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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its ninety-eighth session, 13–17 November 2023****Opinion No. 75/2023 concerning Yaroslav Vladimirovich Timofeyev (Russian Federation)\***

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 51/8.
2. In accordance with its methods of work<sup>1</sup>, on 19 July 2023, the Working Group transmitted to the Government of the Russian Federation a communication concerning Yaroslav Vladimirovich Timofeyev. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
  - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
  - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
  - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
  - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability,

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\* In accordance with paragraph 5 of the Working Group's methods of work, Ganna Yudkivska did not participate in the discussion of the case.

<sup>1</sup> [A/HRC/36/38](#).



or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

## 1. Submissions

### (a) Communication from the source

4. Yaroslav Vladimirovich Timofeyev, born on 2 February 1996, is a national of the Russian Federation. He used to be an electromechanics student at Ufa State Aviation Technical University.

#### (i) Context

5. The source states that Mr. Timofeyev's mother is Tatar and his father is an ethnic Russian. Between January 2015 and May 2016, while he was 19 years old and interested in exploring Muslim practices, Mr. Timofeyev reportedly attended the meetings of Hizb ut-Tahrir, an Islamic organization. He served as a trainee in the group's vernacular; however, he did not take an oath or otherwise agree to become a member. He participated in educational training and meetings in which political and religious issues were discussed. Those included the basics of Islam and the ideas of Hizb ut-Tahrir. He did not discuss any ideas that included the need to use violence. He was not involved in any violent activities. The last Hizb ut-Tahrir meeting at which Mr. Timofeyev's attendance was recorded was on 18 May 2016. In July 2016, he voluntarily left the organization and withdrew his support for its ideology. His departure was confirmed by the trial testimony of three witnesses, who also voluntarily left the group and were not charged, as well as by a co-defendant.

#### (ii) Detention and trial

6. According to the information received, Mr. Timofeyev was arrested and his home was searched on 9 February 2017, about seven months after he voluntarily disassociated from Hizb ut-Tahrir. No prohibited literature was found in his possession. In addition to Mr. Timofeyev, 11 other Muslims involved in Hizb ut-Tahrir were arrested. Mr. Timofeyev was reportedly suspected of violating article 205.5 of the Criminal Code of the Russian Federation, which criminalizes participation in terrorist groups. The Supreme Court of the Russian Federation designated Hizb ut-Tahrir as a terrorist group in February 2003. After his arrest, Mr. Timofeyev was detained in Pretrial Detention Centre No. 5 in Dyurtuli, where he spent 14 months in a solitary confinement cell. Allegedly, the cell received inadequate heat and Mr. Timofeyev was subjected to verbal abuse from investigators. The director of Pretrial Detention Centre No. 5 told him that he would rot in solitary confinement. Mr. Timofeyev was allegedly coerced through prolonged isolation, cold and psychological abuse into signing a confession. No lawyer or witnesses were present when he confessed.

7. The source claims that the trial proceedings against Mr. Timofeyev and nine others began on 11 December 2018, in the Volga District Military Court. During the trial, Mr. Timofeyev testified that he had been coerced into signing the confession and that, although he had been a Hizb ut-Tahrir trainee, he had voluntarily left the organization in July 2016. Reportedly, the video of his confession was entered into evidence over his objections and his allegations of forced confession were not investigated.

8. According to the source, the main witness for the prosecution also testified that the information that he had given during his pretrial detention had been elicited under torture. The witness claimed that bags had been placed over his head and that he had been forced into the swallow position, in which he was hung suspended by his hands, which were cuffed behind his back, and beaten. He was also forced into the stretch position, in which he was bent over and the top of his head was pressed into a wall, while his legs were spread and his arms were raised above his head. He was subsequently held in solitary confinement in Pretrial Detention Centre No. 4 in Birsk and barred from all visits and communication with his family. The witness reportedly suffered a nervous breakdown and was hospitalized due to the physical and psychological torture. The witness's lawyer asked the Office of the Prosecutor to investigate the torture but received no response. According to an independent linguistic analysis submitted to the court, the witness's statements had been coerced. Despite

evidence of torture, the court admitted the statements into evidence on the grounds that they had been confirmed by other testimony. The Court stated that the witness's statements in pretrial detention had laid the basis for the conviction of Mr. Timofeyev and the other defendants.

9. On 21 February 2019, the Volga District Military Court found Mr. Timofeyev guilty of participation in a terrorist group under article 205.5 part 2 of the Criminal Code and sentenced him to 12 years of imprisonment in a strict regime penal colony. At the time that Mr. Timofeyev was involved in Hizb ut-Tahrir, the mandatory minimum sentence for violations of article 205.5 part 2 was 5 years and the maximum was 10 years. On 6 July 2016, the State Duma of the Russian Federation increased the mandatory minimum to 10 years and the maximum to 20 years.

10. The Volga Military Court convicted Mr. Timofeyev, even though article 205.5 exempts from criminal liability those who voluntarily leave a terrorist group prior to their arrest and does not require any legal action to prove dissociation. However, in December 2017, the Russian courts interpreted voluntary departure under article 205.5 to require former participants to formally denounce the terrorist group to the Russian authorities. The Volga District Military Court retroactively punished Mr. Timofeyev for failure to report his renunciation, applying a requirement that was created more than a year after he left Hizb ut-Tahrir.

11. The source claims that at the time that Mr. Timofeyev was involved in Hizb ut-Tahrir, the Russian courts excluded "training" from their interpretation of "participation" and defined involvement in illegal armed formations, a related offence, to require active participation, such as taking an oath, signing or giving verbal consent, receiving uniforms or weapons, training members, constructing temporary housing, various structures and barriers, cooking food or running a subsistence farm. The District Court retroactively applied a broader definition of participation that included training four months after Mr. Timofeyev had left Hizb ut-Tahrir. On 14 October 2019, Mr. Timofeyev's appeal to the Supreme Court was denied.

12. The source reports that Mr. Timofeyev suffers from heart disease and chronic orchiepididymitis. He was also born with only one functioning kidney, which increases the risk of developing kidney disease and requires the monitoring of renal function. He and members of his family testified about his health conditions at his trial, producing medical records for the court, and his counsel explained that prolonged imprisonment posed a danger to his health. The Volga District Military Court's decision purported to take into consideration that Mr. Timofeyev had chronic illnesses but nevertheless sentenced him to 12 years in prison.

13. According to the allegations made by the source, due to the crackdown on dissent during the period leading up to the armed conflict in Ukraine, Mr. Timofeyev's lawyers faced persecution, impeding their ability to adequately represent him. In November 2021, Russian prosecutors filed lawsuits to close non-governmental organizations for alleged violations of its "foreign agent" law. The lawsuits were widely condemned by international organizations and civil society. Mr. Timofeyev's lawyers were expelled from their office in October 2022, when a Russian court ordered the premises to become State property.

(iii) *Legal analysis and allegations*

a. Category I

14. The source claims that the detention of Mr. Timofeyev is arbitrary under category I, as there is no legal basis or justification for it and the Government has used vague or overbroad laws to prosecute him.

15. According to the source, article 205.5 of the Criminal Code of the Russian Federation is too vague and overbroad to provide a legal basis for the conviction of Mr. Timofeyev. That provision prohibits participation in "terrorist groups" as defined under Russian law. In 2003, the Supreme Court of the Russian Federation designated Hizb ut-Tahrir as a terrorist group, even though it did not find that Hizb ut-Tahrir had committed or was planning any terrorist attacks. Russian law criminalized all actions relating to Hizb ut-Tahrir, regardless of their

connection to actual terrorist activity. Under article 205.5, people alleged to have participated in Hizb ut-Tahrir face a sentence of a minimum of 10 and a maximum of 20 years in prison. That is substantially longer than the sentence for murder, which, under article 105.1, is subject to a minimum of 6 and a maximum of 15 years in prison, and the baseline sentence for rape, which is subject to a minimum of 3 and a maximum of 6 years in prison.

16. A prominent Russian think tank has found that the terrorist designation of Hizb ut-Tahrir is unlawful because the organization has not been linked to any terrorist activity in the Russian Federation. Since 2003, more than 340 people, including many Crimean Tatars persecuted in the wake of the armed conflict in Ukraine, have been imprisoned in Russia and Crimea for involvement in Hizb ut-Tahrir, receiving sentences of up to 24 years in prison. Those sentences have been condemned by the Secretary-General<sup>2</sup> and the United Nations High Commissioner for Human Rights.<sup>3</sup>

17. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stressed that international standards require that criminal measures for tackling terrorism or “extremism” draw a direct and immediate connection between the action – including an expressive act – and the actual, objective risk of terrorist acts.<sup>4</sup> The source claims that article 205.5 fails to require such a connection. Moreover, article 205.5 contains no explicit element requiring that the Government demonstrate intent on behalf of perpetrators, such as an intent to promote extremist content or an intent to promote violence.

b. Category II

18. According to the source, the detention of Timofeyev amounts to an arbitrary deprivation of liberty under category II, as it results from the exercise of the fundamental rights to freedom of expression and freedom of assembly.

19. The source claims that the Government’s conviction and continuing detention of Mr. Timofeyev for his religious activities violates his right to religious freedom. His participation as a Hizb ut-Tahrir trainee was protected under article 18 (1) of the Covenant and the Universal Declaration of Human Rights.

20. Mr. Timofeyev’s participation in Hizb ut-Tahrir meetings and classes was protected under article 18 (1) of the Covenant. Article 18 (1) protects the freedom to choose religious leaders and teachers and the right to have or adopt beliefs. Mr. Timofeyev sought to explore religious beliefs by attending the religious meetings of Hizb ut-Tahrir. He attended classes in which students studied the book *The System of Islam*, which contained Islamic theology and Hizb ut-Tahrir political philosophy. Mr. Timofeyev was a trainee under the rules of Hizb ut-Tahrir. His studies were limited to the basics of Islam. He took no oath to Hizb ut-Tahrir and he did not distribute prohibited literature.

21. Under article 18 (3) of the Covenant, the manifestation of religion and belief can be limited only under narrow conditions as “prescribed by law” and “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”. None of the permissible limitations on article 18 apply in the present case and, therefore, Mr. Timofeyev’s ongoing detention violates article 18.

22. Article 18 (3) limitations must be established by law. The source claims that vague allegations and charges indicate that a State may be unlawfully curtailing an individual’s protected rights. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has made clear that international standards require that criminal measures for addressing terrorism draw a direct and immediate connection between the action and the objective risk of harm.<sup>5</sup> Mr. Timofeyev was sentenced to 12 years in prison under article 205.5 of the Criminal Code of the Russian Federation solely for belonging to Hizb ut-Tahrir. Article 205.5 is alleged to be a vague and overbroad law that requires no objective connection to terrorism. In charging and

<sup>2</sup> A/74/276, para. 35 and A/HRC/44/21, para. 36.

<sup>3</sup> A/HRC/39/CRP.4, paras. 30 and 41.

<sup>4</sup> A/HRC/43/46/Add.1, para. 14.

<sup>5</sup> Ibid.

convicting Mr. Timofeyev under article 205.5, the Government reportedly did not allege any connection to terrorism or actual harm.

23. According to the source, the Government failed to provide a legal basis for Mr. Timofeyev's imprisonment and curtailed Mr. Timofeyev's right to manifest religion based on unspecified allegations of terrorism. He was punished under article 205.5, a broad anti-terrorism statute with nebulously defined terms. His detention was based on a retroactive interpretation of the law that did not exist at the time that Mr. Timofeyev left Hizb ut-Tahrir. His detention is allegedly based on a vague law and its overbroad application.

24. Neither Mr. Timofeyev nor Hizb ut-Tahrir were ever associated with any form or threat of violence, historically or during the period that he attended meetings. International law requires a clear link between protected religious acts and violence to justify limitations on article 18. The source recalls that the Working Group found violations of articles 18, 19, 21 and 25 of the Covenant after an individual was imprisoned for making a public speech at what became a violent protest.<sup>6</sup> The violations in Mr. Timofeyev's case are reportedly even more serious, as he did not advocate for his nor Hizb ut-Tahrir's views publicly. In the present case, there is no evidence of any harm caused by Mr. Timofeyev's limited involvement in Hizb ut-Tahrir.

25. Mr. Timofeyev's 12-year sentence, which is double the typical sentence for rape in the Russian Federation, is allegedly not proportional or necessary to avoid any harm to the rights of others. In charging and convicting him, the Government did not link his actions to any objective harm. Mr. Timofeyev had voluntarily left the group six months before his arrest. At the time that he attended Islamic classes through Hizb ut-Tahrir, Mr. Timofeyev was 19 years old and he suffers from chronic illnesses, which are likely to be exacerbated by incarceration.

26. According to the source, Mr. Timofeyev's ongoing incarceration serves no legitimate purpose. Mr. Timofeyev's 12-year prison sentence allegedly far exceeds any purported public safety purpose of his punishment and is disproportionate to his limited involvement in Hizb ut-Tahrir. For these reasons, the source claims that Mr. Timofeyev's detention violates article 18 (1) of the Covenant.

27. The source alleges that the Government's conviction and continuing detention of Mr. Timofeyev violates his rights to freedom of expression and association. His participation in Hizb ut-Tahrir as a trainee was protected under articles 19 (2) and 22 (1) of the Covenant.

28. Freedom of expression, as protected in article 19 (2), is not limited by form or subject matter. As the Human Rights Committee has indicated, the right "includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others. It includes cultural and artistic expression, teaching, and religious discourse".<sup>7</sup> Mr. Timofeyev's participation in Hizb-ut Tahrir was limited to attendance at religious training meetings, the sharing of news and tea parties at which political and religious issues were discussed. Those meetings served a purely educational purpose: attendees learned the basics of Islam and discussed current events. His actions, which were reportedly limited to seeking and imparting information, fell within the rights to freedom of expression and association as guaranteed by articles 19 and 22 of the Covenant.

29. Under article 19 (3) of the Covenant, the Government may restrict freedom of expression only when provided for by law and necessary for respect of the rights or reputations of others and for the protection of national security or of public order, or of public health or morals. Restrictions on freedom of association are similarly limited. The source claims that the Government has not met that burden.

30. Article 19 of the Covenant permits the limiting of freedom of expression when it is required for the respect of the rights or reputations of others. Analogously, article 22 permits the limiting of freedom of association when necessary for the protection of the rights and

<sup>6</sup> See opinion No. 91/2017.

<sup>7</sup> [CCPR/C/GC/34](#), para. 11.

freedoms of others. However, those limitations must conform to the strict tests of necessity and proportionality.

31. The source claims that Mr. Timofeyev's actions did not infringe on the rights or reputations of others. The threshold for infringing expression is high. Human rights law protects expression even if it is deemed offensive. Even though, Mr. Timofeyev did encourage an individual to convert to Islam, his actions in no way incited religious hatred or were at odds with others' right to freely practise their own religion.

32. Article 19 (3) provides for restrictions on the freedom of expression when it is necessary for the protection of national security or public order, or of public health or morals. The source recalls that the Working Group has interpreted that exception narrowly, affirming the right to freedom of expression even in cases in which the group in question had been deemed dangerous by the State.<sup>8</sup> The source claims that Hizb ut-Tahrir has not been connected to violence in the Russian Federation. Mr. Timofeyev's actions were entirely non-violent and it is reported that the Government alleged no connection to violence committed by others.

33. The source argues that international law requires strict justification for State invocations of the national security and public order exception, even in cases with allegations of anti-State activity.<sup>9</sup> Hizb-ut Tahrir did not advocate violence. Hizb ut-Tahrir has not been connected with political unrest or violence in the Russian Federation, so any justification regarding the protection of national security is allegedly even more tenuous.

34. Reportedly, States and non-governmental organizations have expressed concern with the designation by the Russian Federation of Hizb ut-Tahrir as a terrorist organization and the use by the Russian Federation of Hizb ut-Tahrir membership to justify repression and discrimination. That designation does not justify the curtailment of the article 19 rights of those who, like Mr. Timofeyev, only attended peaceful meetings. The source claims that the Government has not shown that Mr. Timofeyev's detention was necessary to avert any real danger to national security or public safety.

35. The source claims that Mr. Timofeyev's imprisonment is not necessary to protect public health or morals either. That exception has been construed narrowly and requires explicit allegations by the State. In the present case, Mr. Timofeyev's actions allegedly did not threaten public health or morals and the Russian Government did not assert that his detention was necessary to protect these interests during domestic proceedings. For these reasons, the source states that Mr. Timofeyev's detention violates articles 19 (2) and 22 (1) of the Covenant.

c. Category III

36. The source claims that Mr. Timofeyev's right to a fair trial was allegedly violated because: (a) He was held in pretrial detention for more than 21 months before his first appearance before the Volga District Military Court; (b) he was held in solitary confinement without heat for 14 months; (c) his conviction was based on a forced confession elicited by means of prolonged solitary confinement and the testimony of a witness that was elicited under torture; and (d) the conviction was based on a retroactive application of criminal law.

37. Mr. Timofeyev was reportedly held in pretrial detention for more than 21 months until his first appearance before the Volga District Military Court, on 11 December 2018. Article 9 (3) of the Covenant establishes that pretrial detention should be the exception rather than the rule and as short as possible. It is alleged that 21 months was unreasonably long<sup>10</sup> and there is no evidence that the authorities considered alternatives. Therefore, his detention violated article 9 (3) of the Covenant.

38. The source stresses that Mr. Timofeyev was held in solitary confinement without adequate heat for 14 months. Prolonged solitary confinement for more than 15 consecutive days is prohibited under rules 43 (1) (b) and 44 of the United Nations Standard Minimum

<sup>8</sup> Opinion No. 78/2017, para. 71.

<sup>9</sup> Opinion 42/2018, paras. 85 and 110.

<sup>10</sup> See opinion No. 52/2018.

Rules for the Treatment of Prisoners (the Nelson Mandela Rules). According to rule 45, solitary confinement must be used only as a last resort, for as short a time as possible, subject to independent review and pursuant to authorization by a competent authority. Mr. Timofeyev's detention in solitary confinement for more than one year violated the Nelson Mandela Rules. Moreover, when solitary confinement is used during pretrial detention for the purpose of obtaining information or a confession, it amounts to a violation of the right to be free from torture or cruel, inhuman or degrading treatment or punishment, which is enshrined in articles 1 and 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 7 of the Covenant.<sup>11</sup> The investigator's statement during the interrogation, affirming that Mr. Timofeyev would rot in solitary confinement, and Mr. Timofeyev's subsequent confession allegedly demonstrate that he was held in solitary confinement for the purpose of forcing him to confess.

39. The source claims that Mr. Timofeyev was forced to sign a confession and that his conviction relied on evidence obtained under torture. Mr. Timofeyev was coerced through prolonged solitary confinement, cold and psychological abuse. The investigator reportedly testified at trial that he had been alone with Mr. Timofeyev when he had obtained the confession, indicating that no lawyer had been present. The video of Mr. Timofeyev's confession was entered into evidence over his objection. The conviction was also based on the statements of another individual, which were elicited under torture, including the placement of bags over his head, the use of stress positions and suspension by his handcuffed arms. The Volga District Military Court reportedly used those statements as a basis for Mr. Timofeyev's conviction, despite evidence of torture, on the grounds that they were supported by other testimony. However, "a forced confession taints the entire proceedings, regardless of whether other evidence was available to support the verdict".<sup>12</sup> For the source, Mr. Timofeyev's forced confession violated the right not to be compelled to confess guilt under article 14 (3) (g) of the Covenant and the admission of the forced confession into evidence together with testimony elicited under torture violated the right to be presumed innocent under article 14 (2) of the Covenant.

40. The source argues that the above violations of Mr. Timofeyev's right to a fair trial, including confinement for over one year in solitary confinement, forced confession and reliance on evidence obtained through torture, render his detention arbitrary under category III.

41. Referring to article 15 of the Covenant and article 11 (2) of the Universal Declaration of Human Rights, the source claims that the detention of Mr. Timofeyev violates the principle of non-retroactivity. First, the Government applied a requirement for denouncing membership in a terrorist organization that did not exist at the time that Mr. Timofeyev ended his participation in Hizb-ut Tahrir. Second, the Government applied a broader definition of "participation" in a terrorist organization than existed at the time of his involvement in Hizb ut-Tahrir. Third, Mr. Timofeyev received a longer sentence than was permitted at the time of his alleged participation in Hizb-ut Tahrir. The Constitution of the Russian Federation also guarantees the right not to be imprisoned under a retroactively applied law.

42. According to the information received, the Russian courts created novel conditions for renunciation that did not exist when Mr. Timofeyev left Hizb-ut Tahrir. Thus, the application of the law to Mr. Timofeyev's case was retroactive or the law itself was too vague to allow for due process. Article 205.5 of the Criminal Code of the Russian Federation exempts from liability those who voluntarily terminate participation in a terrorist organization. That provision does not require a person to take specific measures to be exempt from criminal culpability, in contrast to other provisions of the Criminal Code, which do impose such restrictions. For example, article 205.4, concerning terrorist groups conspiring to commit specific crimes, requires a former participant in a terrorist group to report its existence in order to be exempt from liability. Article 205.3, concerning training to commit terrorism or other crimes, similarly requires anyone who participated in training to report it to the authorities in order to be shielded from prosecution. Article 205.5 reportedly contains

<sup>11</sup> See [A/66/268](#). See also General Assembly resolution 68/156, para. 28; and [E/CN.4/2004/3/Add.2](#), paras. 54–55.

<sup>12</sup> See opinion No. 52/2018. See also opinion No. 85/2021.

no analogous requirements. Nevertheless, in its ruling on Mr. Timofeyev's case, the Volga District Military Court stated that voluntary termination requires the submission of a statement to law enforcement agencies or other State authorities. Since Mr. Timofeyev did not do this, the provisions of the note to part 2 of article 205.5 of the Criminal Code were not applied to him. The Supreme Court affirmed that he did not apply to the authorities and law enforcement agencies with a statement to voluntarily discontinue his participation.

43. The source claims, however, that Mr. Timofeyev's voluntary abandonment of Hizb ut-Tahrir was sufficient to satisfy article 205.5, as interpreted at the time of his arrest. In July 2016, Mr. Timofeyev stopped attending Hizb ut-Tahrir events and did not observe its religious canons. However, in December 2017, the Military Collegium of the Supreme Court of the Russian Federation reportedly reinterpreted article 205.5 to require anyone trying to denounce membership in an organization considered to be a terrorist organization to report the denunciation to the authorities. Mr. Timofeyev was not put on notice at the time that such action was required from him. The reinterpretation of existing law is within the scope of the prohibition on non-retroactivity: under international norms, the reinterpretation of law to impose significant additional burdens on criminal defendants constitutes an ex-post facto law.

44. A law that can be reinterpreted to impose retroactive and unforeseeable conditions on criminal defendants violates due process because it is too vague to provide adequate notice.<sup>13</sup> The source recalls that the Working Group has considered that detention under an anti-terrorism law that did not explicitly contain language prohibiting the action of which the complainant was accused violated article 15 of the Covenant. The Working Group has emphasized that "provisions that are vague and whose application is overbroad are at odds with the relevant norms of international law on the administration of criminal justice".<sup>14</sup> In the present case, the retroactive reinterpretation of the vague language in article 205.5, to require notification of law enforcement, allegedly violated the principle of legality under article 15 of the Covenant.

45. The source claims that the Russian courts violated the non-retroactivity principle when applying a more expansive definition of the term "participation" in a terrorist organization than existed when Mr. Timofeyev was involved in Hizb ut-Tahrir. At that time, the plenary ruling of the Supreme Court concerning terrorist crimes did not define "participation in a terrorist organization" but only defined "participation in an illegal armed group". Such participation did not include training. Instead, it was limited to activities such as taking an oath, signing or giving verbal consent, receiving uniforms or weapons, training members, construction of temporary housing, various structures and barriers, cooking food and running a subsistence farm in locations of an illegal armed formation. Mr. Timofeyev reportedly never engaged in any of those activities. His involvement was limited to attending lectures, discussions and tea parties. He was not a full member of the organization. He received training only and voluntarily left the organization before performing any activities that could be considered participation under the definition in place during his involvement.

46. The Volga District Military Court applied a definition of participation in a terrorist organization that was created after Mr. Timofeyev voluntarily terminated all involvement in Hizb ut-Tahrir. Specifically, the Court reportedly used the definition of participation in a terrorist organization from paragraph 22.7 of the amended plenary ruling of the Supreme Court concerning terrorist crimes. That definition was allegedly published in November 2016, four months after Mr. Timofeyev's involvement with Hizb ut-Tahrir had ended. The new definition expanded the types of activities that could be considered participation, including training activities. Because training was included in the definition of participation in a terrorist organization only after Mr. Timofeyev had already voluntarily left Hizb ut-Tahrir, he was not put on notice that his actions were unlawful. The source claims that that retroactive application of a new definition of "participation" violated due process.

<sup>13</sup> Opinion No. 88/2017.

<sup>14</sup> Opinion No. 9/2016, para. 40. See also opinion No. 56/2017.



47. A criminal defendant cannot be charged under a legal provision that was not in force at the time of the action in question and criminal law must be written and clearly defined.<sup>15</sup> The source claims that Mr. Timofeyev's actions had not been criminalized at the time of his involvement in Hizb ut-Tahrir and the retroactive application of the November 2016 Plenary Ruling deprived him of due process.

48. The source claims that the Russian courts violated the non-retroactivity principle by applying a heavier sentence than was permitted by law at the time that Mr. Timofeyev attended the Hizb-ut Tahrir meetings. Article 15 of the Covenant forbids the imposition of a higher sentence than was applicable at the time that an act was committed. At the time that he was involved with Hizb ut-Tahrir, the mandatory minimum sentence for participation in a terrorist organization was 5 years, with a maximum sentence of 10 years.<sup>16</sup> On 6 July 2016, the State Duma increased the mandatory minimum to 10 years and the maximum to 20 years. The source argues that the Volga District Military Court retroactively applied the higher mandatory minimum, sentencing Mr. Timofeyev to 12 years of imprisonment.

49. By applying the longer sentence retroactively, the Volga District Military Court allegedly violated article 15 of the Covenant. The applicable sentencing regime in Russia was amended after the alleged offence, and the change made the situation of the defendants worse. Mr. Timofeyev was sentenced to 12 years, which was higher than the 10-year maximum sentence under the sentencing regime that had existed when he was involved in Hizb ut-Tahrir. Although the Human Rights Committee has sometimes permitted retroactive resentencing, it has done so only when the sentence was retroactively *lowered* rather than *raised*. The Committee has found a sentence imposed based on a retroactive application of a sentencing law to be permissible under article 15, since the sentence was *decreased* by the court's retroactive application of the law.<sup>17</sup> The retroactive imposition of a higher sentence violates article 15 of the Covenant.

**(b) Response from the Government**

50. On 19 July 2023, the Working Group transmitted the allegations from the source to the Government of the Russian Federation under its regular communications procedure. The Working Group requested the Government to provide detailed information by 18 September 2023 about the current situation of Mr. Timofeyev. The Working Group also requested the Government to clarify the legal provisions justifying his detention, as well as its compatibility with the State's obligations under international human rights law, and, in particular, with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure Mr. Timofeyev's physical and mental integrity.

51. The Working Group regrets that it did not receive a response from the Government to the communication. The Government did not request an extension of the time limit for its reply, as is provided for in the Working Group's methods of work.

**2. Discussion**

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

53. In determining whether the detention of Mr. Timofeyev is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case of breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>18</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

<sup>15</sup> Opinions No. 56/2012, para. 13; No. 28/2011, paras. 12 and 32; and No. 65/2011, para. 23.

<sup>16</sup> Federal Law on amendments to the Criminal Code of the Russian Federation and the Code of Criminal Procedure of the Russian Federation to establish additional measures to counter terrorism and ensure public safety, 6 July 2016, No. 375-FZ, art. 1 (18) (a).

<sup>17</sup> [CCPR/C/97/D/1425/2005](#).

<sup>18</sup> [A/HRC/19/57](#), para. 68.

(a) **Category I**

54. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without any legal basis. The source submits that Mr. Timofeyev was held in pretrial detention for more than 21 months before his first appearance before the Volga District Military Court. During that time, he was held in solitary confinement without heat for 14 months.

55. The Working Group recalls the view of the Human Rights Committee, as well as its own recurrent findings, that pretrial detention must be the exception and not the rule, should be ordered for as short a time as possible and must be based on an individualized determination that it is reasonable and necessary, taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Courts must examine whether alternatives to pretrial detention would render detention unnecessary in the case in question. In the present case, the Working Group concludes that an individualized determination of Mr. Timofeyev's circumstances was absent and, as a result, his detention lacked a legal basis and was ordered in violation of article 9 (3) of the Covenant, article 9 of the Universal Declaration of Human Rights and principles 38 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. His prolonged pretrial detention illustrates the importance of that fundamental legal principle of personal liberty.

56. Based on the source's submissions that he was held in pretrial detention for more than 21 months before his first appearance before the Volga District Military Court, it appears that Mr. Timofeyev was unable to effectively exercise his right to challenge his detention so that a court could decide without delay on its legality in accordance with article 9 (4) of the Covenant. Judicial oversight of detention is a fundamental safeguard of personal liberty<sup>19</sup> and is essential in ensuring that detention has a legal basis. Given that he was unable to challenge his detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated.

57. The source also claims that the detention of Mr. Timofeyev violates the principle of non-retroactivity because his actions had not been criminalized at the time of his involvement in Hizb ut-Tahrir and the retroactive application of the plenary ruling of November 2016 deprived him of due process. First, the Government applied a requirement for denouncing membership in a terrorist organization that did not exist at the time that Mr. Timofeyev ended his participation in Hizb-ut Tahrir. Second, the Government applied a broader definition of "participation" in a terrorist organization than existed at the time of his involvement in Hizb ut-Tahrir. Third, Mr. Timofeyev received a longer sentence than was permitted at the time of his alleged participation in Hizb-ut Tahrir.

58. The Working Group observes that the principle of legality (*nulla poena sine lege*) is a fundamental guarantee that includes:<sup>20</sup>

- (a) The principle of non-retroactivity (*nullum crimen, nulla poena sine lege praevia*);
- (b) The prohibition against analogy (*nullum crimen, nulla poena sine lege stricta*);
- (c) The principle of certainty (*nullum crimen, nulla poena sine lege certa*);
- (d) The prohibition against uncodified, unwritten or judge-made criminal provisions (*nullum crimen, nulla poena sine lege scripta*).

59. The principle of *nullum crimen sine lege certa* "ensures that no defendant may be punished arbitrarily or retroactively by the State",<sup>21</sup> thus meaning that "a person cannot be [...] convicted under a penal law that is passed retroactively to criminalize a previous act or omission".<sup>22</sup> The Working Group recalls that the *nullum crimen sine lege certa* principle provides that no one should be convicted under a penal law that was not yet in force *at the*

<sup>19</sup> A/HRC/30/37, para. 3.

<sup>20</sup> Opinion No. 10/2018, para. 50.

<sup>21</sup> Opinion No. 20/2017, para. 49.

<sup>22</sup> Ibid.

*moment of the acts or omissions*. Accordingly, an act is only punishable by law if when committed it was the object of a “valid, sufficiently precise, written criminal law to which a sufficiently certain sanction was attached”.<sup>23</sup> A criminal defendant cannot be charged under a legal provision that was not in force at the time of the action in question and criminal law must be written and clearly defined.<sup>24</sup>

60. The Working Group has considered that detention under an anti-terrorism law, which did not explicitly contain language prohibiting the action of which the complainant was accused, violated article 15 of the Covenant. It has emphasized that “provisions that are vague and whose application is overbroad are at odds with the relevant norms of international law on the administration of criminal justice”.<sup>25</sup> A law that can be reinterpreted to impose retroactive and unforeseeable conditions on criminal defendants violates due process because it is too vague to provide adequate notice.<sup>26</sup> The Working Group has also found that the retroactive application of currency laws to actions that, “at the time of their execution, did not constitute offences” was in clear violation of the right “to due process of law and the recognized principle of criminal law of *nulla poena sine lege*”.<sup>27</sup>

61. The source also submits that Mr. Timofeyev received a longer sentence than was permitted at the time of his alleged participation in Hizb-ut Tahrir. Article 15 (1) of the Covenant prohibits the imposition of a heavier penalty than the one that was applicable at the time that the criminal offence was committed. The Human Rights Committee has found a violation of article 15 when courts sentenced an individual to a higher prison term than existed when the alleged crimes were committed.<sup>28</sup> The Working Group has also found that the retroactive application of laws leading to an extension of the sentence violates article 11 (2) of the Universal Declaration of Human Rights.<sup>29</sup> The source submits, and the Government does not dispute, that Mr. Timofeyev was convicted and sentenced to 12 years, a sentence that exceeds the maximum sentence of 10 years at the time of the commission of the alleged offence. In the present case, the Working Group thus finds that Mr. Timofeyev’s conviction and detention, which is based on the retroactive reinterpretation of the vague language in article 205.5, resulting in a higher retroactive sentence, violates the principle of legality under article 15 of the Covenant and article 11 (2) of the Universal Declaration of Human Rights.

62. For these reasons, the Working Group considers that his deprivation of liberty lacks legal basis and is thus arbitrary, falling under category I.

**(b) Category II**

63. The source claims that the conviction and continuing detention by the Government of the Russian Federation of Mr. Timofeyev for his religious activities violates his right to religious freedom. Mr. Timofeyev’s exploration of religion through attending Hizb ut-Tahrir meetings and the study of Islam was protected under article 18 (1) of the Covenant. Article 28 of the Constitution of the Russian Federation reportedly also protects freedom of religion.

64. The Working Group recalls that the obligation of the Russian Federation to respect Mr. Timofeyev’s freedom of conscience and religion derives from article 18 of the Covenant. As interpreted by the Human Rights Committee in its general comment No. 22 (1993), as a consequence of freedom of religion, in conjunction with freedom of thought and belief (art. 18) and freedom of expression (art. 19), everyone may express their opinion in public or private, including on matters of religion, noting that the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs.<sup>30</sup> Furthermore, it has considered a missionary’s activities, particularly preaching, praying and conducting meetings, to be a protected manifestation of belief, noting that holding

<sup>23</sup> Opinion No. 10/2018, para. 50.

<sup>24</sup> Opinion No. 56/2012, para. 13.

<sup>25</sup> Opinion No. 9/2016, para. 40; see also opinion No. 56/2017, para. 67.

<sup>26</sup> See opinion No. 88/2017.

<sup>27</sup> Opinion No. 65/2011, para. 23.

<sup>28</sup> [CCPR/C/78/D/981/2001](#), para. 7.4.

<sup>29</sup> Opinion No. 76/2022, paras. 86–88.

<sup>30</sup> Human Rights Committee, general comment No. 22 (1993), para. 4.

non-traditional religious meetings and ceremonies is a protected activity.<sup>31</sup> As observed by the Human Rights Committee, paragraph 3 of article 18 is to be strictly interpreted and restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.<sup>32</sup>

65. The Working Group has determined that article 18 protects discussions about religious beliefs.<sup>33</sup> It also recalls the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981, which protects the right to freedom of thought, conscience and religion.<sup>34</sup> In addition, the Working Group recalls the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992, which protects the right of persons belonging to religious minorities to profess and practise their own religion “freely and without interference or any form of discrimination”.<sup>35</sup> Based on the foregoing, the Working Group finds a violation of article 18 of the Covenant.

66. The source further submits that the Government’s conviction and continuing detention of Mr. Timofeyev violates his right to freedom of expression and association. His participation in Hizb ut-Tahrir as a trainee was reportedly limited to seeking and imparting information, was entirely non-violent and fell within the rights to freedom of expression and association as guaranteed by articles 19 and 22 of the Covenant. Freedom of expression and freedom of association are also guaranteed under articles 29 and 30 of the Constitution of the Russian Federation.

67. Absent a Government response, the Working Group finds to be credible the source’s submission that Mr. Timofeyev’s participation in Hizb-ut Tahrir was limited to meetings that served a purely educational purpose, where attendees learned the basics of Islam and discussed current events. The Government has not provided a legitimate justification for the restriction of freedom of expression and association under articles 19 (3) and article 22 (2) of the Covenant. The Working Group recalls that freedom of expression, as protected in article 19 (2), is not limited by form or subject matter. As the Human Rights Committee has explained in paragraph 11 of its general comment No. 34 (2011), the right “includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others (...) It includes (...) cultural and artistic expression, teaching, and religious discourse”.

68. Article 19 (3) of the Covenant provides for restrictions on the freedom of expression when it is necessary for the protection of national security or of public order, or of public health or morals. The source recalls that the Working Group has interpreted that exception narrowly, affirming the right to freedom of expression even in cases in which the group in question was deemed dangerous by the State. There is allegedly no evidence that Mr. Timofeyev’s detention is specifically necessary for the protection of national security or public order.

69. International law requires strict justification for State invocations of the national security and public order exception, even in cases with allegations of anti-State activity.<sup>36</sup> The Human Rights Committee has emphasized that it is insufficient for the Government to claim an exception under the enumerated categories; the Government “must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat”.<sup>37</sup> Mr. Timofeyev’s imprisonment is not necessary for the protection of the rights or reputation of others and as such does not conform to the strict tests of necessity and proportionality.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid, para. 8.

<sup>33</sup> Opinion No. 62/2017, para. 39.

<sup>34</sup> Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, arts. 1 (1).

<sup>35</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, art. 2 (1).

<sup>36</sup> See, for example, opinions No. 78/2017, para. 71; and No. 42/2018, paras. 85 and 90.

<sup>37</sup> Human Rights Committee, general comment 34 (2011), para. 35.

70. The source claims that Hizb ut-Tahrir has not been connected to violence in the Russian Federation. According to the source, the Government makes no allegations in the present case that Mr. Timofeyev or Hizb ut-Tahrir were linked to violence and the activities involved were entirely peaceful, with no connection to terrorism. Furthermore, the Government has not alleged a connection to violence committed by others. The Human Rights Committee has specified that imprisonment for membership in an organization banned for threatening State order and democracy was impermissible without showing that imprisonment was specifically “necessary to avert a real danger to (...) national security and democratic order”.<sup>38</sup> The Government has not met this burden.

71. The source further submits that the Government has failed to provide a legal basis for Mr. Timofeyev’s imprisonment. He has been charged and convicted under a vague and overbroad provision of the Criminal Code of the Russian Federation. Mr. Timofeyev was sentenced to 12 years in prison under article 205.5 of the Criminal Code solely for belonging to Hizb ut-Tahrir. That provision prohibits participation in “terrorist groups” as defined under Russian law. In 2003, the Supreme Court of the Russian Federation designated Hizb ut-Tahrir as a terrorist group, even though it did not find that Hizb ut-Tahrir had committed or was planning any terrorist attacks. Russian law criminalized all actions related to Hizb ut-Tahrir, regardless of the fact that they had no actual connection to terrorist activity. Article 205.5 is alleged to be a vague and overbroad law that requires no objective connection to terrorism. In charging and convicting Mr. Timofeyev under article 205.5, the Government reportedly did not allege any connection to terrorism or actual harm.

72. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stressed that international standards require that criminal measures for tackling terrorism or “extremism” draw a direct and immediate connection between the action – including an expressive act – and the actual, objective risk of terrorist acts or harm.<sup>39</sup> The source claims that article 205.5 fails to require such a connection and that the Government has curtailed Mr. Timofeyev’s right to manifest religion based on unspecified allegations of terrorism.

73. As the Working Group has previously stated, the principle of legality requires that laws be formulated with sufficient precision so that individuals can have access to and understand the law and regulate their conduct accordingly.<sup>40</sup> In the present case, the application of vague and overbroad provisions adds weight to the Working Group’s conclusion that Mr. Timofeyev’s deprivation of liberty falls within category II. Moreover, the Working Group considers that, in some circumstances, laws may be so vague and overbroad that it is impossible to invoke a legal basis justifying the deprivation of liberty.

74. For these reasons, the Working Group finds that the deprivation of liberty of Mr. Timofeyev is arbitrary under category II and breaches articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18, 19 and 22 of the Covenant. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on freedom of religion or belief.

**(c) Category III**

75. Given its finding that the deprivation of liberty of Mr. Timofeyev is arbitrary under category II, the Working Group wishes to emphasize that, in such circumstances, no trial should have taken place. However, as he has been prosecuted and sentenced, the Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give his deprivation of liberty an arbitrary character, such that it falls within category III.

<sup>38</sup> CCPR/C/84/D/1119/2002, para. 7.3.

<sup>39</sup> A/HRC/43/46/Add.1, para. 14.

<sup>40</sup> See, for example, opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59; and Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 22.

76. The source argues that the violations of Mr. Timofeyev's right to a fair trial, including confinement for over one year in solitary confinement, forced confession and reliance of evidence obtained through torture, render his detention arbitrary under category III.

77. Mr. Timofeyev was reportedly held in solitary confinement for over a year. The Working Group notes that, according to rule 45 of the Nelson Mandela Rules, the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement must be used only in exceptional cases as a last resort, for as short a time as possible, and must be subject to independent review and authorized by a competent authority. Prolonged solitary confinement in excess of 15 consecutive days is prohibited under rules 43 (1) (b), 44 and 45 of the Nelson Mandela Rules. The Working Group recalls that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has deemed that prolonged solitary confinement in excess of 15 days, at which point some of the harmful psychological effects of isolation can become irreversible, may amount to torture as described in article 1 of the Convention against Torture.<sup>41</sup>

78. Moreover, the source argues that the cell was inadequately heated and that Mr. Timofeyev was subjected to verbal abuse from investigators and was threatened by the director of Pretrial Detention Centre No. 5, who told him that he would rot in solitary confinement. He was allegedly coerced into signing a confession through prolonged isolation, cold and psychological abuse. No lawyer or witnesses were present when he confessed. Referring to those submissions, the Working Group recalls that such ill-treatment appears to violate the absolute prohibition of torture, which is a peremptory norm of international law. The Working Group shall refer the present case to the Special Rapporteur on torture for further consideration.

79. The Working Group considers that these violations substantially undermined Mr. Timofeyev's capacity to defend himself in the judicial proceedings.<sup>42</sup> The right to freedom from torture is set out in article 5 of the Universal Declaration of Human Rights and article 7 of the Covenant.<sup>43</sup> The Working Group has previously concluded that, when it is not possible for a person who is subjected to torture to prepare an adequate defence for a trial that respects the equality of both parties, this amounts to a fair trial violation.<sup>44</sup> The Working Group finds that such treatment and conditions of detention violated rules 1, 13, 21, 22 (1) and 23 (1) of the Nelson Mandela Rules, affected Mr. Timofeyev's ability to prepare a defence, jeopardized the principle of equality of both parties and violated his right to a fair trial.<sup>45</sup>

80. Confessions made in the absence of legal counsel are not admissible as evidence in criminal proceedings.<sup>46</sup> As a result, Mr. Timofeyev's right to be presumed innocent under article 14 (2) of the Covenant and not to be compelled to confess guilt under article 14 (3) (g) of the Covenant have been violated, as has principle 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which protects a detainee from self-incrimination or compelled confessions: "It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person." Moreover, the prosecutor was obliged to investigate and report the torture and the forced confession in accordance with guidelines 12 and 16 of the Guidelines on the Role of Prosecutors.<sup>47</sup> Furthermore, the source submits that the main prosecution witness allegedly also testified that the information he had given in pretrial detention had been elicited under torture. He was subsequently held in solitary confinement and reportedly suffered a nervous

<sup>41</sup> [A/63/175](#), para. 56; [A/66/268](#), para. 61; General Assembly resolution 68/156; [A/56/156](#), paras. 14 and 39 (f); and Human Rights Committee, general comment No. 35 (2014), para. 35.

<sup>42</sup> [A/HRC/30/37](#), paras. 12, 15, 67 and 71.

<sup>43</sup> See also rule 1 of the Nelson Mandela Rules, article 10 (1) of the Covenant and principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

<sup>44</sup> Opinions No. 32/2019, para. 42; and No. 20/2022, para. 104.

<sup>45</sup> Opinion No. 32/2019, para. 42. See also opinions No. 47/2017, para. 28; and No. 52/2018, para. 79 (j); and [E/CN.4/2004/3/Add.3](#), para. 33.

<sup>46</sup> See opinions No. 14/2019 and No. 59/2019. See also [E/CN.4/2003/68](#), para. 26 (e); [A/HRC/45/16](#), para. 53; and Committee on the Rights of the Child, general comment No. 24, paras. 58–60.

<sup>47</sup> Opinions No. 47/2017, para. 29; and No. 63/2020, para. 42.

breakdown and was hospitalized due to the physical and psychological torture. Noting this, the Working Group recalls that it has found that the admission of evidence from third parties extracted through torture also violates article 14 (3) (g) of the Covenant.<sup>48</sup>

81. According to the allegations made by the source, due to the crackdown on dissent during the period leading up to the armed conflict in Ukraine, Mr. Timofeyev's lawyers faced persecution, impeding their ability to adequately represent him. Mr. Timofeyev's lawyers were expelled from their office in October 2022, when a Russian court ordered the premises to become State property. The Working Group recalls that legal counsel should be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment.<sup>49</sup> In the light of the seriousness of the persecution and threat faced by Mr. Timofeyev's lawyer, the Working Group finds that the right to legal assistance under article 14 (3) (d) of the Covenant was violated.

82. For the reasons above, the Working Group concludes that the breaches of the fair trial and due process rights of Mr. Timofeyev are of such gravity as to give his deprivation of liberty an arbitrary character, falling within category III. The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers.

**(d) Category V**

83. While the source does not make any specific submissions pertaining to category V, the Working Group has decided to analyse the case under this category of its methods of work, in the light of the information provided by the source.

84. In the discussion above concerning category II, the Working Group has established that Mr. Timofeyev's detention resulted from the peaceful exercise of his rights under international law. The Working Group has repeatedly stated in its jurisprudence that when detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination.<sup>50</sup>

85. The Working Group recalls several non-cumulative indicators that serve to establish the discriminatory nature of detention. They include the following: (a) the deprivation of liberty was part of a pattern of persecution against the detained person, including, for example, other persons with similarly distinguishing characteristics have also been persecuted; or (b) the context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights.<sup>51</sup>

86. The Working Group recalls that it has previously found the detention of a Crimean Tatar belonging to the Muslim faith to constitute discrimination based on national, ethnic or social origin and religion.<sup>52</sup> As stated earlier, the actions of Mr. Timofeyev were peaceful and there is no evidence that he was violent or incited others to violence. The Working Group observes that Mr. Timofeyev is part of an ever-growing number of Crimean Tatars who have been arrested, detained and charged with criminal activities on the basis of their ethnic origin and their religious faith. According to the source, a prominent Russian think tank has found that the terrorist designation of Hizb ut-Tahrir is unlawful because the organization has not been linked to any terrorist activity in Russia. Since 2003, more than 340 people, including many Crimean Tatars persecuted in the wake of the armed conflict in Ukraine, have been imprisoned in the Russian Federation and Crimea for involvement in Hizb ut-Tahrir, receiving sentences of up to 24 years in prison. Reportedly, those sentences have been

<sup>48</sup> Opinions No. 34/1995, paras. 6–8 (a); No. 75/2018, para. 75; No. 47/2017, para. 27; and No. 45/2019, para. 69.

<sup>49</sup> 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, para. 15; [A/HRC/45/16](#), para. 54; Basic Principles on the Role of Lawyers, para. 16; and opinions No. 70/2021, para. 94; No. 66/2019, para. 86; No. 70/2017, para. 62; No. 34/2017, para. 41; No. 32/2017, para. 36; and No. 29/2017, para. 61.

<sup>50</sup> Opinions No. 75/2022, para. 91; No. 62/2020, para. 74; No. 42/2020, para. 93; No. 36/2020, para. 75; No. 59/2019, para. 79; No. 13/2018, para. 34; and No. 88/2017, para. 43.

<sup>51</sup> [A/HRC/36/37](#), para. 48.

<sup>52</sup> Opinion No. 56/2021, para. 98.

condemned by human rights organizations and by the Secretary-General<sup>53</sup> and the United Nations High Commissioner for Human Rights.<sup>54</sup>

87. In the light of the source's credible submissions, the Working Group finds that Mr. Timofeyev was deprived of his liberty on discriminatory grounds based on his religious faith. His detention violates articles 2 and 7 of the Universal Declaration of Human Rights and article 26 of the Covenant and contravenes articles 1 to 4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. It is therefore arbitrary, falling within category V. The Working Group refers the present case to the Special Rapporteur on minority issues.

**(e) Concluding remarks**

88. Noting the submissions of the source on Mr. Timofeyev's chronic illnesses, the Working Group is obliged to remind the Government that, according to article 10 (1) of the Covenant and rules 1, 24, 27 and 118 of the Nelson Mandela Rules, all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity, including by being allowed to enjoy the same standards of health care that are available in the community. In particular, rule 27 (1) of the Nelson Mandela Rules requires that all prisons ensure prompt access to medical attention in urgent cases and that prisoners who need specialized treatment or surgery be transferred to specialized institutions or civil hospitals. The Working Group refers the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

**3. Disposition**

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

The deprivation of liberty of Yaroslav Vladimirovich Timofeyev, being in contravention of articles 2, 3, 7, 8, 9, 11, 18, 19 and 20 of the Universal Declaration of Human Rights and articles 2, 9, 14, 15, 18, 19, 22 and 26 of the International Covenant on Civil and Political Right is arbitrary and falls within categories I, II, III and V.

90. The Working Group requests the Government of the Russian Federation to take the steps necessary to remedy the situation of Mr. Timofeyev without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

91. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Timofeyev immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

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

93. The Working Group requests the Government to bring its laws, particularly article 205.5 of the Criminal Code of the Russian Federation, into conformity with the recommendations made in the present opinion and with the commitments made by the Russian Federation under international human rights law.

94. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and association; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special

<sup>53</sup> [A/74/276](#), para. 35; and [A/HRC/44/21](#), para. 36.

<sup>54</sup> [A/HRC/39/CRP.4](#), paras. 30 and 41.



Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the independence of judges and lawyers.

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

#### 4. Follow-up procedure

96. 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. Timofeyev has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Timofeyev;
- (c) Whether an investigation has been conducted into the violation of Mr. Timofeyev'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 the Russian Federation with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

97. 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.

98. 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 of any failure to take action.

99. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>55</sup>

*[Adopted on 17 November 2023]*

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<sup>55</sup> Human Rights Council resolution 51/8, paras. 6 and 9.