

OPINION No. 7/1997 (KYRGYZSTAN)

Communication addressed to the Government on 3 February 1997.

Concerning: Topchubek Turgunaliev and Timur Stamkulov.

The Kyrgyz Republic is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. (Same text as paragraph 30 of Opinion No. 1/1997.)
4. In the light of the allegations made the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the sources and received their comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the observations by the sources.
5. A summary of the communication submitted by two sources was sent to the Government. It concerns (a) Mr. Topchubek Turgunaliev, a 55-year-old former Rector of the Human Sciences University in Bishkek, who is also a representative of the Erkin Kyrgyzstan (Free Kyrgyzstan) opposition movement, and (b) his former university colleague Timur Stamkulov. According to the sources, Mr. Turgunaliev was sentenced on 8 January 1997 to 10 years' rigorous imprisonment in a correctional labour colony and confiscation of his property. Mr. Stamkulov was sentenced to six years' rigorous imprisonment in the same colony. Both men were found guilty by the Bishkek court of three offences: embezzlement of public or community property belonging to the State or society, under article 88-1, paragraph 1, of the Kyrgyz Criminal Code; abuse of power or public authority, under article 177 of the Code; and forgery committed in an official capacity, under article 182 of the Code.
6. The two men were prosecuted in 1995. In 1994, Mr. Turgunaliev had authorized, in his capacity as rector, a loan of \$10,000 from the university for the purposes of business ventures on the part of Mr. Stamkulov, the university's management director. According to one of the sources, the fact that the loan has not been repaid should not give rise to prosecution proceedings for embezzlement of public or community funds, but should be dealt with under civil law. In his testimony to the court, the university's chief accountant stated that the university had no claims against Mr. Turgunaliev. One of the sources considers that the penalties handed down are

disproportionate to the offences committed. According to the sources, the proceedings against Mr. Turgunaliyev are politically motivated as punishment for his opposition activities.

7. In its reply of 2 April 1997 (addressed to the Office of the High Commissioner/Centre for Human Rights following a communication submitted to the Government under the "1503 procedure", a copy of which was sent to the Working Group), the Government confirmed that both men had indeed been convicted as charged and received the sentences cited by the sources. It quoted at length the articles of the Criminal Code applied by the Kyrgyz courts, specifying the amendments to the sentences made by the Criminal Division of the Supreme Court, which considered the case (on 18 February 1997, according to the source) and, after having reclassified the offences, reduced the original sentences. Mr. Turgunaliyev was finally sentenced to a total of four years' deprivation of liberty in a penal colony. The Supreme Court also annulled the decision of the court of first instance ordering the confiscation of Mr. Turgunaliyev's property and banning him from any post entailing financial responsibilities. Mr. Stamkulov was sentenced to a total of three years' imprisonment in a penal colony.

8. In their observations in reply, both sources confirmed the decision handed down on appeal by the Supreme Court. In addition, the Working Group was informed by the sources that Mr. Turgunaliyev, who had been charged with distributing leaflets during the presidential elections, had been detained from 22 December 1995 to 29 April 1996, given a suspended one year sentence and subsequently released. The information provided by one of the sources indicates that in the case of the \$10,000 loan, Mr. Stamkulov was never arrested or detained, despite the other source's allegation to the contrary. Finally, according to the most recent information received from both sources, dated 7 and 9 May 1997 respectively, his sentence to a penal colony has not yet been enforced; he is currently living in his flat in Bishkek. The reason for Mr. Turgunaliyev's pre-trial arrest on 17 December 1996 was that he had failed to appear at the court hearing the previous day. According to the source, he had not been properly summoned. As a result, he remained in prison for some time, i.e. for the duration of the trial, which ended on 8 January 1997. He reportedly returned to live in his flat in Bishkek until 7 March 1997, when he was taken to Leilek in the region of Osh to a penal colony. The source also reported that Mr. Turgunaliyev's lawyer was not authorized to visit him until 21 December.

9. In the light of the information brought to its attention, the Working Group considers that:

In the case of Mr. Timur Stamkulov, the Group takes notes of the fact that he has not been sentenced to any custodial measure;

In the case of Mr. Turgunaliyev, the Group considers that it is in a position to render an opinion on the following bases:

(a) In the light of the information gathered, the Group is unable to endorse the view that Mr. Turgunaliyev should have been tried under civil law, as the decision taken by the prosecutor to institute criminal proceedings was not contrary to domestic law,

under which the public prosecutor's office may prosecute someone for an offence even if no complaint had been filed by the victim or if the latter has withdrawn his or her complaint. The Working Group further notes that the legislation in question was not criticized by the sources, who essentially focus, in view of their gravity, on the disproportionate nature of the penalties in relation to the offences committed; disproportion no longer existed after the decision of the Supreme Court. The Group also notes that when they classified the acts as criminal offences, the Kyrgyz courts provided sufficient grounds for not treating them as constituting failure to perform a contractual obligation under domestic law.

(b) Regarding the criminal procedural law applicable in Kyrgyzstan, the Working Group considers that although a number of reservations may be expressed, particularly regarding the fact that a lawyer was not involved until four days after the arrest, this fact alone does not constitute a sufficiently serious shortcoming, in terms of the right to a fair trial, for the deprivation of liberty to be characterized as arbitrary.

(c) The Working Group, after having noted that the charges of embezzlement were not disputed, notably by the sources, considers that it does not possess conclusive information to enable it to take the view that Mr. Turgunaliev's prosecution was primarily motivated by political considerations because of his personal commitments.

(d) The procedure before the Supreme Court having led to a final decision, the Working Group has considered, in conformity with resolution 1997/50, paragraph 15, whether the decision, particularly in the light of the law enforced, was in conformity with the relevant provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to which Kyrgyzstan is a party. In the light of the foregoing, the Working Group has not found sufficient grounds seriously to dispute the conformity either of domestic legislation or of the decision handed down with international standards, particularly those relating to a fair trial.

10. In the light of the above, the Working Group renders the following opinion:

Since Mr. Timur Stamkulov has not been deprived of his liberty, his case should be filed;

The deprivation of liberty imposed on Mr. Topchubek Turgunaliev, as apparent from the information submitted to the Working Group, is not of an arbitrary nature in terms of the Group's methods of work.

Adopted on 15 May 1997.