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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its ninetieth session, 3–12 May 2021****Opinion No. 3/2021 concerning Kadyr Yusupov (Uzbekistan)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work,<sup>1</sup> on 11 January 2021 the Working Group transmitted to the Government of Uzbekistan a communication concerning Kadyr Yusupov. The Government submitted a late reply on 23 April 2021. 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).

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<sup>1</sup> A/HRC/36/38.



## Submissions

### *Communication from the source*

4. Kadyr Yusupov is a national of Uzbekistan, born in 1951 and usually residing in Tashkent. He is currently being held at the 4th prison colony at Navoy.

5. According to the source, Mr. Yusupov is a retired diplomat with no prior convictions. He has a distinguished record as evidenced by the various positions he has held at the Ministry of Foreign Affairs, including Head of Asia and Africa Department, Head of European Department and, from 2006 to 2009, Chargé d'Affaires in Austria and Permanent Representative to the Organization for Security and Cooperation in Europe and the United Nations organizations in Vienna.

a. Arrest, detention and trial

6. The source reports that on 3 December 2018, Mr. Yusupov was admitted to the hospital following a brain trauma and other serious injuries incurred after attempting to commit suicide owing to a long-term mental illness. While receiving medical attention and still in a hallucinatory state of mind due to his brain injury, he was reportedly subjected to questioning by the State Security Service of Uzbekistan. After hours of interrogation, Mr. Yusupov allegedly confessed to treason in the presence of State Security personnel.

7. On that same day, the State Security Service reportedly seized Mr. Yusupov's phone and laptop without a warrant. On the following day, they obtained a warrant and searched his flat and family home and again seized his phone and laptops. The next day, a State Security officer reportedly asked a relative of Mr. Yusupov to sign a letter stating that the items had been given voluntarily, which he refused to do.

8. On 10 December 2018, Mr. Yusupov's family reportedly entered the hospital to find that he had been taken by the State Security Service without telling the family or doctors where he was being taken. The next day, a State-appointed attorney called a relative of Mr. Yusupov to inform him that he was being held at the Central State Security Service Detention Facility and was facing charges under article 157 of the Criminal Code of Uzbekistan, relating to treason.

9. The source reports that on 11 December 2018, a relative of Mr. Yusupov met with the State-appointed lawyer who presented himself as a private lawyer working for the Uzbek Chamber of Advocates and asked the family for a retainer payment of \$250 per month. The lawyer explained to the relative that the case was lost and that Mr. Yusupov would get 13 years in prison regardless of his medical condition. The source adds that the family later found out that this lawyer was in fact a State-appointed lawyer, known for his involvement with the State Security Service, and decided to decline his services in favour of a private, independent lawyer.

10. According to the source, on 21 December 2018, Mr. Yusupov's family decided to hire another attorney for Mr. Yusupov. This lawyer made four unsuccessful attempts to see his client. Investigators showed the private lawyer a letter allegedly written by his client and dated 27 December 2018 – the day the lawyer had called the chief investigator on the case asking him for no investigative actions to be taken without his presence as a lawyer. In this letter, Mr. Yusupov reportedly declined the services of the private lawyer and also declined to meet with him as he was already represented by the State-appointed lawyer.

11. On 4 January 2019, Mr. Yusupov's private lawyer was finally able to meet his client at the pretrial detention centre (SIZO). During this visit, with guards present, the lawyer reportedly asked Mr. Yusupov three times whether he voluntarily wrote that letter, but he was not very responsive and appeared to be struggling to maintain personal hygiene. The source adds that Mr. Yusupov's family had still not been able to see him, and they would not be allowed to see Mr. Yusupov until the day of his conviction, 9 January 2020, and only for a very short time.

12. The source reports that on 7 January 2019, suspecting undue influence to reject his services, Mr. Yusupov's private lawyer submitted a formal complaint to the Prosecutor General. In March, the Office of the Prosecutor General responded that they were satisfied

with the State Security Service's handling of Mr. Yusupov's case and did not find any evidence of undue influence. They explained that they had a conversation with Mr. Yusupov, and that he did not have any complaint regarding the handling of his case. According to the source, Mr. Yusupov later told his private lawyer that he did not meet anyone from the Office of the Prosecutor General in the period from January to March 2019, during which the State-appointed lawyer was representing Mr. Yusupov, and there is no evidence to show that the meeting took place.

13. According to the source, Mr. Yusupov's lawyer was not able to see his client again until 24 April 2019, that is, nearly four months after his initial meeting with his client. During that meeting, the lawyer allegedly received complaints from Mr. Yusupov of psychological torture against him in detention, including daily threats of sexual violence against him and his family members, and threats to arrest other relatives, if he did not admit guilt. Additionally, for a period of over a month, lasting until 17 January 2019, Mr. Yusupov was allegedly denied access to escitalopram, a powerful antidepressant he was prescribed to take every day. The source adds that doctors advise that missing a dose of escitalopram can cause relapses, which could lead to bouts of insomnia, suicidal thoughts and irrational behaviour. The family of Mr. Yusupov tried to give him the medicine on two occasions, in his food and in a medicine parcel, but the SIZO guards at the pretrial detention centre did not authorize it until the family's third attempt, on 17 January 2019. On 8 February 2019, a relative of Mr. Yusupov filed a complaint regarding this matter to the head of the State Security Service.

14. The source reports that on 3 June 2019, the Office of the Prosecutor General officially responded to the complaint from Mr. Yusupov's lawyer dated 6 May 2019 regarding allegations of torture, stating that they had now investigated the matter. A member of the Office of the Prosecutor General met with Mr. Yusupov sometime between April (when the private lawyer officially started representing Mr. Yusupov) and the end of June 2019 and asked him whether he had been tortured. According to the source, Mr. Yusupov answered that he would only talk to members of the Prosecutor General's Office in the presence of his lawyer, but briefly confirmed he had indeed been tortured by the State Security Service.

15. The source adds that during this period, Mr. Yusupov's detention was extended once at the request of investigators, notably on 6 March 2019 by a military judge for an additional two months, that is, until 4 May 2019. There does not appear to be any paperwork regarding any further extension. Throughout September and October 2019, Mr. Yusupov's lawyer wrote a number of letters to various authorities in Uzbekistan, including the Military and Criminal Courts Record Bureau and the Ministry of Interior, asking them to confirm the existence of a decision regarding Mr. Yusupov's continued detention after 4 May 2019. He reportedly received several responses confirming that no such decision existed.

16. According to the source, the trial proceedings in Mr. Yusupov's case were entirely secret, and his lawyer was reportedly made to sign a non-disclosure agreement preventing him from discussing the case. At hearings, Mr. Yusupov reportedly appeared in a cage. After numerous adjournments, he was ultimately found guilty of treason under article 157 of the Criminal Code of Uzbekistan and was sentenced to five years and six months' imprisonment on 9 January 2020. The source notes that Mr. Yusupov's lawyer was not able to meet face to face with his client again until 9 October 2020, when he discussed the possibility of appealing his conviction with him. On 13 October 2020, Mr. Yusupov filed an appeal to the Court of Cassation of Uzbekistan. The appeal is pending.

b. Current situation

17. The source reports that there has recently been a surge of coronavirus disease (COVID-19) cases in Mr. Yusupov's prison colony, with no social distancing measures in place and very poor on-site medical facilities. Mr. Yusupov is an elderly man, with health issues that put him at heightened risk in the current pandemic. He has a history of atherosclerosis, coronary artery disease, angina and encephalopathy, which affects cognitive processes. He also suffers from severe mental health issues resulting in several attempts to take his own life.

18. The source adds that there have been recent reports of Mr. Yusupov being mistreated in detention for raising concerns as to the treatment of inmates in his prison. At the start of

Ramadan, in April 2020, Mr. Yusupov reportedly raised some concerns on behalf of prisoners to the head of the prison, namely (a) the fact that prisoners are paid a very low wage for their work; and (b) the inability of prisoners to practise their religion freely. He was reportedly first sent to a punishment cell for two days for raising those issues, where he started a hunger strike in protest of his treatment. On the third day of his hunger strike, he was transferred to solitary confinement where he remained for the next 14 days. The source adds that Mr. Yusupov had been known for helping other prisoners understand their rights while in prison and for advocating for them, angering the prison staff.

19. According to the source, Mr. Yusupov's solitary confinement cell was only 1.5 m x 2 m, with an iron chair, a bed and a torn mattress. There was no toilet in the cell, just a hole in the ground. The source adds that his mattress was taken away during the day, and he was only allowed it from 10 p.m. to 6 a.m. The cell was allegedly infested with insects, small scorpions and snakes. It was badly lit, such that it was not possible for Mr. Yusupov to even read. He was also denied basic hygiene items such as a towel or a toothbrush.

20. More generally, the source reports that the prison conditions in Mr. Yusupov's colony are abysmal. He was essentially placed in solitary confinement for wanting to fast and pray. In addition, the prison administration is reportedly opposed to people exercising religious freedom, especially if they are Muslim prisoners, follow fasting rituals or pray openly. Prisoners are also not allowed to exercise as it is believed prisoners who exercise are just "getting ready to escape".

21. The source alleges that torture is also commonplace in the prison, and prison authorities in Mr. Yusupov's colony have been beating prisoners while their hands and feet are tied behind their backs in a torture position known as the "swallow" position. The source adds that there are thus reasonable grounds to believe, considering his previous treatment in this colony, that Mr. Yusupov may be at risk of torture.

22. In this respect, the source notes that the Committee against Torture, in its most recent concluding observations on Uzbekistan, remained deeply concerned at the use of torture in criminal proceedings. The Committee specifically referred to Mr. Yusupov's case, and it stated that fundamental legal safeguards were absent in his case. The Committee noted that the State party should re-examine the allegations of torture and ill-treatment against him.<sup>2</sup> Since his conviction, Mr. Yusupov has only been able to see his family twice, and they are very worried about him as he is understandably unwell, and they fear for his mental and physical well-being.

c. Analysis of violations

23. The source submits that the arrest and detention of Mr. Yusupov is arbitrary under categories I and III as established by the Working Group on Arbitrary Detention.

i. Category I

24. The source reiterates that Mr. Yusupov's pretrial detention was extended once, on 6 March 2019, at the request of investigators. A military judge approved the extension for a further two months, until 4 May 2019. The source adds that for Mr. Yusupov to have remained in detention until his conviction on 9 January 2020, his detention would need to have been extended on two further occasions – at the three months' mark and at the five months' mark, in accordance with articles 245 and 247 of the Criminal Procedure Code of Uzbekistan.

25. However, the source notes that there is no paperwork in Mr. Yusupov's case indicating further extensions beyond 4 May 2019, and this was confirmed by the authorities of Uzbekistan (see para. 15 above). The source thus submits that Mr. Yusupov's detention beyond 4 May 2019 was in violation of domestic law and thus arbitrary under article 9 (1) of the International Covenant on Civil and Political Rights.

26. The source submits that the detention of Mr. Yusupov was also in violation of the international obligations of Uzbekistan under article 9 of the Covenant. Mr. Yusupov's

<sup>2</sup> CAT/C/UZB/CO/5, paras. 11–13 and 29–30.

lawyer did not lodge an appeal earlier as he was not confident that the client-lawyer privilege would be respected if he tried to communicate with his client via telephone.

27. The source notes that under the Covenant, detention pending trial should be the exception rather than the rule. It should not be general practice to subject defendants to pretrial detention, regardless of their offence. Whether it is reasonable for an accused person to remain in detention must be assessed on the basis of the facts of each case. The State must justify any departure from article 9 and must set out the reasons for doing so in their decision.

28. The source submits that the court's decision to remand Mr. Yusupov on 12 December 2018 and the decision to extend his detention on 6 March 2019 did not provide adequate reasoning for the need for him to be kept on remand. The decision only states that "after listening to both sides, the judge decided to remand the defendant for three months under article 245 of the Criminal Code of Procedure." Mr. Yusupov's lawyer complained about each decision, but did not receive any response. It is all the more worrying that the private lawyer was not Mr. Yusupov's lawyer at the time those decisions were taken.

29. The source also refers to the concluding observations of the Human Rights Committee, in which the Committee remained concerned about deficiencies in the application of habeas corpus provisions and that the fundamental legal safeguards were not afforded, in practice, to all persons deprived of liberty, in particular with regard to access to a lawyer of their choice.<sup>3</sup> The source also notes that the Special Rapporteur on the independence of judges and lawyers, following his 2019 visit to Uzbekistan, noted that many lawyers had difficulty obtaining access to clients. In some cases, he reported that prison authorities put pressure on detainees to force them to waive their right to be assisted by a lawyer of their choice.<sup>4</sup>

30. The source reiterates that Mr. Yusupov was assigned a State-appointed attorney, whose services the family declined and whom they later found out was allegedly known in the Uzbek legal system for being picked by the State as a defence attorney in order to facilitate proceedings for them (see para. 9 above). This lawyer had the opportunity to appeal the decision to remand Mr. Yusupov on 12 December 2018, but he reportedly did not do so. He also never sought for Mr. Yusupov's detention to be reviewed.

31. The source also submits that Mr. Yusupov was subjected to incommunicado detention for a period of 135 days: from the day of his arrest until 24 April 2019, which is the day he was able to meet privately with his independent lawyer for the first time. Although Mr. Yusupov also had a meeting with the lawyer on 4 January 2019, he was not able to speak confidentially with him on that occasion. The source notes that the Working Group in its practice has consistently argued that holding persons incommunicado breaches the right to challenge the lawfulness of detention before a judge. Articles 10 and 11 of the Universal Declaration of Human Rights confirm the impermissibility of incommunicado detention, as does article 9 of the Covenant.

32. After finally assuming his position as Mr. Yusupov's counsel, the private lawyer reportedly sent in three complaints asking for his client's detention to be reviewed. In each of them, he cited three grounds for review: (a) Mr. Yusupov was tortured while in detention; (b) he presented no risk and had no previous criminal record; and (c) his detention as of 4 May 2019 was unlawful as it was not based on any judicial decision. The source notes that the complaints were rejected first on the basis that they were premature, and then that they were unreasonable. The judge never effectively reviewed Mr. Yusupov's detention.

33. The source also refers to article 9 (3) of the Covenant, which guarantees the right to "trial within a reasonable time or to release", and notes that such requirement applies specifically to pretrial detention. According to the source, six out of 15 hearings were delayed in Mr. Yusupov's trial, for reasons such as the illness of the prosecutor or a leak in the building. The source is of the opinion that these hearings were delayed because of foreign media and diplomats gathering around the court on these days, attracting international attention to the case (see para. 42 below). In any event, the source submits that the reasons

<sup>3</sup> CCPR/C/UZB/CO/5, para. 28.

<sup>4</sup> A/HRC/44/47/Add.1, para. 79.

given by the State to justify such delays are not acceptable, especially because Mr. Yusupov's detention was never effectively reviewed, and alternative measures were never considered.

34. The source concludes that Mr. Yusupov's trial was unduly delayed, with no effective review of his detention up until his conviction. He was also held incommunicado for more than 100 days and was unable to confer with a lawyer of his choosing. For these reasons, the source submits that Mr. Yusupov's detention was also arbitrary under articles 9 (3) and (4) of the Covenant.

ii. Category III

35. The source also submits that the non-observance of Mr. Yusupov's right to a fair trial is of such gravity as to give his deprivation of liberty an arbitrary character under category III.

36. As mentioned in paragraphs 10 to 13 above, Mr. Yusupov was denied his right to effective legal assistance. The family decided to hire a private lawyer on 21 December 2018, who was not able to have a confidential appointment with Mr. Yusupov until 24 April 2019, after Mr. Yusupov's family received a letter from him asking for the private lawyer to represent him. According to the source, the State claims that before that, Mr. Yusupov had declined the lawyer's services, despite having never met him or even heard of him.

37. The source notes that once Mr. Yusupov was able to meet with the private lawyer, he was able to inform him of the systematic psychological torture he had been subjected to during the time he was held incommunicado, and on 2 May 2019, Mr. Yusupov sent a written report to the Prosecutor General, the chief investigator and the Head of the State Security Service, claiming that he had been tortured. He described in detail the two persons who had tortured him, gave names and reported that they had made serious threats of violence, including sexual violence, against his family, if he did not admit guilt. According to the source, Mr. Yusupov avers that, contrary to Uzbek law, notably article 951 of the Criminal Procedure Code, there were also "unknown" persons present during the interrogations, one of whom was responsible for some of the torture inflicted on Mr. Yusupov. This is all the more serious given that, while the signature of the State-appointed lawyer appears on all of the interrogation reports, Mr. Yusupov maintains that he was interrogated alone without the presence of a lawyer and gave his confession under duress. He was also denied vital medication, as described in paragraph 13 above.

38. Complaints were reportedly filed to the Ombudsman for Human Rights in Uzbekistan, the national human rights centre, the presidential administration, the Prosecutor General and the State Security Service. On 3 June 2019, the Prosecutor General's Office responded that they did not see any evidence of torture against Mr. Yusupov. According to the source, these allegations were never properly investigated.

39. The source also submits that Mr. Yusupov's detention conditions negatively affect his ability to prepare his defence and his chances of a fair trial. Under these circumstances, it would not be unreasonable to assume that Mr. Yusupov was forced to decline the services of the private lawyer in favour of the State-appointed one, and that he was thus incapable of preparing an effective defence. The private lawyer was only able to meet Mr. Yusupov 11 days before the end of the preliminary investigation, and two months before the start of the trial. His access to case material was also delayed, owing to the fact that he was not officially Mr. Yusupov's lawyer.

40. The source further submits that Mr. Yusupov was tried behind closed doors and, although the international press has tried to cover the case, as it did at the time of the arrest, it has not been allowed further details. The source refers to the Human Rights Committee, which acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order or national security, but that these cases should remain exceptional.<sup>5</sup> A hearing must be open to the general public, including members of the media. The source

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<sup>5</sup> Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 29.

adds that Uzbekistan allegedly has a habit of using closed trials for treason and other serious charges.

41. In the circumstances of the case, the authorities did not give any reasoning as to why the trial needed to be held behind closed doors. The source adds that there seems to be a blanket ban on public hearings in Uzbek law in cases relating to treason. A relative of Mr. Yusupov tried to publicize the case by inviting foreign media and diplomats, and in response was allegedly subjected to threats, intimidation and restrictions on his freedom of movement from the Uzbek authorities.

42. The source adds that such threats were allegedly in response to the relative informing a journalist and representatives of the Embassy of the United States of America in Tashkent about Mr. Yusupov's hearing on 4 October 2019. The hearing was postponed owing to the absence of the State Prosecutor, supposedly for illness, despite Mr. Yusupov having already been transferred from the prison to the court room, which gives the source grounds to conclude that the hearing was cancelled at the last minute owing to the presence of international press. The source adds that five non-governmental organizations issued a press statement in October 2019, asking the Uzbek authorities to stop harassing a relative of Mr. Yusupov, and that the relative also complained to the Office of the Prosecutor General, but to no avail.

43. The source submits that the situation in Uzbekistan with regard to closed hearings is very worrying, as is the extent to which the authorities will go to ensure that hearings do not gain international publicity. This also raises serious questions as to the welcomed judicial reforms of Uzbekistan and how deeply such reforms run. The source adds that these events also cast doubts as to the independence of judges in Mr. Yusupov's case. According to the source, on the day Mr. Yusupov's relative brought international media and diplomats, the judge's secretary approached them asking who they were. The source adds that the judge and his secretary would have been the only ones aware of the presence of international media and diplomats, as the State Security Service was not present on that day.

44. The source also reports that Mr. Yusupov's lawyer filed a motion to the Chair of the Supreme Court on 8 October 2019, asking for the presiding judge to recuse himself under article 76 of the Criminal Procedure Code owing to his lack of impartiality, but the motion was rejected. The lawyer cited numerous examples in support of his application, namely, that the presiding judge: had repeatedly refused to review Mr. Yusupov's detention despite there being no legal basis for it; had refused to look into Mr. Yusupov's allegations of torture; and had refused to order a medical and psychiatric examination of Mr. Yusupov for over three months. In addition, the lawyer also cited the suspected communication between the State Security Service and the judge's chambers. The source notes that following his visit to Uzbekistan, the Special Rapporteur on the independence of judges and lawyers concluded that notwithstanding these judicial reforms, the judiciary could not be regarded at present as being independent from other State authorities.<sup>6</sup>

45. The source submits that Mr. Yusupov was also denied the right to call witnesses. Of the eight witnesses the defence called, only two were admitted, whereas the prosecution's 12 witnesses were all accepted. As noted by the Human Rights Committee in paragraph 39 of its general comment No. 32, there is a strict obligation to respect the right to have witnesses admitted that are relevant for the defence and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings. The source adds that most of the prosecution's witnesses did not provide any evidence to the allegations of treason and the defence was only able to call a quarter of their witnesses. Moreover, of the 12 prosecution witnesses who were called, the prosecution's two key witnesses on whose testimonies the case was built did not appear at trial, violating Mr. Yusupov's right to cross-examine prosecution witnesses. According to the source, this is a clear denial of the equality of arms as guaranteed by article 14 of the Covenant.

46. The source submits that this also calls into question the basis on which Mr. Yusupov was convicted. The source adds that while the Uzbek authorities claim he was found guilty "on the totality of evidence" before them, the charges seemed dubious and the evidence

<sup>6</sup> A/HRC/44/47/Add.1, para. 90.

flimsy at best. The prosecution witnesses who did appear did not add anything to the substance of the allegations, and no evidence was presented to justify a conviction. According to the source, this gives reason to believe that some weight was given to Mr. Yusupov's confession of guilt under torture. His private lawyer believes his conviction was mainly, if not solely, based on his confession. In addition, the judge never properly addressed the allegations of torture and did not declare Mr. Yusupov's confession inadmissible. The failure of the judge to intervene in this instance is particularly concerning and in clear violation of the right to be tried by a fair and impartial trial.

47. The source submits that other violations include the appearance of Mr. Yusupov at trial in a cage, and his lack of access to his private lawyer for months to discuss and file an appeal of his conviction. In paragraph 30 of its general comment No. 32, the Human Rights Committee states that defendants should normally not be kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals. Doing so would seriously impede the right to be presumed innocent until proven guilty.

48. The source also refers to article 14 (5) of the Covenant whereby anyone convicted of a crime is to have the right to have their conviction and sentence reviewed by a higher tribunal according to law. Owing to the current pandemic and additional security measures in place, Mr. Yusupov's lawyer was unable to meet with his client in a confidential setting for months, significantly delaying his ability to appeal his conviction.

49. For all the reasons above, the source concludes that the non-observance of international norms relating to the right to a fair trial in Mr. Yusupov's case is of such gravity as to give his detention an arbitrary character under category III.

#### *Response from the Government*

50. On 11 January 2021, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 12 March 2021, detailed information about the current situation of Mr. Yusupov. It also requested the Government to clarify the legal provisions justifying his continued detention and 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 his physical and mental integrity.

51. The Government submitted a response on 23 April 2021, that is, after the deadline given by the Working Group. The reply is therefore considered late, and the Working Group cannot accept the response as if it had been presented within the time limit. The Government did not request an extension of the time limit for its reply, within the deadline, as provided for in paragraph 16 of the Working Group's methods of work. The Government also submitted a second reply on 5 May 2021, after the adoption of the present opinion.

#### **Discussion**

52. 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.

53. In determining whether the deprivation of liberty of Mr. Yusupov is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.<sup>7</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source in a timely manner.

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<sup>7</sup> A/HRC/19/57, para. 68.



54. The source has submitted that the detention of Mr. Yusupov is arbitrary under categories I and III. The Working Group shall proceed to examine these submissions in turn.

*i. Category I*

55. The source has submitted that Mr. Yusupov visited a medical facility on 3 December 2018 where he was interrogated by the State Security Service and allegedly confessed to a crime. While the source has not provided any further details as to the circumstances of these events, the Working Group is bound to observe the highly irregular nature of these events and in this respect also notes that in its late reply, the Government has failed to provide any account of the way in which the arrest of Mr. Yusupov took place. Mr. Yusupov was in a medical facility following a very serious medical episode, which had clearly left him in a disturbed state of mind. Somehow the State Security Service officials were present in that medical facility and proceeded to interrogate him despite his state of health, leading to an alleged confession. It is clear that this interrogation was carried out without the presence of Mr. Yusupov's lawyer.

56. The source has further submitted that Mr. Yusupov's phone and laptop were seized by the same officials without a warrant on the day of interrogation. The exact date of Mr. Yusupov's transfer from hospital to a detention facility appears unclear as the source reports that the family found out on 10 December 2018 that Mr. Yusupov had been transferred, a fact that the source states was confirmed by the authorities the following day.

57. The Working Group observes that all these claims were put to the Government and regrets that the Government has chosen not to address these very serious allegations in a timely fashion. In such circumstances, the Working Group must conclude that Mr. Yusupov was interrogated while in a medical facility for an acute health emergency, which had left him in a disturbed state of mind, leading him to allegedly confess to a crime. This was then followed by his detention on the same day, although the date of his transfer to a detention facility remains unclear.

58. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge is to be brought promptly before a judge to exercise judicial power. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee "promptly" before a judge or other officer authorized by law following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances. The Working Group finds that Mr. Yusupov was not brought promptly before a judicial authority, in violation of article 9 (3) of the Covenant. As a result, the authorities failed to establish the legal basis of his detention in accordance with the provisions of the Covenant.

59. Moreover, the source has alleged, and the Government has chosen not to contest, that Mr. Yusupov was held incommunicado for some 135 days. As the Working Group has consistently found, holding persons incommunicado violates their right to be brought before a court under article 9 (3) of the Covenant and to challenge the lawfulness of their detention before a court under article 9 (4) of the Covenant.<sup>8</sup>

60. This view is consistent with that of the Human Rights Committee, which in paragraph 35 of its general comment No. 35 (2014) on liberty and security of person has argued that incommunicado detention that prevents prompt presentation before a judge inherently violates paragraph 3 of article 9. The Working Group recalls that judicial oversight of detention is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis. Given that Mr. Yusupov was unable to contact anyone and especially his lawyer, which is an essential safeguard to ensure the ability of any detainee to personally challenge their detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated.<sup>9</sup>

<sup>8</sup> See, e.g., opinions No. 36/2020, No. 35/2018, No. 11/2018, No. 79/2017, No. 46/2017 and No. 45/2017.

<sup>9</sup> Opinions No. 61/2020, para. 70; and No. 40/2020, para. 29. See also 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 (A/HRC/30/37, annex), principle 10.

61. The source has also argued that the pretrial detention of Mr. Yusupov breached article 9 (3) of the Covenant as its imposition did not satisfy the requirement of exceptionality and no reasons for the pretrial detention were given by the judge. In its late reply, the Government has chosen not to address these submissions and has provided no explanation as to the reasons for the imposition of pretrial detention.

62. The Working Group recalls that it is a well-established norm of international law that pretrial detention is to be the exception and not the rule, and that it should be ordered for as short a time as possible and subject to a periodic review to ensure its continued necessity and proportionality.<sup>10</sup> Article 9 (3) of the Covenant provides that it is not to be the general rule that persons awaiting trial are to be detained, but release may be subject to guarantees to appear for trial and at any other stage of the judicial proceedings. It follows that liberty is recognized as a principle and detention as an exception in the interests of justice.<sup>11</sup>

63. To give effect to this principle, pretrial detention must be based on an individualized determination that it is reasonable and necessary, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.<sup>12</sup> The courts must examine whether alternatives to detention, such as bail, would render custodial measures unnecessary.<sup>13</sup> In the present case, the court failed to comply with the requirements of article 9 (3) of the Covenant and the pretrial detention was imposed upon Mr. Yusupov in violation of this provision.

64. The source has further submitted numerous allegations of irregularities concerning the extensions of Mr. Yusupov's detention. According to the source, the national legislation requires a periodic review and renewal of Mr. Yusupov's detention. When enquiries about such reviews taking place were made by Mr. Yusupov's lawyer, confirmations or indeed the requisite paperwork were not forthcoming, and complaints submitted by the lawyer remained unanswered. The Working Group notes that these allegations have not been contested by the Government. In these circumstances, the Working Group finds that the continued pretrial detention failed to respect the requirements of the national law of Uzbekistan and thus violated article 9 (1) of the Covenant, which strictly obliges all detention to be consistent with national law.

65. Furthermore, the source has made serious allegations concerning Mr. Yusupov's right to legal assistance, which remain uncontested by the Government. In this respect, the Working Group recalls that to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged by article 9 (4) of the Covenant. The Working Group wishes to emphasize that according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.<sup>14</sup> This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty,<sup>15</sup> is not limited to detention for purposes of criminal proceedings. It extends to all situations of detention under administrative and other fields of law, including military detention, security detention, detention under counterterrorism 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. Moreover, it also applies irrespective of the place of

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<sup>10</sup> Opinions No. 8/2020, para. 54; No. 1/2020, para. 53; No. 57/2014, para. 26; No. 49/2014, para. 23; and No. 28/2014, para. 43. See also Human Rights Committee, general comment No. 35, para. 38; and A/HRC/19/57, paras. 48–58.

<sup>11</sup> A/HRC/19/57, para. 54.

<sup>12</sup> Human Rights Committee, general comment No. 35, para. 38.

<sup>13</sup> *Ibid.* See also opinion No. 83/2019, para. 68; and 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, guideline 15.

<sup>14</sup> A/HRC/30/37, paras. 2–3.

<sup>15</sup> *Ibid.*, para. 11.

detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.<sup>16</sup>

66. The Working Group further notes that in order to ensure an effective exercise of this right, the detained persons should have access, from the moment of arrest, to legal assistance of their own choosing as stipulated in principle 9 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. This was denied to Mr. Yusupov, as although he was appointed a lawyer by the State, this was not a lawyer of his choice. Moreover, this lawyer clearly did not exercise his duties diligently as he failed to intervene on behalf of Mr. Yusupov on various occasions, including a failure to appeal the decision of 12 December 2018 (see para. 30 above). In the meantime, Mr. Yusupov was prevented from meeting the lawyer of his choosing, which had serious adverse impacts on his ability to effectively exercise his right to challenge the legality of his detention, denying him his rights under article 9 (4) of the Covenant.

67. Finally, the Working Group notes that the phone and laptop of Mr. Yusupov were seized by the authorities without a warrant. In the context of the numerous allegations of violations of Mr. Yusupov's fair trial rights, which the Working Group will examine below, the Working Group wishes to recall its jurisprudence establishing that detention is arbitrary when evidence obtained without a search warrant is used in judicial proceedings.<sup>17</sup> In this case, the fact that Mr. Yusupov's personal items were seized without a warrant supports the Working Group's conclusion that the authorities did not follow the necessary investigative procedures in order to ensure that Mr. Yusupov's detention had a legal basis. Accordingly, the Working Group finds that Mr. Yusupov's right to freedom from arbitrary arrest and detention under article 9 (1) of the Covenant was violated.

68. The Working Group therefore concludes that the detention of Mr. Yusupov lacks a legal basis as he was not promptly presented before a judicial authority, was held incommunicado and had his personal items seized without a warrant. In addition, his pretrial detention was imposed in violation of article 9 (3) of the Covenant, there was a failure to substantiate periodic review of his detention contrary to national law and in breach of article 9 (1) of the Covenant, and he was unable to challenge the legality of his detention. It is therefore arbitrary and falls under category I of the Working Group.

*ii. Category III*

69. The source has made a series of allegations concerning the violations of Mr. Yusupov's fair trial rights. However, prior to examining these, the Working Group initially observes that the pretrial hearing and the reviews of Mr. Yusupov's continued detention were presided over by a military judge, although Mr. Yusupov is a civilian. The Working Group notes that the involvement of the military court is confirmed by the Government in its late reply.

70. The Working Group notes that it is within its mandate to assess the overall proceedings of the court and the law itself to determine whether they meet international standards.<sup>18</sup> In relation to the jurisdiction of the military courts, the Working Group in its practice has consistently argued that the trial of civilians by military courts is in violation of the Covenant and customary international law, and that under international law, military tribunals can only be competent to try military personnel for military offences.<sup>19</sup> Moreover, in the present case, the Government had the opportunity to explain the involvement of the military judge in the case of Mr. Yusupov, but it failed to do so. The Working Group therefore finds a breach of article 14 (1) of the Covenant.

<sup>16</sup> 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, guideline 1.

<sup>17</sup> Opinion No. 83/2019, para. 51.

<sup>18</sup> See opinions No. 78/2017, No. 30/2017, No. 15/2017 and No. 33/2015.

<sup>19</sup> A/HRC/27/48, paras. 67–70. See also opinions No. 66/2019, No. 32/2018, No. 28/2018, No. 30/2017 and No. 44/2016.

71. The source has also made extensive submissions concerning the violations of the right to legal assistance of Mr. Yusupov, with the Government merely arguing in its late reply that some witnesses were not called because they were unwell or overseas.

72. Initially, Mr. Yusupov was denied prompt access to the lawyer of his choosing, as he was only able to meet his lawyer privately on 24 April 2019, some five months after his initial detention. While he was provided with a State-appointed lawyer, this clearly was not a lawyer of his choice and indeed it appears that Mr. Yusupov was coerced into claiming otherwise (see para. 12 above). The Working Group notes here that while the Government in its late reply argues that Mr. Yusupov had a lawyer and gave his testimony in his lawyer's presence, it does not address the allegation that this lawyer was appointed by the State and in fact was not a lawyer of Mr. Yusupov's choosing.

73. When Mr. Yusupov was finally able to meet with the lawyer of his choosing, access to the case files was delayed. During the trial, Mr. Yusupov was not allowed to present witnesses, and his right to cross-examine witnesses of the prosecution was curtailed. In these circumstances, the Working Group finds that Mr. Yusupov's rights under articles 14 (1) and (3) (b), (d) and (e) of the Covenant were violated. In making this finding, the Working Group takes specific note of the concerns expressed by the Committee against Torture in its concluding observations on the fifth periodic report of Uzbekistan at the lack of respect of the right to fundamental safeguards, including the right to legal assistance in the case of Mr. Yusupov.<sup>20</sup>

74. Moreover, the Working Group has already established that Mr. Yusupov was interrogated repeatedly in the absence of legal counsel and while in incommunicado detention. As the Working Group has stated previously, confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.<sup>21</sup> Furthermore, the admission into evidence of a statement allegedly obtained through torture or ill-treatment renders the entire proceedings unfair, regardless of whether other evidence was available to support the verdict.<sup>22</sup> The burden is on the Government to prove that statements were given freely,<sup>23</sup> but in this case it has not done so.

75. Therefore, the Working Group finds that Mr. Yusupov's right to be presumed innocent under article 14 (2) of the Covenant and his right not to be compelled to confess guilt under article 14 (3) (g) were violated. In making this finding, the Working Group takes special note of the concluding observations of the Human Rights Committee on the fifth periodic report of Uzbekistan, requiring that the prohibition of forced confessions and the inadmissibility of torture-tainted evidence are effectively enforced in practice, including by law enforcement officials, prosecutors and judges.<sup>24</sup> The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

76. The Working Group wishes to place on record its particular alarm at the uncontested allegations by the source of the torture and ill-treatment inflicted upon Mr. Yusupov, which were brought to the attention of the authorities and the court by his lawyer. The Working Group considers that the failure to intervene when torture allegations have been made amounts to a violation of the right to a fair hearing by an independent and impartial tribunal under article 14 (1) of the Covenant.<sup>25</sup> In making this finding, the Working Group takes due regard of the concerns expressed by the Committee against Torture in 2020 regarding the case of Mr. Yusupov and the failure to investigate the allegations of torture in particular.<sup>26</sup>

<sup>20</sup> CAT/C/UZB/CO/5, paras. 29–30.

<sup>21</sup> A/HRC/45/16, para. 53. See also opinions No. 73/2019, para. 91; No. 59/2019, para. 70; No. 14/2019, para. 71; and No. 1/2014, para. 22. See also E/CN.4/2003/68, para. 26 (e).

<sup>22</sup> Opinions No. 73/2019, para. 91; No. 59/2019, para. 70; No. 32/2019, para. 43; No. 52/2018, para. 79 (i); No. 34/2015, para. 28; and No. 43/2012, para. 51.

<sup>23</sup> Human Rights Committee, general comment No. 32, para. 41.

<sup>24</sup> CCPR/C/UZB/CO/5, para. 27.

<sup>25</sup> Opinions No. 32/2019, para. 44; and No. 53/2018, para. 77 (b).

<sup>26</sup> CAT/C/UZB/CO/5, paras. 9–10 and 12–13.

The Working Group considers that a violation of paragraphs 12 and 16 of the Guidelines on the Role of Prosecutors also occurred.

77. Additionally, the Working Group also takes note of the numerous other allegations by the source concerning the overall impartiality of the court in the case of Mr. Yusupov, allegations which the Government has chosen not to address. In this context, the Working Group recalls that the Human Rights Committee in paragraph 19 of its general comment No. 32 argues that the requirement of competence, independence and impartiality of a tribunal in the sense of article 14 (1) is an absolute right that is not subject to any exception. In paragraph 21 of the same general comment, the Committee has further observed that:

The requirement of impartiality has two aspects. First, judges must not allow their judgment to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial.

78. In the present case, the source has alleged, and the Government has not rebutted, that the court acted with favouritism towards the witnesses presented by the prosecution while Mr. Yusupov was not allowed to call witnesses. Moreover, as established above, the court failed to act when credible allegations of torture and ill-treatment, and a confession obtained through such means, were brought to its attention by the lawyer of Mr. Yusupov. The Working Group therefore finds that the court acted in a manner that promoted the interests of the prosecution and failed in its duty of impartiality to Mr. Yusupov, in breach of the principle of equality of arms and article 14 (1) of the Covenant. The Working Group refers this case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

79. Furthermore, the source has submitted, and the Government has not contested, that the trial of Mr. Yusupov was conducted behind closed doors. Moreover, the authorities made active efforts to keep it that way by avoiding any publicity and making the lawyer sign a non-disclosure agreement. As the Human Rights Committee states in paragraph 29 of its general comment No. 32:

Article 14, paragraph 1, acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons.

80. The Working Group has been presented with no evidence as to how the case of Mr. Yusupov could possibly fall into any of the prescribed exceptions to the general obligation of public trials under article 14 (1) of the Covenant, and the Government of Uzbekistan has not invoked any of those exceptions to justify the closed trial. The Working Group thus finds a violation of article 14 (1) of the Covenant.

81. Moreover, during the closed trial, the source has made an uncontested allegation that Mr. Yusupov was presented to the court in a cage. Recalling general comment No. 32 of the Human Rights Committee, the Working Group observes that defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.<sup>27</sup> In the present case, such presentation violated Mr. Yusupov's presumption of innocence in breach of article 14 (2) of the Covenant.

82. Further, the source has alleged, and the Government does not contest, that 6 out of 15 hearings of Mr. Yusupov's trial were delayed for reasons such as the illness of the prosecutor or a leak in the building. Although trial proceedings lasting just over a year overall are not

<sup>27</sup> Human Rights Committee, general comment No. 32, para. 30. See also opinions No. 59/2020, para. 81; No. 83/2019, para. 73; No. 36/2018, para. 55; No. 79/2017, para. 62; No. 40/2016, para. 41; and No. 5/2010, para. 30.

excessive per se, the Working Group notes the failure of the Government to provide any explanation for the rescheduling of the hearings on numerous occasions for the reasons submitted by the source. In such circumstances, the Working Group finds that the right of Mr. Yusupov to be tried within a reasonable time frame and without undue delay under articles 9 (3) and 14 (3) (c) of the Covenant was thus violated.<sup>28</sup>

83. The Working Group observes that article 14 (5) of the Covenant entitles anyone convicted of a crime to have the right to have their conviction and sentence reviewed by a higher tribunal. In the present case, Mr. Yusupov was sentenced by the court of first instance in January 2020 and the source has argued that since then, the lawyer of Mr. Yusupov was not able to have a face-to-face, confidential meeting with his client until October 2020, and that the appeal was therefore not lodged until 13 October 2020. The source has argued that this was due to the prevailing conditions of the pandemic, while the Government has chosen not to address the allegations.

84. The Working Group notes that there was a delay of 10 months between the pronouncement of the sentence by the court of first instance and the lodging of the appeal. As the Working Group noted in its Deliberation No. 11:

If the exigencies of the prevailing public health emergency require restrictions on physical contact, States must ensure the availability of other ways for legal counsel to communicate with their clients, including secured online communication or communication over the telephone, free of charge and in circumstances in which privileged and confidential discussions can take place. Similar measures can be taken for judicial hearings. The introduction of blanket measures restricting access to courts and legal counsel cannot be justified and could render the deprivation of liberty arbitrary.<sup>29</sup>

85. In its late reply, the Government has chosen not to address the allegation that Mr. Yusupov's lawyer was delayed in accessing his client following the judgment of the court of first instance for some 10 months, and it has merely stated that the lawyer met with Mr. Yusupov. Nor has the Government made any efforts to explain what alternative measures it had put in place to ensure that the right of Mr. Yusupov to legal assistance was preserved in the circumstances of the pandemic. The Working Group therefore finds a breach of article 14 (5) of the Covenant.

86. Furthermore, Mr. Yusupov was also held in solitary confinement in what appears to be retaliation for his speaking out on behalf of other prisoners, an allegation not denied by the Government in its late reply. The Working Group recalls that according to rule 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement must only be: used in exceptional cases as a last resort, for as short a time as possible; subject to independent review; and authorized by a competent authority. These conditions do not appear to have been observed in the present case. Prolonged solitary confinement in excess of 15 consecutive days is prohibited under rules 43 (1) (b) and 44 of the Nelson Mandela Rules.

87. Finally, although the Working Group's mandate does not cover conditions of detention or the treatment of prisoners, it must consider to what extent detention conditions can negatively affect the ability of detainees to prepare their defence as well as their chances of a fair trial.<sup>30</sup> The detention of Mr. Yusupov took place in deplorable conditions, which is especially alarming noting his state of health. He was also denied medication and treatment for the very serious health conditions from which he suffers. These are violations of the Nelson Mandela Rules, in particular of rules 24, 25, 27 and 30. The Working Group refers the case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

<sup>28</sup> Human Rights Committee, general comment No. 35, para. 37; and general comment No. 32, para. 35.

<sup>29</sup> A/HRC/45/16, annex II, para. 21.

<sup>30</sup> E/CN.4/2004/3/Add.3, para. 33.

88. Consequently, noting all the above, the Working Group finds that the violation of Mr. Yusupov's fair trial rights is of such gravity as to render his continued detention arbitrary under category III.

89. Finally, the Working Group also wishes to highlight that the failure to notify Mr. Yusupov's family of his whereabouts and the denial of family contact during his detention constitute a violation of principles 15, 16 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

### **Disposition**

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

The deprivation of liberty of Kadyr Yusupov, being in contravention of articles 3, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2 (3), 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

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

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

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

94. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to (i) the Special Rapporteur on the independence of judges and lawyers, (ii) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and (iii) Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

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

### **Follow-up procedure**

96. 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. Yusupov has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Yusupov;
- (c) Whether an investigation has been conducted into the violation of Mr. Yusupov'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.

97. 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.

98. 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.

99. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>31</sup>

*[Adopted on 3 May 2021]*

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<sup>31</sup> Human Rights Council resolution 42/22, paras. 3 and 7.