 2020 at Sherobod District market and subsequent interactions with the owner of the market. The Government claimed that Mr. Sattoriy had attempted to extort a mobile phone from the owner of the market in exchange for not publishing a negative report about the market.

44. The source asserts that the Government’s claim is unfounded. Mr. Sattoriy did request a phone from the owner of the market; however, the request was not made with the intent to illegally obtain a phone from him. Instead, Mr. Sattoriy reportedly sought replacement for the damage done to his phone by the market security, who were acting as agents for the owner of the market at the time. Furthermore, Mr. Sattoriy maintained a legal right to compensation from the Sherobod District market, in money or in kind, for the damage that the market security officers caused to his phone. As a result, the source submits that Mr. Sattoriy’s attempts to obtain compensation for the damage of his phone cannot be reasonably construed as extortion.

² The source cites opinion No. 45/2018, paras. 42–43.

45. According to the source, these facts were known to government officials at the time of Mr. Sattoriy's arrest. Mr. Sattoriy specifically raised the issue of the seizure and damage of his cell phone to the district chief administrator's office, and an assistant to the district chief administrator intervened in the dispute. Accordingly, the source submits that the Government lacked a reasonable factual basis for detaining Mr. Sattoriy, prior to the trial and following the conviction, on the basis of extortion charges.

46. With respect to the remaining charges upon which the Government bases Mr. Sattoriy's current detention, the source submits that government officials appear to have entirely fabricated these charges in retaliation for his reporting activities, and in an attempt to silence future investigations. The source notes that the Government's allegations of extortion do not hold up to scrutiny. In the cases of extortion upon which Mr. Sattoriy's conviction was based, the Government alleged that he had threatened to disclose negative information about the alleged victim in exchange for money. However, the source notes that in each case, Mr. Sattoriy, nonetheless, published the investigations that he conducted, suggesting that no agreement or threat actually occurred. Furthermore, during the course of the trial, the Government reportedly presented no evidence that money had been exchanged between Mr. Sattoriy and the alleged victims, and in one of the cases, the victim at trial denied having been extorted. The source adds that the allegation of slander was equally without merit, as the report that Mr. Sattoriy published was supported by documentary evidence and the victim herself was unable to identify which statements of the report were slanderous.

47. The source asserts that the Government's allegations that serve as the basis for Mr. Sattoriy's detention were merely pretextual in their attempt to silence his investigative activities. The source adds that all of the charges related directly to reports that Mr. Sattoriy published. According to the source, the Government's true motivation was revealed while Mr. Sattoriy was being held at the city police department, where the deputy head of the department allegedly told him: "This is what happens when you interfere in politics, we can imprison you at any time." The source notes that the pretextual nature of the allegations against Mr. Sattoriy was further supported by the fact that all of the purported victim complaints against Mr. Sattoriy were filed on the same day, despite the fact that the victims appeared to not have any connection to one another. The source adds that Mr. Sattoriy's domestic counsel noted at trial that the submission timing suggested that the cases were initiated in a deliberately planned manner.

48. The source submits that both because the Government failed to produce substantive evidence supporting the charges at trial and because the Government's entire case against Mr. Sattoriy is an attempt to silence his investigative and reporting efforts, the Government's continued detention of Mr. Sattoriy lacks a legal basis and amounts to category I detention.

ii. Category II

49. The source notes that freedom of expression is guaranteed in article 19 (2) of the International Covenant on Civil and Political Rights and article 19 of the Universal Declaration of Human Rights. It is also guaranteed in article 29 of the Constitution of Uzbekistan. The source refers to the Human Rights Committee, which has emphasized the importance of safeguarding political debate and citizenry's capacity to criticize political officials.³ The source also notes that journalistic activities, including the work of bloggers and independent journalists, are protected under article 19 of the Covenant.⁴

50. In this respect, the source submits that Mr. Sattoriy was targeted, arrested and detained in retaliation for his legitimate journalistic activities. All of the charges against Mr. Sattoriy, with the exception of the first count of extortion, related to investigations that Mr. Sattoriy published on matters of public concern, including corruption. Additionally, the first count of extortion related to an attempted investigation that Mr. Sattoriy was pursuing. The source notes that detaining Mr. Sattoriy on the basis of these investigations amounts to restriction of his right to freedom of expression. The source adds that this is further supported by the statement of the deputy head of the city police department made to Mr. Sattoriy (see paras.

³ General comment No. 34 (2011), para. 38.

⁴ *Ibid.*, paras. 11, 23 and 43–45.

17 and 47 above). According to the source, conducting investigations into matters of public concern and publishing the results of those investigations is protected journalistic activity under article 19 of the Covenant. As a result, the source submits that Mr. Sattoriy's detention amounts to a restriction on his right to freedom of expression.

51. According to the source, none of the legitimate restrictions on the right to freedom of expression⁵ apply to the detention of Mr. Sattoriy. As discussed above, the Government reportedly targeted Mr. Sattoriy on the basis of his journalistic activities. For this reason, the source asserts that the Government's actions qualify as pretextual, and thus are not a legitimate restriction on his rights to freedom of expression and assembly.

52. The source asserts that in the alternative, even if the Working Group were to find that Mr. Sattoriy's case is not entirely pretextual, none of the exceptions described in article 19 (3) of the Covenant would justify the Government's arrest or detention of Mr. Sattoriy, because none of his published reports place at risk national security, public morals, public health or the rights of others. The source adds that to allow the Government to criminalize Mr. Sattoriy's public reporting on the basis of one of the article 19 (3) exceptions would put in jeopardy the very right to freedom of expression. As a result, the source submits that Mr. Sattoriy's detention does not fall within the scope of the exception to the right to freedom of expression, and the Government has violated article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights, rendering Mr. Sattoriy's detention arbitrary under category II.

iii. Category III

Right to be free from arbitrary arrest

53. The source submits that Mr. Sattoriy's arrest and detention was retaliation for his legitimate exercise of the right to freedom of expression and opinion. The source adds that the Government punished and silenced Mr. Sattoriy's speech, which is protected under the Covenant and the Universal Declaration of Human Rights, by arresting and detaining him. Furthermore, the Government reportedly failed to provide a warrant at the time of Mr. Sattoriy's arrest on 30 January 2021. The source asserts that as a result, Mr. Sattoriy's arrest and detention is in violation of article 9 of the Covenant and article 9 the Universal Declaration of Human Rights,⁶ rendering his detention arbitrary under category III.

Right to release pending trial

54. The source notes that article 9 (3) of the Covenant guarantees an individual's right to release pending trial, establishing that it shall not be the general rule that persons awaiting trial shall be detained in custody.⁷ According to the source, Mr. Sattoriy was held in pretrial detention until his conviction, from 1 February 2021 to 10 May 2021. However, the Government reportedly lacked any legitimate basis for holding him in pretrial detention. The source notes that he did not pose a flight risk, as his family lived in the same city, and he did not have a history of traveling abroad. Moreover, he could not have destroyed any evidence, given that the allegations relied entirely upon testimony. Lastly, there was no indication that he posed a risk to public safety, as he was not accused of a violent crime and there was no reason to believe that he would commit such an offence prior to his trial.

55. Accordingly, the source asserts that in the absence of a legitimate basis for holding Mr. Sattoriy in pretrial detention, the Government violated his right to release pending trial. As a result, the source submits that Mr. Sattoriy's pretrial detention violated 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, and amounts to category III arbitrary detention.

⁵ A/66/290, para. 40 and A/HRC/31/65, para. 38.

⁶ See also Human Rights Committee, general comment No. 35 (2014), para. 12.

⁷ See also Human Rights Committee, general comment No. 35 (2014).

Right to a fair trial and right to presumption of innocence

56. The source submits that the trial of Mr. Sattoriy did not meet the minimum standards for fairness, and failed to provide him with a presumption of innocence.⁸ The source adds that his conviction appeared to be a foregone conclusion, as evidenced by the statements of the deputy head of the city police department (see paras. 17 and 47 above). At trial, the prosecution reportedly failed to provide evidence that money had exchanged hands between Mr. Sattoriy and the victims with respect to the extortion charges. Furthermore, the prosecution was reportedly unable to explain how Mr. Sattoriy extorted the victims when he published his investigations in spite of the alleged threat of extortion. Lastly, with respect to the charge of slander, the source notes that there no evidence was presented concerning which statements the victims found to be slanderous. The source asserts that on all of the charges against Mr. Sattoriy, the prosecution failed to prove key facts regarding his guilt, and accordingly, the prosecution failed to meet its burden of proof. The source also asserts that a conviction based upon inadequate evidence amounts to a violation of a defendant's right to a presumption of innocence and the right to a fair trial.

57. The source submits that because the prosecution failed to meet its burden of proving guilt, Mr. Sattoriy's trial did not respect his right to a presumption of innocence and the right to a fair trial. The source adds that as a result, the Government's conviction of Mr. Sattoriy violated articles 14 (1) and (2) of the Covenant, as well as article 11 (1) of the Universal Declaration of Human Rights. According to the source, Mr. Sattoriy's detention on the basis of this trial thus amounts to category III arbitrary detention.

Response from the Government

58. On 18 July 2022 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 16 September 2022, detailed information about the current situation of Mr. Sattoriy 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. Sattoriy's physical and mental integrity.

59. The Working Group regrets that the Government did not submit a reply or seek an extension in accordance with paragraph 16 of Working Group's methods of work.

Discussion

60. 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.

61. In determining whether Mr. Sattoriy'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.⁹ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

62. The source has argued that the detention of Mr. Sattoriy is arbitrary and falls under categories I, II and III. The Working Group shall proceed to examine these in turn.

Category I

63. The source submits that Mr. Sattoriy was not presented with an arrest warrant at the time of arrest on 30 January 2021. The Working Group recalls that in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant, and it was not contested that it was not implemented in the present

⁸ Human Rights Committee, general comment No. 32 (2007), para. 30.

⁹ A/HRC/19/57, para. 68.

case. International law concerning the right to personal liberty allows restrictions to this right and includes the right to be presented with an arrest warrant in cases that do not involve arrests made in flagrante delicto in order to ensure the objectivity of the arrest process.

64. In the present case, the arrest apparently took place immediately following Mr. Sattoriy's meeting with the director of the market, who gave him the phone that became the basis for an accusation of extortion. However, it appears that the director of the market acted following instruction of the police officers and in coordination with them. Therefore, it cannot be said that Mr. Sattoriy was arrested in flagrante delicto. The exception thus does not apply, and his arrest was without an arrest warrant. The Working Group concludes that the detention in question lacked a legal basis and was ordered in violation of article 9 (2) of the Covenant; the detention thus was arbitrary under category I.

Category II

65. The Working Group notes that Mr. Sattoriy was charged with several counts of extortion and slander. The source alleges that all these charges were aimed at punishing Mr. Sattoriy for his public comments on corruption and misappropriation by government officials. Given that Mr. Sattoriy was an investigative journalist who revealed corruption among State officials, he was ultimately detained for his legitimate exercise of his rights to freedom of expression, protected under article 19 of the Covenant. The Working Group is mindful that slander as such, if unfounded, can be dramatically damaging for one's reputation. However, in this case, Mr. Sattoriy's report was based on his interview with an employee of the alleged victim and supported by documents. Even if the reports were exaggerated, the Working Group finds that a criminal conviction would amount to a disproportionate interference with the freedom of expression enshrined in article 19 of the Covenant and would have a chilling effect on journalists and bloggers, to the detriment of a free democratic society.

66. In this respect the Working Group recalls that the Human Rights Committee, in paragraph 47 of its general comment No. 34 (2011) on the freedoms of opinion and expression, stated that States parties should consider the decriminalization of defamation and, that, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment was never an appropriate penalty.

67. In the present case, given the factual circumstances and nature of the charges, the Working Group finds that the basis for the arrest and subsequent detention of Mr. Sattoriy was in fact his exercise of freedom of expression. Furthermore, the Government did not use the opportunity to refute the source's allegations that all the charges against Mr. Sattoriy were contrived to punish him for his critics.

68. Absent the Government's explanations, the Working Group cannot but conclude that Mr. Sattoriy was detained because of the exercise of his freedom of expression, in violation of article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights. His deprivation of liberty thus falls under category II.

Category III

69. The source alleged that Mr. Sattoriy was held in pretrial detention without any legitimate basis, as he did not pose a risk of absconding or destroying evidence. Given that the pretrial detention of Mr. Sattoriy lasted approximately one month (from his arrest on 30 January 2021 until the case was submitted to the court on 11 March 2021) and that he was represented by a lawyer, lacking more precise information on the formal ground for his pretrial detention the Working Group is unable to assess if the presumption in favour of release pending trial, enshrined in article 9 (3) of the Covenant, was breached.

70. Equally, lacking detailed precision, the Working Group cannot accept the blanket submission by the source alleging that that Mr. Sattoriy did not receive a fair trial and that his presumption of innocence was violated since the prosecution failed to prove the charges. It notes that Mr. Sattoriy in fact was acquitted for some charges submitted by the prosecution.

71. The Working Group therefore does not find that the detention in question is arbitrary under category III.

Category V

72. While the source does not allege that Mr. Sattoriy's arrest and detention also fall under category V, the Working Group will examine if the authorities had a discriminatory intent to punish him as an investigating journalist revealing corruption.

73. The Working Group noted that the present case is similar to other cases of human rights defenders and journalists in Uzbekistan that it has examined. The Working Group also refers to the most recent concluding observations on Uzbekistan adopted by the Committee against Torture, in which the Committee expressed concern at allegations that human rights defenders and journalists in Uzbekistan continued to face arbitrary detention, surveillance, harassment and other measures aimed at deterring them from carrying out their work.¹⁰

74. The Working Group therefore believes that there is a distinct pattern in the attitude of the authorities towards investigative journalists that constitutes a discrimination on the basis of political or other opinion, a prohibited ground of discrimination under articles 2 (1) and 26 of the Covenant, and that ignores the equality of human beings. The Working Group considers that the facts in the present case disclose a violation under category V.

75. Lastly, the Working Group notes with concern the fact that the Government did not respond to the serious allegations in this case. The Working Group recalls that the Human Rights Council called for all States to cooperate with the Working Group, 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.

Disposition

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

The deprivation of liberty of Otabek Sattoriy, being in contravention of articles 2, 3, 7, 9 and 19 of the Universal Declaration of Human Rights and articles 2 (1), 9 (2), 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and V.

77. The Working Group requests the Government of Uzbekistan to take the steps necessary to remedy the situation of Mr. Sattoriy 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.

78. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Sattoriy 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 unconditional release of Mr. Sattoriy.

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

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

Follow-up procedure

81. 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. Sattoriy has been released and, if so, on what date;

¹⁰ CAT/C/UZB/CO/5, para. 17.

- (b) Whether compensation or other reparations have been made to Mr. Sattoriy;
- (c) Whether an investigation has been conducted into the violation of Mr. Sattoriy'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.

82. 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.

83. 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.

84. 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.¹¹

[Adopted on 17 November 2022]

¹¹ See Human Rights Council resolution 51/8, paras. 6 and 9.