



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 23 April–3 May 2019****Opinion No. 11/2019 concerning Dmitriy Mikhaylov (Russian Federation)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.
2. In accordance with its methods of work (A/HRC/36/38), on 3 December 2018 the Working Group transmitted to the Government of the Russian Federation a communication concerning Dmitriy Mikhaylov. The Government submitted a late response on 19 February 2019. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).



Submissions

Communication from the source

4. Dmitriy Mikhaylov, born on 25 October 1977, is a national of the Russian Federation. He is a janitor and usually resides in the city of Shuya in the Ivanovo region of the Russian Federation. He is also a religious minister of Jehovah's Witnesses.

(a) Background

5. On 20 April 2017, the Supreme Court of the Russian Federation granted the application of the Ministry of Justice and ruled to liquidate the national Administrative Centre of Jehovah's Witnesses along with 395 local religious organizations of Jehovah's Witnesses.

6. The source reports that this liquidation decision is the culmination of a decades-long State attack on Jehovah's Witnesses. The State has allegedly used the purported aim of combating extremism as a "cover" to conceal its real aims, which are to wipe out the religious practice of Jehovah's Witnesses in the Russian Federation, intimidate individual Jehovah's Witnesses into abandoning their faith and stir up public hatred and suspicion against them so that others will not join their faith. The source adds that two applications challenging the liquidation decision are now pending with the European Court of Human Rights, and that the Court has given both applications priority status.

7. The source also notes the claim by the State authorities that the ban imposed under the liquidation decision applies only to all religious legal entities (local religious organizations) of Jehovah's Witnesses, and that Jehovah's Witnesses continue to have the right to gather for peaceful worship. In other words, the liquidation of a local religious organization does not prohibit individuals from meeting together as a congregation ("a religious group"). This is consistent with articles 6 to 8 of Federal Act No. 125-FZ of 26 September 1997 on Freedom of Conscience and Religious Associations, under which persons may organize themselves as religious groups and/or as local religious organizations. The liquidation of a local religious organization (a legal entity) does not prohibit individuals from meeting together as a congregation (a religious group).

8. According to the source, the Investigative Committee of the Russian Federation considers that the Supreme Court's liquidation decision banned the religious activity of more than 175,000 Jehovah's Witnesses in the Russian Federation and made it a criminal offence for them to hold peaceful religious services and engage in door-to-door evangelism.

9. On 21 September 2017, the Ivanovo Regional Court reportedly authorized the Investigative Committee to conduct covert surveillance of Jehovah's Witnesses, which included monitoring their phone calls, installing hidden video cameras in the private homes in which they met for worship and monitoring their daily activities. Over the following months, the Ivanovo Regional Court granted additional covert surveillance measures.

10. The source reports that on 19 April 2018, the Investigative Committee opened a criminal case against unidentified Jehovah's Witnesses under article 282.2 (2) of the Criminal Code, which punishes participation in the activity of extremist organizations. The investigator alleged that the criminal offence was that Jehovah's Witnesses had held religious services in the city of Shuya in contravention of the Supreme Court's liquidation decision of 20 April 2017.

11. On that same day, the Shuya City Court reportedly also authorized the Investigative Committee to conduct simultaneous searches on the homes of four Jehovah's Witnesses in Shuya, including that of Mr. Mikhaylov.

(b) Arrest and detention

12. The source reports that early in the morning of 20 April 2018, at 6.30 a.m., 10 heavily armed police officers pounded on the door of Mr. Mikhaylov's home, demanding entry. The police then searched the entire house and seized religious literature, mobile phones and other electronic devices. The search continued until 11.30 a.m., when Mr. Mikhaylov was taken under armed police guard to the Investigative Committee office,

where he was interrogated and charged under article 282.2 (2) of the Criminal Code for allegedly participating in the activity of an “extremist” organization. He was released at 3.00 p.m. that day on his own recognizance.

13. On 29 May 2018, police officers reportedly arrived at Mr. Mikhaylov’s home, pretending to be traffic police. They asked to speak to him outside, claiming that his car had been damaged in an accident. As soon as he left his house to look at his car, the police physically grabbed him and forced him into their waiting car.

14. According to the source, Mr. Mikhaylov was then taken by the police to the Investigative Committee office, where he was charged under article 282.3 (1) of the Criminal Code for allegedly financing the activity of an extremist organization. It was alleged that it was now unlawful for individual Jehovah’s Witnesses in the city of Shuya, including Mr. Mikhaylov, to make financial contributions to defray the cost of renting facilities to hold their religious services. At 5.05 p.m. that day, 29 May 2018, Mr. Mikhaylov was officially detained in police custody.

15. The source reports that on 31 May 2018, the investigator applied to the Shuya City Court to place Mr. Mikhaylov in pretrial detention. The investigator did not cite any evidence that established a reasonable suspicion that Mr. Mikhaylov had committed a crime. The investigator claimed that detention was necessary because Mr. Mikhaylov was accused of “committing two grave crimes” and the investigator did not believe that less severe preventive measures would suffice.

16. On 31 May 2018, the Shuya City Court accepted the investigator’s motion to extend Mr. Mikhaylov’s detention by an additional 72 hours so that the investigator could provide additional evidence to justify the request to impose pretrial detention.

17. On 3 June 2018, the Shuya City Court reportedly continued the hearing and granted the investigator’s application in full. It ordered that Mr. Mikhaylov be held in pretrial detention until 19 July 2018. The court concluded, without citing any evidence, that there was a reasonable suspicion that he had committed the alleged crimes. According to the source, the court merely referred to various protocols without stating what in those protocols or witness testimony established that Mr. Mikhaylov had committed an offence. The source adds that in ordering that Mr. Mikhaylov be placed in pretrial detention, the Shuya City Court relied on articles 97 and 99 of the Criminal Procedure Code in an allegedly stereotyped and abstract way to conclude that pretrial detention was necessary.

18. According to the source, the court rejected as “hypothetical” the investigator’s arguments that Mr. Mikhaylov could “exert pressure on witnesses and otherwise obstruct the proceedings in the criminal case”. Nonetheless, the court concluded that detention was necessary based on the assertion that Mr. Mikhaylov, “if at liberty, may continue to engage in criminal activity and hide from the investigation”. In support of this assertion, the court stated that there was evidence that Mr. Mikhaylov had continued to attend religious services of Jehovah’s Witnesses and that he was on a list of delegates to attend a religious convention of Jehovah’s Witnesses in 2018. The court failed to give any consideration to the fact that Mr. Mikhaylov had an impeccable reputation and that since 20 April 2018, he had been under a recognizance imposed by the investigator and had not attempted to abscond or evade the investigation.

19. On 7 June 2018, Mr. Mikhaylov filed an appeal to the Ivanovo Regional Court against the pretrial detention order. According to the source, Mr. Mikhaylov’s lawyer was orally told on 12 July 2018 by staff at the Ivanovo Regional Court that the appeal had been “returned” by the appeal court judges for unknown reasons. However, neither Mr. Mikhaylov nor his lawyer have received any written decision or communication from the court explaining why the appeal filed on 7 June 2018 has not been heard or decided.

20. On 16 July 2018, the Shuya City Court reportedly granted the investigator’s motion to extend the pretrial detention order for a further three months, until 19 October 2018. Just as in the original detention order, the Shuya City Court reportedly did not refer to any evidence establishing a reasonable suspicion that Mr. Mikhaylov had committed a crime. The court also failed to provide any reason as to why detention was necessary and other

less intrusive measures would not suffice. On 19 July 2018, Mr. Mikhaylov filed an appeal to the Ivanovo Regional Court against the order extending pretrial detention.

21. On 18 October 2018, the Shuya City Court again granted the investigator's motion and extended Mr. Mikhaylov's detention for a second time for a further three months, until 19 January 2019. As with its previous rulings, the court did not cite any evidence that there was a reasonable suspicion that Mr. Mikhaylov had committed a criminal offence or that detention was necessary.

22. According to the source, an appeal filed by Mr. Mikhaylov on 22 October 2018 was heard by the Ivanovo Regional Court on 15 November 2018. The court granted his appeal in part and released him from pretrial detention, substituting detention with a personal recognizance pending his criminal trial. The source notes that in total, Mr. Mikhaylov had spent nearly six months (171 days) in pretrial detention.

(c) Analysis of violations

23. The source submits that Mr. Mikhaylov's arrest and detention is arbitrary, falling under categories II, III and V of the categories applied by the Working Group.

(i) Category II

24. The source submits that Mr. Mikhaylov was arrested and detained simply for peacefully exercising his religious beliefs, including by gathering for worship with fellow believers. In doing so, he was exercising his right to freedom of religion and freedom of expression as guaranteed by articles 18 and 19 of the Universal Declaration of Human Rights and articles 18 and 19 of the Covenant.

(ii) Category III

25. The source also submits that no reasons were given by the domestic authorities to justify the order to place Mr. Mikhaylov in police custody and the subsequent judicial decisions to place him in pretrial detention. The domestic courts merely repeated the general wording of articles 97 and 99 of the Criminal Procedure Code without pointing to any evidence that justified his detention.

(iii) Category V

26. The source further asserts that State authorities targeted Mr. Mikhaylov for prosecution simply because he is a Jehovah's Witness. Indeed, his arrest and prosecution were ostensibly based on the Supreme Court's liquidation decision of 20 April 2017, which the investigator has construed as imposing a total ban on the religious activity of Jehovah's Witnesses.

(d) Legal arguments put forward by the source

27. The source submits that Mr. Mikhaylov has been subjected to arbitrary arrest and detention and deprivation of his liberty in at least three respects, as follows: (a) on 20 April 2018 and again on 29 May 2018, he was taken against his will from his home by armed police and made to go to the Investigative Committee office for interrogation; (b) from 29 May to 31 May 2018, he was held in police custody; and (c) from 31 May 2018 to 15 November 2018, he was held in pretrial detention.

28. According to the source, heavily armed police stormed Mr. Mikhaylov's home on 20 April 2018 at 6.30 a.m. He was prevented from moving about or telephoning a lawyer or family members. He was taken against his will to the Investigative Committee office. He was also subjected to the humiliation of being photographed and fingerprinted as though he were a dangerous criminal.

29. The source submits that the arrest and detention of Mr. Mikhaylov was arbitrary and in violation of article 9 (1) of the Covenant. The sole reason for the raids on Mr. Mikhaylov's home and on the homes of his fellow believers was that they were practising their faith as Jehovah's Witnesses, including by meeting for peaceful worship, which are

legitimate activities protected under the Covenant. In this respect, the source refers to opinion No. 62/2017, paragraphs 36 and 39.

30. The source also submits that the orders by the Shuya City Court of 31 May and 3 June 2018 and its subsequent court orders were arbitrary and in violation of article 9 (3) of the Covenant. Neither the investigator nor the Shuya City Court referred to any evidence that established a reasonable suspicion that Mr. Mikhaylov had committed a crime. The source adds that the sole reason that he was arrested and placed in pretrial detention is that he is a religious minister of Jehovah's Witnesses and continues to meet with fellow believers to read and study the Bible, in exercise of rights that are fully protected by the Covenant. His arrest and detention, which occurred solely because he is a Jehovah's Witness, is thus arbitrary and discriminatory. Moreover, when granting the detention order, the Leninsky District Court provided no reasons as to why pretrial detention of Mr. Mikhaylov was necessary. The source adds that the State provided no evidence that detention was necessary because there is none.

31. The source further submits that the sole motivation for the search on 20 April 2018 of Mr. Mikhaylov's home and of the homes of his fellow believers and the seizure of their personal goods was allegedly based on a fundamentally flawed and discriminatory criminal investigation in which it was wrongly claimed that it was illegal for Jehovah's Witnesses to gather for worship. The rights to freedom of religion and freedom of association protected by the Covenant guarantee Mr. Mikhaylov's right to freely practise his faith. In this respect, the source asserts that the early-morning police raids and searches of the homes of Mr. Mikhaylov and his fellow believers and seizure of their religious literature, computers and other personal goods was arbitrary and unlawful, contrary to article 17 (1) of the Covenant.

32. According to the source, Mr. Mikhaylov has also been denied his rights under article 17 (2) of the Covenant. He has been deprived of any judicial remedy to protect himself from such an arbitrary State attack on his "privacy, family, home or correspondence". The source adds that there is no judicial remedy available in the Russian Federation to impeach the legal and factual grounds of the search warrant and to obtain redress against an unlawfully ordered or executed search.

33. In addition, the source submits that the decision to arrest Mr. Mikhaylov and place him in pretrial detention because of his religious beliefs and practices as a religious minister of Jehovah's Witnesses has interfered with his rights under article 18 (1) of the Covenant. The search of his home and the seizure of his Bibles and religious texts, which he uses for worship, have also interfered with his rights under this provision. In this respect, the source makes reference to opinion No. 62/2017, paragraph 39.

34. The source also refers to article 18 (2) of the Covenant, whereby "no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice". However, according to the source, this was precisely the intent of the State authorities in the present case. Their heavy-handed actions were designed to terrorize and intimidate the victims into abandoning their faith as Jehovah's Witnesses. The State has allegedly used its purported aim of combating "extremism" as a "cover" to conceal its real aims, which are to wipe out the religious practice of Jehovah's Witnesses in the Russian Federation, intimidate individual Jehovah's Witnesses into abandoning their faith and stir up public hatred and suspicion against them so that others will not join their faith.

35. The source underlines that, far from being a criminal offence, Mr. Mikhaylov's peaceful religious activity is protected by article 18 of the Covenant. None of his activity, or the activity of his fellow believers, could legitimately be described as "extremist". The Bible, the religious publications of Jehovah's Witnesses and the religious services of Jehovah's Witnesses are entirely peaceful and do not contain calls to violence, incitement to religious hatred or statements that are gratuitously offensive.

36. The source adds that Jehovah's Witnesses are a religious minority in the Russian Federation. The actions of the State authorities, as described in the present case, have denied the right of Mr. Mikhaylov and his fellow believers to profess and practise their own religion freely. Although in a comparable situation to members of other registered religions, Mr. Mikhaylov and his fellow believers have received less favourable treatment without

reasonable and objective grounds for such difference in treatment. The sole difference regarding that treatment is religious belief.

37. The source submits that the State's actions were solely motivated by its discriminatory aim of stopping the religious practice of Jehovah's Witnesses in the Russian Federation. No other religious organization in the modern-day Russian Federation, much less a "traditional religion", has been treated in such a manner by State officials. In this respect, the source refers to opinion No. 62/2017, paragraphs 47–50.

38. The source adds that the facts of this case must also be considered in the context of the State's ongoing attack against Jehovah's Witnesses, which culminated with the Supreme Court's decision of 20 April 2017 to ban Jehovah's Witnesses nationwide. The religious beliefs of Jehovah's Witnesses are now prohibited, and Jehovah's Witnesses cannot meet openly for worship.

39. According to the source, State authorities also continue to target Jehovah's Witnesses in the Russian Federation for criminal prosecution. As at 26 November 2018, Russian authorities had reportedly initiated criminal proceedings against at least 98 Jehovah's Witnesses in 34 different cities, of whom 42 are currently being held in pretrial detention or under house arrest. The source refers to a list of the approximately 72 Jehovah's Witnesses who have been indicted under article 282.2 of the Criminal Code,¹ most of whom are still being held in pretrial detention or under house arrest. The source alleges that criminal arrests of Jehovah's Witnesses are now occurring on a weekly basis and, most recently, on a daily basis. Consequently, the source submits that Mr. Mikhaylov has suffered a violation of his rights under articles 26 and 27 of the Covenant.

Response from the Government

40. On 3 December 2018, 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 1 February 2019, detailed information about the current situation of Mr. Mikhaylov and to clarify the legal provisions justifying his continued detention, and its compatibility with the State's obligations under international human rights law, in particular with regard to the treaties that it has ratified. Moreover, the Working Group called upon the Government to ensure his physical and mental integrity.

41. On 19 February 2019 the Working Group received a reply from the Government. The reply was late and the Working Group regrets that the Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work. The Working Group therefore cannot accept the reply as if it was presented within the time limit.

42. The late response of the Government was transmitted to the source on 5 March 2019, and the source submitted further comments on 19 March 2019.

Discussion

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

44. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source. In accordance with paragraph 16 of its methods of work, the Working Group is rendering its opinion on the basis of all the information that it has obtained.

¹ Available at <https://jw-russia.org/prisoners.html>.

45. As a preliminary issue, the Working Group notes that Mr. Mikhaylov is no longer under pretrial detention given that on 15 November 2018 the Ivanovo Regional Court granted his appeal and substituted pretrial detention with a personal recognizance pending trial. The Working Group however notes that the charges against Mr. Mikhaylov remain and the investigations are ongoing. If convicted, Mr. Mikhaylov faces a serious term of imprisonment. Moreover, Mr. Mikhaylov spent 171 days in pretrial detention. The Working Group takes the view that the present case raises a serious issue, as it concerns the impact of the liquidation of the Jehovah's Witnesses legal entity in the Russian Federation. Consequently, and consistently with para 17 (a) of its methods of work, in which the Working Group reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned, the Working Group shall proceed to examine the submission.

46. The source has submitted that the arrest and detention of Mr. Mikhaylov was arbitrary and falls under categories II, III and V of categories applied by the Working Group. The Working Group shall examine these in turn.

47. The source submitted that Mr. Mikhaylov was arrested and detained simply for peacefully exercising his religious beliefs, including by gathering for worship with fellow believers. In doing so, he was exercising his right to freedom of religion and freedom of expression as guaranteed by articles 18 and 19 of the Universal Declaration of Human Rights and articles 18 and 19 of the Covenant. In its late reply, the Government argues that Mr. Mikhaylov was arrested and detained as a suspect in relation to three crimes: (a) membership of an extremist organization; (b) financing of an extremist organization; and (c) organization of the activities of an extremist organization. The Government contends that each of these crimes arose from his activities as part of the Jehovah's Witnesses organization. The Government argues that Mr. Mikhaylov continued his activities as part of the Jehovah's Witnesses organization throughout 2017 and 2018 despite being fully aware that the Supreme Court had in 2017 approved the liquidation of this organization in the Russian Federation as an extremist organization.

48. The Working Group observes that article 18 (1) of the Covenant states the following: "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom ..., either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching." As this right applies to everyone, it undoubtedly applies to Jehovah's Witnesses and their religious practices and manifestations.

49. Human Rights Committee, in its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, further explains the following (para. 4): "The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ... the building of places of worship In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as ... the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications."

50. The Working Group recalls that freedom of religion is an absolute right upon which no restrictions can be permitted and from which no derogations are possible (*ibid.*, para. 3). However, the freedom to manifest religion is not an absolute right, and article 18 (3) of the Covenant permits restrictions on the right to manifest religion if they are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. As the Human Rights Committee argues in its general comment No. 22 (para. 8), "[l]imitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated".

51. Moreover, article 20 of the Covenant obliges States to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

52. The Working Group notes that the Government contends that Mr. Mikhaylov is charged with three crimes: (a) membership of an extremist organization; (b) financing of an

extremist organization; and (c) organization of the activities of an extremist organization. Yet, the Government has not explained how mere meetings with others and peaceful religious discussions amounted to such crimes. It is clear to the Working Group that Mr. Mikhaylov did nothing more than exercise his right to freedom of religion under article 18 of the Covenant and, for this, he was detained by the authorities. The Working Group therefore concludes that the arrest of Mr. Mikhaylov falls under category II. The Working Group refers the present case to the Special Rapporteur on freedom of religion or belief, for appropriate action.

53. Given its finding that the deprivation of liberty of Mr. Mikhaylov is arbitrary under category II, the Working Group wishes to emphasize that Mr. Mikhaylov should not have been arrested and held in pretrial detention and that no trial of Mr. Mikhaylov should take place.

54. However, Mr. Mikhaylov was arrested and held in pretrial detention and, although he has been released, the investigation against him is ongoing. The source has submitted that the arrest and detention of Mr. Mikhaylov was arbitrary and falls under category III, since no reasons were given by the domestic authorities to justify either the order to place Mr. Mikhaylov in police custody or the subsequent judicial decisions to place him in pretrial detention. The domestic courts merely repeated the general wording of articles 97 and 99 of the Criminal Procedure Code, without pointing to any evidence that justified his detention. In its late reply, the Government states the dates on which hearings on pretrial detention and its extension were held, without giving any explanation as to why pretrial detention was deemed necessary and appropriate in this case.

55. The Working Group recalls that it is a well-established norm of international law that pretrial detention should be the exception and not the rule, and that it should be ordered for as short a time as possible.² Article 9 (3) of the Covenant sets forth two cumulative obligations, namely to be promptly brought before a judge within the first days of the deprivation of liberty and to have a judicial decision rendered without undue delays, in the absence of which the person is to be released (A/HRC/19/57, para. 53).

56. This provision is completed by the second part of article 9 (3), which provides that “it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement”. It follows that liberty is recognized as a principle and detention as an exception in the interests of justice (*ibid.*, para. 54).

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

58. The Working Group also wishes to refer to the Human Rights Committee’s general comment No. 35 (2014) on liberty and security of person, according to which (para. 38):

It should not be the general practice to subject defendants to pretrial detention. Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. The relevant factors should be specified in law and should not include vague and expansive standards such as “public security”. Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.

59. In the case of Mr. Mikhaylov, the Working Group notes that the Government has chosen not to explain the reasons that led to the decision to remand Mr. Mikhaylov in

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

custody. The Working Group accepts that periodic reviews of the pretrial detention took place and that Mr. Mikhaylov was able finally to appeal successfully against continued pretrial detention, which led to him being released from it on 15 November 2018. However, he had spent 171 days in pretrial detention, which is a considerable period of time. Moreover, from 20 April 2018 until his arrest on 29 May 2018, Mr. Mikhaylov was under a recognizance imposed by the investigator and did not attempt to abscond or evade the investigation. In the absence of any explanation from the Government of the reasons justifying the need to substitute recognizance imposed by the investigator with pretrial detention, the Working Group finds a breach of article 9 (3) of the Covenant.

60. Furthermore, the Working Group wishes to examine the circumstances of Mr. Mikhaylov's arrest on 29 May 2018. The source alleges that police officers arrived at Mr. Mikhaylov's home, pretending to be traffic police, and asked to speak to him outside, claiming that his car had been damaged in an accident. As soon as he left his house to look at his car, the police physically grabbed him and forced him into their waiting car. The Working Group notes the Government's failure to address these allegations.

61. The Working Group cannot accept that the circumstances of Mr. Mikhaylov's arrest on 29 May 2018 can be construed as following a procedure for arrest established in law. The Working Group also cannot establish any reasons for such clandestine actions by the police, as Mr. Mikhaylov had never resisted the requests of the authorities. He had, in fact, already been taken in for interrogation on 20 April 2018 and was under a recognizance.

62. The Working Group observes that Mr. Mikhaylov was arrested on 29 May 2018 and was presented to the court only on 31 May 2018 for a pretrial detention hearing. The Working Group observes that this detention was based on article 94 of the Criminal Procedure Code, which allows detention of a suspect for 48 hours. The source has also submitted that on 31 May 2018, the court remanded Mr. Mikhaylov in custody for an additional 72 hours so that the investigator could provide additional evidence to justify the request to impose pretrial detention. In its late reply, the Government has noted only that Mr. Mikhaylov was lawfully arrested on 29 May 2018 and that the court extended his detention for a further 72 hours.

63. The Working Group considers that judicial oversight of detention is a fundamental safeguard of personal liberty (A/HRC/30/37, para. 3), and is essential in ensuring that detention has a legal basis. Moreover, as the Human Rights Committee noted in its general comment No. 35 (2014), 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances. This did not apply in the case of Mr. Mikhaylov. Notably, the Government presented no exceptional reasons justifying the delay in bringing Mr. Mikhaylov before a judge. In fact, it appears that Mr. Mikhaylov was held beyond the time permitted by article 94 of the Criminal Procedure Code. The Working Group is particularly alarmed about the allegation made by the source that the court extended Mr. Mikhaylov's initial detention by a further 72 hours to give the investigators more time to find evidence to support pretrial detention. The Working Group therefore finds a breach of article 9 (3) of the Covenant in the authorities' failure to present Mr. Mikhaylov to the judge promptly.

64. In the present case, Mr. Mikhaylov was held in detention for three days before he was brought in front of a judge, for a hearing on the application of pretrial detention. During those three days, therefore, Mr. Mikhaylov was deprived of the possibility to challenge the legality of his detention as provided for by article 9 (4) of the Covenant. Indeed, without the affirmation by the judiciary that the detention is indeed legal, the detention cannot be said to have a legal basis.

65. The Working Group wishes to reiterate that the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society (A/HRC/30/37, paras. 2–3). This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty (*ibid.*, para. 11), and to "all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under

counter-terrorism measures, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrests, house arrest, solitary confinement, detention for vagrancy or drug addiction, and detention of children for educational purposes” (ibid., para. 47 (c)). The Working Group observes that Mr. Mikhaylov was denied this right for the first three days of his detention, in breach of article 9 (4) of the Covenant.

66. The Working Group therefore concludes that the pretrial detention of Mr. Mikhaylov was arbitrary and falls under category I. It lacked legal basis since he was not promptly presented before a judge, in violation of article 9 (3) of the Covenant; since he was unable to challenge the legality of his detention for the first three days, in violation of article 9 (4); and since the pretrial detention was imposed in violation of article 9 (3).

67. The Working Group further wishes to examine the behaviour of the courts during Mr. Mikhaylov’s pretrial detention hearings. The source has alleged that at the hearing on 31 May 2018, the Shuya City Court granted the investigator an additional 72 hours to provide additional evidence to justify the imposition of pretrial detention. Further, the source has submitted that the appeal of 7 June 2018 to the Ivanovo Regional Court against pretrial detention was simply not heard, with no explanation or justification provided to Mr. Mikhaylov or his lawyer. The Working Group is mindful that the Government has chosen not to address these allegations.

68. Under principle 6 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, any court reviewing the arbitrariness and lawfulness of the deprivation of liberty is required to be established by law and bear the full characteristics of a competent, independent and impartial judicial authority capable of exercising recognizable judicial powers. This echoes the position of the Human Rights Committee in its general comment No. 35 (para. 32).

69. The Working Group considers that the two examples of court behaviour alluded to by the source and not rebutted by the Government are clear evidence of bias on the part of the two courts in relation to Mr. Mikhaylov. The Working Group therefore finds a violation of article 14 (1) of the Covenant.

70. The Working Group recalls that the Covenant does not require that a court decision upholding the lawfulness of detention be subject to appeal.³ However, in the view of the Working Group, if a State provides such an appeal or further instances of review, it must meet the standard of impartial and independent review required under article 9 (3) and (4) of the Covenant. In the present case, therefore, the failure of the Ivanovo Regional Court to examine the appeal of 7 June 2018 against pretrial detention and the absence of any written decision or communication that would explain or justify this failure amount to a violation of article 9 of the Covenant.

71. The Working Group wishes to emphasize that these two failures by the courts had direct consequences for the extended pretrial detention of Mr. Mikhaylov. On that basis, the Working Group concludes that his pretrial detention was arbitrary, and also falls under category III due to the lack of independence and impartiality of the Shuya City Court during the 31 May 2018 hearing and the failure of the Ivanovo Regional Court to entertain Mr. Mikhaylov’s appeal of 7 June 2018. The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers, for further action.

72. The source further asserts that the State authorities targeted Mr. Mikhaylov for prosecution simply because he is a Jehovah’s Witness, arguing that his arrest and prosecution were ostensibly based on the Supreme Court’s liquidation decision of 20 April 2017, which the investigator has construed as imposing a total ban on the religious activity of Jehovah’s Witnesses. The source therefore submits that the arrest and detention of Mr. Mikhaylov fall under category V.

³ Human Rights Committee, general comment No. 35, para. 48. See also guideline 7 of the United Nations Basic Principles and Guidelines, para. 66.

73. The Government does not deny that Mr. Mikhaylov was arrested and charged for his activities as a Jehovah's Witness, as a member of an organization that has been liquidated in the Russian Federation, noting that Mr. Mikhaylov engaged in these activities knowingly.

74. The Working Group observes that there have been at least five joint urgent actions by the special procedures mandate holders since 2015 expressing concern about the banning of the religious activities of Jehovah's Witnesses in the Russian Federation; about amendments under the Yarovaya Law, including restrictions on religious expression and activities; and about violations of the rights to freedom of expression and freedom of association and peaceful assembly of Jehovah's Witnesses in the Russian Federation.⁴ The Working Group specifically wishes to emphasize the latest joint letter of allegation, in which the special procedure mandate holders expressed concerns over "issue of systemic and institutionalized persecution of Jehovah's Witnesses".⁵

75. The Working Group is also mindful that on 14 May 2018, the universal periodic review of the Russian Federation was held. Among the recommendations addressed to the Russian Federation were recommendations to refrain from outlawing religious groups, including Jehovah's Witnesses, as "extremist" (A/HRC/39/13, paras. 147.199–147.204).

76. As stated earlier, the actions of Mr. Mikhaylov have always been entirely peaceful and there is no evidence that he or indeed the Jehovah's Witnesses in the Russian Federation have ever been violent or incited others to violence. The Working Group notes that Mr. Mikhaylov is only one of the now ever-growing number of Jehovah's Witnesses in the Russian Federation who have been arrested, detained and charged with criminal activity on the basis of mere exercise of freedom of religion, a right protected by article 18 of the Covenant (see also para. 39 above). The Working Group therefore concludes that the arrest and pretrial detention of Mr. Mikhaylov were discriminatory on the basis of religion and fall under category V.

77. The Working Group observes that while this is the first case through its regular communication procedure on the situation of Jehovah's Witnesses in the Russian Federation, numerous other such cases have been raised through the joint urgent action procedure by the Working Group and other special procedures (see para. 74 above). All these cases concerned the branding of peaceful religious activities by Jehovah's Witnesses as "extremist activities", which has led to the arrest and detention of individuals having this religion. Although the present opinion concerns the particular circumstances of Mr. Mikhaylov, therefore, the Working Group wishes to emphasize that its findings in this opinion apply to all other individuals in situations similar to that of Mr. Mikhaylov.

Disposition

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

The deprivation of liberty of Dmitriy Mikhaylov, being in contravention of articles 2, 3, 7, 9 and 18 of the Universal Declaration of Human Rights and articles 2, 9, 14, 18 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

79. The Working Group requests the Government of the Russian Federation to take the steps necessary to remedy the situation of Mr. Mikhaylov 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.

80. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to discontinue the proceedings against Mr.

⁴ For details of all communications sent, see <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>. For the cases mentioned here, see specifically joint letter of allegation No. RUS 22/2018 of 20 December 2018, joint letter of allegation No. RUS 19/2018 of 14 September 2018, joint letter of allegation No. RUS 2/2017 of 23 March 2017, joint other letter No. RUS 7/2016 of 28 July 2016 and joint letter of allegation No. RUS 6/2015 of 11 November 2015.

⁵ Joint letter of allegation No. RUS 22/2018 of 20 December 2018.

Mikhaylov and accord him an enforceable right to compensation and other reparations, in accordance with international law.

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

82. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

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

Follow-up procedure

84. 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 the proceedings against Mr. Mikhaylov have been discontinued and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Mikhaylov;

(c) Whether an investigation has been conducted into the violation of Mr. Mikhaylov'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 the Russian Federation with its international obligations in line with the present opinion;

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

85. 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.

86. 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.

87. 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.⁶

[Adopted on 26 April 2019]

⁶ See Human Rights Council resolution 33/30, paras. 3 and 7.