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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fifth session, 14–23 November 2012

No. 67/2012 (Uzbekistan)

Communication addressed to the Government on 12 April 2012

Concerning Dilmurod Saidov

The Government replied to the communication on 19 June 2012.

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

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. 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 the detainee) (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 International Covenant on Civil and Political Rights (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 for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Dilmurod Saidov, a national of Uzbekistan, born in 1962, holder of passport No. CA2398501, issued by the Ministry of Internal Affairs on 18 May 2007, usually residing in Sabir Rakhimov district of Kara-Kamish 2/5, 14, 2, Tashkent, Uzbekistan, is a prominent journalist and human rights activist. He is also a member of the human rights organization Ezgulik. He has published numerous articles critical of the authorities of Uzbekistan appearing in local newspapers, including *Advokat-Press*, *Darachki*, and *Qishloq Hayoti*. His articles have also been published by many Internet news agencies such as Voice of Freedom or Uznews.net.

4. Mr. Saidov has allegedly been under pressure from the authorities since 2005 after he had criticized human rights violations in Uzbekistan in an article published in *Advokat-Press* newspaper. He was subsequently fired from that newspaper agency. As a freelance journalist, he continued to report on alleged instances of corruption in Samarkand, Uzbekistan and accused Government officials of impoverishing regional farmers. Prior to his arrest, Mr. Saidov was investigating, on farmers' behalf, allegations of theft and illegal land appropriation by the Agricultural Equipment and Tractor Park in Djambay (Jomboy) district, Samarkand, Uzbekistan. Between 3 September 2008 and 16 February 2009, Mr. Saidov petitioned various Government bodies, including the Office of the Samarkand Prosecutor and the Prosecutor General of Uzbekistan. The Djambay district's Department of Internal Affairs established a special commission to review the complaints and investigate the company.

Circumstances of arrest and charges brought against Mr. Saidov

5. On the evening of 22 February 2009, Mr. Saidov was arrested at his residence by officers of the Tashkent branch of the Division for Combating Tax, Currency Crimes and Legalization of Criminal Proceeds under the General Prosecutor's Office in Uzbekistan. Mr. Saidov was placed in TB Zone No. 36, Navoiy, Uzbekistan where he remains.

6. Mr. Saidov was charged with extortion and forgery under articles 165, paragraph 3; 228, paragraph 2 (b); and 229, paragraph 3, of the Criminal Code of Uzbekistan. The Tashkent Branch of the Prosecutor General's Office accused Mr. Saidov of extortion on the basis of a statement made by Asliddin Urinboev, the head of the Agricultural Equipment and Tractor Park in the Djambay district of the Samarkand Region. Mr. Urinboev claimed that, on 17 February 2009, Mr. Saidov had sought to extort 15,000 US dollars from him with the help of Marguba Juraeva. Ms. Juraeva was also arrested on 22 February 2009 at Yulduz, a restaurant in Samarkand. She was arrested immediately after Mr. Urinboev allegedly handed her 10,000 US dollars in cash, and was also charged with extortion. Ms. Juraeva allegedly gave a written statement indicating that she had committed extortion on Mr. Saidov's behalf. The following day, she allegedly recanted her statement, stating that she had given it under the influence of alcohol.

7. In mid-March 2009, a second charge of extortion was brought against Mr. Saidov on the basis of an allegation made by Saydullo Baymuradov, the head of the privatized collective farm "Uzbekistan". Mr. Baymuradov claimed that Mr. Saidov had tried to extort 5,000 US dollars from him in 2004.

8. In April 2009, the Tashkent Branch of the General Prosecutor's Office also charged Mr. Saidov with forgery on the basis of accusations made by the Djambay farmers who alleged that he had falsified documents giving himself power of attorney to represent them.

Trial and sentencing of Mr. Saidov

9. Along with Mr. Saidov, three co-defendants were brought to trial on charges of extortion and forgery: Marguba Juraeva, Anorkul Pulatov and Tura Ergashev. All of them were accused of conspiring with Mr. Saidov to extort money from Mr. Urinboev and Mr. Baymuradov, as well as forging the power of attorney.

10. According to the information received, the court's hearings were repeatedly conducted without notice being given to Mr. Saidov's defence lawyer.

11. On 25 February 2009, a first hearing was held in Samarkand City Court with the view to determining whether there was sufficient evidence for Mr. Saidov's arrest. Mr. Saidov's lawyer was not informed of the hearing and was not present when the evidence was reviewed. Mr. Saidov's lawyer allegedly appealed the court's decision, but was not informed of the appeal hearing either.

12. It is reported that 6 of the 10 farmers who had initially claimed that Mr. Saidov forged the power of attorney testified at the trial that their original written statement had been false. It is alleged that one witness testified that he had been detained and held for two days in a pretrial detention facility to pressure him to make allegations against Mr. Saidov.

13. It is further reported that many documents that the defence handed over to the investigator during the pretrial investigation, including the original notarized copy of Mr. Saidov's power to attorney from the farmers, disappeared during the trial.

14. The source points out that the prosecution based its case against Mr. Saidov only on the written statements obtained from witnesses during the investigation phase. Many of those statements were allegedly rescinded during the trial.

15. Six of the prosecution's main witnesses, five of which were serving as chairpersons in different local farms, provided written statements that they had signed and put farm seal on a blank paper without allegedly knowing what their end use was. Moreover, one of those six witnesses, Jamshid Rustamov, testified that it was not him but his son who had signed and put a farm seal on his behalf on a blank paper. Yet another witness, Rayim Egamberdiev, allegedly testified that there was something written on the paper, that he did not remember what was written on it and nevertheless signed and sealed it.

16. During Mr. Saidov's trial, the court allowed only a very limited group of people to attend the proceedings. Among those who were granted permission to attend the trial were Mr. Saidov's family members, his defence lawyer and public defender. The court did not provide any specific reasons for limiting access to the proceedings by foreign officials or representatives of human rights organizations.

17. On 30 July 2009, the Tayloq District Court in Samarkand convicted Mr. Saidov and sentenced him to 12 years and six months in prison under articles 165 (extortion) and 228 (forgery) of the Uzbek Criminal Code. Mr. Saidov's co-defendants were also convicted. The court sentenced Mr. Pulatov to 12 years in prison, and Mr. Ergashev and Ms. Juraeva to 11 years each. The presiding judge on the case began reading the decision without considering the motions of the defence. The verdict was passed behind closed doors.

18. On 11 September 2009, the Samarkand Regional Appeal Court left the decision of the trial court unchanged.

19. In July 2010, Mr. Saidov wrote an open letter to the Secretary-General of the United Nations and several international human rights organizations, reporting that he had been diagnosed with tuberculosis and was being denied adequate medical treatment.

20. On 7 January 2010, the Tashkent Public Prosecutor's Office interrogated several independent journalists working in Uzbekistan. During the interrogation of Khusniddin Kutbiddinov, one of the independent journalists, Bakhrom Nurmatov, an Assistant Public Prosecutor of Tashkent, asked him if he had any relations with Mr. Saidov's family or cooperated with human rights organizations.

21. During a meeting in late February 2010, Mr. Saidov asked his lawyer to submit a written statement that he had prepared to the Supreme Court of Uzbekistan. On 10 August 2010, the Supreme Court upheld Mr. Saidov's conviction and prison term. On 11 August 2010, Mr. Saidov's family made a direct appeal to the Ombudsperson for Human Rights Sayora Rashidova, who met with the family and promised to study the situation. However, she sent a written response to the family on 9 November 2010, informing that her office had no jurisdiction over the matter. On 8 February 2011, the family again tried to have Mr. Saidov's case reviewed and sent a complaint to the President's Office. On 15 March 2011, the family received a response from the Supreme Court informing them that their complaint to the President's Office had been forwarded to the Supreme Court and that the Court had dismissed their request.

22. Reportedly, the authorities have further accused Mr. Saidov of multiple prison regime violations preventing him from being eligible for the 2010 amnesty granted by the Government of Uzbekistan. When a relative went to visit Mr. Saidov in prison on 27 April 2011, the prison authorities told him that Mr. Saidov had been put into a punishment cell for allegedly violating prison regulations, but would not say which ones. As of February 2011, Mr. Saidov had been in a punishment cell five times.

The source's contention regarding the alleged arbitrary character of Mr. Saidov's detention

23. First, the source maintains that Mr. Saidov's detention on charges of extortion and forgery is arbitrary as it results from the exercise of his right to freedom of expression and the right to participate in public affairs. The source points out that the extortion and forgery charges against Mr. Saidov were fabricated and brought as a means to punish and silence him for his political and public activism as well as his record in defending the rights of the farmers. His arrest was preceded by the investigations that Mr. Saidov conducted into the allegations of illegal land appropriation by the Agricultural Equipment and Tractor Park in Samarkand's Djambay (Jomboy) district, Samarkand, Uzbekistan. Previously, Mr. Saidov's investigative journalism had resulted in numerous convictions of Government officials. For example, based on the farmers' complaints, Mr. Saidov investigated the activities of the "Uzbekistan" collective farm and subsequently published two articles summarizing his findings in the local newspaper Qishloq Hayoti ("Farm Life") in May and September 2004. As a result of these publications, charges were brought against the administration of the farm that resulted in convictions.

24. The source further points to the fact that in its interrogations of several independent journalists, the Tashkent Public Prosecutor's Office focused almost exclusively on Dilmurod Saidov's case. The fact that Mr. Saidov was singled out and listed along with reputable human rights organizations in the country also demonstrates, according to the source, that he was targeted and detained for political and public activism.

25. In the light of the foregoing, the source submits that there is a genuine link between Mr. Saidov's activities as an investigative journalist and as a human rights defender and his detention, trial and sentencing to 12 years' imprisonment. The source conveys that the authorities of Uzbekistan allegedly breached articles 19 and 25 (a) of the International Covenant on Civil and Political Rights and articles 19 and 21, paragraph 1, of the Universal Declaration of Human Rights. The source also points to the alleged violations of articles 29 and 32 of the Constitution of Uzbekistan.

26. Second, the source maintains that the detention of Mr. Saidov is arbitrary as a result of partial or total non-observance of international norms relating to the right to a fair trial.

27. In particular, the source evokes the following violations: article 14, paragraph 3 (d), of the Covenant and article 51 of the Code of Criminal Procedure of Uzbekistan, as Mr. Saidov did not benefit from an unimpeded and effective access to a lawyer. He was allegedly denied legal assistance at crucial stages of criminal proceedings as described in the section above concerning his trial and sentencing; article 14, paragraph 1, of the Covenant, article 10 of the Universal Declaration and article 19 of the Code of Criminal Procedure of Uzbekistan as the court allowed only a very limited number of people to attend the trial; the court failed to provide any justification in denying access to foreign officials and independent observers; in one instance, the court hearing was closed due to alleged security concerns; similarly, according to the source, a hearing was not held by an impartial and independent tribunal (as described in the section concerning trial, the alleged irregularities include: the treatment of witness testimonies, a number of which were subsequently recanted; reliance of untrustworthy written statements relating to the charges of forgery; the loss by the investigation unit of the document containing the original power of attorney).

28. The source also evokes the following violations: article 14 of the Covenant, article 11 of the Universal Declaration and article 23 of the Uzbek Code of Criminal Procedure, as Mr. Saidov was reportedly denied the right to be presumed innocent until proven guilty. The source reports that Sukhrab Madidov, an investigator in the case of Mr. Saidov, told the latter's relatives that the case had been ordered "from above", implying that the verdict would result in Mr. Saidov's imprisonment. Furthermore, the presiding judge on the case read the decision of the court without considering the motions of the defence which, according to the source, indicates that the case had been decided in advance of any deliberations.

Response from the Government

29. By letter dated 19 June 2012, the Government of Uzbekistan conveyed its response to the Working Group.

30. The Government points out that Mr. Saidov was tried and sentenced for a series of different crimes in the past. The Government briefly describes past periods of detention. The ongoing detention of Mr. Saidov relates to the criminal case as follows.

31. On 17 February 2009, the competent authorities of the Samarkand region were seized with a complaint from the chair of the Agricultural Equipment and Tractor Park, Mr. Urinboev. The complaint concerned allegations of extortion by Mr. Saidov, Ms. Zuraeva and others of 15,000 US Dollars. In the course of criminal investigation undertaken on 22 February 2009 Ms. Zuraeva was arrested at the Yulduz restaurant in Samarkand when receiving 10,000 US Dollars from Mr. Urinboev.

32. Mr. Saidov was charged under articles 165, paragraph 3 (a), (b) and (c) (aggravated extortion); 228, paragraph 2 (b) (forgery); and 228, paragraph 3 (use of a forged document) of the Criminal Code of Uzbekistan. Mr. Saidov was taken into custody by order of the Samarkand City Court.

33. Mr. Saidov was sentenced by Taylyakskiy Regional Court to 12 years and 6 months' of imprisonment and convicted of extortion (article 165, paragraph 3 (a) of the Criminal Code), forgery (article 228, paragraph 2 (b)) of the Criminal Code and use of forged document (article 228, paragraph 3, of the Criminal Code). The sentence was upheld by the Samarkand Appeal Court on 11 September 2009.

34. The Court found that Mr. Saidov, while hiding behind his work as a journalist, entered into a criminal enterprise with Mr. Pulatov. Under the threat of spreading information affecting the honour and integrity of the former head the privatized collective farm "Uzbekistan" Mr. Chuzakulov and the incumbent head Mr. Boymuradov, Mr. Saidov tried to extort from Mr. Boymuradov 5,000 US Dollars. When Mr. Boymuradov refused to give the money, Mr. Saidov published the above information in the *Advokat-Press* newspaper.

35. Further, Mr. Saidov, in a criminal enterprise with Mr. Pulatov, Ms. Zuraeva and Mr. Ergashev aimed at producing forged documents, received blank papers with signatures and stamps from the heads of six different collective farms. The Government provides names of these farms and their chairs and states that Mr. Saidov threatened Mr. Urinboev to use the abovementioned papers to spread complaints with information offending the honour and integrity of Mr. Urinboev. In doing so, Mr. Saidov attempted to extort 15,000 US Dollars from Mr. Urinboev.

36. During the hearing, Ms. Zuraeva in presence of her lawyer Mr. Yahyaev stated that in the beginning of February 2009 she had informed Mr. Saidov of Mr. Urinboev's request not to make any further public statements. Mr. Saidov demanded 13,000 US Dollars in return from Mr. Urinboev. Ms. Zuraeva transmitted this request to Mr. Urinboev through a third party Mr. Makhmudov. Mr. Urinboev agreed to give the requested amount and this fact was corroborated in court by both himself and the witness Mr. Makhmudov.

37. The present criminal case does not contain objective evidence that Ms. Zuraeva recanted any of her initial statements allegedly under the influence of alcohol.

38. The Government further informs that the allegation according to which Mr. Saidov's case was examined in court without a legal counsel is unfounded.

39. At the pretrial stage, Mr. Saidov was interrogated in presence of his lawyer Mr. Komulov. During the trial, Mr. Saidov received the assistance of his lawyer Mr. Makhbukhov. In addition, Mr. Tashanov, the Chair of the Tashkent human rights organization Ezgulik was also present during the trial in the role of public defender.

40. The Government maintains that the allegation that the six farmers refused to give testimony about Mr. Saidov's acts of forgery is also baseless.

41. At the pretrial investigation and trial stages, the heads of the collective farms explained that in summer 2008, Mr. Ergashev (in a criminal enterprise with Mr. Saidov) introduced Mr. Saidov as a lawyer, who would be in position to assist them with any relevant legal matters. In this context, the heads of the collective farms handed to Mr. Saidov blank papers signed and stamped, without however knowing the ultimate use of these papers. None of the heads of the collective farms recanted their original statements contrary to what is submitted by the source. In the course of the trial, all these witnesses confirmed that they had not authorized in any way Mr. Saidov to legally represent their interests.

42. Similarly, the allegations concerning Mr. Saidov's torture or ill-treatment are unfounded. No complaint has been filed in this respect neither by Mr. Saidov nor his lawyers.

43. Upon his placement in prison, Mr. Saidov was subject to the complete medical examination. In March 2010, he was diagnosed with tuberculosis and placed in section 64/18 of the prison hospital. After successful treatment, Mr. Saidov was transferred to section 64/36 (Navoiy) on 20 September 2011. His medical condition is closely monitored. He continues to receive tuberculosis treatment with a programme called Dots Plus.

44. During his prison term, Mr. Saidov has on five occasions violated prison's rules and was subjected to disciplinary measures. Compliance with the prison regime within the terms of the applicable Uzbek legislation cannot be regarded as affecting the rights and legitimate interests of the prisoners. Prison administration considers Mr. Saidov as a particularly dangerous prisoner and hence did not consider applicable any amnesty measures to his case.

45. According to paragraph 8 (a) of the Decision of the Senate of Oliy Majlis, dated 5 December 2011 "On Amnesty", the scope of amnesty is not extended to those individuals who systematically violate prison regime rules. During his prison term, Mr. Saidov was accorded one short and three longer family visits.

46. In the light of the foregoing information, the Government contests the validity of the allegations received from the source.

47. First, the Government states that articles 19 and 25 (a) of the International Covenant on Civil and Political Rights and articles 19 and 27, paragraph 1, of the Universal Declaration of Human Rights were not violated in the case of Mr. Saidov. Actions such as extraction under aggravated circumstances, forgery of official documents and the use of forged document, of which Mr. Saidov was charged and convicted, are punishable under the applicable legislation in Uzbekistan.

48. Second, the detention of Mr. Saidov is in compliance with article 14, paragraph 3 (d) of the Covenant and article 51 of the Code of Criminal Procedure of Uzbekistan. From the outset of investigation, Mr. Saidov was granted an unimpeded and effective access to his lawyers. Yhayaev, Komilov and Makhbukhov.

49. Third, the Government states that the detention of Mr. Saidov is in conformity with article 14, paragraph 1, of the Covenant, article 10 of the Universal Declaration and article 19 of the Code of Criminal Procedure of Uzbekistan. The trial was conducted publicly by a competent, independent and impartial tribunal established in accordance with the law. The allegation that the six central witnesses recanted original statements incrimination Mr. Saidov is unfounded.

50. Fourth, Mr. Saidov's right to presumption of innocence pursuant to articles 14 of the Covenant, 11 of the Universal Declaration, 26 of the Constitution of Uzbekistan and 23 of the Code of Criminal Procedure was respected.

Further comments from the source

51. The Government reply was transmitted to the source for comments on 27 June 2012. In its further comments of 21 August 2012, the source upheld its allegations and their factual basis. It states that the Government has provided inadequate replies and that the Government "did not refute that the charges against Mr. Saidov were fabricated" and failed to address the procedural violations. According to the source, the Government's insufficient and superficial responses are further evidence that the prosecution was politically motivated to punish Mr. Saidov for his independent journalism and human rights activities.

Discussion

52. In this case, the question for the Working Group is whether the deprivation of liberty is the result of the exercise of the rights and freedoms in articles 19 (freedom of opinion and

expression) of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In cases of human rights defenders, there is a relationship between these rights of expression and fair trial rights in articles 9 of the Universal Declaration and the Covenant.

53. The Government has responded to the information from the source by accounting for the formal steps of the criminal process against Mr. Saidov. It has denied the allegations about violations of procedural rights and of maltreatment. The source has robustly upheld its allegations and their factual basis. The Working Group is not in a position to make findings on these issues in the light of the information submitted to it in the case.

54. The Government has confirmed that Mr. Saidov has been sentenced to 12 years and 6 months' imprisonment for involvement in extortion and other criminal offences.

55. The Working Group notes that Mr. Saidov is involved in work as a human rights defender. The Government argues that he has abused this work for financial gain in a way which constitutes the criminal offences of which he has been convicted, and the source contends that Mr. Saidov's detention is a direct consequence of his exercise of the right to freedom of expression as guaranteed *inter alia* by article 19 of the Covenant.

56. The Working Group has considered the relationship between the detention and prosecution of Mr. Saidov and his exercise of the fundamental rights to freedom of expression and association in his work as a human rights defender. The Working Group subjects cases to a heightened scrutiny when article 19 rights and work as human rights defenders are involved. The source alleges that the detention is a direct consequence and has no other grounds. The Government's reply is helpful in providing the dates and other formal aspects of the criminal procedures and other steps relating to his detention and sentencing.

57. The severe reaction of 12 years and 6 months' imprisonment and the possible restriction on article 19 and article 9 rights and the work as human rights defender in this case put a heavy burden on the Government to show that the harsh punishment was not discriminatory due to his human rights activities. The alleged disproportionate severity of the sentence demands a higher threshold for the Government to satisfy this heightened scrutiny review. However, the Working Group would have needed further information from the Government in effect invalidating the allegations of the source that the sentences were disproportionate. The Working Group thus finds that there are breaches of the human rights guarantees in articles 19 and 9 of the Universal Declaration and the Covenant.

58. The arbitrary detention falls within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. The appropriate remedy in this case is the retrial of Mr. Saidov as well as adequate reparation to him in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

Disposition

59. In the light of the preceding, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. Saidov is arbitrary, and constitutes a breach of articles 9 and 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights, falling within category II of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

60. The Working Group requests the Government to take the necessary steps to remedy the situation, which would include a retrial of Mr. Saidov, and adequate reparation to him in accordance with article 9, paragraph 5, of the Covenant.

61. In accordance with article 33 (a) of its revised methods of work, the Working Group considers it appropriate to refer the case to the Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment and on the situation of human rights defenders for appropriate action.

[Adopted on 23 November 2012]
