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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its sixty-seventh session, 26-30 August 2013****No. 30/2013 (Republic of Uzbekistan)****Communication addressed to the Government on 15 April 2011****Concerning Yuri Korepanov****The Government replied to the communication on 23 June 2011.****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. The case was submitted to the Working Group on Arbitrary Detention as follows:
4. Yuri Korepanov (hereinafter Mr. Korepanov), born in 1947 in Pokrovskoe, Uzbekistan, is a retired colonel and former Head of the military department of the Agricultural Irrigation and Mechanization Institute in Tashkent. He is the recipient of various awards and medals from the Ministries of Defence of the Russian Federation and of Uzbekistan.
5. In May 2003, Mr. Korepanov left the Military Forces of Uzbekistan, where he had served for nearly 40 years, and moved to the Russian Federation as a permanent resident. Mr. Korepanov was granted Russian citizenship, as evidenced by his passport, which was issued by the Artyom City department of the Ekaterinburg Internal Affairs office in the Russian Federation. In 2004, Mr. Korepanov withdrew his address from the compulsory address registration system (*propiska*) in Uzbekistan and returned his Uzbek passport to the Mirzo-Ulugbek passport office in Tashkent. Since then, Mr. Korepanov had been travelling to Uzbekistan with his Russian passport to visit his chronically ill son, who resides in Tashkent.
6. On 30 October 2010, when travelling from Tashkent to Ekaterinburg, an Uzbek border patrol removed Mr. Korepanov from the train at Keles train station near the border between Uzbekistan and Kazakhstan. Mr. Korepanov was placed in a pretrial detention centre run by the Uzbek National Security Office.
7. On 11 January 2011, the Military Court of Uzbekistan found Mr. Korepanov guilty, as a citizen of Uzbekistan, of illegal exit from or entry into the Republic of Uzbekistan (based on article 223 of the Uzbek Criminal Code) and of high treason (article 157 of the Criminal Code). He was sentenced to 16 years' imprisonment. According to the information received, the Military Court of Uzbekistan completely disregarded the fact that since 2004, Mr. Korepanov only possessed Russian citizenship.
8. In accordance with article 9, paragraph 1, of the International Covenant on Civil and Political Rights, "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law". The source argues that both of the counts upon which Mr. Korepanov was convicted were fabricated and therefore fail to comply with the requirements of article 9, paragraph 1, of the Covenant. According to the information submitted, upon receiving Russian citizenship in 2004, Mr. Korepanov renounced his Uzbek citizenship and handed in his Uzbek passport. It is alleged that the Uzbek authorities may have delayed the approval of applications to renounce Uzbek citizenship. According to the Law on "Citizenship of the Republic of Uzbekistan", renunciation of citizenship is completed only upon publication of a decree by the President of Uzbekistan, and this can often take a few years.

9. The source further contends that the charge of high treason cannot be substantiated in Mr. Korepanov's case as he is a Russian citizen and for over 10 years he has not had access to any official information, especially not to any State secrets of Uzbekistan. According to the source, Mr. Korepanov could not pose a threat to the sovereignty, territorial integrity, security, defence or economy of Uzbekistan simply by using his Russian passport to visit his son in Uzbekistan. Mr. Korepanov had served in the military in Uzbekistan for over 40 years and received various Soviet awards for his service.

10. Moreover, the source maintains that Mr. Korepanov's deprivation of liberty is arbitrary on the grounds of serious violations of the minimal guarantees under the right to a fair trial. In particular, article 14, paragraph 1, of the International Covenant on Civil and Political Rights states that "all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". The Human Rights Committee clarified in its general comment No. 13 (1984) that "the provisions of article 14 apply to all court and tribunals within the scope of that article whether ordinary or specialized" (para. 4). In particular, article 14, paragraph 3 (b) and (d), of the Covenant state that everyone shall be entitled "to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing" as well as "to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing". Articles 48 and 49 of the Uzbek Code of Criminal Procedure also provide for the right to legal counsel and assistance.

11. According to the information received, Mr. Korepanov's trial lasted one month and during that time, he was not given access to a lawyer. He was also pressured by authorities to confess to charges brought against him under the threat of prosecution of his son, who lives in Uzbekistan and who suffers from insulin-dependent diabetes. Mr. Korepanov did not confess.

12. The source also indicates that Mr. Korepanov was not provided with a copy of the verdict, which is a violation of article 475 of the Code of Criminal Procedure, and could not appeal the verdict in accordance with article 14, paragraph 5, of the International Covenant on Civil and Political Rights. It was not until assistance was sought from the Ministry of Foreign Affairs of the Russian Federation and public pressure was brought to bear that Mr. Korepanov's lawyer was granted permission to see the case, but was requested to sign a non-disclosure notice. Soon thereafter, the lawyer reportedly filed an appeal of the verdict, which was subsequently denied by the military court in Uzbekistan.

13. According to the information received, the Russian embassy repeatedly requested the Uzbek Foreign Ministry to explain the reasons for Mr. Korepanov's detention and to allow a Russian consular staff member to attend the court hearings, but these requests were not successful.

14. In conclusion, the source asserts that Mr. Korepanov's deprivation of liberty is arbitrary on a twofold basis: first, the source maintains that his verdict is based on fabricated charges of illegal exit from or entry into the Republic of Uzbekistan and high treason; second, it concludes that minimal guarantees, as enshrined in the right to a fair trial, have not been respected.

15. Finally, the source states that Mr. Korepanov has a "level-2 disability" and according to unconfirmed information he might have suffered from a heart attack in early March 2011.

*Response from the Government*

16. On 15 April 2011, the Working Group requested that the Government of Uzbekistan respond to the allegations; the Government responded on 23 June 2011. According to the Government's response, Yuri Korepanov was tried by the military tribunal of the Republic of Uzbekistan on the basis of article 157, part 1, "Treason of State", article 223, part 1, "Unlawful Exit Abroad or Unlawful Entry into the Republic of Uzbekistan", and article 59 "Determination of sentence in the commission of multiple offences." He was sentenced to 16 years' imprisonment.

17. The sentence was confirmed on 3 February 2011 by the military collegium of the military tribunal of the Republic of Uzbekistan, following an appeal filed by Mr. Korepanov's lawyer, Mr. Belousov.

18. Upon Mr. Korepanov's transferral to the facility No. УЯ-64/ИЗ-1, notification No. 825, dated 22 February 2011, was sent to his family informing them of his whereabouts. His health file was collected by prison doctors. According to Mr. Korepanov, he sustained a heart attack in 2009 and underwent treatment in a hospital.

19. After the enforcement of his sentence, Mr. Korepanov was sent to facility No. УЯ-64/49 (Karshi city, Kashkadarianska region). The Government maintains that Mr. Korepanov was under constant medical surveillance and that he was placed on the list of prisoners with chronic diseases as having "heart disease, [technical terms]". He received medical treatment in the medical section of the penitentiary facilities. During the period spent at facilities No. УЯ-64/ИЗ-1 and No. УЯ-64/49, Mr. Korepanov's heart condition was examined and there was no sign of possible myocardia infarction.

20. Given Mr. Korepanov's chronic diseases, he has been subject to regular medical treatment from 11 April 2011 at the hospital facilities (No. УЯ-64/18, Tashkent city). According to the reply from the Government, Mr. Korepanov's health condition was considered stable/satisfactory.

*Comments from the source*

21. The source informed the Working Group on 25 August 2011 that Mr. Korepanov had been released from the prison hospital and from custody by order of the Military Tribunal of Uzbekistan. During the two months prior to the date of the source's submission, he had been staying with his relatives in Tashkent.

22. However, Mr. Korepanov had not been issued a certificate of release from custody nor identification documents. The release did not mean that his sentence had been set aside.

23. Subsequently, on 29 August 2013, the source confirmed to the Working Group that Mr. Korepanov had since been able to return to Russia.

**Discussion**

24. Taking into consideration that Mr. Korepanov has been released, and in conformity with paragraph 17 (a) of its revised methods of work, the Working Group has decided to file the case.

25. However, the Working Group notes that the Government has not provided an adequate reply to the accusations put forward by the source regarding serious violations of the due process requirements in article 14, paragraph 1, of the International Covenant on Civil and Political Rights.

26. The Working Group points out that the Government has not provided sufficient justification for using a military court to try a person who is not serving in the military forces or for considering Mr. Korepanov as a citizen of Uzbekistan when he had renounced

his citizenship on becoming a Russian citizen. The Working Group refers to the concluding observations on Uzbekistan,<sup>1</sup> adopted by the Human Rights Committee in 2010, in which the Committee expressed concern about due process guarantees, the independence of the judiciary and the scope of statutory criminal offences. The Human Rights Committee recommended that the State party ensure that all apprehended persons have the right to contact relatives and a lawyer, and that it review and amend its laws and practice so as to ensure the independence of lawyers, including through a revision of the system regarding the granting of licences (para. 17).

27. In its concluding observations, the Human Rights Committee also expressed concern that individuals needed to obtain an exit visa to be able to travel abroad, and that the State party maintained a compulsory address register of individuals (*propiska*) as it could interfere with the enjoyment of a number of other rights under the Covenant, as well as result in abuses and permit corruption (para. 17). In this respect, the Committee recommended that the exit visa system be abolished and that the State party ensure that its address registration system (*propiska*) is in compliance with the provisions of article 12 of the International Covenant on Civil and Political Rights. The Working Group also refers to the Human Rights Committee's general comment No. 27 (1999) on freedom of movement and the Committee's views in *Batyrov v. Uzbekistan* where it found a violation of the complainant's right to liberty of movement.<sup>2</sup>

28. The Working Group points out that in the current case, there appears to be a violation of Mr. Korepanov's right to liberty of movement under article 12 of the International Covenant on Civil and Political Rights. Restrictions to movement must be necessary and proportionate; the Government has not provided the Working Group with reasons or otherwise shown that a review to that effect has been undertaken. The Working Group has not looked further into any of the other allegations made by the source or made further findings other than those outlined above, as this is not necessary when a case is filed.

### **Disposition**

29. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

Taking in consideration that Mr. Korepanov has been released and in conformity with paragraph 17 (a) of its revised methods of work, the Working Group decides to file the case.

*[Adopted on 30 August 2013]*

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<sup>1</sup> CCPR/C/UZB/CO/3.

<sup>2</sup> See Human Rights Committee, communication No. 1585/2007, *Batyrov v. Uzbekistan*, Views adopted on 30 July 2009, para. 8.2.