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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fourth session, 29 August–2 September 2022

Opinion No. 57/2022 concerning Karim Massimov (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,¹ on 4 March 2022 the Working Group transmitted to the Government of Kazakhstan a communication concerning Karim Massimov. The Government replied to the communication on 30 April 2022. The State is a party to the International Covenant on Civil and Political Rights.

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

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

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

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

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

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

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

4. Karim Massimov is a Kazakh citizen born in 1965 in Almaty, Kazakhstan. He usually resides at his family home in Nur-Sultan. At the time of his arrest, he was 56 years old.

5. Mr. Massimov has been a public servant for over two decades in Kazakhstan, most notably as the country's longest-serving Prime Minister, for the periods 10 January 2007 to 24 September 2012 and 2 April 2014 to 8 September 2016. From 8 September 2016, and until his detention, he chaired the National Security Committee of Kazakhstan, the chief State intelligence body. He managed the counter-intelligence services, the border guard force and several domestic security services for Kazakhstan.

6. The source notes that throughout his various roles in government, Mr. Massimov has consistently championed a more progressive and modernizing agenda, placing the betterment of the people and the maintenance of sovereignty at the heart of his vision for the country. He has reportedly been one of the key drivers of institutional reform and stability in Kazakhstan, and was central to efforts to ensure a smooth transfer of power in 2019.

a. Context

7. The source reports that in early January 2022, large-scale protests began in western Kazakhstan in response to gas price increases triggered by the Government's decision to remove price controls on liquefied petroleum gas. The protests spread rapidly throughout Kazakhstan and began to encompass other socioeconomic and political demands, including an end to what protesters perceived as "a corrupt political system".

8. According to the source, nationwide dissent peaked on 5 January 2022, when protesters stormed several State buildings in Almaty and clashed with security forces. In response, the incumbent President reportedly declared a two-week state of emergency and declared himself Chair of the Security Council of Kazakhstan. In that role, he replaced the former President of Kazakhstan. At the request of the incumbent President, the Collective Security Treaty Organization, a military alliance led by the Russian Federation, deployed troops to Kazakhstan. The handling by the Government of Kazakhstan of the January 2022 protests has given rise to significant human rights concerns.² In the midst of the upheaval, Mr. Massimov was dismissed from his role as head of the National Security Committee.

9. The source also alleges that the subsequent arrest and detention of Mr. Massimov are part of a broader crackdown by the incumbent President and his Government on political opposition. Facing widespread political upheaval, the President allegedly unleashed a wave of repression to silence his political opponents, detaining thousands of individuals, many of whom have not been identified.

b. Arrest and detention

10. The source reports that hours after his dismissal from his role as head of the National Security Committee, Mr. Massimov was called to the Akorda Presidential Palace, where he is believed to have been arrested and detained by State forces on or around 5 January 2022. He was last seen on television at the Security Council meeting at the Akorda Presidential Palace at midnight on 6 January 2022. His dismissal from the National Security Committee was announced promptly after the meeting, at 1 a.m. Reportedly, Mr. Massimov has not been seen since.

11. In the days following Mr. Massimov's initial detention, the National Security Committee reportedly issued a series of vague press statements confirming that Mr. Massimov had been remanded in detention while under investigation for committing "treason", "attempted seizure of power" and "abuse of power". On 8 January 2022, the National Security Committee issued a press statement confirming that it had arrested and

² The source refers, inter alia, to a joint statement issued by United Nations human rights experts on 11 January 2022, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28019&LangID=E>.

detained Mr. Massimov and an unspecified number of “other persons” on suspicion of high treason.

12. The source reports that the authorities appointed a State lawyer on Mr. Massimov’s behalf. It remains unknown whether this lawyer has been provided with the information about the charges or the evidence against Mr. Massimov. Insofar as the lawyer has been provided with any material, it is understood that the lawyer is not permitted to share this material with Mr. Massimov or his family on the basis that the entire investigation, including full details of the specific charges and of the evidence against him, is regarded as “top secret”. The source thus understands that no information regarding the charges, their purported legal basis, or the evidence, has been provided to Mr. Massimov or his family.

13. Mr. Massimov’s detention is reportedly ongoing and indefinite. On 8 January 2022, an unnamed and unidentified judicial authority purportedly ruled that he would be held in detention at a pretrial detention centre operated by the National Security Committee for the entirety of its investigation. The name of that court, the procedures that it applied and the name of its sitting judge have been withheld for national security reasons. The court ruling is not public, and no reasons for its decision have been given. It is unknown whether Mr. Massimov was present at the court hearing. Also, no date has been set for his trial.

14. On 13 January 2022, the National Security Committee reportedly issued a further press statement, stating that “additional pretrial investigations” against Mr. Massimov had been launched “into acts of usurpation of power and abuse of office”. No legislative provisions were cited.

15. The source reports that since his arrest, Mr. Massimov has been held incommunicado, without access to his family, his chosen lawyer, or a doctor. His family members do not know anything about the conditions in which he is being held, and requests made by the family to communicate with him have been repeatedly denied. The only means of receiving any information about his case has been through his State-appointed lawyer. However, all contact with that lawyer and Mr. Massimov reportedly ceased between 15 and 28 January 2022, when the lawyer entered coronavirus disease (COVID-19) quarantine. Reportedly, the State-appointed lawyer resumed her representation on 28 January 2022, but no further substantive information about Mr. Massimov’s case, or the conditions in which he has been held, has been shared with his family since.

16. The source understands that repeated attempts by Mr. Massimov’s family to secure him access to his own chosen legal counsel have been obstructed by the authorities, who insist that any alternative legal counsel must undergo a full State investigation before gaining access to the information necessary to represent Mr. Massimov. This investigatory process has been under way regarding Mr. Massimov’s chosen lawyer since 10 January 2022 and is ongoing. No deadline for the completion of this investigation has reportedly been set.

17. To date, all requests for further information relating to Mr. Massimov’s case have been rejected.

c. Health condition

18. Prior to his arrest, Mr. Massimov was reportedly being treated for diabetes, hypertension and high cholesterol. A list of the medicines that he requires was shared with the authorities on 8 January 2022. The source notes that a close relative has attended the remand prison twice a week to deliver food, medicine and clothing, but has not been allowed to have any contact with Mr. Massimov. Reportedly, for at least part of the period of detention, there was no doctor available at the detention centre due to COVID-19 quarantine. Mr. Massimov’s family does not know what the conditions of his detention are, or whether he is receiving basic medical care and his medication. The source notes that they fear the worst.

d. Analysis of violations

19. The source submits that the only possible inference is that the arrest and detention of Mr. Massimov is politically motivated. By opening baseless criminal proceedings against him, remanding him in pretrial detention and denying him the right to access any information

about the charges against him, the President and his Government are using the charges against Mr. Massimov as a pretext for suppressing any political threat he may pose.

20. The source also submits that the arbitrary nature of Mr. Massimov's imprisonment is evident from the lack of any legal basis for his arrest and detention, and the grave due process violations that characterize the proceedings against him to date. Thus, his arrest and detention are arbitrary under categories I and III.

i. Category I

21. The source refers to article 9 (1) and (2) of the Covenant, articles 3 and 9 of the Universal Declaration of Human Rights and principle 10 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment. According to the source, the national law of Kazakhstan further requires that, at the time of detaining a person on suspicion of a criminal offence, the prosecuting authority must set out the criminal offences of which the detainee is suspected.³ Within the first three hours of apprehension, the prosecuting authority must draw up a protocol of detention. Under domestic law, that report must include a clear statement of the grounds for the arrest.⁴

22. Mr. Massimov has been held by the Kazakh authorities since his arrest on or around 5 January 2022. Insofar as the source is aware, to date he has still not been informed of the substance of the charges against him, or provided with any evidence against him. While article 9 (2) of the Covenant does not require that a detainee be given as much detail regarding the charges against him as would be needed to prepare for trial, it does require the State to promptly provide an "indication of the substance of the complaint" that will enable the accused "to take immediate steps to secure his release if he believes the reasons given are invalid or unfounded".⁵

23. The source further submits that in any event, Mr. Massimov's pretrial detention is arbitrary because he was not promptly informed of the reasons for his arrest, as required under article 9 (2) of the Covenant and under the Criminal Code of Kazakhstan. The criminal offences leading to his arrest were not explained to him at the time of his arrest, nor was a protocol of detention prepared, as is required under Kazakh law. It was not until three days after his initial arrest that State forces publicly announced that he was being detained on suspicion of high treason. A further five days later, the National Security Committee announced that it had commenced "additional pretrial investigations" against Mr. Massimov "into acts of usurpation of power and abuse of office", but the precise charges or their legislative basis remains unclear.

24. According to the source, article 9 (3) of the Covenant creates a presumption against pretrial detention: "it shall not be the general rule that persons awaiting trial shall be detained in custody".⁶ Mr. Massimov has been held in pretrial detention since his initial arrest. The judicial authority that is said to have authorized his continued pretrial detention has not been identified, except in the broadest possible terms by Mr. Massimov's State-appointed lawyer. Nor has its decision been made publicly available. In the circumstances, it is impossible to invoke any legal basis justifying Mr. Massimov's continuing deprivation of liberty.

25. Moreover, there is no evidence that the unidentified judicial authority considered whether Mr. Massimov's continued pretrial detention was "reasonable and necessary" in all the circumstances. There is reportedly no proof that the prosecuting authorities provided, or that the court requested, any evidence that Mr. Massimov would attempt to flee, commit additional crimes, or intimidate witnesses. The absence of any individualized, substantiated basis for the ongoing pretrial detention gives rise to a violation of article 9 (3) of the Covenant.

³ Code of Criminal Procedure, art. 131 (1).

⁴ *Ibid.*, art. 131 (2).

⁵ Human Rights Committee, *Drescher Caldas v. Uruguay*, communication No. 43/1979, paras. 13.2 and 14.

⁶ Human Rights Committee, general comment No. 35 (2014), para. 38; and opinions No. 8/2017, No. 56/2017, No. 62/2017 and No. 10/2018.

26. The source submits that Mr. Massimov has been denied his right to challenge the legality of his pretrial detention, in contravention of article 9 (4) of the Covenant,⁷ in four respects.

27. Firstly, Mr. Massimov has reportedly been denied access to legal assistance of his own choosing, despite the continuing efforts of his family to secure him effective and independent counsel. The Kazakh authorities have reportedly refused to grant Mr. Massimov's chosen lawyer access to the essential information regarding his case, citing vague and unsubstantiated "national security" concerns as the reason for doing so. Mr. Massimov's chosen legal representative has reportedly been forced to undergo an extensive security vetting process by the country's Security Council. That process commenced on 10 January 2022 and remains ongoing. Mr. Massimov has therefore been unable to instruct effective and independent legal counsel in Kazakhstan.

28. Secondly, although Mr. Massimov has been provided with a State-appointed attorney, she has reportedly indicated that she is unable to provide him with any information regarding the evidence against him, on the basis that this information is regarded as "top secret". Without knowledge of the legal basis for his detention, Mr. Massimov is unable to challenge its legality.

29. Thirdly, since his State-appointed lawyer entered COVID-19 quarantine on 15 January 2022, Mr. Massimov's family members have been unable to contact her, and there is every indication that she has also ceased contact with Mr. Massimov himself. In the circumstances, Mr. Massimov lacks any effective legal representation.

30. Fourthly, the judicial authority that is said to have authorized Mr. Massimov's ongoing pretrial detention has not been named, and its decision has not been published. There is therefore no evidence that any of the basic requirements of fairness were secured during the judicial process that resulted in Mr. Massimov's ongoing detention. To the contrary, there is every indication that he did not receive proper legal advice in advance of that hearing, and that he was not adequately informed of the case against him.

31. The source submits that Mr. Massimov has therefore been denied any effective opportunity to challenge the legality of the decision of 8 January 2022 authorizing his continued detention.

ii. Category III

32. The source submits that Mr. Massimov has been subjected to numerous violations of articles 9, 10 and 14 of the Covenant and to violations of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment. His detention is therefore arbitrary under category III.

33. The source submits that the prosecuting authorities have denied Mr. Massimov access to the evidence that will be used against him at trial, purportedly on the basis that the information is regarded as "top secret" and is withheld on grounds of national security. Although it appears that his State-appointed lawyer has been provided with some information, it remains unclear whether she has been, or will be, provided with all material and whether she will be able to share any information with Mr. Massimov. The source submits that this is in flagrant violation of article 14 of the Covenant.⁸ The source asserts that without knowledge of the case against him, Mr. Massimov is denied his right to equality of arms. Without knowledge of the prosecutor's evidence and case against him, Mr. Massimov cannot effectively defend himself at trial.

⁷ See, for example, [A/HRC/19/57](#), para. 59; United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court ([A/HRC/30/37](#)), paras. 2 and 47 (b); and Human Rights Committee, general comment No. 35 (2014), paras. 40 and 42.

⁸ Human Rights Committee, general comment No. 32 (2007), paras. 13 and 31, and general comment No. 13 (1984), para. 8; United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, paras. 99–101; and [A/HRC/13/42](#), para. 292 (b).

34. The source also submits that the failure by Kazakhstan to provide any information to Mr. Massimov about the evidence against him is a clear violation of article 14 (3) (a) and (b) of the Covenant. The source adds that it is axiomatic that, without knowledge of the case against him, Mr. Massimov is being denied information about “the nature and cause of the charge against him” and does not have the necessary “facilities for the preparation of his defence”.

35. The source submits that since his arrest on or around 5 January 2022, Mr. Massimov has been detained without any access to his family or his chosen legal counsel. It is also not clear whether he has had any access to medical practitioners. Members of his family have repeatedly attempted to visit him in prison but have reportedly been denied any means of seeing or communicating with him. Accordingly, Mr. Massimov’s rights under articles 9 (1) and 10 (1) of the Covenant have been violated.

36. In the absence of any information, or of any ability to visit Mr. Massimov, the source also has grave concerns about his conditions of detention, and whether he has been subjected to torture or cruel, inhuman or degrading treatment. Torture and other ill-treatment are reported to be widespread in penitentiary institutions in Kazakhstan, with the State reportedly taking little action to prevent these practices.⁹ The source also refers to recent jurisprudence of the Working Group;¹⁰ it notes that based on previous incidents that have taken place, and in the absence of any access to Mr. Massimov, there is a risk that Mr. Massimov’s detention is facilitating acts of torture and ill-treatment which have, so far, gone undetected.

37. The source recalls that the judicial authority that purportedly authorized Mr. Massimov’s ongoing pretrial detention has not been named, and its decision has not been published. The hearing did not occur in public. The Kazakh authorities have not provided any explanation for conducting these proceedings in secret. This is a violation of article 14 (1) of the Covenant.¹¹

38. According to the source, Mr. Massimov has been denied access to counsel of his choice. The Kazakh authorities have failed to explain why security clearance is required of his chosen lawyer, or why such clearance has not yet been granted. Thus, Mr. Massimov has been denied the right to communicate with counsel of his own choosing, in violation of article 14 (3) (b) of the Covenant. The source also understands that Mr. Massimov has been assigned a lawyer who was admitted to the criminal defence bar in 2018 and who, though formally qualified to represent clients in criminal proceedings, may not have the requisite experience to deal with matters concerning such grave charges.

39. The source refers to the Human Rights Committee’s most recent concluding observations on Kazakhstan, in which the Committee stated that it remained concerned that the independence of the judiciary was not sufficiently secured under the law and in practice, and highlighted the lack of safeguards against “undue influence” from the executive branch as well as the low rates of acquittal. The Committee further remarked on non-compliance with the principle of equality of arms, describing the prosecution as retaining “wide powers” in criminal proceedings.¹²

40. According to the source, it has been suggested by Mr. Massimov’s State-appointed lawyer that he will be tried in the specialized courts of the Armed Forces of Kazakhstan (the Military Court). The court that issued the ruling authorizing Mr. Massimov’s ongoing pretrial detention has not been identified. Moreover, the authorities have reportedly not demonstrated why resorting to trial by the Military Court is necessary or justified. In the circumstances, there is every indication that Mr. Massimov is being denied his rights under article 14 (1) of

⁹ The source refers, inter alia, to the European Parliament resolution of 14 March 2019 on the human rights situation in Kazakhstan, para. M.

¹⁰ Opinions No. 43/2020, para. 88; and No. 67/2018, paras. 47, 76 and 77.

¹¹ Human Rights Committee, general comment No. 32 (2007), paras. 28–29.

¹² [CCPR/C/KAZ/CO/2](#), para. 37.

the Covenant to be heard at a fair and public hearing by a competent, independent and impartial tribunal established by law.¹³

41. Prior to his arrest, Mr. Massimov was being treated for diabetes, hypertension and high cholesterol and was prescribed medications. A close relative has reportedly attended the remand prison to deliver these medicines but there is no indication that Mr. Massimov is receiving the medicines he needs. The source submits that if the State is failing to secure Mr. Massimov's access to this basic health care, his rights under article 10 (1) of the Covenant are being violated.¹⁴

42. According to the source, States parties to the Covenant are further required to take positive steps to protect detainees from torture and other ill-treatment, under article 7. As the family has not been able to communicate with Mr. Massimov, nothing is known about the conditions in which he is being held. Numerous international and domestic organizations and institutions have raised concerns about the use of torture and other ill-treatment in penitentiary institutions in Kazakhstan.¹⁵ It is widely recognized among the various human rights bodies of the United Nations that denying a detainee any communication with the outside world facilitates the commission of acts of torture and ill-treatment.¹⁶ The source is thus deeply concerned for Mr. Massimov's welfare.

Response from the Government

43. On 4 March 2022, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure, with a deadline of 3 May 2022 for the reply.

44. In its response dated 3 May 2022, the Government recalled the information provided to special procedures of the Human Rights Council on 18 March 2022 in relation to the causes of the tragic events of January 2022.¹⁷

45. With regard to human rights violations during the January events, the President, Kassym-Jomart Tokayev, publicly instructed law enforcement agencies to form an investigative group to conduct a large-scale investigation and bring all those responsible to justice. The results of the investigation will be presented to the international community upon its completion. Information about the preliminary results of the investigation into the January events and about the President's new package of political reforms, aimed at protecting human rights and improving the socioeconomic situation of the country's population, were presented in his State of the Nation address at Parliament on 16 March 2022.

46. The decision by the authorities to investigate the cases of violence and riots, as well as the President's statement that the results of the preliminary investigation into the January events will be made public, received a positive assessment and approval from the international community.¹⁸

47. Kazakhstan, respecting the principles and norms of international human rights law, voluntarily assumed international obligations to implement these by ratifying the fundamental legal documents included in the International Bill of Human Rights and does not shy away from their conscientious implementation.

¹³ Human Rights Committee, general comment No. 32 (2007), paras. 19 and 22–23; and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, term (f).

¹⁴ Human Rights Committee, general comment No. 21 (1992), para. 3.

¹⁵ Opinion No. 67/2018, paras. 76–77.

¹⁶ CAT/C/CR/29/3, para. 10.

¹⁷ See note No. 30-96 of the Permanent Mission of the Republic of Kazakhstan to the United Nations Office and other international organizations in Geneva, dated 18 March 2022, in response to KAZ 1/2022 which is available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26969>.

¹⁸ See <https://www.eureporter.co/world/kazakhstan/2022/04/07/kazakhstan-lessons-learnt-from-the-january-2022-events/>.

Arrest and detention

48. The arrest and detention of Mr. Massimov were carried out in accordance with the legislation of Kazakhstan and the norms of international human rights law, particularly the Universal Declaration of Human Rights, the Covenant, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other international treaties in areas of human rights to which Kazakhstan is a party, as well as with the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.

49. Article 4 of the Constitution of Kazakhstan stipulates that the provisions of the Constitution, the laws corresponding to them, other regulatory and legal acts, and international agreements and other commitments of Kazakhstan, as well as regulatory resolutions of the Constitutional Council and the Supreme Court, are the law in force in Kazakhstan. The Constitution has the highest juridical force and direct effect on the entire territory of Kazakhstan.

50. According to article 16 (2) of the Constitution, arrest and detention are allowed only in cases stipulated by law and only with the authorization of a court, with the arrested person having the right of appeal. Without the authorization of a court, a person may only be detained for a period of not more than 72 hours. The procedures and detention conditions applicable to a person suspected of having committed a criminal offence corresponding to the above-mentioned norm of the Constitution are defined in article 14 and article 131 (4) of the Criminal Procedure Code.

51. Mr. Massimov was detained on 6 January 2022, at 2.36 p.m., in accordance with article 128 of the Criminal Procedure Code, being suspected of having committed a criminal offence outlined in article 175 (1) (on high treason) of the Criminal Code, in respect of which an official of the National Security Committee drew up a protocol of detention at the time of detention. Mr. Massimov was placed in the temporary detention facility of the Nur-Sultan Police Department.

52. As outlined in article 131 of the Criminal Procedure Code, at the time of detention Mr. Massimov was informed of his rights in accordance with article 64 of the Criminal Procedure Code, and of the grounds for his detention in accordance with article 128 of the Criminal Procedure Code, as well as about his right to an attorney, his right to remain silent, and the fact that anything he said could be used against him in court. The detention report contains Mr. Massimov's signature, confirming the fact that he was familiarized with this report.

53. Mr. Massimov stated in the protocol of detention that he had no complaints in connection with his health. Nevertheless, in compliance with the requirements of article 131 of the Criminal Procedure Code, on 6 January 2022, following his detention, a forensic medical examination was conducted at the Institute of Forensic Examinations in Nur-Sultan. According to the expert's conclusion, dated 8 January 2022 (number withheld), no bodily injuries were found. During the examination, Mr. Massimov confirmed that no physical force had been used against him during the detention.

54. On 7 January 2022, Mr. Massimov was granted the right to meet with a lawyer privately and confidentially before the first questioning, after which, in accordance with article 64 (3) of the Criminal Procedure Code, he was questioned as a suspect. On 8 January 2022, Mr. Massimov, in the presence of the lawyer, was presented with a resolution on the classification of his actions under article 175 (1) of the Criminal Code, and the rights of the suspect, and the main aspects of what he is suspected of were explained. On the same day, again in the presence of the lawyer, he was questioned about the classification of the actions.

55. On 8 January 2022, before the expiration of the legally permissible detention of a suspect without court authorization (i.e. 72 hours starting from the time of detention), the investigating judge of the Specialized Interdistrict Investigative Court of Nur-Sultan, in the presence of Mr. Massimov and his lawyer, authorized his detention for a period of two months, until 6 March 2022, which formed the legal basis for his further detention.

56. Regarding the authorization of a preventive measure by the court (in this case detention), the fact was taken into account that Mr. Massimov had previously held high-ranking positions (i.e. Prime Minister, and Chair of the National Security Committee),

meaning that he could pressure witnesses in the case by using his authority (most witnesses are employees of the National Security Committee), thereby preventing an objective investigation of the case – which, in accordance with article 136 (1) of the Criminal Procedure Code, is the basis for the use of a preventive measure. Moreover, according to article 136 (2) of the Criminal Procedure Code, a preventive measure in the form of detention may be applied in respect of persons suspected of having committed high treason, on the grounds of the gravity of the crime committed.

57. In line with the aforementioned authorization of the Specialized Interdistrict Investigative Court of Nur-Sultan, Mr. Massimov was transferred from the temporary detention facility of the Police Department in Nur-Sultan to the pretrial detention centre of the National Security Committee.

58. A private complaint was filed against the court ruling by Mr. Massimov's lawyer on 14 January 2022. Following an assessment by the judicial board for criminal cases of the Nur-Sultan court, the complaint was not upheld, and the court ruling remained intact. Thus, Mr. Massimov made use of his right to challenge the legality of his detention, which indicates that he and his lawyer knew the name of the court, and about the trial and the date of it, and were also informed about the nature of the accusations brought against him.

59. On 18 January 2022, Mr. Massimov's relatives and lawyer signed an agreement (number withheld) on the provision of legal assistance and the lawyer's acceptance to join the case to provide qualified legal assistance to Mr. Massimov (confirmed by a notice of protection (representation) (number withheld)). Thus, the lawyer is representing the interests of Mr. Massimov with the consent of and on behalf of his relatives.

60. On 31 March 2022, the investigating judge of the Specialized Interdistrict Investigative Court of Nur-Sultan, in the presence of Mr. Massimov and his lawyer, authorized the extension of his detention by up to four months, until 6 May 2022.

61. The Investigative Department of the National Security Committee has registered the criminal cases against Mr. Massimov and other persons in the Unified Register of Pretrial Investigations as follows:

- 6 January 2022, under article 175 (1) of the Criminal Code (on high treason)
- 8 and 9 January 2022, under article 362 (4) (3) of the Criminal Code (on abuse of power and of official authority (two crimes))
- 10 January 2022, under article 179 (3) of the Criminal Code (on forcible seizure or retention of power or forcible change of the constitutional order of Kazakhstan)
- 18 February 2022, under article 218 (3) of the Criminal Code (on the legalization (laundering) of money or other property obtained by criminal means)
- 25 February 2022, under article 366 (4) of the Criminal Code (on taking a bribe (two crimes))

62. Mr. Massimov and his lawyer have been familiarized with all the reports on the registration of the above-mentioned criminal cases, examinations and other procedural documents affecting their interests, in accordance with the established procedure. Mr. Massimov and his lawyer were not prevented from using their right to challenge the legality of the procedural decisions taken.

63. The source's statement about Mr. Massimov being detained indefinitely is unfounded, since the crime he is suspected of committing belongs to a particularly serious category. For such crimes, the Criminal Procedure Code (art. 151 (4)) provides for the possibility of extending the period of pretrial detention for up to 18 months.

64. The Government also reports that Mr. Massimov's lawyer is able to visit him in the pretrial detention centre alone and confidentially, without any restrictions. That is to say, the suspect is not limited in exercising his right to defence counsel. There were no requests or complaints from Mr. Massimov or his lawyer in connection with the lawyer's inability to represent him during her COVID-19-associated quarantine.

65. At the same time, no investigative actions were conducted with Mr. Massimov's participation in the absence of his lawyer. There were no complaints from Mr. Massimov concerning torture, physical and psychological pressure, dissatisfaction with the conditions of detention, or medical support.

66. During the investigation, Mr. Massimov applied for admission of a lawyer from the Almaty City Bar Association to represent him as a defence lawyer. Pursuant to article 47 of the Criminal Procedure Code, during criminal proceedings, measures are taken to protect the information received that constitutes State secrets and other classified information protected by law. The procedure for participants in criminal proceedings to access such information is determined by law. According to the Instruction on Ensuring Secrecy, approved in Government Decree No. 776-dsp of 28 October 2021, access by a lawyer to State secrets is granted by local authorities of the Ministry of Justice at the location of the collegium of lawyers of which the lawyer in question is a member.

67. Considering that the materials on the criminal case were classified, on 21 January 2022 the National Security Committee's Investigative Department sent a letter to the Almaty City Justice Department requesting that the lawyer chosen by Mr. Massimov be granted access to State secrets. On 28 February 2022, the Almaty City Justice Department refused to grant such access, on the basis of article 30 of the Law on State Secrets. Consequently, the lawyer was not allowed to participate in the criminal case as a defence lawyer representing Mr. Massimov. However, this does not prevent Mr. Massimov from finding another lawyer who will be able to pass the necessary verification processes.

68. The Government reports that, under article 17 (2) of the law on procedures and detention conditions for persons in special institutions that provide temporary isolation from society, a suspect may be granted a meeting with relatives with the written permission of the person conducting the criminal proceedings. On 7 and 28 April 2022, Mr. Massimov was granted a meeting with his wife in a pretrial detention facility in compliance with the requirements of the current legislation on the protection of State secrets.

69. The right to study all the materials relating to the criminal case after the end of the investigation, particularly access to evidence that will be used against him in court, is guaranteed to the suspect by articles 64, 294 and 296 of the Criminal Procedure Code.

70. If it is necessary to call a lawyer or receive any medical assistance, Mr. Massimov can directly contact the administration of the National Security Committee detention centre. There were no requests from Mr. Massimov about the need for access to his chosen doctor.

71. The Government submits that Mr. Massimov receives the necessary basic medical care and medicines in the pretrial detention facility in accordance with the procedures established by law. There were no complaints from him in this respect.

72. At the request of representatives of independent media, the Commissioner for Human Rights in Kazakhstan reported that Mr. Massimov did not complain about the conditions of his detention in the pretrial detention centre.

73. The Government contends that there is no hidden political agenda or elements of political struggle in the arrest of Mr. Massimov as a suspect and in his subsequent detention. There is sufficient evidence of his involvement in committing high treason, which was found during the comprehensive, complete and objective investigation, which took place without any use of illegal methods of investigation and without exerting pressure on the participants in the process.

74. Furthermore, criminal cases were also registered against Mr. Massimov (see the full list above) under articles 218 (3) (3) and 366 (4) of the Criminal Code.

75. Thus, the prosecution of Mr. Massimov is related to economic and corruption crimes and there is no political motivation for the investigation. Moreover, Mr. Massimov and his lawyer did not make any complaints regarding allegations of political motivation for his arrest and detention.

76. The Government submits that, initially, Mr. Massimov was arrested to prevent a crime; since there were grounds for believing that he could hide from the investigation

agency, the question of detaining him was considered. The legal grounds for his detention were reliable evidence of his involvement in high treason, which could not be ignored.

77. Within three hours of Mr. Massimov's detention, the investigator prepared a protocol, noting suspicion of high treason being committed under article 175 (1) of the Criminal Code, and also outlining the reasons and motives for the arrest, the rights of the suspect, and the time and place of the arrest. The protocol was signed by Mr. Massimov.

78. The investigative authorities were unable to apply a less restrictive preventive measure against Mr. Massimov, since there were grounds for believing that he could hide from the investigative authorities, and also because of his previous high-ranking official position, which could have had an impact on objective investigation of the case.

79. In this regard, the investigator issued a decree on the initiation of a request before the court to authorize Mr. Massimov's pretrial detention, which, together with supporting materials, was sent to the Prosecutor General's Office. Having studied the materials confirming the validity of the suspicion, and of the request, the Prosecutor concurred and sent them for consideration to the Specialized Interdistrict Investigative Court of Nur-Sultan. Subsequently, the investigating judge of that court considered the request – in presence of Mr. Massimov, his lawyer, and the prosecutor during the court session.

80. The investigating judge heard the prosecutor, who was in favour of the request, as well as Mr. Massimov and his lawyer, who asked for the request to be rejected and for an alternative to pretrial detention to be chosen. After studying the materials submitted, the judge, having checked the validity of the accusation against Mr. Massimov, made a ruling authorizing Mr. Massimov's pretrial detention for a period of two months, from 6 January to 6 March 2022.

81. At the same time, the investigating judge explained to those present at the hearing that the reasons for ordering pretrial detention were the severity of the crime, danger to the public, and the availability of sufficient evidence to believe that Mr. Massimov could hide from the authorities and prevent objective investigation of the case. Taking these circumstances into account, it was not possible to order bail or other less severe preventive measures.

82. The court's decision to order pretrial detention, in view of the classification of the materials against Mr. Massimov, bears an appropriate secrecy stamp, therefore, in accordance with the requirements of the legislation on the protection of State secrets, it is not subject to disclosure.

Category I

83. The source's claims that Mr. Massimov was not informed in a timely manner about the reasons for his arrest or the allegations made against him are untrue and unfounded. As set out above, his arrest and detention were carried out in accordance with the requirements of the Criminal Procedure Code, article 9 (1) and (2) of the Covenant and principles 2, 4, 10, 12 and 13 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.

84. As indicated above, the Specialized Interdistrict Investigative Court of Nur-Sultan (on 8 January and 31 March 2022) authorized pretrial detention. When deciding on pretrial detention, the Court considered the issue on the basis of the principles of reasonableness and necessity, as outlined in article 9 (3) of the Covenant.

85. Additionally, Mr. Massimov exercised his right to receive qualified legal assistance, indicating that the State complies with the requirements of articles 9 and 14 of the Covenant and principles 11, 17, 18 and 23 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.

Category III

86. The Government submits that the crimes that Mr. Massimov is suspected of fall – according to article 308 (2) of the Criminal Procedure Code – within the competence of a specialized interdistrict court dealing with criminal cases, due to their classification as particularly serious crimes. The case of Mr. Massimov cannot be referred to the Military

Court, since this court is authorized only to consider cases of military crimes and crimes against military personnel, and Mr. Massimov is not a military serviceman, nor is he accused of having committed military crimes.

87. As noted above, Mr. Massimov and his lawyer are duly acquainted with all reports on the registration of the above-mentioned criminal cases, examinations and other procedural documents affecting their interests. Additionally, the right of access to all the materials in the criminal file after the end of the investigation process, including access to the evidence that will be used against him in court, is guaranteed to the suspect by articles 64, 294, 296 of the Criminal Procedure Code. These circumstances indicate that the source's allegations of gross violation by the State of article 14 of the Covenant are untenable.

88. According to the conclusions of the forensic medical examination of 8 January 2022 (number withheld), no signs of bodily injury were detected on Mr. Massimov. During the examination, he himself confirmed that physical force had not been used against him during the arrest.

89. Furthermore, Mr. Massimov made no complaints throughout his detention concerning use of torture, physical and psychological pressure, dissatisfaction with the conditions of detention, or medical support. In this regard, the source's concern regarding the use of torture is unfounded and false. Moreover, the reference to the European Parliament resolution of 14 March 2019 is not to a document of a specialized and competent authority of the international organization conducting special studies and observations in Kazakhstan on the merits of the issue; accordingly, it does not have reliable facts about the country's practices and measures against torture. Furthermore, the reference to a separate opinion of the Working Group cannot be considered as sufficient grounds for concluding that Kazakhstan is taking insufficient measures to prevent this practice. As regards Mr. Massimov's detention conditions, the conclusions and assumptions given by the source are unsubstantiated and unreasonable.

90. According to article 2 (3) of the Criminal Procedure Code, international treaties ratified by Kazakhstan take precedence over the Criminal Procedure Code and are applied directly, except when it follows from an international treaty that enactment of a law is required for its application. In this regard, the above-mentioned provisions of the legislation of Kazakhstan fully comply with international human rights law and, in particular, with the international treaties to which Kazakhstan is a party.

91. Based on the above, the Government considers that the arrest and detention of Mr. Massimov are not arbitrary and do not correspond to categories I and III. The source's submissions on these categories are untenable and do not correspond to reality.

Further comments from the source

92. On 4 May 2022, the reply of the Government was sent to the source for further comments. In its comments dated 25 May 2022, the source emphasizes the serious obstacles to providing a full and informed response to the points raised by the Government, given the sparsity of information available. The source asserts that the government response comprises a series of unevicenced assertions regarding the circumstances that led to Mr. Massimov's arrest, the legal basis for his ongoing pretrial detention, the conditions in which he is being held, and the procedural guarantees that he is allegedly being afforded.

93. Beyond these assertions, there remains a complete lack of transparency regarding Mr. Massimov's detention. In this respect, the source notes that far from addressing the concerns raised in the source's initial submission, the government response has exacerbated them. The source notes that the circumstances of Mr. Massimov's ongoing detention continue to deteriorate. The source adds that the Government is violating his most fundamental human rights, including his right to life, and his right to be free from cruel, inhuman and degrading treatment, by failing to afford him access to essential medical care and treatment and by detaining him in conditions that amount to torture or inhuman and degrading treatment.

94. Noting the extent of the uncertainty which remains following the response, and the source's serious concerns regarding Mr. Massimov's health and welfare, the source requests an urgent visit to Mr. Massimov to assess the circumstances of his ongoing detention, and that he be urgently provided with access to a full, independent medical examination and

treatment. The source also calls on the Government to ensure that Mr. Massimov's human rights are secured throughout the ongoing investigation and trial, including ensuring that he is entitled to engage his chosen legal counsel without delay, to communicate with his family, to be provided with the full detail of the charges and the evidence against him, and to be afforded a proper opportunity to challenge the legality of his pretrial detention.

95. On 16 June 2022, the source reported that two lawyers of Mr. Massimov's choosing had been approved to act as his defence lawyers.

Discussion

96. The Working Group thanks the source and the Government for their submissions.

97. In determining whether Mr. Massimov's deprivation of liberty was 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.¹⁹

98. The source has argued that the detention of Mr. Massimov is arbitrary and falls under categories I and III, while the Government denies these allegations. The Working Group shall proceed to examine the submissions under each category in turn.

Category I

99. The source submits that the exact circumstances of Mr. Massimov's detention are shrouded in secrecy, but argues that his arrest is likely to have taken place in the night from 5 to 6 January 2022, and that no arrest warrant or reasons were provided. The Government denies these allegations, arguing that Mr. Massimov was detained on 6 January 2022 at 2.36 p.m. on the charge of high treason and that an appropriate protocol of detention was drawn up.

100. Furthermore, the source argues that the pretrial detention was ordered by an unknown judicial authority for undisclosed reasons and that the decision to order pretrial detention was never made public due to the secrecy imposed upon the whole proceedings. The Government, on the other hand, argues that pretrial detention was ordered on 8 January 2022 by the investigative judge of the Specialized Interdistrict Investigative Court of Nur-Sultan, initially for a period of two months. The Government submits that the reasons for the pretrial detention were that Mr. Massimov had held a very high-ranking position in the country and it was feared that, given the charge of high treason, he could exert influence on witnesses. The Government also notes that article 136 (2) of the Criminal Procedure Code requires pretrial detention for those suspected of high treason, due to the gravity of the crime. The court's decision was not publicized because the materials relating to the criminal case against Mr. Massimov were classified as State secrets.

101. From the outset, the Working Group wishes to note its discomfort with the scarcity of the information provided to it. While it is clear that Mr. Massimov was arrested, the exact date and circumstances of that arrest and the reasons for it remain unclear. Equally, while both the source and the Government have submitted that Mr. Massimov has been charged with high treason, the Working Group is particularly concerned at the failure of the Government to provide any explanation regarding what actions by Mr. Massimov may have warranted this very serious charge. Furthermore, while the Government has argued that pretrial detention was imposed due to Mr. Massimov having held high-ranking positions, thereby indicating that the charge of high treason is linked to his previous professional activity, it has provided no rebuttal to the source's claims about the reasons for Mr. Massimov's dismissal and has simply denied that his arrest is politically motivated.

102. Furthermore, the Working Group notes that in addition to the charges of high treason, on 18 and 25 February Mr. Massimov was charged with money laundering and bribery, as

¹⁹ [A/HRC/19/57](#), para. 68.

submitted by the Government. The Government has provided no information about the factual basis for these charges.

103. The Working Group notes that it is not contested that Mr. Massimov was assigned a State lawyer with whom he was able to meet on 7 January 2022, however the source has submitted that the lawyer is prevented from disclosing any information concerning Mr. Massimov's detention, including the charges, to anyone, including to his family and possibly also to Mr. Massimov himself. The Government has submitted that Mr. Massimov has been able to communicate with this lawyer freely and confidentially but has offered no explanation as to why the lawyer has been prevented from disclosing the reasons for Mr. Massimov's arrest, including to his family.

104. The Working Group recalls that one major purpose of requiring that all arrested persons be informed of the reasons for their arrest is to enable them to seek release if they believe that the reasons given are invalid or unfounded.²⁰ While Mr. Massimov was presented before the court for his pretrial hearing on 8 January 2022, the secrecy surrounding the factual basis for his arrest clearly must have had a negative effect on his ability to challenge the legality of that detention. The Working Group therefore finds that articles 9 (2) and 9 (4) of the Covenant were violated.

105. Moreover, the Working Group notes the Government's submission that the charge of high treason required the imposition of pretrial detention due to the gravity of the alleged crime. In this regard, the Working Group recalls its consistent jurisprudence confirming that mandatory pretrial detention – in the present case, obligatory pretrial detention due to the gravity of the alleged crime – violates a State's obligations under international human rights law.²¹ In particular, non-bailable offences violate the requirement under article 9 (3) of the Covenant that pretrial detention is an exceptional measure rather than the rule. Such non-bailable offences also violate the requirement that pretrial detention must be based on an individualized determination that it is reasonable and necessary in the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.²² As the Human Rights Committee has stated, pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.²³ The Working Group therefore finds a violation of article 9 (3) of the Covenant.

106. Furthermore, the decision to impose pretrial detention was not made public on account of the classified material involved in the case, as argued by the Government. However, the Working Group recalls that public hearings ensure the transparency of proceedings and thus provide an important safeguard for the interests of the individual and of society at large.²⁴ While article 14 (1) of the Covenant indeed permits the public to be excluded from proceedings on the basis of national security, "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".²⁵

107. Although this was not a full judgment about the merits of the case against Mr. Massimov, it is the very basis for him remaining in custody. Not even his family have been able to ascertain the reasons for the imposition of pretrial detention by obtaining a reasoned decision of the court. Moreover, the decision to impose pretrial detention could not concern the substance of the allegations against Mr. Massimov, which makes it even more untenable that the court's decision was not made public, and the Government has provided no explanation for this degree of secrecy. The Working Group therefore finds a breach of article 14 (1) of the Covenant and considers that this violation made it even more difficult for Mr. Massimov to exercise his right to challenge the legality of detention in accordance with article 9 (4) of the Covenant.

²⁰ Human Rights Committee, general comment No. 35 (2014), para. 25.

²¹ Opinions No. 8/2020, No. 64/2019, No. 14/2019, No. 75/2018, No. 61/2018, No. 53/2018 and No. 16/2018; [A/HRC/42/39/Add.1](#), paras. 36–38; and [A/HRC/19/57](#), paras. 48–58.

²² Human Rights Committee, general comment No. 35 (2014), para. 38.

²³ *Ibid.*

²⁴ Human Rights Committee, general comment No. 32 (2007), para. 28.

²⁵ *Ibid.*, para. 29.

108. Consequently, noting all of the above, the Working Group concludes that the arrest and pretrial detention of Mr. Massimov is arbitrary, as it lacks a legal basis and falls under category I.

Category III

109. The source has argued that there have been various infringements of Mr. Massimov's right to legal assistance – notably, that he has been unable to appoint a lawyer of his own choosing due to his chosen lawyer not satisfying the vetting process for accessing the State secrets involved in the charges against him, and that the State-appointed lawyer has been extremely restrained in her ability to perform the defence effectively due to imposed confidentiality requirements. The source has also expressed overall concern about the independence and impartiality of the judiciary in Kazakhstan, and has expressed fears that Mr. Massimov could be tried by a military court.

110. The Working Group notes the unequivocal statement by the Government that Mr. Massimov would not be tried by a military court and recalls that the trial of civilians by military courts is in violation of the Covenant and customary international law and that under international law, military tribunals can only be competent to try military personnel for military offences.²⁶ The Working Group welcomes the respect for this as expressed by the Government.

111. In relation to the source's argument about the lack of independence of the judiciary in Kazakhstan, the Working Group observes that these submissions are of a general nature and that the source has not made any concrete allegations as to how any alleged lack of impartiality and independence has manifested itself in the case of Mr. Massimov. The Working Group is therefore unable to make any findings on this matter.

112. However, the Working Group is seriously concerned about the way in which Mr. Massimov's right to legal assistance has been respected in the present case. While Mr. Massimov has been appointed a State lawyer and the Government is arguing that this lawyer has been present at all interrogations and been able to take part fully in all proceedings, the Government has not addressed the source's submission that this lawyer is severely restricted in the exercise of her professional duties due to the secrecy of the whole proceedings and the associated very strict confidentiality protocols. For example, it is entirely unclear what reasons could justify the absolute prohibition imposed upon the lawyer to discuss the charges against Mr. Massimov, especially noting that two of these charges are money laundering and bribery. The Government has provided no explanation for this.

113. Moreover, the Government does not deny that Mr. Massimov attempted to appoint a lawyer of his own choosing, but this lawyer was required to undergo vetting in order to be allowed access to State secrets, which the lawyer did not pass. The Government has once again provided no reason as to why that was the case, but has merely stated that Mr. Massimov can appoint another lawyer who would be able to pass the vetting process. Given that it is unclear what requirements any lawyer needs to satisfy in order to be allowed access to State secrets, the Working Group cannot accept the Government's argument that Mr. Massimov could have chosen another lawyer.

114. The Working Group recalls that the right to legal assistance is an essential guarantee of equality of arms and fairness of proceedings. All persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access is to be provided without delay.²⁷ Mr. Massimov is not only prevented from having legal assistance of his own choosing, for reasons that the Government has failed to explain in a satisfactory manner, but his State-appointed lawyer is also unable to engage effectively in his defence due to the confidentiality protocols in place.

²⁶ A/HRC/27/48, paras. 67–70; and opinions No. 44/2016, No. 30/2017, No. 28/2018, No. 32/2018 and No. 66/2019.

²⁷ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 and guideline 8.

115. In this regard, the Working Group recalls that “lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter”.²⁸ In the view of the Working Group, this has not been satisfied in the case of Mr. Massimov, and it therefore finds a breach of article 14 (3) (d) of the Covenant. Given the seriousness of this violation, the Working Group finds that the detention of Mr. Massimov is arbitrary and falls under category III. The Working Group wishes to emphasize that just because Mr. Massimov was allowed to appoint two lawyers of his own choosing some five months later, the Working Group’s views on this issue are not altered in any way. The Working Group refers the case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

116. The Working Group is seriously concerned about the veil of secrecy surrounding the proceedings against Mr. Massimov, as all pretrial hearings thus far appear to have been conducted behind closed doors; his family are not informed about the progress of the case and are unable to visit him; and there is serious interference with his ability to exercise his right to defence effectively, as recognized above. The Working Group recalls that it is essential that all court proceedings be conducted independently and impartially and wishes to remind the Government that in order for a trial to satisfy the requirements of article 14 (1) of the Covenant, a trial “must also appear to a reasonable observer to be impartial”.²⁹

Concluding remarks

117. Although the Working Group has already stated its discomfort with the secrecy surrounding the judicial proceedings against Mr. Massimov, it wishes to specifically emphasize the negative effects that this has had upon the family of Mr. Massimov, who have had very little information provided to them about the reasons for his arrest and the progress of his case, and have not been allowed to visit him.

118. The source has also expressed concerns as to whether Mr. Massimov may have been subjected to ill-treatment and whether he has received the appropriate medication for his health conditions. While the Government has insisted that on 6 January 2022, Mr. Massimov was examined by a forensic medical expert at the Institute of Forensic Examinations in Nur-Sultan, who concluded that “no bodily injuries were found”, the Working Group notes that this, in itself, does not eliminate the possibility of injuries that are invisible to the eye, and does not address the issue concerning the lack of appropriate medication to treat Mr. Massimov’s ongoing health conditions.

119. The Working Group is obliged to remind the Government that in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person, and that denial of medical assistance constitutes a violation of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), of rules 24, 25, 27 and 30 in particular. The denial of contact with the family is also a violation of principle 19 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.

120. 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 for the Government, to conduct a visit to Kazakhstan 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

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

The deprivation of liberty of Karim Massimov, being in contravention of articles 3, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the

²⁸ Human Rights Committee, general comment No. 32 (2007), para. 34.

²⁹ *Ibid.*, para. 21.

International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

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

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

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

125. 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, for appropriate action.

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

Follow-up procedure

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

128. 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.

129. 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.

130. 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.³⁰

[Adopted on 1 September 2022]

³⁰ Human Rights Council resolution 42/22, paras. 3 and 7.

