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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-third session, 30 March–8 April 2022**

### **Opinion No. 2/2022 concerning Alnur Ilyashev (Kazakhstan)**

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 27 August 2021 the Working Group transmitted to the Government of Kazakhstan a communication concerning Alnur Ilyashev. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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

## Submissions

### *Communication from the source*

4. Alnur Ilyashev is a Kazakh citizen usually residing in Almaty, Kazakhstan. At the time of his arrest, he was 42 years old.

#### a. Background

5. According to the source, Mr. Ilyashev is an advocate of human rights and peaceful civic participation, seeking development of political competition in Kazakhstan and the creation of an independent, multiparty democratic system. He also campaigns for the strict observance of the law and the Constitution. Thus, in 2019, he reportedly drew attention to the State's unduly restrictive law governing peaceful assemblies. Allegedly, Mr. Ilyashev repeatedly requested permission to hold a rally but was refused 35 times, and the court challenges to this were all unsuccessful. Finally, permission was granted in June 2019, after which he organized a peaceful assembly that was attended by more than 100 people. Thereafter, he reportedly faced increasing monitoring and harassment.

6. Mr. Ilyashev also reportedly worked with other members of civic society to try to form a new political party. In early March 2019, another civil activist decided to establish a political party called "Our Right". Mr. Ilyashev, alongside a third activist, decided to support this initiative but, on the day of the party's founding congress, he was summoned to the police for an interview. The interview was brief, but the authorities allegedly kept him there for three hours to interfere with the establishment of the party. The source adds that the police in front of the building where the congress was to be held warned that, should people gather again, it would be considered as an unauthorized demonstration, and the founding congress was therefore cancelled.

7. The source reports that, because of this, the three activists, including Mr. Ilyashev, sued the Almaty authorities and the ruling Nur Otan Party for obstructing the establishment of the new political party. Officials of the Nur Otan Party reportedly countersued, claiming the plaintiffs had discredited the party's "honour and dignity". The Zhetysu District Court found the activists guilty of disseminating false information, ordered them to withdraw their statements and required them to pay the Nur Otan Party officials T6 million (roughly \$15,000). The activists appealed and, on 23 January 2020, the Almaty appellate court upheld the judgment. Since January 2020, all three activists have been charged with other criminal offences.

#### b. General context

8. On 15 March 2020, the Government declared a state of emergency due to the coronavirus disease (COVID-19) pandemic, which was extended and ultimately lifted on 11 May 2020. The source alleges that, by using COVID-19 as a pretext, the Government cracked down on civic society during and after the state of emergency. The source adds that the Government targeted Mr. Ilyashev as part of the crackdown.

#### c. Arrest and detention

9. The source reports that Mr. Ilyashev's activism continued prior to his arrest. On 29 February 2020, he participated in a Facebook live event that was critical of the Government. On 21 March, Mr. Ilyashev and eight other activists recorded a joint video message to the former Kazakh President that was published on the YouTube channel "BASE". It called for the former President to use his substantial wealth to fund assistance for COVID-19 and called for the resignation of the current Government.

10. Lastly, in March 2020, Mr. Ilyashev reportedly posted messages critical of the Nur Otan Party and its officials on his private Facebook page. The source notes that it was these messages, posted on 6, 28 and 30 March, that ostensibly resulted in his indictment, trial and conviction. The source also adds that, in expressing his opinions, Mr. Ilyashev relied on and included links to publicly reported information in news articles.

11. The source reports that Mr. Ilyashev was arrested on 17 April 2020, at approximately 8.20 p.m., at the office of his relatives in Almaty, where he had been staying overnight regularly during the COVID-imposed isolation. The source adds that the arresting officers did not show a warrant or explain the reason for his arrest.

12. According to the source, the authorities did not inform Mr. Ilyashev that he was a suspect in a criminal investigation under article 274 of the Criminal Code of Kazakhstan until the next day. The authorities alleged that Mr. Ilyashev had disseminated knowingly false information during the state of emergency, violating article 274 (4) (2) of the Criminal Code.

13. While Mr. Ilyashev's subsequent criminal prosecution was reportedly based on the three posts to his personal Facebook account described above, those posts were not the genesis of the investigation against him. In fact, he was allegedly initially targeted because of the civil case between him and the Nur Otan Party and because of the YouTube video of March 2020 directed at the former Kazakh President. The initial report regarding alleged criminal violations of article 274 did not mention his Facebook messages at all. Yet, after his arrest, the police investigator reportedly claimed that Mr. Ilyashev's posts sought to influence public opinion about the "incompetence" of the activities of the Nur Otan Party in response to the COVID-19 pandemic, which may lead to negative consequences.

14. The source reports that the police searched the house of Mr. Ilyashev's relatives (where Mr. Ilyashev was isolating to comply with COVID-19 measures), his workplace, his car and residences of other close family members based on warrants. These searches were reportedly performed without documentation of the protocols employed, the logging of information and material collected, or a record of the search or of who was in attendance. Multiple addresses were reportedly searched at night, without a justification of the urgency, in violation of the criminal procedure of Kazakhstan. The electronic information used to prosecute Mr. Ilyashev was reportedly not authenticated and the means used to collect it did not follow the required procedures.

15. Although Mr. Ilyashev's relatives did not resist the searches in any way, the police reportedly applied significant force against them, including older relatives and a minor. The simultaneous searches were reportedly executed by a large number of officers of the rapid deployment police task force, as if the family and relatives of Mr. Ilyashev were a threat to society. A search was conducted at one of the residences without the presence of any adults but in the presence of a minor and the minor's friend. During the search, the minor reportedly had a panic attack, had trouble breathing and lost consciousness. Police officers did not call any of the minor's relatives for more than one hour and, only after a relative arrived, did they call an ambulance for the minor's medical emergency.

16. Following his arrest, Mr. Ilyashev appeared before the investigating magistrate on 18 April 2020, who ordered that he be placed in pretrial detention. From the morning of 18 April and until 6 May, Mr. Ilyashev was detained in the temporary detention facility in Almaty, where he was reportedly placed with individuals convicted for grave crimes. On 5 May, he was indicted for allegedly spreading false information that threatened public order and caused substantive harm to protected interests of society during the state of emergency. On 6 May, at night, he was transferred to an investigative isolation centre in Almaty. According to the source, Mr. Ilyashev believes that he became infected with COVID-19 during the transfer. In the morning he was reportedly coughing up blood and had difficulties breathing at night.

17. Mr. Ilyashev's request for pretrial release was reportedly denied and he was held in custody until his trial began. The investigators reportedly asserted that, if he were not detained he could impede the objective investigation of a criminal case and continue his criminal activity while at liberty, which would create a mood of protest in society, leading to destabilizing the situation in Kazakhstan. No other justification for his pretrial detention was provided.

18. Mr. Ilyashev was reportedly able to meet with his lawyers only twice prior to his trial, due in part to COVID-19-related restrictions. Otherwise, he could only communicate with his lawyers from the pretrial detention centre through a smartphone made available to detainees. Despite being detained for almost two months before trial, Mr. Ilyashev was only able to make WhatsApp calls from this smartphone four times, for 5 to 10 minutes each time. Furthermore, the results of the expert evaluation of Mr. Ilyashev's posts and statements were

reportedly not provided to either the lawyers or Mr. Ilyashev himself. The source adds that his lawyers were required to sign non-disclosure agreements for the information provided in the pretrial investigation.

d. Trial proceedings

19. The trial of Mr. Ilyashev began on 12 June 2020 before Medeu District Court No. 2 in Almaty and consisted of six hearings over the course of 10 days. Because of the quarantine due to the COVID-19 epidemic, the trial was held remotely through videoconferencing, and Mr. Ilyashev was not physically present either in the court or with his lawyers. The source adds that Mr. Ilyashev faced hostility from the court throughout the proceedings. On 12 June, he filed a petition requesting the suspension of the proceedings until he could attend in person, but the court denied his request. He further requested the participation of his brother as legal counsel, which was also denied.

20. Technical problems reportedly hampered Mr. Ilyashev's defence, and the court's response deprived him of a fair trial. For significant parts of the trial, Mr. Ilyashev and his counsel were either unable, or limited in their ability, to participate in the proceedings. They were frequently disconnected from audio and video feeds. The interruptions in the audio and video feeds meant that Mr. Ilyashev was often unable to hear witnesses, his lawyers, the prosecutor and the judge, and they too were equally unable to hear him. The technical problems reportedly prevented Mr. Ilyashev's lawyers from making and joining motions, presenting arguments, questioning witnesses and consulting with Mr. Ilyashev. At one point on 15 June, Mr. Ilyashev even stated that he was the main person involved and that he could not hear anything.

21. The source asserts that these interruptions directly affected the ability of Mr. Ilyashev and his lawyers to present his defence. In one instance, on 18 June 2020, a disconnection cut short the defence attorney's cross-examination of the prosecution's main expert witness, whose testimony was the prosecution's principal evidence that Mr. Ilyashev's Facebook posts had created a danger of disturbing public order. In particular, the witness, who is allegedly an expert in religion and psychology, not the issues on which the witness commented, concluded that Mr. Ilyashev's three Facebook posts could cause members of the public to harbour a negative attitude towards the Nur Otan Party, thereby making it more likely that they would disobey social isolation rules or engage in other acts of civil disobedience. The witness was of the view that the dissemination of such materials during a period of stress – when the majority of the population were in an unstable emotional state, associated with the need for self-isolation and the observance of quarantine regulations, as well as loss of income – would encourage a large number of people (allies of Mr. Ilyashev) to publish their sociopolitical views. According to the source, this implied that the danger posed by Mr. Ilyashev's post was that other people might agree with his criticisms.

22. Yet, on 18 June 2020, the court reportedly truncated Mr. Ilyashev's lawyers' cross-examination of this expert witness, apparently because of a low battery of the witness's cell phone. The court promised that Mr. Ilyashev's counsel could resume cross-examination the next day but, when the trial reconvened on 19 June, the court denied Mr. Ilyashev's counsel the opportunity to continue his cross-examination because the witness was unwell. Mr. Ilyashev's lawyers objected, stating that the cross-examination was crucial, but the court ordered the trial to proceed. At other times, problems with the virtual proceedings likewise prevented Mr. Ilyashev and his counsel from making motions, presenting arguments and questioning witnesses.

23. The use of remote trial technology reportedly also prevented Mr. Ilyashev from consulting with his counsel and did not allow for confidential discussions. No confidential video breakout rooms were provided for his defence, and he was only allowed to communicate with his counsel over the main, and frequently inoperative, video feed, in the presence of the prosecutors. There was reportedly no mechanism allowing him to consult with his lawyers in real time on courtroom developments or to receive their legal advice and guidance. With the single exception of a short period after the court recessed on 19 June and removed other participants from the video feed, Mr. Ilyashev was not allowed to consult with his counsel confidentially.

24. Despite these difficulties, the presiding judge reportedly took no steps to suspend the proceedings until there was a resolution of the technical problems and pressed forward with the trial despite the impediment to Mr. Ilyashev's defence. Indeed, Mr. Ilyashev's counsel could not even consult with him about his motion on 12 June to postpone the proceedings until he could attend them in person. The court denied his motion without allowing the consultation requested by his lawyers.

25. The court also refused to allow the defence to present and question other witnesses who were integral to the defence, including witnesses to attest to the truth of Mr. Ilyashev's statements, subscribers to Mr. Ilyashev's Facebook posts who could testify about their reactions to them, and defence experts. The presiding judge rejected most of the witnesses, largely without providing any basis. In one instance, the presiding judge refused to let a witness testify because she was not sitting in the same room as the lawyer, even though the witness was online and ready to testify.

26. Mr. Ilyashev's lawyers reportedly made a range of procedural motions throughout the trial and, because the presiding judge consistently ruled against motions intended to facilitate his right to present a fair defence, Mr. Ilyashev's counsel moved for the recusal of the judge. That motion was also denied.

e. Conviction and ongoing deprivation of liberty

27. After the trial proceedings, the court found Mr. Ilyashev guilty and sentenced him to three years of restricted liberty, 100 hours per year of forced labour, and a ban on political and civic activism for five years. The restriction on liberty order reportedly prohibits Mr. Ilyashev from changing his place of permanent residence and from changing his place of employment without notifying the Government. Furthermore, under the terms of the judgment, Mr. Ilyashev is subjected to regular monitoring by parole officers, who have the authority to request additional restrictions on his movement. On 14 January 2021, parole officers reportedly filed a formal request with the court to impose a curfew on Mr. Ilyashev between the hours of 10 p.m. and 6 a.m. At the time of the source's submission, the court had yet to address the request.

28. According to the source, Mr. Ilyashev appealed his conviction, but his appeal was denied. The court concluded that, considering the COVID-19 situation, at a time when people were literally panicking, his posts had of course had a negative effect, and it therefore concluded that he was guilty.

f. Analysis of violations

29. The source submits that the arrest and detention of Mr. Ilyashev constitutes an arbitrary deprivation of his liberty under categories I, II, and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

i. Category I: lack of a legal basis for detention

30. The source submits that Mr. Ilyashev's detention is arbitrary under category I because the Government lacks any evidence of a non-protected wrongful act to justify his detention and because the Government charged Mr. Ilyashev under a vague and overbroad provision of the Criminal Code that the Government applies in an arbitrary fashion to target opposition civic activists.<sup>2</sup>

31. The Government's conviction and detention of Mr. Ilyashev is reportedly not founded on any evidence against him. He was convicted of disseminating knowingly false information under article 274 of the Criminal Code, which requires proof of the dissemination of knowingly false information, creating a danger of violation of public order or infliction of substantial harm to the rights and legal interests of citizens or organization or the interests of society or the State, protected by the law.

32. The source notes that the Government possessed no evidence that Mr. Ilyashev had engaged in any activity that would reasonably fall under this definition. At the trial, in effect,

<sup>2</sup> Opinions No. 60/2013, para. 22; No. 44/2014, paras. 26–36; and No. 45/2018, paras. 42–43.

the Government reportedly skipped over the element of the dissemination of knowingly false information. Mr. Ilyashev's conviction resulted from three Facebook posts criticizing the Nur Otan Party officials as ineffective or corrupt. No evidence that his criticisms were false was presented. The source notes that his criticisms are, by definition, judgments and opinions. Even if considered statements of fact, they were not shown to be false; rather, it was claimed that Mr. Ilyashev had not verified them.

33. The source adds that there are at least three flaws with prosecuting Mr. Ilyashev. First, the Government is improperly shifting the burden onto Mr. Ilyashev to prove his innocence (as discussed below). Second, the proposition that he failed to verify facts is inherently inconsistent with the "knowingly false" element of article 274 – if the purported facts were unverified (either way), the statement cannot be knowingly false. In effect, the Government is criminalizing his conduct as a reckless disregard for the truth, but that is not what article 274 authorizes. Third, Mr. Ilyashev cited and linked the exact sources of information, some of which were the Government itself, so the "failed to verify" argument lacks credibility.

34. Reportedly, the Government also did not present any viable evidence that Mr. Ilyashev's three Facebook posts had created a danger of substantial harm to the interests of society or the State. The main expert witness for the Government reportedly claimed that statements criticizing the Government were more problematic during the COVID-19 pandemic and social isolation because other people might agree with the criticism. The expert's most tangible theory appears to have been that agreement with Mr. Ilyashev's criticism of the ruling party would result in generalized opposition to the Government, resulting in non-compliance with social isolation rules. However, according to the source, the Government presented no evidence that Mr. Ilyashev had called for non-compliance with social isolation rules or for any civil disobedience at all (nor did he – and his three Facebook posts prove he did not); thus, the Government did not prove there was any danger of substantial harm linked to his actual words. The Government also did not present any evidence that there had been any actual substantial non-compliance because of his words. In fact, at the time of his speech, Mr. Ilyashev himself was socially isolating. Moreover, his posts were critical of the Nur Otan Party, which is not the same as the Government.

35. The source notes that, more fundamentally, the potential for agreement with criticism of the Government is neither a danger to the violation of public order nor a source of harm to the rights of others. In fact, it is the exact type of freedoms of expression and of thought and conscience that are protected by the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and the law of Kazakhstan.<sup>3</sup>

36. The source also notes that the elements of a violation of article 274 do not change under a state of emergency, but here the Government reportedly referred to the existence of an emergency to absolve itself of the burden of proving that Mr. Ilyashev's posts were false and that they created a danger of substantial harm. The source submits that this is a violation under category I.

37. The source notes that article 15 (1) of the Covenant and article 11 (2) of the Universal Declaration of Human Rights both guarantee individuals the right to know what the law is and what conduct violates the law. In this respect, the source submits that the legal crime of dissemination of knowingly false information under Kazakh law is too vague and overbroad. The source adds that the Government's prosecution of Mr. Ilyashev for his three Facebook posts in this case proves that the law is ripe for misuse by a Government intent on suppressing criticism.<sup>4</sup> The definition relies on highly indeterminate phrases in article 274 of the Criminal Code, referring to, for example, a danger of violation of public order, and infliction of substantial harm to the interests of society or the State. The source also adds as an example that the phrase "interests of society or the State" would depend heavily on an individual's perspective concerning what society is and what it would take to harm the interests of the

<sup>3</sup> The source refers to article 4 of the Constitution of Kazakhstan, which establishes that international agreements are part of the law of Kazakhstan and that international agreements ratified by the State have primacy over its laws. The source also refers to articles 8 and 39 (3) of the Constitution. The source notes that, in addition to these substantive rights, the Covenant (art. 14) and the Constitution (arts. 13, 16 and 77) have enshrined the right to due process and a fair trial.

<sup>4</sup> [CCPR/C/KAZ/CO/2](#), para. 49.

collective society. In this case, the Government's position is that speech critical of the ruling party risked inflicting substantial harm to the interests of the State merely because it was critical of the ruling party during a declared state of emergency. In this context, according to the Government, the law would apply to all speech critical of the Government.

38. The source asserts that, from the point of view of the accused, due to the subjective terms in article 274, there is no way for an individual to determine *ex ante* whether their actions will, for example, have the effect of being interpreted by a State expert as being harmful to the interests of society or the State in a way completely untethered from the specific criticism offered. The source adds that the prosecution in the case of Mr. Ilyashev depended entirely on an expert's opinion regarding the psychological status of a society that is dealing with a pandemic – something that would be entirely unknown to an individual who posts messages on a private Facebook page. The source notes that, at a minimum, to not run afoul of the law, Mr. Ilyashev would have had to have been a social psychologist and accurately predicted that others might react in a way that he did not advocate, and in which they did not, in fact, react.

39. The source submits that the vagueness of article 274 also permitted the Kazakh authorities to arbitrarily apply its knowledge requirement. In this case, the court accepted the Government's claim that it had met its burden to show the statements were knowingly false under article 274 by asserting that Mr. Ilyashev had failed to verify his comments. However, the source adds that "failure to verify" does not equate to either falsity or knowledge of falsity. A person can fail to verify a true fact, and the "failure to verify" itself proves the lack of knowledge on Mr. Ilyashev's part that his statements were false (which they were not).

40. Accordingly, the source submits that Mr. Ilyashev's detention is arbitrary under category I because the law that provides the purported basis for his detention, namely, article 274 of the Criminal Code, is vague in relation to violation of the Covenant and the Universal Declaration of Human Rights.

ii. Category II: exercise of fundamental rights or freedoms

41. The source further asserts that the detention of Mr. Ilyashev is arbitrary under category II, as it resulted from his exercise of his rights to freedom of expression, assembly and association. The source adds that these rights are protected under both international and Kazakh law, in particular articles 19, 21 and 22 (1) of the Covenant, articles 19 and 20 (1) of the Universal Declaration of Human Rights, and articles 20 (1), 23 and 32 of the Constitution of Kazakhstan.

42. The source submits that Mr. Ilyashev's criticism of the Government is squarely within his right to freedom of expression, and the Government violated Mr. Ilyashev's freedom of expression when it arrested and sentenced him for his Facebook posts critical of the ruling party.

43. First, the charge of dissemination of knowingly false information under article 274 of the Criminal Code is reportedly facially a violation of an individual's freedom of expression because it vaguely criminalizes a broad swath of speech acts. The source notes that the Human Rights Committee has previously criticized Kazakhstan for employing a similarly vague restriction on speech to silence critics and warned the Government about vagueness of the crime of dissemination of knowingly false information in particular. The source adds that the Government's flouting of those admonitions is evident from the arrest and conviction of Mr. Ilyashev for nothing more than relatively mild criticism of the ruling party.

44. Second, Mr. Ilyashev was reportedly targeted for his Facebook posts (and other speech) critical of the ruling party. The source adds that Mr. Ilyashev's posts did not advocate for violence, did not call for disobedience of COVID-19-related social isolation or quarantine measures, and did not seek any action at all. Rather, they were simply critical of the Nur Otan Party, which falls squarely within protected speech. The source thus submits that Mr. Ilyashev's detention violated his right to freedom of expression both *de jure* and *de facto*.

45. Moreover, according to the source, Mr. Ilyashev's sentence proves that the objective of his arrest, prosecution and detention was to place arbitrary burdens on his right to freedom of expression and association. The sentence includes a five-year ban on political and civic

activism, namely, serving the political, cultural and professional needs of society, including creating and taking part in the activities of political parties, public associations and foundations. The source submits that this is a direct affront to his rights to freedom of expression and association, in addition to being entirely divorced from the duration – of less than two months – of the state of emergency from 15 March to 11 May 2020.

46. The source asserts that the Government arbitrarily detained and prosecuted Mr. Ilyashev as a direct result of his speech. His posts are political criticism and fall under the protections of article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights. The source adds that, as discussed below, because the restrictions placed on Mr. Ilyashev's speech do not fall within the narrow exceptions contained in article 19 (3) of the Covenant, his detention is arbitrary pursuant to category II.

47. The source also submits that Mr. Ilyashev's conviction and sentence violate his rights to association and assembly. According to the Government, Mr. Ilyashev's Facebook posts created a danger of substantial harm because others might associate with him in his criticism of the Government. Indeed, in one of the posts, he specifically identifies others with whom he had worked to provide food assistance to victims of the COVID-19 pandemic. However, the source notes that, regardless of whether the posts themselves implicate freedom of association, the sentence imposed by the court necessarily infringes Mr. Ilyashev's freedoms of association and assembly.

48. The sentence includes a five-year ban on political and civic activism. The source adds that this affront to his rights is divorced both from the COVID-19 pretext offered by the Government to support his conviction and from the context of his Facebook posts altogether, and it is undisputedly a violation of the rights protected by article 20 (1) of the Universal Declaration of Human Rights and article 22 (1) of the Covenant. Accordingly, the source submits that Mr. Ilyashev's sentence is arbitrary pursuant to category II.

49. The source also asserts that the Government of Kazakhstan detained Mr. Ilyashev to muzzle his advocacy for human rights and directly challenged his right to freedom of expression, putting the right itself in jeopardy.<sup>5</sup> The source adds that Mr. Ilyashev was jailed, tried and convicted for no reason other than his criticism of the Nur Otan Party. His three posts were critical of the Party and referred to contemporaneous news reports and political dialogue: his post on 6 March commented on reports about fundraising by the Party for COVID-19 pandemic relief; the post on 28 March responded to a news report regarding the Government's detention of a Party official; and the post on 30 March refuted a news report in which the Party had taken credit for food assistance during the pandemic. According to the source, these posts were entitled to heightened protection.

50. According to the source, the Government's suppression of Mr. Ilyashev's freedom of expression fails to serve any legitimate objective and is not necessary or proportionate to any legitimate objective. The expression – criticism of the Nur Otan Party for corruption and ineptitude – was in no way related to the alleged threat of mass disobedience of social isolation. Mr. Ilyashev did not call for any protests or acts at all. As evidenced by the Government's own arguments presented by its expert witness, there is no direct and immediate connection between the expression and the threat. The source notes that this reveals the Government's pretext. Although the Government claimed that Mr. Ilyashev's detention was based on his dissemination of knowingly false information, which created a "substantial danger", none of his Facebook posts was false or dangerous. None of his posts called directly or indirectly for protests or violence or could reasonably be considered to threaten national security, public order, public health or morals, or the rights or reputations of others.

51. The source adds that, although the prosecution claimed to be protecting public order, it failed to present any specific and individualized information about the precise nature of the threat to public order and to establish a direct and immediate connection between the Facebook posts and the purported danger. The source submits that the Government was merely using the veil of crime to silence criticism, which is not an acceptable purpose under article 19 (3) of the Covenant. On the contrary, political discourse, journalism and criticism

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<sup>5</sup> Human Rights Committee, general comment No. 34 (2011), paras. 21 and 33.



of political authority have all been explicitly recognized as protected speech, and “the criminalization of speech is only appropriate where grave crimes have been committed.”<sup>6</sup>

52. The source further submits that the sentence in this case was also not necessary and proportionate to the Government’s stated objective of ensuring compliance with the quarantine imposed due to the COVID-19 pandemic. The Government’s state of emergency due to COVID-19 expired on 11 May 2020, which was before Mr. Ilyashev’s trial; thus, as at that date, any necessity was gone, and any danger of substantial harm was no more, as was the Government’s pretext that members of society are more susceptible to join criticism of the Government while on lockdown. Yet, Mr. Ilyashev was detained for another 11 days, is now serving three years of restricted liberty, and is banned from political and civic expression and association for five years.

iii. Category III: fair trial and due process rights

53. The source submits that the Government’s detention of Mr. Ilyashev also amounts to an arbitrary deprivation of liberty under category III. The source notes that due process is one of the tenets of the right to a fair trial. The minimum international standards of due process are established in the Covenant, the Universal Declaration of Human Rights, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The source adds that the Constitution of Kazakhstan likewise ensures the rights of criminal defendants.<sup>7</sup>

54. The source submits that, in the present case, Mr. Ilyashev was arbitrarily denied his right to release pending trial. On 18 April 2020, a judge ordered him to remain in pretrial detention, where he remained until trial. Mr. Ilyashev has no history of violence and is not a threat to society. He resides in Kazakhstan, as does his family, and therefore he does not pose a flight risk. Likewise, his alleged criminal activity was posting his opinions on his private Facebook account, which is an exercise of his fundamental rights, not a crime. The source notes that Mr. Ilyashev should not have been arrested and no trial should have occurred for these acts, so this is not a valid basis for pretrial detention.

55. The source adds that, to justify pretrial detention, the prosecutor did not point to any specific evidence that it feared Mr. Ilyashev might destroy, and the prosecutor did not specify what particularized risk Mr. Ilyashev had posed or how the investigation might be hampered. Instead, the prosecutor argued that Mr. Ilyashev might foster a mood of protest. Notably, however, although the Government reportedly used the COVID-19-related state of emergency to justify its prosecution of Mr. Ilyashev, that state of emergency had ended on 11 May 2020, yet he was not freed from detention even then. So, even under the Government’s theory, there was reportedly no basis for his continuing detention after that point. For the source, this reveals the pretext of the Government’s claim. Accordingly, the source asserts that the pretrial detention of Mr. Ilyashev was unfounded and the denial of his pretrial release is a violation of article 9 (3) of the Covenant and principles 38 and 39 of the Body of Principles.

56. According to the source, Mr. Ilyashev’s trial did not meet the standard of fairness required under international law. First, the Government’s decision to try Mr. Ilyashev by videoconference, over his objection, reportedly prejudiced his defence. The source adds that trial monitors documented many instances of technical problems during the trial, including Internet outages and audio and video feed disruptions, the low-battery failure of the Government’s expert’s cell phone (only during cross-examination) and other interruptions. Due to these failures, the Government reportedly denied Mr. Ilyashev the right to attend a significant portion of his trial in person. Mr. Ilyashev objected to the technological failures during his trial, and the Government continued to violate his rights. The source notes that, while the COVID-19 pandemic may necessitate alternative trial arrangements in some circumstances, it cannot justify the Government’s refusal to provide technology sufficient to

<sup>6</sup> American Bar Association, “Kazakhstan: preliminary report on proceedings against human rights activist Alnur Ilyashev”, 2 September 2020.

<sup>7</sup> Articles 16 and 77 of the Constitution of Kazakhstan.

allow the accused to participate in his defence, hear the testimony against him, and confront the evidence and witnesses presented against him. The source adds that Mr. Ilyashev's trial commenced after the expiration of the declared state of emergency related to COVID-19, so the justification is unfounded.

57. Second, the presiding judge reportedly interfered with the defence's presentation of evidence by preventing Mr. Ilyashev's counsel from proffering the testimony of more than half of their proposed witnesses, including experts, by cutting short the cross-examination of the Government's key witness (after promising to allow the cross-examination to continue), and by rejecting all of the various motions presented by Mr. Ilyashev's counsel to ensure that Mr. Ilyashev could attend the trial and participate in his defence.

58. The source submits that the failure to consider strong evidence in favour of the defence demonstrates a clear bias on behalf of the judge in favour of the prosecution, and the judge's selective consideration of the evidence demonstrates a lack of equality of arms, the absence of a presumption of innocence and unfairness in the proceedings. The source asserts that the court's refusal to suspend the trial to allow for a resolution of the technical issues violated Mr. Ilyashev's rights under article 14 (1) and (3) (d) of the Covenant. Accordingly, the conviction of Mr. Ilyashev amounts to a violation of his right to a presumption of innocence. For these reasons, the source submits that the Government violated article 14 (1), (2) and (3) (d) of the Covenant and article 11 (1) of the Universal Declaration of Human Rights.

59. According to the source, the technological problems noted above with Mr. Ilyashev's video trial inhibited his ability to participate effectively in his trial. The source adds that the trial court violated Mr. Ilyashev's right to a fair trial and to a defence because problems with the virtual proceedings continuously prevented Mr. Ilyashev's counsel from making motions, presenting arguments and questioning witnesses.

60. The source submits that the presiding judge also violated Mr. Ilyashev's right to consult in confidence with his lawyers. He was reportedly entirely unable to communicate with his counsel in real time during the proceedings. When he was able to speak with them during short breaks, it was over the main court's open video feed with the prosecutors present. He was reportedly afforded no way to communicate in confidence, save for a single opportunity after adjournment on 19 June 2020. The technical problems also hindered his ability to confer with counsel. The source notes that trial monitors documented numerous instances where Mr. Ilyashev's counsel could not consult with him at vital junctures, including when there were motions related to suspending the proceedings until he could attend in person, suspending the proceedings when Mr. Ilyashev was sick and the recusal of the presiding judge. The source submits that, because of its denial of Mr. Ilyashev's right to consult with counsel to prepare and participate in his defence, the Government violated article 14 (3) (b) of the Covenant and severely infringed his right to a fair trial.

61. The source further submits that the court denied Mr. Ilyashev and his counsel the opportunity to call witnesses whose testimony was relevant to his defence. It adds that Mr. Ilyashev and his counsel followed all procedural requirements in a timely manner in seeking to call nine fact witnesses with directly relevant information, including information related to the truth of Mr. Ilyashev's posts and their impact on the recipients, as well as three experts. According to trial monitors, the court reportedly denied Mr. Ilyashev and his counsel the right to present the majority of these witnesses. For most of them, it offered no justification for the denial.

62. The source also submits that the court denied Mr. Ilyashev's right to have his counsel cross-examine the prosecution's main expert, who was the prosecution's sole witness attesting that Mr. Ilyashev's three posts would cause a substantial harm to public order and who was the only Government's witness listed on the indictment. After the expert witness called to participate in the trial from a cell phone, the witness lost the connection, allegedly due to the cell phone battery. The court stated that cross-examination would resume the next day but, when the court resumed, the judge reportedly announced that the witness was ill and would not participate. When the defence objected, stating that the cross-examination of that witness was central to the defence, the court reportedly ordered the case to proceed without the cross-examination. The source submits that the Government's effort to prevent Mr. Ilyashev and his counsel from presenting favourable witnesses and cross-examining

unfavourable witnesses was a severe violation of Mr. Ilyashev's right under article 14 (3) (e) of the Covenant.<sup>8</sup>

*Response from the Government*

63. On 27 August 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 26 October 2021, detailed information about the current situation of Mr. Ilyashev and to clarify the legal provisions justifying his detention, as well as its compatibility with the obligations of Kazakhstan under international human rights law, and in particular with regard to the treaties ratified by the State.

64. On 22 September 2021, the Government of Kazakhstan requested an extension in accordance with paragraph 16 of the Working Group's methods of work,<sup>9</sup> which was granted with the new deadline of 26 November. The Working Group regrets that, despite this, no response has been received from the Government.

**Discussion**

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

66. In determining whether Alnur Ilyashev's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>10</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

67. As a preliminary matter, the Working Group notes that Mr. Ilyashev is not currently deprived of liberty. However, the Working Group notes the restrictions on Mr. Ilyashev's liberty, and he was detained during the pretrial stage. Moreover, the submissions made by the source allege that he was deprived of his liberty purely due to the peaceful exercise of his rights protected by the Covenant. Noting this, the Working Group will proceed to examine the submission.

68. The source has argued that the arrest and subsequent detention of Mr. Ilyashev is arbitrary and falls under categories I, II and III. The Government has chosen not to address these allegations. The Working Group will proceed to examine them in turn.

*Category I*

69. The source has submitted, and the Government has chosen not to contest, that Mr. Ilyashev was arrested on 17 April 2020 and that no arrest warrant was presented at the time of the arrest and he was not informed of the reasons for the arrest.

70. The Working Group recalls that a detention is considered arbitrary under category I if it lacks a legal basis. As it has previously stated, for a detention to have a legal basis, it is not sufficient that there is a law that may authorize it. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.<sup>11</sup>

71. Indeed, international law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation under articles 3 and 9, respectively, of the Universal Declaration of Human Rights and article 9 of the Covenant, as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>12</sup> Any form of detention or imprisonment should be ordered by,

<sup>8</sup> Opinion No. 16/2017, para. 59.

<sup>9</sup> [A/HRC/36/38](#).

<sup>10</sup> [A/HRC/19/57](#), para. 68.

<sup>11</sup> See, for example, opinions No. 72/2021, No. 89/2020, No. 79/2018, No. 35/2918, No. 93/2017, No. 75/2017, No. 66/2017 and No. 46/2017.

<sup>12</sup> Opinions No. 30/2018, para. 39; No. 3/2018, para. 43; and No. 88/2017, para. 27.

or be subjected to the effective control of, a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles. This was denied to Mr. Ilyashev, and the Government has chosen not to present any explanation for this. The Working Group therefore finds that the arrest of Mr. Ilyashev was carried out in violation of article 9 of the Covenant.

72. Moreover, the Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested be informed of the reasons for arrest at the time of arrest. In the present case, it is not contested that Mr. Ilyashev was arrested on 17 April 2020, without a warrant and also without any explanation of the reasons for his arrest. In fact, it was only the following day that he was informed that he was being investigated under article 274 of the Criminal Code. In these circumstances, the Working Group finds a violation of Mr. Ilyashev's rights under article 9 (2) of the Covenant and concludes that his detention falls under category I.

### *Category II*

73. The source has submitted, and the Government does not contest, that Mr. Ilyashev was arrested and detained following posts he made on social media. According to the source, the arrest and subsequent prosecution and sentencing of Mr. Ilyashev for these posts violated his rights under articles 19, 21 and 22 (1) of the Covenant.

74. The source has made detailed submissions arguing that article 274 of the Criminal Code is overly broad and vague and provided a detailed discussion on what kind of behaviour should and should not be criminalized under this provision, alluding to the failure of the national judicial authorities to apply this provision correctly in the case of Mr. Ilyashev. However, the Working Group recalls 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.<sup>13</sup> It is outside of the mandate of the Working Group to reassess the sufficiency of the evidence or to deal with errors of law allegedly committed by the domestic court.<sup>14</sup>

75. Nevertheless, Mr. Ilyashev was prosecuted under article 274 of the Criminal Code, and the Working Group must therefore examine whether this provision was applied in a manner consistent with obligations of Kazakhstan under international human rights law. In particular, the Working Group recalls that detention purely due to the peaceful exercise of rights protected by the Covenant may be arbitrary.<sup>15</sup> Indeed, in its resolution 24/5, the Human Rights Council reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others. This echoes the principle enunciated in Council resolution 12/16, in which the Council calls on States to refrain from imposing restrictions that are not consistent with article 19 (3).

76. In the present case, the posts by Mr. Ilyashev were expressing disagreement with the approach taken by the leading political party in handling the COVID-19 pandemic in the country. While the Working Group is mindful of the harm that may be caused by misinformation concerning the pandemic, the posts at the heart of the present case did not address the pandemic itself but rather its handling by the leading political forces in Kazakhstan. In this regard, the Working Group recalls that, in its deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies, it clearly states:

Emergency powers must not be used to deprive particular groups or individuals of liberty. For example, the power to detain persons during public health emergencies must not be used to silence the work of human rights defenders, journalists, members

<sup>13</sup> Opinion No. 40/2005.

<sup>14</sup> See, for example, opinions No. 5/2021, No. 60/2019, No. 58/2019, No. 49/2019, No. 16/2017 and No. 15/2017.

<sup>15</sup> Human Rights Committee, general comment No. 35 (2014), paras. 17 and 53.

of the political opposition, religious leaders, health-care professionals or any person expressing dissent or criticism of emergency powers or disseminating information that contradicts official measures taken to address the health emergency.<sup>16</sup>

77. The Working Group recalls that freedom of opinion and freedom of expression as expressed in article 19 of the Covenant are indispensable conditions for the full development of the person; they are essential for any society and in fact constitute the foundation stone for every free and democratic society.<sup>17</sup> According to the Human Rights Committee, no derogations can be made from article 19 simply because it can never become necessary to derogate from it during a state of emergency.<sup>18</sup>

78. Freedom of expression includes the right to seek, receive and impart information and ideas of all kinds regardless of frontiers, and this right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions.<sup>19</sup> Moreover, article 19 (2) of the Covenant protects all forms of expression and the means of their dissemination, including all forms of audiovisual, electronic and Internet-based modes of expression.<sup>20</sup>

79. Although article 19 (3) permits certain restrictions to this right, the permitted restrictions to this right may relate either to respect for the rights or reputations of others or to the protection of national security or of public order or of public health or morals. As the Human Rights Committee has stipulated, restrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.<sup>21</sup> It should be noted that articles 21 and 22 of the Covenant permit restrictions to the right of assembly and association on the same three grounds.

80. In the present case, the Working Group notes that Mr. Ilyashev was arrested, detained and tried for his posts on social media on the basis of disseminating knowingly false information during the state of emergency, and the Government has provided no explanation as to how this was compatible with its obligations under international human rights law. Notably, the Working Group has been presented with no evidence that the posts of Mr. Ilyashev incited violence or unrest. On the contrary, they appear to fall firmly within the permissible criticism of governmental policies.

81. Moreover, the Working Group is mindful that Mr. Ilyashev was detained pending trial allegedly due to fear that he may continue posting criticism of the adopted policy to combat the spread of COVID-19. Yet, his pretrial detention was not reconsidered or indeed lifted when the state of emergency was lifted on 11 May 2020, and Mr. Ilyashev remained detained until the trial concluded in June. The Working Group particularly notes the lack of any explanation on behalf of the Government and is therefore of the view that the restrictions imposed due to COVID-19 were a mere pretext for the arrest and detention of Mr. Ilyashev.

82. On that basis and also noting the subsequent ban on activities imposed upon Mr. Ilyashev, the Working Group concludes that his arrest and subsequent detention resulted from the exercise of the rights or freedoms guaranteed by articles 19, 21 and 22 of the Covenant and therefore falls under category II.

83. The Working Group wishes to underscore its concern over the application in this case of article 274 of the Criminal Code, the crime of dissemination of knowingly false information, which, as the examination above clearly demonstrates, was done in a manner that violated Mr. Ilyashev's rights under articles 19, 21 and 22 of the Covenant.

84. The Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression for further action.

<sup>16</sup> A/HRC/45/16, annex II, para. 22.

<sup>17</sup> Human Rights Committee, general comment No. 34 (2011), para 2.

<sup>18</sup> *Ibid.*, para. 5.

<sup>19</sup> *Ibid.*, para. 11.

<sup>20</sup> *Ibid.*, para. 12.

<sup>21</sup> *Ibid.*, para. 22.

*Category III*

85. Given its finding that the deprivation of liberty of Mr. Ilyashev is arbitrary under category II, the Working Group emphasizes that Mr. Ilyashev's trial should not have occurred. However, it did occur, and the source has submitted that there were severe violations of Mr. Ilyashev's fair trial rights. While the Working Group notes that Mr. Ilyashev was not sentenced to imprisonment, he was remanded in custody throughout his trial, and his sentence includes numerous restrictions imposed for a period of five years. It therefore considers it important to examine the submissions under category III.

86. The source has argued, and the Government has not challenged, that Mr. Ilyashev's trial was conducted through videoconference owing to COVID-19 restrictions. While in itself this is not a violation of fair trial rights, the Working Group recalls that, 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.<sup>22</sup>

87. In the case of Mr. Ilyashev, however, it is not contested that the trial was marred by technical difficulties that prevented him from hearing and being heard during the proceedings. When this was brought to the attention of the judge and the postponement of hearings was sought, no action was taken, and the trial proceeded in the same manner. This was a serious breach of article 14 (1) of the Covenant that cannot be accepted even in the prevailing circumstances of the COVID-19 pandemic.

88. Furthermore, the source has alleged, and the Government has not contested, that there was serious interference with Mr. Ilyashev's right to legal assistance. Initially, during the pretrial detention, Mr. Ilyashev's communication with his lawyer was restricted to merely two instances and to limited telephone calls of a short duration. While this was allegedly due to restrictions imposed as a result of the pandemic, the Working Group once again reiterates that it is the duty of the State to ensure alternative means of sufficient and confidential communication between the accused and his or her lawyer to ensure that the right to defence is not adversely affected.<sup>23</sup> The exigencies of a pandemic cannot be used as a blanket to deny fair trial rights.

89. The interference with the right to legal assistance continued also during the trial, as Mr. Ilyashev's communication with his counsel was seriously adversely affected due to the same technical issues as during the trial proceedings overall and, when communication was possible, it was not confidential. The Working Group therefore concludes that a breach of article 14 (3) (d) of the Covenant took place.

90. Moreover, it is not contested that the defence was denied the possibility to cross-examine witnesses fully, as well as prevented from presenting its own witnesses. This is a violation of article 14 (3) (e) of the Covenant.

91. Overall, the Working Group is struck by the lack of impartiality displayed by the court in the proceedings against Mr. Ilyashev. The actions of the trial judge in pressing on with the proceedings in circumstances when the defence team and, more importantly, the defendant were unable to even hear the proceedings, let alone take part in them, due to technical difficulties of the equipment provided, are staggering. Coupled with the denial to the defence to examine witnesses fully and present its own witnesses and noting the absence of any explanation from the Government, the Working Group considers that the court in the case of Mr. Ilyashev was blatantly lacking in impartiality, in breach of article 14 (1) of the Covenant. In these circumstances, the Working Group also considers that Mr. Ilyashev was in fact denied the right to be presumed innocent, in breach of article 14 (2) of the Covenant. The Working Group refers the case to the Special Rapporteur on the independence of judges and lawyers for further action.

<sup>22</sup> Deliberation No. 11 (A/HRC/45/16, annex II), para 21.

<sup>23</sup> *Ibid.*

92. Noting all the above, the Working Group concludes that the violation of Mr. Ilyashev's fair trial rights was of such gravity as to give his deprivation of liberty an arbitrary character, falling under category III.

#### *Category V*

93. While the source has made no submissions under category V, the Working Group notes that the arrest of Mr. Ilyashev on 17 April 2020 was not an isolated incident. Indeed, Mr. Ilyashev and his activities to promote peaceful civic participation had also attracted the attention of the authorities earlier on. The source has argued that Mr. Ilyashev was summoned to the police for an interview in March 2019 and, although the interview was short, he was kept there for three hours in an alleged attempt to interfere with his establishment of a political party (see para. 6 above).

94. Recalling that the present case also concerns the political activism of Mr. Ilyashev, relating to his legitimate criticism of the leading political party as established in the present opinion, the Working Group considers that the arrest and subsequent detention of Mr. Ilyashev constitutes a violation of international law on the grounds of discrimination based on political or other opinion, which aims towards or can result in ignoring the equality of human beings, in violation of articles 2 (1) and 26 of the Covenant. The Working Group therefore considers that his arrest and detention also falls under category V.

95. In making all the above findings concerning the arrest and detention of Mr. Ilyashev, the Working Group wishes to emphasize that, while the prevailing circumstances of the COVID-19 pandemic have placed enormous strain upon all Governments, arbitrary detention can never be justified, whether it be for any reason related to a national emergency, maintaining public security or health.<sup>24</sup> The prohibition of arbitrary detention in international law is absolute.

#### *Concluding remarks*

96. The Working Group is disturbed by the uncontested allegations that, during the search of the residences of Mr. Ilyashev's close family members, the police used excessive force against his older relatives and that no prompt medical attention was provided to a minor who suffered from a panic attack due to the search.

97. The Working Group also wishes to express its concern at the uncontested allegations that, during his pretrial detention, Mr. Ilyashev was held together with convicted persons. The Working Group reminds the Government of its obligations under article 10 of the Covenant, which obliges it to treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person and to ensure that accused persons are segregated from convicted persons and subject to separate treatment appropriate to their status as unconvicted persons.

98. Given that the present case concerns the application of emergency measures adopted by the Government in the light of the COVID-19 pandemic, 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.

99. On 2 March 2015, the Working Group issued a request to the Government of Kazakhstan to invite the Working Group to conduct a country visit. The Working Group reiterates that it would welcome the opportunity, at the earliest convenience to the Government, to conduct a visit to Kazakhstan in order to engage with the Government in a constructive manner and to offer its assistance in addressing its serious concerns relating to instances of arbitrary deprivation of liberty.

#### **Disposition**

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

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<sup>24</sup> Ibid., para. 5.

The deprivation of liberty of Alnur Ilyashev, being in contravention of articles 2, 3, 7, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 2 (1), 9, 14, 19, 21, 22 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

101. The Working Group requests the Government of Kazakhstan to take the steps necessary to remedy the situation of Mr. Ilyashev 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.

102. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to quash Mr. Ilyashev's sentence, expunge his criminal record and accord him an enforceable right to compensation and other reparations, in accordance with international law.

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

104. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

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

#### **Follow-up procedure**

106. 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. Ilyashev's sentence has been quashed and his criminal record expunged and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Ilyashev;
- (c) Whether an investigation has been conducted into the violation of Mr. Ilyashev'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 Kazakhstan with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

107. 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.

108. 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.



109. 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>25</sup>

*[Adopted on 30 March 2022]*

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<sup>25</sup> See Human Rights Council resolution 42/22, paras. 3 and 7.