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**Human Rights Council**

**Working Group on Arbitrary Detention**

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

Opinion No. 78/2021 concerning Gaffor Rakhmonovich Mirzoev (Tajikistan)

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

2. In accordance with its methods of work,[[1]](#footnote-2) on 4 January 2021 the Working Group transmitted to the Government of Tajikistan a communication concerning Gaffor Rakhmonovich Mirzoev. The Government replied to the communication on 4 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).

Submissions

Communication from the source

4. Gaffor Rakhmonovich Mirzoev is a national of Tajikistan born in 1954. He usually resides in Dubai, United Arab Emirates.

5. The source reports that, from 1995 to 26 January 2004, Mr. Mirzoev was Commander of the Presidential Guard of Tajikistan. He was also Director of the Drug Control Agency of Tajikistan for a short period in 2004 and served as President of the National Olympic Committee of Tajikistan from 2001 to 2004.

6. The source notes that Mr. Mirzoev is one of the most well-known individuals in Tajikistan. Until his arrest, Mr. Mirzoev, also known as “Gaffor the grey” owing to his grey hair, was known as a reliable, high-ranking public servant.

a. Arrest, detention and trial

7. The source reports that Mr. Mirzoev was arrested on 6 August 2004 outside the Drug Control Agency of Tajikistan. The arrest was carried out by the national office for combating organized crime on the basis of a warrant or decision issued by the Attorney General. Mr. Mirzoev was subsequently charged with an array of criminal charges, including murder, appropriation of property and other serious offences.

8. On 11 August 2006, Mr. Mirzoev was convicted on 28 counts for violations of the Criminal Code. Specifically, the Supreme Court found Mr. Mirzoev guilty of crimes under the following articles of the Criminal Code: 32 (3); 67 (1); 104 (a), (c)–(d), (f), (j) and (o)–(p); 104 (2) (a), (h)–(i), (n) and (q); 131 (2) (a)–(b); 134 (1); 160 (3); 179 (2) (a); 191 (2); 195 (2) (a)–(c); 196 (2); 233 (3); 234 (1); 245 (4) (b); 247 (4) (b); 248 (3) (b); 255 (2); 268 (2) (b); 270 (b); 289 (3) (a)–(b); 291 (2) (b); 306; 313; 314 (2); 326–327; 338; 368; and 391 (3) (b).

9. On 7 July 2007, the Supreme Court upheld the verdict, which subsequently entered into legal force. That verdict was appealed and then upheld, and Mr. Mirzoev was convicted on all 28 counts. The sentences ranged from one year to life imprisonment.

10. According to the source, Mr. Mirzoev resolutely rejects the charges against him as politically motivated, a view shared by many. In addition, he has allegedly been prosecuted in disregard of the fundamental human rights protections to which all nationals of Tajikistan are entitled.

11. The source reports that the entirety of the trial against Mr. Mirzoev was conducted in closed session and no judgment has been publicly disclosed. In addition, during the original trial proceedings, the court allegedly sentenced Mr. Mirzoev to an impermissible penalty under national and international law, relying upon a punishment regime not yet enacted into law at the time of Mr. Mirzoev’s arrest (see paras. 15–24 below). Following Mr. Mirzoev’s conviction, his family appointed an international human rights lawyer to act on his behalf but the lawyer has not been able to speak to his client.

12. Based on the information available to the source, Mr. Mirzoev has already served the term of imprisonment for all but the following five convictions:

(a) Armed rebellion, in violation of article 313 of the Criminal Code, for which the punishment was a sentence of 19 years of imprisonment and confiscation of property;

(b) Forcible capture or retention of power, in violation of article 306 of the Criminal Code, for which the punishment was a sentence of 19 years of imprisonment and confiscation of property;

(c) Murder:

(i) Under article 104 (a), (f), (i) and (o)–(p) of the Criminal Code, for which the punishment was a sentence of life imprisonment and confiscation of property;

(ii) Under articles 104 (a), (f), (j) and (o)–(p) of the Criminal Code, for which the punishment was a sentence of life imprisonment and confiscation of property;

(iii) Under articles 104 (a), (c)–(d), (j) and (o)–(p) of the Criminal Code, for which the punishment was a sentence of life imprisonment and confiscation of property.

13. According to the source, 16 years after his conviction, Mr. Mirzoev remains in prison at a pretrial detention facility in Dushanbe. He is reportedly serving his sentence under a so-called special prison regime. Mr. Mirzoev’s relatives, who reside in the United Arab Emirates, are allegedly unable to travel to Tajikistan for fear of being subjected to harassment and of being arrested. In nearly 15 years, the Government of Tajikistan has reportedly facilitated only two telephone calls between Mr. Mirzoev and his family.

b. Analysis of violations

14. The source asserts that the detention of Mr. Mirzoev is arbitrary under categories I and III.

i. Category I

15. The source submits that the Government of Tajikistan is arbitrarily detaining Mr. Mirzoev, as his sentence has been served. During the original trial proceedings, the court sentenced Mr. Mirzoev to an impermissible penalty under national and international law, relying upon a punishment regime not yet enacted into law at the time of his arrest. The source adds that this clearly contravenes core and universal principles of law and, as explained below, leads directly to Mr. Mirzoev’s arbitrary detention.

16. In order to provide the necessary context for its claim, the source refers to the following:

(a) On 30 April 2004, a law was passed instituting a moratorium on the death penalty and reducing the maximum penalty from death to 25 years of imprisonment;

(b) On 6 August 2004, Mr. Mirzoev was arrested by the Tajik authorities;

(c) On 6 March 2005, the law on life imprisonment was adopted, making life imprisonment (not 25 years of imprisonment) the maximum penalty, for the crime of murder;

(d) On 11 August 2006, the Supreme Court handed down a guilty verdict against Mr. Mirzoev;

(e) On 7 July 2007, the Supreme Court upheld the verdict, which entered into legal force;

(f) After 7 July 2007, the verdict was appealed and upheld. Mr. Mirzoev was convicted on 28 counts.

17. The source contends that none of the convictions against Mr. Mirzoev were the result of a fair trial. That fact notwithstanding, Mr. Mirzoev has served the terms of imprisonment for all but the five convictions referred to above.

18. According to the source, at the time when Mr. Mirzoev was charged, the punishment under article 104 for the crime of murder was either 15 years of imprisonment or the death penalty. Although the Prosecutor General’s Office sought the imposition of the death penalty, this was not an option owing to the moratorium in place since 30 April 2004, as noted above. In other words, the law was in place before Mr. Mirzoev’s arrest.

19. The source adds that, under the amended law, the prosecution did not request a legitimate criminal sanction for Mr. Mirzoev’s alleged criminal acts, as it only had the option of seeking a term of imprisonment of between 15 and 25 years (25 years being an option because the moratorium changed the maximum punishment). Accordingly, his sentence would have been served on 6 August 2019 or on 6 August 2029. However, instead of following a human rights-compliant sentencing framework, the Prosecutor General’s Office retroactively sought the imposition of the law on life imprisonment against Mr. Mirzoev and issued an increased punishment that did not exist at the time at which the alleged crimes and the arrest took place.

20. In this respect, the source refers to international legal principles that prohibit the retroactive criminalization of alleged conduct that was not criminal when performed, that increase the punishment for crimes already committed or that change the rules of procedure in force at the time when an alleged crime was committed in a way substantially disadvantageous to the accused. International human rights jurisprudence supports that position. The Working Group on Arbitrary Detention too has upheld that principle in several of the opinions it has adopted.

21. According to the source, the Criminal Code supports that notion as well. Indeed, its article 12 provides that the “criminality and punishment of an act is determined by the law in force at the time of its commission” and its article 13 (3) provides that “the criminal law establishing the criminality of an act, increasing the punishment or otherwise worsening the situation of the person who committed this act has no retroactive effect”.

22. The source notes that it is evident from both the domestic and the international law perspectives that the Prosecutor General’s Office had two choices in charging Mr. Mirzoev under article 104: to hand down a sentence of either 15 or 25 years of imprisonment. Whether the law on life imprisonment was passed into law by Parliament on 6 March 2005, on 6 March 2015 or on any subsequent date is, according to the source, inconsequential to Mr. Mirzoev’s situation because charges were laid against him before any of those dates. Accordingly, the Government’s retroactive application of laws to increase Mr. Mirzoev’s penalty constitutes a violation of his human rights.

23. The source submits that a human rights-compliant penalty against Mr. Mirzoev remains to be determined, at either 15 or 25 years of imprisonment. There exists ambiguity concerning the appropriate punishment. In the context of a criminal trial, the principle of *dubio pro reo* is omnipresent. In short, this means that ambiguities relating to the trial of someone accused of criminal behaviour must be resolved in his or her favour. In relation to the case at hand, and considering that the prosecutor relied upon an impermissible penalty, an ambiguity exists as it relates to the sentence sought by the prosecutor in this case. In the spirit of in *dubio pro reo*, the ambiguity should have been resolved in favour of the accused. Accordingly, Mr. Mirzoev should have faced a 15-year sentence and he should have been released in 2019, after having served that sentence.

24. The source submits that the punishment imposed on Mr. Mirzoev is clearly illegal. In furtherance of this illegal finding, he is currently being arbitrarily detained (after having served a 15-year sentence) or will be in the future (after having served a 25-year sentence). The source submits that failing to interpret the situation in the manner described above contravenes article 9 of the Universal Declaration of Human Rights.

ii. Category III

25. The source submits that the Government has failed to observe international norms relating to Mr. Mirzoev’s right to a fair trial, thereby making his deprivation of liberty arbitrary.

26. As highlighted above, Mr. Mirzoev was reportedly a popular figure in Tajikistan in 2004 and he is still well known today. Similarly, Tajikistan has increasingly become known as a “one-man” or a “one-family” State. Individuals who pose a threat to power (perceived or otherwise) have been treated in a range of different ways. One way is of particular relevance to the present case. According to the source, the President has maintained control over the country since independence, at least in part allegedly through arbitrary detention and other persecutory practices. The source submits that there are many examples of such practices, wherein individuals who appear to compete with the current rulers for power are persecuted, and that such treatment violates international human rights law.

27. The source suggests that, while certain factors and background aspects may be different in the present case compared to other cases, Mr. Mirzoev appears to have experienced a complicated relationship with the Tajik leadership that eventually led to his arrest. According to the source, this cannot be asserted with full confidence, however, because the precise circumstances surrounding Mr. Mirzoev’s arrest remain unclear. First, Mr. Mirzoev’s arrest could have been precipitated by his alleged decision to back the Mayor of Dushanbe and Chair of the upper house of Parliament in his probably successful run for President. Second, Mr. Mirzoev’s arrest might have related to the fear that he was about to challenge the President by presenting himself as presidential candidate, a matter that appears to have been discussed publicly by the Tajik authorities. Third, the President allegedly feared that Mr. Mirzoev and others were plotting a coup against him. However, the source notes that, based on the information available to it, no evidence has ever been publicly proffered to support such a serious allegation.

28. The source does not know all the details of what occurred between Mr. Mirzoev’s arrest and his trial. However, what is not disputed is a public statement by the Prosecutor General, who reportedly stated in an interview that, if Mr. Mirzoev were to be found innocent, he would be released, but who then added, “you can forget about the release”.

29. The source submits that officials, particularly prosecutors and judges, have a continuous obligation to refrain from presuming that accused individuals are guilty. Such a presumption undermines this cornerstone principle of criminal law. The source notes that international human rights law makes clear that individuals are presumed innocent until trial proceedings find them guilty, as stipulated in article 11 of the Universal Declaration of Human Rights. The source adds that the Human Rights Committee has discussed the sacrosanct nature of this right in several cases, including by stating that public authorities should refrain from prejudging the outcome of a trial by making public statements affirming the guilt of the accused, and that the media should avoid news coverage undermining the presumption of innocence. This is also an ethical responsibility for prosecutors in international criminal courts.

30. According to the source, this fundamental human rights principle has been materially violated in the case of Mr. Mirzoev. The source adds that failing to respect this notion appears to be a systemic problem. Combined with the alleged repression of previous potential political candidates for higher office and the suspicion with which the President already viewed Mr. Mirzoev, the arrest (and concomitant treatment as guilty in advance of the trial proceedings) appears to the source to have been illegal.

31. The source submits that it is exceedingly difficult to assess whether Mr. Mirzoev was accorded a fair trial for several reasons. First, it appears that the entirety of the trial was conducted in closed session and there does not appear to have been even a moment of public disclosure. Second, it appears that no judgment has been publicly disclosed. Finally, the international human rights lawyer appointed by Mr. Mirzoev’s family to act on his behalf has not been able to speak to him. According to the source, these circumstances make it difficult to assess whether Mr. Mirzoev’s right to a fair trial has been upheld.

32. The source notes that the concern with the opacity of Mr. Mirzoev’s specific situation in the context of the criminal proceedings against him is compounded by reports regarding the controversial nature of the treatment of those accused in Tajik courts. The source claims that examples include the failure to always properly inform the accused of the charges against them and the denial of the right to an attorney during pretrial and investigatory periods of a trial (particularly in “politically sensitive cases”). Allegedly, corruption is rampant and the executive has control over the judiciary in a manner that challenges its independence.

33. Regarding the specific fair trial rights that can be identified as having been violated in the case of Mr. Mirzoev, the source submits that they principally relate to the Government failing to provide any transparency in relation to trial proceedings against him. The source contends that blocking the entirety of the criminal proceedings from outside scrutiny makes it impossible to consider whether a range of other human rights violations have taken place.

34. According to the source, it is established in law that trials should be public. The source refers to article 14 of the Covenant and recalls that, according to the Human Rights Committee, public trials are crucial to ensure the transparency of proceedings and thus provide an important safeguard for the interest of the individual and of society at large.[[2]](#footnote-3) That Committee has also stated that, apart from the exceptional circumstances provided in article 14 (1) of the Covenant, hearings 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.[[3]](#footnote-4) If the State is unable to justify the reasons for holding a closed hearing, article 14 (1) would naturally be violated. The source also refers to the jurisprudence of the European Court of Human Rights in this respect.

35. Additionally, the source refers to the observations of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism whereby any exclusion of the press and public for reasons of national security should be accompanied by adequate mechanisms for observation or review to guarantee the fairness of the hearings.[[4]](#footnote-5) Furthermore, any restrictions must be limited to those portions of the hearing which there is a necessary and proportional need to exclude the press and public.

36. With regard to the human right to a public trial and, by extension, the need for judgments to be public, the source submits that there is to date no known, publicly available, written judgment explaining the reasoning behind the decision.

37. On 7 November 2019, the family of Mr. Mirzoev reportedly hired an international human rights lawyer to provide a range of international legal services to Mr. Mirzoev to ensure that his rights were being respected while in prison in Dushanbe, as efforts at the domestic level had not been successful.

38. However, the source notes that the Government of Tajikistan will not allow the human rights lawyer to speak to or meet Mr. Mirzoev. The source adds that the decision to prohibit the lawyer from meeting Mr. Mirzoev violates his human rights and exacerbates the situation for him as it complicates his ability to demonstrate that his right to a fair trial has been violated.

39. On 11 January 2020, the lawyer reportedly went to the pretrial detention facility in Dushanbe in an effort to meet Mr. Mirzoev. Outside the centre, he spoke with the supervisor of the facility, who told him that he would have to fulfil two prerequisites before he could meet Mr. Mirzoev: he would have to show proof that Mr. Mirzoev wanted to meet him and he would have to obtain permission from the Government of Tajikistan to meet Mr. Mirzoev. According to the source, Mr. Mirzoev had confirmed his interest in meeting the lawyer and had relayed that confirmation to the lawyer waiting outside the detention centre. At that point, the lawyer went to the Ministry of Internal Affairs and prepared a statement indicating that he would like to meet Mr. Mirzoev to provide him with the legal assistance he would need to safeguard all the relevant rights to which he was entitled under international law. The lawyer was informed that an answer would be provided on 13 January 2020.

40. Between 13 and 15 January 2020, the lawyer reportedly continued to go back and forth between the Ministry of Internal Affairs and the pretrial detention facility in an effort to meet Mr. Mirzoev. He was unsuccessful and continued to wait. According to the source, this may have been a delay tactic to deter him from continuing in his efforts to meet Mr. Mirzoev. During the afternoon of 15 January, the lawyer received a letter informing him that the international legal advisory services he sought to provide to Mr. Mirzoev were not legal in Tajikistan. On that basis, he was denied the right to meet Mr. Mirzoev. It was not made clear to the lawyer whether he had the right to seek judicial review. After an unsuccessful attempt to meet with the relevant government officials at the Ministry of Internal Affairs to clarify and confirm the information set out in the letter, the lawyer had to leave Dushanbe prematurely.

41. The source notes that the right to select a lawyer of one’s own choosing is a core, fundamental tenet of international human rights law and a basic necessity for according an individual the right to a fair trial. The right to select one’s own attorney is upheld in several international treaties, the statutes of international criminal tribunals, regional treaties and the national legislation of countries throughout the world, including Tajikistan.

42. The source notes that, when this right is denied to an accused or convicted person, it puts the accused at a marked disadvantage. While everybody has a basic understanding of the law and of the concepts of fairness and justice, and while some are capable of representing their issues in a court, most cannot. The technicalities of the legal practice often make the endeavour too difficult and a specialist lawyer is therefore necessary. In furtherance of the international community’s commitment to individual rights, the choice of lawyer should rest with the accused individual. Accordingly, human rights law makes it incumbent upon States to empower individuals with the right to select an individual who will represent their position regarding the matter for which they got arrested. This ensures that the person has his or her rights advocated in a court of law in the best possible way. The source notes that, like most human rights, the right to select a lawyer of one’s choice is not absolute, and it refers to legal aid counsels, prerequisite qualifications, conflicts of interest etc. However, according to the source, none of these exceptions are applicable in the present case. The source adds that the lawyer could have been fairly seen to be an international human rights activist doing legal work and that Mr. Mirzoev should have been granted the opportunity to speak with him.

43. In conclusion, the source submits that, given the multitude of fair trial rights violations in the present case, Mr. Mirzoev’s detention should also be assessed as arbitrary under category III. The source notes that Mr. Mirzoev was most likely prosecuted for political reasons, that his right to be presumed innocent was violated, that neither his trial nor his judgment were not public and that he was denied access to a lawyer of his own choosing. The source adds that, by operating thus, the Government of Tajikistan has shielded its actions from scrutiny, making it impossible to understand the full breadth of the potential human rights violations perpetrated against Mr. Mirzoev.

44. The source submits that, given the individual and cumulative effect of all these violations, the Government of Tajikistan has failed to observe international norms relating to Mr. Mirzoev’s right to a fair trial, thereby making his deprivation of liberty arbitrary under category III.

Response from the Government

45. On 4 January 2021, the Working Group transmitted the allegations from the source to the Government of Tajikistan under its regular communications procedure. The Working Group requested the Government to provide, by 5 March 2021, detailed information about the current situation of Mr. Mirzoev and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Tajikistan under international human rights law, in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure the physical and mental integrity of Mr. Mirzoev.

46. On 10 February 2021, the Government requested an extension for the submission of a response, in accordance with paragraph 16 of its methods of work; the extension was granted and the new deadline was 6 April 2021. In its reply of 4 April 2021, the Government confirms that Mr. Mirzoev was found guilty by the Judicial Board for Criminal Cases of the Supreme Court of Tajikistan under articles 270, 134-1 (1), 248 (3), 160, 191 (2), 104 (2), 233 (1), 234 (1), 255 (2), 104, 289 (3), 391 (3), 291 (2), 245 (4), 179 (2), 196 (2), 32 (3), 104 (2), 393 (3), 131 (2), 247 (4), 338, 327, 326, 314 (2), 268 (2), 313, 368 (1) and 306 of the Criminal Code. It also confirms that Mr. Mirzoev was sentenced to life imprisonment, the confiscation of property and a ban on holding public office for five years. He was to be placed in a high-security penal colony, including five years in a maximum-security penal colony, for committing specific criminal offences incurring criminal liability under the Criminal Code. The Government adds that the court verdict established the beginning of the prison sentence for Mr. Mirzoev as 6 August 2004.

47. The Government notes that, in accordance with the verdict of the Judicial Board for Criminal Cases of the Supreme Court of 11 August 2006, Mr. Mirzoev was convicted of specific criminal acts prohibited by the Criminal Code, such as premeditated murder with aggravating circumstances, including hostage-taking, extortion, robbery, smuggling, the illegal storage of weapons, ammunition and explosives on a large scale and the theft of property on a particularly large scale. It adds that the materials in the criminal case, the indictment and the court verdict all establish that there was no reason to make Mr. Mirzoev criminally liable for the political threat that he allegedly posed to the leadership, especially considering that the Criminal Code contains no provision that would entail criminal liability for posing a political threat.

48. With regard to the allegation that Mr. Mirzoev’s trial was held in camera and the verdict not publicly announced, the Government notes that, under article 273 (1) of the Code of Criminal Procedure, a criminal case is tried behind closed doors if an open hearing can lead to the disclosure of State or other secrets. Owing to the fact that the indictment against Mr. Mirzoev was related to his activities as Commander of the Presidential Guard of Tajikistan, Director of the Drug Control Agency of Tajikistan and other high-ranking positions and affected legally protected State and other secrets related to the armament and deployment of the armed forces, their location and other information that could lead to their disclosure, the court determined that the hearings in the criminal case against Mr. Mirzoev should be held in a closed court session, in compliance with all the rules of legal proceedings. The court verdict was announced publicly and broadcast on national television the same day.

49. With regard to the allegation that the application of a life sentence was unjustified, the Government states that, in accordance with Law No. 45 on the suspension of the application of the death penalty, both the application of the death penalty in Tajikistan as punishment for the crimes provided for in articles 104 (2), 138 (3), 179 (3), 398 and 399 of the Criminal Code and the execution of the death penalty have been suspended since 30 April 2004.

50. On 1 March 2005, the Criminal Code was supplemented by article 58-1, according to which life imprisonment is imposed only as an alternative to the death penalty for committing particularly serious crimes provided for in the Code. Moreover, a sentence of life imprisonment is served, in accordance with article 58 (5) (d) of the Criminal Code, in a high-security penal colony. When considering crimes for which the Criminal Code provides the death penalty, including murder with aggravating circumstances, the courts of Tajikistan do not apply the death penalty.

51. The Government reports that, in relation to Mr. Mirzoev, criminal law prescribes the death penalty for some of the crimes committed, as proved during the court hearings, in particular the murders of two high-ranking public officials and two other individuals. The Government notes that the court imposed an alternative penalty on Mr. Mirzoev in the form of life imprisonment. According to the Government, this meets the requirements of article 13 (1) of the Criminal Code, according to which a criminal law that removes the criminal element of an act, reduces the punishment or otherwise improves the situation of a person who has committed a crime has retroactive force; that is, it applies to persons who committed the relevant act before the law entered into force, including persons who are serving or have served a sentence but have a criminal record.

52. In view of the above, the Government notes that the source’s arguments that Mr. Mirzoev was sentenced to an unacceptable punishment that was not put into effect by law at the time of his arrest cannot be taken into account.

53. According to the Government, the reasoning provided by the source that Mr. Mirzoev was denied a fair trial is also untrue and is refuted by the case files.

54. The Government notes that Mr. Mirzoev was directly represented and that his procedural rights were defended in court by four lawyers. Before the trial started and at the request of the defendant, Mr. Mirzoev and his lawyers were provided with the criminal case files for re-examination. Their motion for permission to use computer equipment was also granted. In the course of the trial, over 290 victims and witnesses, brought in both by the prosecution and at the suggestion of Mr. Mirzoev and his lawyers, were questioned. Mr. Mirzoev and his lawyers had every opportunity to participate in the study of the evidence and to present a defence in respect of all the counts in the indictment, which they did. Additional materials submitted by Mr. Mirzoev and his lawyers were examined. The Government adds that the judicial investigation established that the corpus delicti was not found in respect of certain charges brought against Mr. Mirzoev; thus, his guilt was not proved, and he was acquitted on those counts.

55. According to the Government, the above indicates a full and comprehensive trial held in accordance with the requirements of the Code of Criminal Procedure. The Government thus refutes the arguments that Mr. Mirzoev was denied a fair trial and submits that there are no grounds for reviewing the judicial acts regarding Mr. Mirzoev.

56. With regard to the arguments provided by the source concerning Mr. Mirzoev being held in pretrial detention under a special prison regime, the denial of visits from his family and the denial of meetings between Mr. Mirzoev and an international lawyer, the Government notes that, in accordance with article 134-1 of the Penitentiary Code, convicts sentenced to life imprisonment are normally held in cells with no more than two inmates. As requested by the convicts, in exceptional cases, the head of the correctional colony can rule to organize their detention alone, in solitary cells, if there is a threat to their personal safety.

57. On 20 August 2006, Mr. Mirzoev was transferred to a detention centre in Dushanbe. On 11 August 2007, to serve his sentence in the high-security regime, as established by the court, he was placed in the cell of a local section of the aforementioned detention centre with a high-security detention regime.

58. Regarding Mr. Mirzoev’s right to meet relatives, the Government notes that, in accordance with the requirements of article 134-1 (5) of the Penitentiary Code, Mr. Mirzoev is allowed to receive short visits from his sister and other relatives, within the terms prescribed by the law.

59. As for the appeal of the international lawyer, the Government notes that on 11 January 2020 the leadership of the main penitentiary directorate of the Ministry of Justice was approached by a lawyer with an application to provide legal aid to Mr. Mirzoev. This application was denied, as it contradicted the requirements of article 91 (5) of the Penitentiary Code and article 3 (5) of the law on advocacy, which prohibits foreign lawyers from practicing law in Tajikistan, exception made for economic cases that do not touch on State secrets.

60. The Government notes that Mr. Mirzoev enjoys all the rights stipulated in the Penitentiary Code, including the rights to take daily walks, to spend funds from his personal account for the purchase of food and basic necessities without restrictions, to receive four small parcels and four larger parcels, to have access to health care, including primary medical care in outpatient or inpatient conditions, depending on the medical opinion, and to receiving material support and legal protection.

61. The Government adds that, in order to prevent the spread of the coronavirus disease (COVID-19), all the facilities of the penitentiary system under the Ministry of Justice have regular sanitary and anti-epidemic measures applied. In other words, all the premises are disinfected, treated with quartz and aired, and, if necessary, medical care and medication are supplied in a timely manner.

62. The Government concludes that Mr. Mirzoev has been treated in a manner consistent with the terms of imprisonment and personal safety while serving his sentence, as prescribed by the law.

Additional comments from the source

63. On 6 April 2021, the response of the Government was submitted to the source for further comments. In its response of 19 April 2021, the source largely reiterates its claims under category I in relation to article 104 of the Criminal Code and contends that Mr. Mirzoev’s sentence has been fully served for these crimes. The source adds that the Government of Tajikistan has relied upon a punishment of life imprisonment that did not exist for the crimes with which Mr. Mirzoev was charged at the time of his arrest. The source reiterates that, at the time of Mr. Mirzoev’s arrest, on 6 August 2004, the maximum sentence that the Government could seek for crimes committed in violation of article 104 was 25 years of imprisonment and it contends that retroactively applying the law of 1 March 2005 supplementing the Criminal Code to Mr. Mirzoev’s 2004 case is an impermissible violation of his human rights. The source clarifies that, while the contents of its submission under category I related to murder charges under article 104 of the Criminal Code, Mr. Mirzoev should have been released on 6 August 2019. Accordingly, Mr. Mirzoev’s term has been served and he is currently being detained illegally.

64. In relation to Mr. Mirzoev’s conviction under article 104 of the Criminal Code, as well as under the other charges, the source reiterates that the Government has failed to observe international norms relating to Mr. Mirzoev’s right to a fair trial, thereby making his deprivation of liberty arbitrary. In relation to the right to a public trial, the source reiterates the need to balance the necessity to publicize trials in line with human rights standards with the limited right to restrict disclosure. The source adds that the Government did not clarify in its response whether it had conducted such a balancing exercise, instead noting the right to impose a blanket restriction on public access. The source also notes that, since the trial proceedings were not public, it is impossible to assess whether fair trial violations were perpetrated against Mr. Mirzoev (see para. 33 above). The source adds that, while it is impossible to know definitively, or potentially to present arguments on that basis, it is faced with indications that cause grave concern that such rights might not have been provided to Mr. Mirzoev, including the nature of the alleged retroactive sentence imposed and the statement by the Prosecutor General (see para. 28 above). The source notes that such statements and conclusions create a well-founded fear that Mr. Mirzoev’s human rights were violated.

65. In its comments, the source reiterates that the Government of Tajikistan did not announce the verdict publicly or broadcast it on national television. With reference to the concluding observations of the Human Rights Committee and the Committee against Torture,[[5]](#footnote-6) it also expresses its concern about Mr. Mirzoev’s prison conditions and his special prison regime. With regard to the right to communicate with his family, the source acknowledges that there have been limited visits allowed since Mr. Mirzoev’s arrest, particularly by his sister, and that several other family members have visited him, but infrequently. However, the source notes that it does not consider this to be sufficient and adds that Mr. Mirzoev has had very limited telephone contact with the members of his nuclear family who live in Dubai. With regard to the Government’s denial to let Mr. Mirzoev meet with the international lawyer, the source submits that the international legal community regularly relies on services similar to that provided by this international lawyer. The source further contends that these human rights defenders should not be restricted from providing such services (outside of domestic courts when there are no licensing rights and other limited situations), as doing so would lead to lesser protections for those most in need. Restricting access to an international lawyer can make international human rights, at least in many situations, including Mr. Mirzoev’s, remarkably difficult to realize.

66. With regard to the allegation that the arrest of Mr. Mirzoev was politically motivated, the source reiterates the arguments made in its original submission. The source notes that, due to the opacity with which the Government of Tajikistan has operated concerning Mr. Mirzoev’s arrest, trial proceedings and otherwise, it cannot conclude with absolute certainty that personal reasons or politics, not the law, motivated the Government to arrest Mr. Mirzoev. The source can conclude, however, that the Government has charted a well-trodden course of prosecuting individuals who threaten the President’s power (perceived or otherwise) and that Mr. Mirzoev began to support other political candidates.

67. On 24 August 2021, the source further explains that the Prosecutor General made his public statements some time after Mr. Mirzoev’s arrest on 6 August 2004 but before they were referred to in a newspaper article published on 10 August 2004 (see para. 28 above). In the article, the Prosecutor General is quoted saying that if Mr. Mirzoev were to be found innocent, he would be released. The source argues that, in another article, published on 9 August 2004, the Prosecutor General is quoted saying that people should not even think about Mr. Mirzoev’s release. The source explains that a transcript of the full statement made by the Prosecutor General at the time cannot be located.

68. The source also notes that the lawyers of Mr. Mirzoev reportedly received the court’s trial judgment, with reasons provided, and were given sufficient time to review the judgment in advance of filing an appeal on his behalf. The source also specifies that Mr. Mirzoev’s legal representatives had full access to the case files and evidence.

69. However, the source once again disputes the proportionality of the court’s decision to conduct the whole trial behind closed doors and argues that at least some of the evidence could have and should have been heard in an open trial.

Additional comments from the Government

70. Exceptionally, on 17 September 2021, the Working Group requested the Government to provide, by 16 November 2021, any additional views on the issues set out below.

71. In its initial submission, the source refers to a public interview by the Prosecutor General where he reportedly stated that if Mr. Mirzoev were to be found innocent he would be released, but then added, “you can forget about the release”. The source adds that these statements were made after Mr. Mirzoev’s arrest on 6 August 2004 but before 10 August 2004, and that the Prosecutor General noted an impending legal process from which he would not be released.

72. The source notes that it has taken a range of steps in an effort to provide the Working Group with the full statement of the Prosecutor General but has unfortunately been unable to locate it. While the source regrets its inability to provide the full statement to the Working Group, it does not doubt its veracity and material relevance to these proceedings.

73. The source also notes that the Government of Tajikistan, in its reply, did not refute the source’s characterization of the statement as true. If there was any reason to dispute the veracity of the statement being made, the Government had the opportunity to clarify any possible mischaracterization, perhaps even by providing the full transcript from its governmental archives.

74. According to the source, Mr. Mirzoev’s lawyers received the court’s trial judgment, with reasons provided, and were given sufficient time to review the judgment in advance of filing an appeal on Mr. Mirzoev’s behalf. However, the source submits that the final judgment, with the reasons, was never made available to the public at large.

75. The source argues that, had a public trial been provided, it would be possible to better understand whether the procedural and substantive entitlements, as well as other entitlements, were sufficiently accorded to Mr. Mirzoev. In further assessing the proportionality of the decision to hold the proceedings in closed session, the source suggests that it is useful to recall the justification given by the Government of Tajikistan. According to the source, the Government stated that owing to the fact that the indictment against Mr. Mirzoev was related to his activities as Commander of the Presidential Guard of Tajikistan, Director of the Drug Control Agency of Tajikistan and other high-ranking positions and affected legally protected State and other secrets related to the armament and deployment of the armed forces, their location and other information that could lead to their disclosure, the court determined that the hearings in the criminal case against Mr. Mirzoev should be held in a closed court session. The Government contends that this approach complied with article 273 of the Code of Criminal Procedure, which is the relevant section addressing in camera trial proceedings and permitting the non-public announcement of a trial judgment.

76. The source notes that it does not oppose the principle of closing trial proceedings for national security purposes. If taking such an approach is disproportionate to the seriousness of the matter at hand, however, it leads to grave violations of fair trial rights as it removes the “foundation” – or first guarantee – of a fair trial.

77. According to the information available to the source, Mr. Mirzoev’s legal representatives had full access to the case files and all the evidence.

78. The Working Group regrets that the Government did not submit a reply to these additional points, nor did it seek an extension of the deadline in accordance with paragraph 16 of its methods of work.

Discussion

79. The Working Group thanks the source and the Government for their submissions and engagement in the present case, although it regrets the failure of the Government to provide additional comments on the issues raised by the Working Group (see paras. 70–78 above).

80. In determining whether Mr. Mirzoev’s detention is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source’s allegations.[[6]](#footnote-7)

81. The source has argued that the detention of Mr. Mirzoev is arbitrary and falls under categories I and III, while the Government, in its initial reply, refutes the source’s arguments.

Category I

82. The source has made detailed submissions alleging that Mr. Mirzoev was retroactively sentenced to life imprisonment when that penalty was not envisaged by law at the time when Mr. Mirzoev is alleged to have committed the crimes.

83. The Government denies these allegations, noting that Mr. Mirzoev was sentenced on 11 August 2006 for crimes he was found guilty of committing on 6 August 2004. According to the Government, the crimes, including premeditated murder with aggravated circumstances, hostage-taking, extortion and the illegal possession of weapons, ammunition and explosives in large quantities, carried a maximum penalty of the death sentence (see paras. 49–51 above). However, on 15 July 2004, Law No. 45 was passed, requiring that, as of 30 April 2004, the imposition and execution of the death penalty be halted in the country. Furthermore, on 1 March 2005, the Criminal Code was amended by article 58-1, requiring that life imprisonment be imposed as an alternative sanction to the death penalty for certain crimes, including the ones of which Mr. Mirzoev was found guilty. Therefore, although the criminal acts were committed by Mr. Mirzoev prior to the entry into the force of these laws, the Government contends that since they were beneficial to the individual situation of Mr. Mirzoev, the lighter penalty (life imprisonment) was applied to him instead of the original, heavier, penalty (death), as stipulated by article 13 (1) of the Code of Criminal Procedure.

84. The source, in its additional comments, while not disagreeing with the Government, highlights, however, that Mr. Mirzoev was arrested on 6 August 2004, after the law imposing the moratorium on the death penalty was passed but before the 1 March 2005 law was enacted requiring the substitution of the death penalty with life imprisonment. According to the source, the appropriate penalty therefore would have been a maximum of 25 years of imprisonment and the court was obliged to seek a lighter penalty of 15 years of imprisonment pursuant to article 12 of the Criminal Code.

85. The Working Group wishes out the outset to place on record its unease regarding the lack of information concerning the crimes Mr. Mirzoev allegedly committed and the surrounding circumstances. The final sentence against Mr. Mirzoev is a long list of very serious, violent crimes involving no fewer than four murders, two of which appear to have been of high-ranking public and even military officials, as well as the very serious crimes of hostage-taking and the illegal possession of weapons and explosives, to name just a few. The Working Group has not been provided with any facts on the circumstances leading to the alleged commission of these crimes.

86. Instead, the Working Group has been called upon to act as arbiter, under category I, of a dispute between the source and the Government concerning the correct application of the penalty for the crimes that the Supreme Court found Mr. Mirzoev guilty of. The Government has provided detailed explanations of the legal framework applicable to the sentencing of Mr. Mirzoev, noting that the life imprisonment was correctly imposed instead of death penalty. The source contests this, arguing that the maximum penalty could not have exceeded 25 years of imprisonment but that a more lenient imprisonment term of 15 years should have been imposed.

87. The Working Group reiterates that it has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the application of domestic law by the judiciary.[[7]](#footnote-8) While it considers itself entitled to assess the proceedings of the court and the law itself to determine whether they meet international standards,[[8]](#footnote-9) it is outside its mandate to reassess the sufficiency of the evidence or to deal with errors of law allegedly committed by the domestic court.

88. The Working Group notes that article 15 of the Covenant indeed prohibits the retroactive application of laws. While this prevents authorities from imposing penalties harsher than those applicable at the time of the commission of the crime, it also obliges States to retroactively apply lighter penalties, which appears to have happened to Mr. Mirzoev. While acknowledging the source’s arguments about the maximum penalty that should have applied, the Working Group notes that an analysis of the domestic laws applicable at different points of time would lead it to trespass into the domestic jurisdiction of the national courts. In the light of this, the Woking Group is unable to reach a conclusion under category I.

Category III

89. The Working Group observes that many years have indeed passed since the trial of Mr. Mirzoev in 2006. However, this in itself does not prevent the Working Group from examining the allegations brought to its attention.[[9]](#footnote-10)

90. The source has alleged that the fair trial rights of Mr. Mirzoev were violated because: the court hearings were conducted behind closed doors; the verdict was not publicly announced; the international lawyer of Mr. Mirzoev was prevented from meeting his client; and Mr. Mirzoev’s right to be presumed innocent until proven guilty was violated.

91. While the Government does not deny that the hearings indeed took place behind closed doors, it submits that the present case concern crimes committed while Mr. Mirzoev was Commander of the Presidential Guard of Tajikistan and Director of the Drug Control Agency of Tajikistan and the crimes in fact occurred on the premises of those entities. The crimes include four murders, two of which are alleged to have been committed in the office of a high-ranking official. The Government thus contends that State secrets linked to the location of military equipment and of the State armed forces were implicated. The public disclosure of such sensitive information in the context of the criminal trial of Mr. Mirzoev was impermissible and therefore the court decided to exclude the public from the trial. However, the Government argues that all legal safeguards to ensure a fair trial for the accused were strictly observed; the verdict of the court was announced publicly and was even later broadcast on national television that same day.

92. In relation to the observance of the principle of equality of arms, the Government notes that Mr. Mirzoev was represented by four lawyers prior and during the legal proceedings; that he and his lawyers were given full access to all case files and materials; and that their requests for the use of computers were granted. The Government highlights that more than 290 victims and witnesses were heard during the proceedings and that these included those called by Mr. Mirzoev and his defence team. Moreover, Mr. Mirzoev and his defence team were given every opportunity to examine and cross-examine all the evidence and the witnesses, which they actively did. The Government contends that the court proceedings were objective and impartial; as evidence of such objectivity and impartiality, it notes that certain charges made by the prosecution were established by the court to be unfounded. However, the guilt of Mr. Mirzoev was established in relation to other charges, on the basis of which he was therefore sentenced.

93. Turning to the international lawyer, the Government acknowledges that he petitioned the Ministry of Justice on 11 January 2020 to be allowed to represent Mr. Mirzoev. That petition was denied, as under national law lawyers who have not been admitted to the Tajik bar are not allowed to participate in criminal proceedings. The Government contends, however, that Mr. Mirzoev was represented by four Tajik lawyers during the proceedings.

94. In its additional comments, the source agrees that the Government has the right to hold court proceedings behind closed doors and does not contest the Government’s account of the number of witnesses examined and cross-examined and that the defence team was allowed to call any witness it wished to call before the court. The source, however, argues that a balance is to be struck between the need to publicize trials in line with human rights standards and the limited right to restrict disclosure. According to the source, the Government, in its submission, has not clarified whether it conducted such a balancing exercise, instead noting the right to a blanket restriction to public access. The Working Group sought further clarification from the Government in relation to the trial behind closed doors, but the Government chose not to respond.

95. The Working Group recalls that holding hearings in public ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large (see para. 34 above). While article 14 (1) of the Covenant indeed permits the exclusion of the public from proceedings for reasons of national security, it stresses that, even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public, except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.[[10]](#footnote-11) The Working Group observes that the proceedings against Mr. Mirzoev do not fall under these exceptions.

96. In this regard, the Working Group notes the source’s additional comments, in which it insists that the Government did not publicize the judgment but instead announced the verdict publicly and broadcast it on national television, which the source contends does not meet the requirements of article 14 of the Covenant. While the Government was initially presented with these allegations and was subsequently specifically asked by the Working Group to comment upon them, it chose not to do so.

97. In the light of this and noting the absolute opacity surrounding Mr. Mirzoev’s court proceedings, the Working Group finds a breach of the fundamental right to a fair trial through the denial of the right to a public trial under article 14 (1) of the Covenant. Even had the case of Mr. Mirzoev concerned national security, the Working Group cannot accept the failure of the Government to provide any explanation as to why absolutely all parts of the proceedings had to be conducted behind closed doors nor that, to date, over 16 years after the verdict, there is not a crumb of information about the trial of Mr. Mirzoev. In this regard, the Working Group emphasizes that a trial must not only be impartial but also appear to a reasonable observer to be impartial,[[11]](#footnote-12) and that this is not the case here.

98. The Working Group notes the allegations that Mr. Mirzoev’s presumption of innocence was violated and that his international lawyer was not permitted to meet him.

99. In relation to the former issue, the Working Group notes that the Government has not responded to the allegation that, prior to the trial, the Prosecutor General reportedly stated in an interview that, if Mr. Mirzoev were to be found innocent, he would be released, but then added, “you can forget about the release” (see para. 28 above). The source argues that this breached Mr. Mirzoev’s right to the presumption of innocence. In its additional comments, the source refers to two articles published on 9 and 10 August 2004 (see paras. 28 and 67 above). The source explains that the transcript of the full statement made by the Prosecutor General cannot be located.

100. The Working Group regrets that this allegation, which was put to the Government on two separate occasions, has not been addressed.

101. The Working Group recalls that it is the duty of all public authorities to refrain from prejudging the outcome of a trial, for example by abstaining from making public statements affirming the guilt of the accused.[[12]](#footnote-13) Noting that the above-mentioned statements were made by the highest prosecutorial body, the Prosecutor General, that the proceedings were held in absolute secrecy, which the Working Group has already established violated article 14 (1) of the Covenant, and that the Government has failed to engage on the matter, the Working Group finds a breach of article 14 (2) of the Covenant.

102. Finally, in relation to the denial of meetings between Mr. Mirzoev and his international lawyer, the Working Group initially notes that it is not uncommon for jurisdictions to require that only lawyers admitted to the national bar associations or otherwise qualified in the national jurisdictions have the right of an audience before the national courts, especially in criminal matters. The source has not contested that Mr. Mirzoev had four national lawyers representing him during the trial and, indeed, no allegations have been submitted claiming that the right to a defence was somehow trespassed during the trial. In fact, in its additional comments, the source has noted specifically that Mr. Mirzoev’s legal representatives had full access to the case files and to the evidence.

103. Moreover, the Working Group observes that a request to meet Mr. Mirzoev was made to by the international lawyer on 11 January 2020, some 14 years after Mr. Mirzoev had been found guilty and sentenced. The Working Group cannot accept that a mere meeting between Mr. Mirzoev and an international lawyer required specific permission from the Ministry of Justice nor that such a request would be denied. While the Working Group accepts that the denial might have had an adverse effect on the ability of Mr. Mirzoev to bring proceedings before an international forum, including the Working Group, it does not accept that it could have had any bearing upon the court proceedings, which had taken place some 14 years earlier.

104. However, noting the breaches found of articles 14 (1)–(2) of the Covenant, the Working Group finds that the detention of Mr. Mirzoev is arbitrary under category III.

Concluding remarks

105. The Working Group notes the allegations concerning Mr. Mirzoev’s contact with the family and their rebuttal by the Government. The Working Group also notes that, in its additional comments, the source accepts that the family members of Mr. Mirzoev have been allowed to meet him and that telephone calls have been permitted, nevertheless contesting the frequency with which they have taken place according to the Government. The Working Group reminds the Government that denial of family contact may constitute a breach of principle 19 of the Body of Principlesfor the Protection of All Persons under Any Form of Detention or Imprisonment.

106. The source has also questioned the appropriateness of Mr. Mirzoev’s place and conditions of detention. The Government has provided a detailed explanation of why it was decided that Mr. Mirzoev should be held in the facility where he is detained. It has also highlighted that Mr. Mirzoev is entitled to carry out daily outdoor activity, purchase goods from the prison shop, receive parcels and letters and gain access to medical assistance. The Working Group recalls the obligation arising from article 10 of the Covenant to treat all persons deprived of their liberty with respect for their dignity.

107. Finally, the Working Group reiterates its unease regarding the scarcity of factual information concerning the crimes for which Mr. Mirzoev has been sentenced. The present opinion however concerns only the fair trial rights denied to Mr. Mirzoev and is adopted without prejudice to any crimes that he may or may not have committed.

Disposition

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

The deprivation of liberty of Gaffor Rakhmonovich Mirzoev, being in contravention of articles 10 and 11 of the Universal Declaration of Human Rights and articles 14 (1)–(2) of the International Covenant on Civil and Political Rights, is arbitrary and falls within category III.

109. The Working Group requests the Government of Tajikistan to take the steps necessary to remedy the situation of Mr. Mirzoev 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.

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

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

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

Follow-up procedure

113. 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. Mirzoev has been released and, if so, on what date;

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

(c) Whether an investigation has been conducted into the violation of Mr. Mirzoev’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 Tajikistan with its international obligations in line with the present opinion;

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

114. 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.

115. 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.

116. 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.[[13]](#footnote-14)

[*Adopted on 19 November 2021*]

1. [A/HRC/36/38](http://undocs.org/en/A/HRC/36/38). [↑](#footnote-ref-2)
2. General comment No. 32 (2007), para. 28. [↑](#footnote-ref-3)
3. Ibid., para. 29. [↑](#footnote-ref-4)
4. [A/63/223](http://undocs.org/en/A/63/223), para. 30. See also [A/HRC/Sub.1/58/30](https://undocs.org/A/HRC/Sub.1/58/30) and [A/HRC/Sub.1/58/30/Corr.1](http://undocs.org/en/A/HRC/Sub.1/58/30/Corr.1), para. 45. [↑](#footnote-ref-5)
5. [CCPR/C/TJK/CO/3](http://undocs.org/en/CCPR/C/TJK/CO/3) and [CAT/C/TJK/CO/3](http://undocs.org/en/CAT/C/TJK/CO/3). [↑](#footnote-ref-6)
6. [A/HRC/19/57](https://undocs.org/A/HRC/19/57), para. 68. [↑](#footnote-ref-7)
7. See, for example, opinion No. 40/2005. [↑](#footnote-ref-8)
8. Opinion No. 33/2015, para. 80. [↑](#footnote-ref-9)
9. See, for example, opinions No. 69/2019, No. 45/2020 and No. 31/2021. [↑](#footnote-ref-10)
10. Human Rights Committee, general comment No. 32 (2007), para. 29. [↑](#footnote-ref-11)
11. Ibid., para. 21. [↑](#footnote-ref-12)
12. Ibid., para. 30. [↑](#footnote-ref-13)
13. See Human Rights Council resolution 42/22, paras. 3 and 7. [↑](#footnote-ref-14)