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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its 101st session, 11–15 November 2024

Opinion No. 57/2024 concerning Saparbek Akunbekov, Aike Beishekeeva, Azamat Ishenbekov, Akylbek (“Akyl”) Orozbekov, Aktilek (“Maadanbek”) Kaparov, Tynystan Asypbekov, Saipidin Sultanaliev, Maksat Tazhibek uulu and Zhoodarbek Buzumov (Kyrgyzstan)*

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,[1] on 25 July 2024 the Working Group transmitted to the Government of Kyrgyzstan a communication concerning Saparbek Akunbekov, Aike Beishekeeva, Azamat Ishenbekov, Akylbek (“Akyl”) Orozbekov, Aktilek (“Maadanbek”) Kaparov, Tynystan Asypbekov, Saipidin Sultanaliev, Maksat Tazhibek uulu and Zhoodarbek Buzumov. The Government submitted a late response on 30 September 2024. 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);

* Mumba Malila did not participate in the discussion of the case.

[1] A/HRC/36/38.

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

1. Submissions

(a) Communication from the source

4. Saparbek Akunbekov, born on 28 January 1990, is a national of Kyrgyzstan. He began working as a trainee journalist at Ait Ait Dese two months prior to his arrest. He has health concerns, including kidney issues.

5. Aike Beishekeeva, born on 16 January 2001, is a national of Kyrgyzstan. She is a journalist employed by Temirov LIVE. Her usual place of residence is in Bishkek.

6. Azamat Ishenbekov, born on 12 December 1997, is a national of Kyrgyzstan. He works as a poet at Ait Ait Dese. His usual place of residence is in Tash-Bashat, Kyrgyzstan. He has vision problems and high blood pressure.

7. Akylbek ("Akyl") Orozbekov, born on 30 December 1991, is a national of Kyrgyzstan. He is a camera operator at Temirov LIVE. His usual place of residence is in Tash-Komur, Kyrgyzstan.

8. Aktilek ("Maadanbek") Kaparov, born on 16 July 1994, is a national of Kyrgyzstan. He is a journalist and founder of Alga Media. He previously worked as a journalist at Temirov LIVE until August 2023. His usual place of residence is in Maevka, Kyrgyzstan. He has health issues, including kidney issues.

9. Tynystan Asypbekov, born on 28 September 1994, is a national of Kyrgyzstan. He is a journalist at Politklinika. He previously worked at Temirov LIVE. His usual place of residence is in Ilyich, Kyrgyzstan.

10. Saipidin Sultanaliev, born on 29 August 1972, is a national of Kyrgyzstan. He is a former employee of Temirov LIVE; he currently works as a journalist at Archa Media. His usual place of residence is in Bishkek. He suffered a heart attack after being detained.

11. Maksat Tazhibek uulu, born on 9 September 1992, is a national of Kyrgyzstan. He was a founding member of Temirov LIVE, where he worked as a camera operator until 2022. He has not worked as a journalist since 2022. His usual place of residence is in Bishkek. He has had health issues for the past two years.

12. Zhoodarbek Buzumov, born on 17 June 1993, is a national of Kyrgyzstan. He is a former employee of Temirov LIVE. His usual place of residence is in Bishkek.

(i) Context

13. The source submits that, on 16 January 2024, Kyrgyz authorities arrested the above-named nine individuals on charges of inciting "mass unrest" on the basis of a series of videos posted on the social media accounts of Temirov LIVE and Ait Ait Dese, investigating alleged government corruption and criticizing the President of Kyrgyzstan. Two of the individuals were reportedly released from pretrial detention and put under house arrest in March 2024; four more were released on house arrest in April 2024.

14. According to the source, the nine individuals' deprivation of liberty is consistent with reports of an alleged ongoing campaign in Kyrgyzstan to stifle dissent, including by criminalizing the independent media and journalists.[2] It is submitted that, through constitutional changes adopted in 2021, the Office of the Prime Minister has been eliminated and the size and powers of the legislature have been reduced. The adoption of a

[2] Office of the United Nations High Commissioner for Human Rights, "Comment by UN Human Rights Office spokesperson Liz Throssell on freedom of expression in Kyrgyzstan", statement, 16 January 2024. https://www.ohchr.org/en/statements/2024/01/comment-un-human-rights-office-spokesperson-liz-throssell-freedom-expression.

super-presidential system has reportedly allowed the Government to target human rights advocates and independent media outlets.

15. These constitutional changes have granted the President the power to appoint judges and heads of law enforcement agencies. This increased presidential leverage over the judiciary has reportedly further enabled the targeting of independent journalists and civil society. In its 2022 concluding observations on the third periodic report of Kyrgyzstan, the Human Rights Committee expressed concern about reports of the lack of independence and impartiality in the judiciary, in particular due to the President's involvement in selecting and appointing judges.[3] It likewise expressed concern about the initiation of criminal proceedings against bloggers and journalists and called upon the Government of Kyrgyzstan to refrain from the use of criminal prosecution as a tool to suppress critical reporting on matters of public interest.[4]

16. Despite calls for the Government to protect freedom of expression, criminal prosecutions concerning free speech and independent reporting have allegedly persisted. In January 2022, a leading anti-corruption journalist and founder of Temirov LIVE was arrested on drug charges after undergoing months of surveillance and harassment. His arrest came after a video was posted on Temirov LIVE in which it was alleged that family members of the head of the State Committee for National Security, the national agency responsible for intelligence on counter-terrorism and organized crime, were involved in corruption.

17. Furthermore, the authorities have reportedly endeavoured to block access to and close down independent media outlets. A law on protection from false information, adopted in 2021, has been used to restrict free speech. The law grants individuals the right to request the removal of online content about them that they consider to be false and places all responsibility on the owner of the website or web page to prove that content on their platform is true. The Human Rights Committee has expressed concern about this law.[5]

18. On 14 March 2024, the parliament adopted a law on foreign agents, requiring non-governmental organizations that receive financial support from foreign entities and engage in broadly defined political activities to register as "foreign agents". The source notes that, in 2023, three special procedure mandate holders expressed concern about the law's impact on civil society.[6]

(ii) Arrest and detention

19. The source submits that, between November and 26 December 2023, Temirov LIVE and Ait Ait Dese published videos of their investigations into alleged corruption by the Kyrgyz authorities, including the President and others close to him. In one video, dated 13 December 2023, the director of Temirov LIVE and Ait Ait Dese criticized State officials, making specific reference to the President's alleged failure to take action to address corruption.

20. On 30 December 2023, the Ministry of Internal Affairs began investigating Temirov LIVE and Ait Ait Dese. According to the resolution initiating a criminal case filed by the Ministry's Investigation Service on 13 January 2024, officials engaged the Forensic Expert Service under the Ministry of Justice to analyse materials published by Temirov LIVE and Ait Ait Dese. On the basis of the conclusions in a forensic linguistic report, the Ministry of Justice alleged that Temirov LIVE and Ait Ait Dese had published materials calling for violent protests and mass unrest by discrediting the Government. In addition, the Ministry of Internal Affairs alleged that, in the materials submitted for investigation, many activities had been attempts to appeal to society, since they had been posted on social networks. It referred

[3] CCPR/C/KGZ/CO/3, para. 37.
[4] Ibid., paras. 45 and 46 (a) and (b).
[5] Ibid., para. 45.
[6] See letter dated 2 October 2023 (communication OL KGZ 4/2023). All communications mentioned in the present report, and the responses thereto, are available at https://spcommreports.ohchr.org/Tmsearch/TMDocuments.

in particular to the above-mentioned video of 13 December 2023 featuring the director of Temirov LIVE and Ait Ait Dese.[7]

21. On 13 January 2024, the authorities initiated a criminal case, in accordance with article 278 (3) of the Criminal Code, which provides that "calls for active disobedience of the lawful demands of representatives of the authorities and for mass riots, as well as calls for violence against citizens, shall be punishable by imprisonment for a term of five to eight years".[8]

22. The source notes that, beyond broadly referencing the video posted on social media on 13 December 2023, the resolution initiating a criminal case does not identify any statements deemed to be calls for mass disorder or rioting. Furthermore, none of the nine individuals appeared in the video and the resolution did not refer to any specific roles that any of them had played in the creation of the video. In fact, some of those individuals were no longer working at Temirov Live or Ait Ait Dese at the time when the video was created.

23. On 16 January 2024, starting at approximately 6 a.m., officers of the Ministry of Internal Affairs began to search the homes of the nine individuals and the office of Temirov Live and Ait Ait Dese. It is submitted that none of the nine individuals were informed at the time of arrest of the reasons for the searches and the arrests or of their right to legal counsel.

24. After the searches, the nine individuals were taken to the Ministry of Internal Affairs for questioning. They were each questioned as witnesses and, as such, they could not invoke the right against self-incrimination or the right to refuse to respond to questioning. In fact, some of the defence lawyers were unable to meet their clients for the first few hours of their detention because they were unable to get in touch with the investigators who were supposed to grant them access to the building. However, the nine individuals' lawyers were present during the "official" interrogations.[9]

25. For instance, Ms. Beishekeeva was arrested at 6.30 a.m., but her lawyer was only allowed to see her at around noon. Although there was no "official" interrogation before she met with her lawyer, the Ministry of Internal Affairs officers had asked her for information about the people with whom she worked. Similarly, Mr. Ishenbekov was not able to meet with his lawyer until six hours after his arrest, during which time he was informally questioned without access to his lawyer.

26. Furthermore, it was not until the evening of the day of their arrest, on 16 January 2024, and after the interrogations had concluded, that employees of the Investigative Service issued orders for the nine individuals to be detained for 48 hours.

27. The day after their arrest, on 17 January 2024, all except Mr. Kaparov were reportedly charged with violating article 278 (3) of the Criminal Code, which criminalizes "calls for active disobedience of the lawful demands of representatives of the authorities and for mass riots, as well as calls for violence against citizens", and article 41 (4), which criminalizes the offence of aiding and abetting. In Mr. Kaparov's case, he was charged as an organizer of the conspiracy under articles 278 (3) and 41 (2) of the Criminal Code. However, the indictments do not explain how exactly each of the nine individuals incited, or aided and abetted in the incitement of, mass riots or violence in violation of article 278 of the Criminal Code.

28. The source reports that the resolution initiating a criminal case was based on a forensic linguistic analysis conducted under the oversight of the Ministry of Justice. Although the legality of the charges against the nine individuals, and their subsequent arrest and detention, hinged on the content of the forensic linguistic report, none of their lawyers were allowed access to the linguistic report until immediately before a hearing held on 17 January 2024. Even then, the nine individuals and their lawyers were not provided with a copy of the report or given the opportunity to make notes of key extracts; rather, they were allowed only to

[7] The source provides the following link to the video: https://www.youtube.com/watch?v=MRIhMxCHyyQ.

[8] Criminal Code of Kyrgyzstan, art. 278 (3), 28 October 2021. Available at https://mvd.gov.kg/rus/ministry/normative-bases/22.

[9] See letter dated 15 March 2024 (communication AL KGZ 1/2024).

review a copy of the document in the short period between when the charges were announced and the hearing began.

29. On 17 January 2024, after the nine individuals were presented with their indictments, Pervomaisky District Court of Bishkek considered the legality and validity of their detention in separate hearings. Access to the courtroom was reportedly limited: only relatives were allowed to attend; journalists from various media outlets were barred from the courtroom.[10]

30. According to the source, Pervomaisky District Court held that pretrial detention of the nine individuals was lawful and justified as a preventive measure. The court ordered their detention for two months, until 13 March 2024, in remand centre No. 21 of the Penal Enforcement Service of the Ministry of Justice. However, when issuing the detention orders, the court did not consider their individual circumstances. For instance, in the case of Mr. Orozbekov, the court found that, considering the degree of risk to public order associated with the alleged crime and the fact that Mr. Orozbekov was accused of committing a serious crime, it was appropriate to order preventive measures.

31. Under article 266 (6) of the Code of Criminal Procedure, the nine individuals were supposed to be transferred to remand centre No. 21 immediately after the order of 17 January 2024 by Pervomaisky District Court. However, they were not transferred until 29 January 2024, 14 days after their initial arrest and 13 days after the court's decision. During that time, a representative of the Office of the Ombudsman (Akyikatchy) of the Kyrgyz Republic visited them at the Main Directorate of Internal Affairs and sent a letter addressed to the Directorate asking for an explanation of the reasons why the transfer to the pretrial detention centre had not yet occurred.

32. According to the source, the authorities transferred the nine individuals to remand centre No. 21 only after representatives of the National Centre for the Prevention of Torture visited the temporary detention facility and issued a public statement demanding that officials immediately resolve the issue of transferring the nine individuals. In the statement, the representatives of the National Centre stated that "further detention of these persons in the temporary detention facility of the Main Directorate of Internal Affairs or in other places under the jurisdiction of the Ministry of Internal Affairs would be considered torture".[11]

33. The source notes that the temporary detention centre in which the nine individuals stayed during the first 14 days of their detention falls under the jurisdiction of the Ministry of Internal Affairs. As such, representatives of the Ministry had unimpeded access to them during that time.

34. From 2 to 6 February 2024, in separate hearings, Bishkek City Court heard the nine individuals' appeals regarding the detention orders issued by Pervomaisky District Court. During the appeal hearings, the nine individuals were reportedly kept in metal cages.

35. The nine individuals brought different challenges against the imposition of pretrial detention. For example, Mr. Kaparov challenged on the basis of the court's failure to assess the appropriateness of detention, the investigator's failure to specify the grounds for detention, the lack of reasonable suspicion that he had committed a crime and violation of criminal procedure. Ms. Beishekeeva and Mr. Tazhibek uulu challenged the legality of their detention and restraint orders under articles 6, 7 and 212 of the Code of Criminal Procedure, article 55 of the Constitution and article 19 of the Covenant. Mr. Ishenbekov appealed on the basis of the judge's involvement in another case against him. In response, the prosecutor reportedly primarily invoked the gravity of the alleged offence as justification for pretrial detention.

36. Rather than considering the specific circumstances of each of the nine individuals' cases, Pervomaisky District Court allegedly held in identical terms for each of them. For example, in its decision of 6 February on Mr. Kaparov's pretrial detention, it held that "taking into account the fact that the violation of the articles was not determined", and that "the

[10] Ibid. See also https://kyrgyzstan.un.org/en/270664-un-special-procedures-sent-permanent-mission-kyrgyzstan-joint-allegation-letter-raising.

[11] The source provides the following link to the news article: https://rus.azattyk.org/a/32799452.html (in Russian).

investigating judge allowed the request", the pretrial detention was "legal and justified". The court left all nine individuals in pretrial detention.

37. On 12 March 2024, in separate hearings, Pervomaisky District Court extended the pretrial detention of seven of the nine individuals – Ms. Beishekeeva and Messrs. Ishenbekov, Sultanaliev, Kaparov, Asypbekov, Buzumov and Tazhibek uulu – until 13 May 2024, on the basis of requests from the authorities for extension of the period of pretrial detention. For example, the State argued, in the case of Ms. Beishekeeva, that the investigative bodies had not completed their investigation, that the crimes she was accused of were serious, that many individuals had to be interrogated and that the presence of the accused had to be ensured to be able to confront witnesses. It is submitted that Pervomaisky District Court largely adopted these arguments and held, in identical terms for each of the individuals, that Ms. Beishekeeva's continued pretrial detention was reasonable and justified.

38. After that hearing, Messrs. Orozbekov and Akunbekov were transferred to house arrest. In the case of Mr. Orozbekov, while Pervomaisky District Court, in its decision ordering his house arrest, considered mitigating factors that favoured house arrest over his continued custodial detention (e.g. that he was a Kyrgyz national, was resident permanently in the country and had no criminal record), the court did not include any reasoning as to whether a less restrictive measure than house arrest might have been sufficient to ensure his presence at trial.

39. After the hearing on 12 March 2024, Messrs. Asypbekov, Sultanaliev, Tazhibek uulu and Buzumov were transferred to house arrest. The house arrest order for Mr. Buzumov, issued on 9 April, reportedly does not address the need for house arrest over any less restrictive alternative. The source notes that it has not had access to the court orders for the other individuals who were released on house arrest on 12 March.

40. On 10 May 2024, Pervomaisky District Court extended the detention of the three individuals who had not been placed under house arrest – Ms. Beishekeeva and Messrs. Ishenbekov and Kaparov – and transferred the case to Leninsky District Court, without their lawyers being present. The court has reportedly not made any meaningful distinction between those assigned to house arrest and those who remain in detention.

41. On 28 May 2024, defence counsel appealed before Bishkek City Court the decision of Permovaisky District Court extending the restraint orders and transferring jurisdiction to Leninsky District Court. Bishkek City Court rejected the appeal.

(iii) Legal analysis

42. The source argues that the arrest and detention of the above-mentioned nine individuals are arbitrary and fall under categories I and III of the Working Group.

43. The source submits that Messrs. Akunbekov, Orozbekov, Asypbekov, Sultanaliev, Tazhibek uulu and Buzumov, who have been released on house arrest, are subject to a number of restrictions. They are prohibited from: (a) leaving their place of residence at night; (b) leaving the administrative territory without the permission of the court; and (c) using information and communications technologies. As such, they cannot leave their homes, or the city more generally, at will and are severely limited in their communications.

44. In the source's opinion, this form of deprivation of liberty falls within the Working Group's mandate.[12] It notes that the Working Group has previously considered cases involving house arrest, where communication with the outside world through the telephone or the Internet was prevented.[13]

45. The source argues that, given the complete lack of reasoning in the present case in the orders imposing detention and, subsequently, house arrest, the measure of restraint lacked any of the safeguards of arrest and detention guaranteed by the Covenant. Furthermore, while six of the nine individuals are under house arrest and the three others are in detention, they all stand accused of the same crime.

[12] Deliberation No. 1 on house arrest (E/CN.4/1993/24, sect. II); and opinion No. 30/2012, para. 23.
[13] See opinion No. 16/2011.

a. Category I

46. The source recalls that the Working Group "has consistently found that vague and overly broad provisions that could result in penalties being imposed on individuals who had merely exercised their rights to freedom of opinion and expression cannot be regarded as being consistent with the Universal Declaration of Human Rights or the Covenant".[14] The Working Group has further clarified that such laws afford the authorities unfettered discretion, thereby resulting in unjustified and arbitrary criminalization of the legitimate exercise of the right to freedom of expression.[15]

47. It further recalls that the Working Group has expressed concern about incitement laws that are so vague that they could result in penalties being imposed not only on persons using violence for political ends but also on persons who have merely exercised their legitimate right to freedom of opinion or expression.[16]

48. The nine individuals were reportedly investigated and detained pursuant to article 278 (3) of the Criminal Code, which prohibits "calls for active disobedience … and for mass riots, as well as calls for violence against citizens". The source argues that this provision is impermissibly vague for three reasons.

49. First, in the absence of an explanation of what would constitute "disobedience", the provision potentially covers a wide range of conduct protected under international law. The source argues that Mr. Ishenbekov's indictment of 17 January 2024 serves as an example of how susceptible the law is to misuse; citing the analysis of a linguistic expert, the offence is identified as "actively discrediting the State power of the Kyrgyz Republic, thereby committing such actions as would foster a negative opinion among the citizens of the Kyrgyz Republic and in the current political climate, with regard to the policies carried out by the Head of State, encouraging the citizens of the Kyrgyz Republic to secretly overthrow the current Government". According to the source, in this indictment criticism of the Government is equated with incitement to violence but any specific statements inciting such violence are not identified. In addition, the imprecision of article 278 of the Criminal Code allows for this type of interpretation.

50. Second, article 278 (3) of the Criminal Code references "riots" without defining the term. While "riots" is a term used in the national laws of many countries, in the linguistic expert report, which served as the basis for the indictment, the term appeared to have been glossed as being equivalent to "mass disorder". In particular, the linguistic expert, as cited by the indictments, found that the materials of Temirov LIVE and Ait Ait Dese "exhibit linguistic signs of calls for resistance actions and mass disorder by discrediting the authorities in the respective materials". In the indictments and the resolution initiating a criminal case, reference is made repeatedly and seemingly interchangeably to "resistance", "active disobedience" and "mass disorder", without providing for a definition of the terms. The source argues that all of these terms could encompass activities protected under the rights to freedom of expression and freedom of assembly, including peaceful demonstrations.

51. Third, article 278 (3) of the Criminal Code fails to specify the requisite causal nexus between the speech at issue and any acts of "disobedience" or "mass riots" in order for one to have violated article 278. This deficiency allegedly prevents potential defendants from understanding the extent of their potential criminal exposure or liability, as illustrated by the facts giving rise to the nine individuals' deprivation of liberty. According to the resolution initiating a criminal case, for example, the investigators found that Temirov LIVE and Ait Ait Dese materials "discrediting" government authorities "could lead to mass riots" in Kyrgyzstan. The source contends that the nine individuals were arrested and detained because

[14] Opinion No. 9/2018, para. 44.

[15] Opinions No. 27/2012, para. 38; No. 21/2014, paras. 25 and 26; No. 20/2017, para. 35; and No. 4/2020, paras. 133 and 142. See also Human Rights Committee, general comment No. 34 (2011), para. 25.

[16] Opinion No. 26/2013, para. 65. See also opinion No. 8/2017, paras. 8–11, 36 and 38; and Human Rights Committee, general comment No. 35 (2014), para. 12.

the Government feared, without examining or establishing any actual likelihood, that criticism by Temirov LIVE of the Government and its policies could inspire unrest.[17]

52. The source concludes that article 278 of the Criminal Code is impermissibly vague and thus cannot provide a basis for deprivation of liberty, rendering the nine individuals' deprivation of liberty, both in pretrial detention and under house arrest, arbitrary under category I.

53. The source recalls that, under article 9 (3) of the Covenant, pretrial detention should be the exception, not the norm, and that the general rule is that persons awaiting trial should not be detained in custody.[18] Any justification for pretrial detention must be substantiated with evidence and cannot be based on a "mere assumption". Vague and expansive standards, such as "public security", are insufficient to justify pretrial detention; the court must find a "present, direct and imperative threat".[19]

54. The source further recalls that the Working Group has found detention to be arbitrary in cases where the State has failed to conduct an individualized assessment to determine whether it was "reasonable and necessary" to keep an individual in pretrial detention.[20] This failure is aggravated when the detained person has a serious health condition.[21]

55. The source asserts that the nine individuals' pretrial detention was ordered as the default option. It argues that, by imposing detention following the nine individuals' arrests, the court did not set forth any individualized, specific risks necessitating their detention, such as that any of the nine individuals would attempt to flee, commit additional crimes, interfere with the process of evidence collection or intimidate witnesses while awaiting trial. Instead, the court relied, at most, on vague pronouncements about public danger associated with crimes against public order to conclude that pretrial detention was necessary.

56. Similarly, the detention orders of 17 January 2024 reportedly did not evaluate any of the nine individuals' personal circumstances. For example, Mr. Orozbekov is the sole breadwinner for his family members, and Mr. Tazhibek uulu has suffered from health problems for the past two years and supports his family. Moreover, Mr. Sultanaliev reportedly suffered a heart attack while in custody and, despite his health condition, remained in pretrial detention for several months, until 9 April 2024, when he was transferred to house arrest.

57. The source further submits that the decisions of the appellate court rejecting the nine individuals' appeals against the pretrial detention orders similarly failed to set forth any individualized, specific risks necessitating their detention or consider alternative forms of restraint. For example, while Mr. Kaparov directly raised the lower court's failure to specify the grounds for his detention in his appeal against the court's decision on his detention, the appellate court, in its decision of 6 February 2024 on his pretrial detention, avoided considering this shortcoming, summarily stating in language identical to that in the decisions on the appeals regarding the other eight individuals, that Mr. Kaparov's pretrial detention was legal and justified.

58. The source submits that, as with pretrial detention, courts must make an individualized assessment of an accused person's circumstances when deciding to impose pretrial house arrest. It recalls that the Working Group has found house arrest to be arbitrary under category I when the Government has failed to provide a "substantive explanation" justifying house arrest as a necessary and proportionate measure.[22]

59. The source argues that the court did not explain in the house arrest orders why the restrictive measure was necessary, instead appearing to treat house arrest as a benefit to be

[17] Ibid.
[18] Human Rights Committee, general comment No. 35 (2014), para. 38.
[19] Opinion No. 44/2017, paras. 29 and 30.
[20] Opinions No. 56/2017, paras. 67 and 68; No. 62/2017, paras. 45 and 46; and No. 75/2021, paras. 49 and 50.
[21] Opinion No. 62/2017, paras. 45 and 46. See also CCPR/C/KGZ/CO/3; and CAT/C/KGZ/CO/3, para. 17.
[22] Opinion No. 65/2018, paras. 22 and 23.

received by some of the nine individuals (Messrs. Akunbekov, Orozbekov, Asypbekov, Sultanaliev, Tazhibek uulu and Buzumov). In ordering that Mr. Orozbekov be moved from the detention facility to house arrest on 12 March 2024, the court provided no justification for the house arrest measure, citing only favourable individual criteria, including that he is a Kyrgyz national, has a permanent place of residence, has not previously been prosecuted and cares for his family members. The source contends that the court failed to set forth individualized, specific risks necessitating the individuals' continued deprivation of liberty.

60. The source concludes that the nine individuals' deprivation of liberty is disproportionate and unnecessary.

b. Category II

61. The source submits that the nine individuals' deprivation of liberty is based on their exercise of the right to freedom of expression.

62. The source submits that the threshold for finding that speech warrants restriction in the form of criminalization and imprisonment is high.[23] It notes that the Working Group has previously found that the peaceful expression of an opinion via the Internet is – if the opinion is not couched in violent terms or does not constitute an incitement to national, racial or religious hatred or to violence – within the allowable limits of the exercise of freedom of expression.[24]

63. It further submits that Governments seeking to justify restrictions on speech on the basis of one of the grounds set forth in article 19 (3) of the Covenant must specifically identify relevant language in the speech at issue that creates the threat.[25]

64. The source argues that the authorities have failed to identify any specific statement entailing an "appeal to violence" in the materials published by Temirov LIVE and Ait Ait Dese in which the nine individuals are alleged to have either assisted in the production of or organized. At most, the statements identified in the court and prosecution documents amount to "vigorous political criticism", without any appeal to violence.[26] The authorities relied on vague pronouncements and the possibility of some sort of unrest and did not directly connect this supposed risk to actual language posing a violent threat.

65. In the resolution initiating a criminal case it is allegedly stated only that the materials at issue (without further specification) could lead to various mass disturbances in the territory of Kyrgyzstan. These vague justifications are insufficient to meet the requirements under article 19 of the Covenant for restricting freedom of expression under the four factors identified by the Working Group in its jurisprudence.[27]

66. The source notes that, while the reviewed indictments, unlike the resolution initiating a criminal case, quote the Ait Ait Dese video dated 13 December 2023, the excerpts cited conflate the inciting of disobedience and mass riots with protected speech consisting of criticism of the Government. For example, in the indictments of 17 January 2024 against Messrs. Orozbekov, Ishenbekov and Kaparov, reference is made to statements in the video that political leaders "only think about their own pockets", should "create a glorious era in the history of Kyrgyzstan and be remembered as a hero in the future or be cursed by the youth of the future", and should "enjoy the respect of the youth and the people rather than dismiss justice, lose people's respect, and flee elsewhere like the previous rulers". None of these statements call for any form of violence; at most, they point to a call to "fight for freedom", which, in the context of the video, was not a call to violence but an invocation well within the bounds of political discourse and essential criticism of government.[28]

[23] Opinions No. 41/2017, para. 86; and No. 58/2017, para. 48.
[24] Opinion No. 41/2005, para. 28 (see A/HRC/4/40/Add.1). See also A/66/290, para. 40.
[25] Opinions No. 5/1999, para. 13 (see E/CN.4/2000/4/Add.1); and No. 6/2016, para. 48.
[26] Opinion No. 5/1999, para. 13.
[27] Opinions No. 41/2017, para. 86; and No. 58/2017, para. 48.
[28] See opinion No. 41/2005; see also opinion No. 9/2018, para. 41; and Human Rights Committee, general comment No. 34 (2011), para. 34.

67. It further argues that, by conflating criticism of the Government with incitement to violence, such as through repeated references to the slander of government officials, the resolution initiating a criminal case and the reviewed indictments stand in tension with international jurisprudence that precludes detention as a response to controversial or defamatory speech.[29]

68. It is asserted that, while some of the journalists arrested were not even working for Temirov LIVE or Ait Ait Dese at the time when the videos were published – and the case materials do not specify the nine individuals' specific roles in the production of the videos, calling into question whether they were involved at all – it is clear that, at the very least, the nine individuals were targeted because of their connection with an outlet that has robustly exercised its right to freedom of expression. Moreover, their deprivation of liberty is in line with the targeting of independent media in Kyrgyzstan.

69. For the above-mentioned reasons, the source concludes that the nine individuals' deprivation of liberty is in violation of their right to freedom of expression and thus falls within category II.

c. Category III

70. The source submits that all persons who are arrested must immediately have access to counsel.[30]

71. It is recalled that, under article 14 (3) (d) of the Covenant, individuals facing criminal charges are further entitled to be informed of the right to legal assistance and that such notification should occur immediately upon arrest.[31]

72. The source asserts that Ms. Beishekeeva and Mr. Ishenbekov were neither notified of their right to counsel upon arrest (irrespective of whether they were classified as a "witness" or a "suspect"),[32] nor allowed counsel during informal questioning by officers of the Ministry of Internal Affairs. For instance, Ms. Beishekeeva was arrested at 6.30 a.m., but her lawyer was only allowed to see her at around noon. Although there was no "official" interrogation during this time, Ministry of Internal Affairs officers asked her for information about the people with whom she worked. Similarly, Mr. Ishenbekov was informally questioned without access to counsel during the first six hours of his detention and before he was able to meet with his lawyer.

73. The source concludes that, for the above-mentioned reasons, and for Ms. Beishekeeva and Mr. Ishenbekov at least, the right to counsel was violated.

74. The source recalls that article 14 (2) of the Covenant guarantees that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.[33] Under this article, all public authorities have a duty to refrain from prejudging the outcome of a trial, such as by abstaining from making public statements affirming the guilt of the accused.[34] The presumption of innocence may be violated where public authorities make statements pronouncing an accused's guilt prior to trial.[35]

[29] Opinion No. 51/2017, para. 35; and *Cacho Ribeiro v. Mexico* (CCPR/C/123/D/2767/2016), paras. 10.8 and 10.11.

[30] CCPR/C/79/Add.75, para. 27; and *Zhuk v. Belarus* (CCPR/C/109/D/1910/2009), paras. 2.1 and 8.5. See also *Gridin v. Russian Federation* (CCPR/C/69/D/770/1997 and CCPR/C/69/D/770/1997/Corr.1); *Carranza Alegre v. Peru* (CCPR/C/85/D/1126/2002); *Krasnov v. Kyrgyzstan* (CCPR/C/101/D/1402/2005); *Lyashkevich v. Uzbekistan* (CCPR/C/98/D/1552/2007); and *Saidov v. Tajikistan* (CCPR/C/122/D/2680/2015).

[31] CCPR/C/NLD/CO/4, para. 11; and *Saidov v. Takijistan* (CCPR/C/81/D/964/2001), para. 6.8.

[32] European Court of Human Rights, *Truten v. Ukraine*, Application No. 18041/08, Judgment, 23 June 2016, para. 66.

[33] Human Rights Committee, general comment No. 32 (2007), para. 30; and *Saidov v. Tajikistan* (CCPR/C/122/D/2680/2015), para. 9.4.

[34] Human Rights Committee, general comment No. 32 (2007), para. 30.

[35] Ibid. See also *Gridin v. Russian Federation*, para. 8.3.

75. The source argues that the authorities, on several occasions, made public statements to the media about the cases of the nine individuals' after their arrest, prejudging the outcome of their trials before they had even been scheduled or completed.

76. On the same day as the arrests, 16 January 2024, the official website of the Ministry of Internal Affairs, which controls the entity that arrested and initially detained the nine individuals, published a report in which it was stated that, on 30 December 2023, during monitoring of the Internet, information calling for mass disorder had been found on the pages of Ait Ait Dese and Temirov LIVE. The source argues that, given that the nine individuals stand charged with the offence of inciting mass riots, this report amounted to a prejudging of their guilt by the authorities.

77. Days after Pervomaisky District Court imposed pretrial detention on the nine individuals, and while appeals against that decision were still pending, the President reportedly began to make public comments to the press about them. In an interview with the Kyrgyz national news agency, Kabar, on 19 January 2024, the President said that: "In this particular case, according to the conclusions of the Forensic Expert Service under the Ministry of Justice of the Kyrgyz Republic, it was established that, in the video messages, there are signs of calls for mass riots, which falls under article 278 (3) of the Criminal Code of the Kyrgyz Republic".[36] Moreover, the President further stated that recently detained journalists, including those from Temirov LIVE, were "not professional journalists" but "bloggers" who "distort facts" and "manipulate and mislead society" by using "social networks to irresponsibly publish various information" and "make a mountain out of a molehill".[37] The source notes that, as recounted by the President, the authorities were "forced to take preventive measures" by pursuing individuals engaged in "denigrating State policy, stirring up society, anti-constitutional calls and in general dissemination of fake information that poses a threat to national security".[38]

78. In another interview with Kabar, on 7 February 2024, the President again commented on the detention of Temirov LIVE journalists, stating that:

> Those who claim the situation has worsened are themselves interested in destabilizing the situation. By using the term "freedom of speech", they do whatever they want by any means necessary. These are "false patriots". They actively engage in propaganda that contradicts our mentality and traditions … We will not let selfish aims to destabilize the situation and make them reality … Under the guise of democracy, spreading false information, they call for unrest.[39]

79. On 29 January 2024, the deputy head of the Cabinet of Ministers reportedly stated, during a talk show, in reference to the nine individuals, that: "These young guys, of course they are not enemies, of course they have made a mistake. Neither the President, the law enforcement agencies or the court has any intention to bury them in prison. These are educational measures … In some cases, the head of the family or the owner of the house has to clean up a little bit."[40] In the source's opinion, these comments indicated that the Temirov LIVE journalists did something wrong that warranted "cleaning up".

80. The source contends that the above-mentioned comments by different high-level officials, including the President, violated the nine individuals' right to the presumption of innocence.

81. The nine individuals' right to be presumed innocent was further violated when they were all reportedly kept in metal cages for their respective hearings on their detention, in

[36] The source refers to the following national news article, in which the President referred to the video messages of the director of Temirov LIVE and Ait Ait Dese: https://kabar.kg/news/svoboda-slova-zaderzhanie-blogerov-vyzov-na-dopros-rukovoditelei-ia-ocherednoe-interv-iu-prezidenta-sadyra-zhaparova.

[37] Ibid.

[38] Ibid.

[39] The source refers to the following national news article: https://en.kabar.kg/news/sadyr-zhaparov-spoke-about-freedom-of-speech-and-human-rights-in-kyrgyzstan/.

[40] The source submits the following link: https://kloop.kg/blog/2024/01/29/bajsalov-zayavil-chto-arest-11-zhurnalistov-temirov-live-eto-mery-vospitaniya/.

February 2024. The source recalls that the Human Rights Committee has stated that "defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals".[41] If a defendant is caged, the State must thus offer some justification for this measure.[42]

82. In the present case, the court reportedly did not provide an explanation as to why it was necessary to keep the nine individuals in a metal cage during the hearings. Given that they were not accused of committing violence, had exhibited no violent tendencies and did not present flight risks, it is difficult to conceive of any reasonable justification for such a drastic measure. Thus, the source asserts that the confinement of the nine individuals to a cage during the judicial proceedings violated their right to be presumed innocent.

83. For the above-mentioned reasons, the source concludes that the nine individuals' right to a fair trial was violated and that their detention and house arrest are therefore arbitrary under category III.

d. Category V

84. The source submits that the nine individuals' deprivation of liberty is based on their perceived political opinions in connection with Temirov LIVE and Ait Ait Dese videos: specifically, videos on social media in which corruption was alleged and senior officials and government policy were criticized. Although the nine individuals do not appear in these videos and some of them no longer work for either Temirov LIVE or Ait Ait Dese (and did not work for either outlet at the time when the videos were made), their current or former affiliation with the outlets was seemingly the basis for their arrest and their subsequent detention and house arrest.

85. The source recalls that the Working Group has highlighted several non-cumulative indicators that serve to establish the discriminatory nature of deprivation of liberty based on actual or perceived political opinion, namely that: (a) the deprivation of liberty was part of a pattern of persecution against the detained person, such as through previous detention; (b) other persons with similarly distinguishing characteristics have also been persecuted; and (c) the context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights.[43]

86. First, the authorities have reportedly previously used the State apparatus to target Temirov LIVE. According to the source, the nine individuals' deprivation of liberty follows years of persecution of the founder of Temirov LIVE, who was expelled from Kyrgyzstan on charges that are widely believed to have been the result of his outspoken criticism of the Government and his investigations into corruption. The present case appears to indicate that the nine individuals, some of whom have continued to produce videos for Temirov LIVE since its founder's exile, were targeted as part of the Government's alleged campaign of harassment and intimidation against Temirov LIVE.

87. Second, the Government has allegedly launched a campaign of harassment against other independent journalists and bloggers who, like the nine individuals, report critically on the country's political leadership. For example, in February 2024, an independent media outlet was reportedly targeted by the authorities and subjected to a judicial order to cease operations, and other independent journalists have been prosecuted under article 278 (3) of the Criminal Code.

88. It is thus argued that the nine individuals' deprivation of liberty is situated within a wider crackdown on dissent through the new super-presidential powers instituted by means of the constitutional changes adopted in 2021. The source notes that the spokesperson for the Office of the United Nations High Commissioner for Human Rights has stated that "these

[41] General comment No. 32 (2007), para. 30. See also *Selyun v. Belarus* (CCPR/C/115/D/2289/2013), para. 7.5; and *Pustovoit v. Ukraine* (CCPR/C/110/D/1405/2005), para. 9.3.

[42] *Selyun v. Belarus*, para. 7.5; and *Pustovoit v. Ukraine*, para. 9.3.

[43] A/HRC/36/37, para. 48.

latest actions by the authorities appear to be part of a larger pattern of pressure against civil society activists, journalists and other critics of the authorities".[44]

89. The source concludes that, in the light of the above-mentioned reasons, the nine individuals' deprivation of liberty is arbitrary under category V.

(b) Response from the Government

90. On 25 July 2024, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 23 September 2024, detailed information about the current situation of Messrs. Akunbekov, Ishenbekov, Orozbekov, Kaparov, Asypbekov, Sultanaliev, Tazhibek uulu and Buzumov and Ms. Beishekeeva and to clarify the legal provisions justifying their continued detention, and its compatibility with the obligations of Kyrgyzstan under international human rights law, in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Kyrgyzstan to ensure the nine individuals' physical and mental integrity.

91. The Government submitted its response on 30 September 2024, which was after the deadline. 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. Consequently, the Working Group cannot accept the reply as if it had been presented within the time limit.

2. Discussion

92. In determining whether the detention of Messrs. Akunbekov, Ishenbekov, Orozbekov, Kaparov, Asypbekov, Sultanaliev, Tazhibek uulu and Buzumov and Ms. Beishekeeva is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.[45] In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source within the prescribed time limit.

(a) Preliminary observations

93. At the outset, the Working Group notes the acquittal, on 10 October 2024, of Messrs. Akunbekov, Orozbekov, Asypbekov, Sultanaliev, Tazhibek uulu and Buzumov. It also notes that Mr. Kaparov and Ms. Beishekeeva were released on probation that same day; only Mr. Ishenbekov remains in detention, following his conviction. Upon the release of a person concerned, the Working Group has the option of filing the case or rendering an opinion as to the arbitrariness of the detention, in conformity with paragraph 17 (a) of its methods of work. In the present case, the Working Group has decided to render the present opinion in respect of all nine individuals. In making this decision, the Working Group gives particular weight to the fact that: (a) the individuals appear to have been arrested for their journalism-related activities; (b) they were deprived of liberty for about 10 months; and (c) the Government has not informed the Working Group about the guarantees of non-repetition. Furthermore, the court decision of 10 October 2024 is not yet final.

94. The source has argued that the arrest and detention of the nine individuals fall under categories I, II, III and V of the Working Group. The Working Group will proceed to examine the allegations in turn.

[44] Office of the United Nations High Commissioner for Human Rights, "Comment by UN Human Rights Office spokesperson Liz Throssell".

[45] A/HRC/19/57, para. 68.

(b) Category I

95. The source submits, and the Government has failed to refute, that the above-mentioned nine individuals were held in pretrial detention (in a remand prison or under house arrest) on the basis of vaguely formulated provisions and without any individual assessment of the risks allegedly presented.

96. The Working Group recalls that it is a well-established norm of international law that pretrial detention is to be the exception and not the rule and that it should be ordered for as short a time as possible.[46] Article 9 (3) of the Covenant provides that the general rule is that persons awaiting trial should not be detained, but that release may be subject to guarantees to appear for trial and at any other stage of the judicial proceedings. It follows that liberty is recognized as a principle and detention as an exception in the interests of justice. Moreover, although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from this purely abstract point of view, taking into consideration only the gravity of the offence and using stereotyped formulas, without carrying out any individualized assessment or considering alternative preventive measures.

97. In the present case, the Working Group considers that, by failing to address specific facts and alleged risks or to consider alternative, less severe preventive measures, the authorities failed to properly justify the nine individuals' pretrial detention, three of whom – Mr. Ishenbekov, Mr. Kaparov and Ms. Beishekeeva – were kept in a remand prison during the whole pretrial period, and the other six of whom – Messrs. Orozbekov, Asypbekov, Sultanaliev, Tazhibek uulu, Akunbekov and Buzumov – were held under house arrest, which is comparable to deprivation of liberty, since these six individuals were not allowed to leave their apartments after two months of detention in a remand prison.[47] In the absence of any argument to the contrary in the Government's late submission, the Working Group finds their detention to be in violation of article 9 of the Universal Declaration of Human Rights and article 9 (3) of the Covenant.

98. The foregoing is enough for the Working Group to find that the detention of the nine individuals was arbitrary under category I.

99. The source further alleges that the detention of the above-mentioned individuals lacked a legal basis, as the provision impugned is formulated in impermissibly vague terms. The Working Group will examine this allegation under category II.

(c) Category II

100. The source alleges that the persecution of Messrs. Ishenbekov, Kaparov, Orozbekov, Asypbekov, Sultanaliev, Tazhibek uulu, Akunbekov and Buzumov and Ms. Beishekeeva was motivated by their opinions. The source refers to the imputation of crimes under article 278 (3) of the Kyrgyz Criminal Code, which criminalizes "calls for active disobedience of the lawful demands of representatives of the authorities and for mass riots, as well as calls for violence against citizens", but does not provide an explanation of what would constitute "disobedience" or "riots", sometimes equating criticism of the Government with incitement to violence. The source argues that these terms could encompass protected activity under freedom of expression and freedom of assembly, including peaceful demonstrations. The source stressed that, according to the case documents, the case was initiated as the prosecuting authorities found that the materials published on social media accounts, to which the above-named individuals were linked, "discredited" the Government and thus "could lead to mass riots".

101. The Working Group observes that, while the Government had the opportunity to explain which specific actions by the nine individuals amounted to crimes, it has chosen not to do so. The Working Group notes the fundamental role of journalists and bloggers in

[46] Opinions No. 28/2014, para. 43; No. 49/2014, para. 23; No. 57/2014, para. 26; No. 1/2020, para. 53; and No. 8/2020, para. 54; see also Human Rights Committee, general comment No. 35 (2014), para. 38; and A/HRC/19/57, paras. 48–58.

[47] Deliberation No. 1 on house arrest (E/CN.4/1993/24, sect. II). See also opinion No. 28/2024, para. 76.

serving as providers of information of public importance, independent monitors and "public watchdogs".[48]

102. Under article 19 (3) of the Covenant, any restriction imposed on the right to freedom of expression must satisfy three requirements, namely the restriction must be provided by law, be designed to achieve a legitimate aim (i.e. the protection of national security, public order, public health or morals) and be imposed in accordance with the requirements of necessity and proportionality.[49] In its late response, the Government has provided no specific information as to how the nine individuals presented a threat to any of the legitimate interests enumerated in article 19 (3) of the Covenant.

103. The Human Rights Committee has emphasized that the form of expression is highly relevant in assessing whether a restriction is proportionate. As stipulated by the Human Rights Council in its resolution 12/16, the following types of expression should never be subject to restrictions: (a) discussion of government policies and political debate; (b) reporting on human rights, government activities and corruption in government; (c) engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and (d) expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.[50] In the same resolution, the Council called upon States to refrain from imposing restrictions that are not consistent with article 19 (3) of the Covenant. The Committee has also specifically recognized that article 19 (2) protects the work of journalists and "includes the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment".[51] As such, article 19 (2) of the Covenant protects the holding and expression of opinions, including those that are not in line with government policy.

104. In the present case, as the source submits and the Government did not dispute, article 278 (3) of the Kyrgyz Criminal Code was employed against nine individuals to suppress their legitimate criticism of the Government, including on issues related to corruption. This provision, by criminalizing broad and vague concepts such as "disobedience" and "riots", fails to meet the rigorous standards set by article 19 (3) of the Covenant. The accusations against the individuals appear to be based on their critical opinions, shared through social media, which were deemed to "discredit" the Government. This response by the authorities effectively equates dissent and public criticism with incitement to violence, a stance that contradicts international human rights standards.

105. By misusing legal provisions to suppress dissent, the authorities appear to be stifling public discourse, which is essential for democratic governance and accountability. Thus, the impugned provision, as applied, has been wielded as a tool of political repression rather than as a legitimate means of maintaining public order.

106. In the absence of any allegation to the contrary and given the general context of the case, it is quite clear to the Working Group that the basis for the arrest and subsequent detention of Messrs. Ishenbekov, Kaparov, Orozbekov, Asypbekov, Sultanaliev, Tazhibek uulu, Akunbekov and Buzumov and Ms. Beishekeeva was their exercise of freedom of expression, as guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. The Working Group concludes that the arrest and detention of the above-mentioned nine individuals was arbitrary under category II.

(d) Category III

107. Given its finding that the nine individuals' detention was arbitrary under category II, the Working Group emphasizes that no trial should have been held. Nevertheless, the trial was held: Mr. Ishenbekov, Mr. Kaparov and Ms. Beishekeeva were convicted; Messrs. Akunbekov, Orozbekov, Asypbekov, Sultanaliev, Tazhibek uulu and Buzumov were

[48] European Court of Human Rights, "Key theme: article 10 contributions to public debate – journalists and other actors", 31 August 2024. Available at See https://ks.echr.coe.int/documents/d/echr-ks/contributions-to-public-debate-journalists-and-other-actors.

[49] Human Rights Committee, general comment No. 34 (2011), paras. 21–36.

[50] See also A/HRC/14/23, para. 81 (i).

[51] *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.7.

acquitted. The Working Group will therefore proceed to examine the source's submissions concerning the denial of fair trial rights.

108. The source submitted, and the Government did not disprove, that Ms. Beishekeeva and Mr. Ishenbekov were not given access to legal counsel during the initial period after their arrests, although they were questioned during that time. Article 14 (3) (b) of the Covenant guarantees the right of all persons charged with a criminal offence to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing, at any time during their detention, including immediately after their apprehension, and that such access must be provided without delay.[52] The Working Group considers that the questioning of Ms. Beishekeeva and Mr. Ishenbekov in the absence of their lawyers, even if it was not a formal interrogation, deprived them of their right to legal counsel at a critical stage of the criminal proceedings and exposed them to a risk of coercion. In view of these facts, the Working Group finds a violation of article 14 (3) (b) of the Covenant.

109. The source further complains of the violation of the presumption of innocence of the nine individuals, primarily due to public statements made by high-ranking officials, including the President, that prejudged their guilt before any trial had been scheduled or completed. Statements by the authorities, such as those published by the Ministry of Internal Affairs and the President's comments to the media, suggested that the individuals were guilty of inciting mass riots, thereby undermining their right to a fair trial. In addition, during pretrial hearings, the individuals were confined in metal cages without justification, despite not being accused of violent acts or posing a flight risk. The Government did not comment on these allegations in its late response.

110. The Working Group emphasizes that the presumption of innocence is one of the fundamental principles of a fair trial and thus non-derogable, and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt.[53] As the Human Rights Committee has stated, it is the duty of public authorities to refrain from prejudging the outcome of a trial, for example by abstaining from making public statements affirming the guilt of the accused.[54] In the present case, the impugned statements by public officials amounted to a declaration of the nine individuals' guilt and prejudged the assessment of the facts by the competent judicial authority. Given that the officials in question held high positions, they should have exercised particular caution in their choice of words when describing pending criminal proceedings. Instead, their statements could only have encouraged the public to believe that the nine individuals were guilty before their case had been examined by the trial court.

111. Furthermore, defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.[55] In the present case, the nine individuals had objectively justified fears that their confinement in a cage during the hearings would project a negative image to the judges responsible for determining their criminal liability and liberty, portraying them as dangerously criminal to the extent that such extreme restraint was necessary. In addition to causing them anxiety and distress, the situation also led to a violation of their right to the presumption of innocence.

112. In the absence of a rebuttal by the Government, the Working Group considers that the nine individuals' right to the presumption of innocence under article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant was violated. This finding is not altered by the fact that six of them have been acquitted by the trial court – such violations may be irreversible, as they damage the defendants' reputation and dignity during the proceedings. In the present case, it is obvious – and the Government did not argue otherwise – that the impugned statements made by the high-level officials, together with the fact that

[52] Human Rights Committee, general comment No. 32 (2007), paras. 32 and 34; and United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 and guideline 8.

[53] Human Rights Committee, general comment No. 32 /2007), para. 30.

[54] Ibid.

[55] Ibid.

the defendants were kept in a cage in the courtroom, left lasting impacts and harmed the accused persons' integrity in ways that could not be fully remedied.

113. In the light of the foregoing, the Working Group concludes that the detention of the nine individuals was arbitrary under category III.

(e) Category V

114. Finally, the source alleges that the nine individuals were deprived of their liberty on the basis of perceived political opinions. The present case is seen as part of a broader pattern of State harassment against independent journalists and critics, reflecting a discriminatory motive to suppress dissent. The Government has not commented on these allegations.

115. In the present case, the Working Group has found, under category II, that the nine individuals' detention resulted from their legitimate exercise of freedom of expression. When a 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 on the basis of political or other views.

116. The Working Group observes a pattern of attitude displayed by the authorities towards the nine individuals related, in different capacities, to the Temirov LIVE and Ait Ait Dese social media accounts, which are known for their investigations of corruption and their criticism of the President. In view thereof, and especially in view of its findings under category II, the Working Group finds that the arrest and detention of Messrs. Ishenbekov, Kaparov, Orozbekov, Asypbekov, Sultanaliev, Tazhibek uulu, Akunbekov and Buzumov and Ms. Beishekeeva were based on discrimination resulting from their political opinion, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. Their detention is therefore arbitrary under category V.

3. Disposition

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

> The deprivation of liberty of Saparbek Akunbekov, Aike Beishekeeva, Azamat Ishenbekov, Akylbek ("Akyl") Orozbekov, Aktilek ("Maadanbek") Kaparov, Tynystan Asypbekov, Saipidin Sultanaliev, Maksat Tazhibek uulu and Zhoodarbek Buzumov, being in contravention of articles 2, 7, 9, 11 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 14, 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

118. The Working Group requests the Government of Kyrgyzstan to take the steps necessary to remedy the situation of Messrs. Ishenbekov, Kaparov, Orozbekov, Asypbekov, Sultanaliev, Tazhibek uulu, Akunbekov and Buzumov and Ms. Beishekeeva without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

119. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Ishenbekov unconditionally and remove the conditional sentences imposed on Mr. Kaparov and Ms. Beishekeeva, and accord them and Messrs. Orozbekov, Asypbekov, Sultanaliev, Tazhibek uulu, Akunbekov and Buzumov an enforceable right to compensation and other reparations, in accordance with international law.

120. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Messrs. Ishenbekov, Kaparov, Orozbekov, Asypbekov, Sultanaliev, Tazhibek uulu, Akunbekov and Buzumov and Ms. Beishekeeva and to take all appropriate measures against those responsible for the violation of their rights.

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

4. Follow-up procedure

122. 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. Ishenbekov has been released unconditionally and, if so, on what date;

(b) Whether the conditional sentences imposed on Mr. Kaparov and Ms. Beishekeeva have been removed;

(c) Whether compensation or other reparations have been made to Messrs. Ishenbekov, Kaparov, Orozbekov, Asypbekov, Sultanaliev, Tazhibek uulu, Akunbekov and Buzumov and Ms. Beishekeeva;

(d) Whether an investigation has been conducted into the violation of their rights and, if so, the outcome of the investigation;

(e) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Kyrgyzstan with its international obligations in line with the present opinion;

(f) Whether any other action has been taken to implement the present opinion.

123. 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.

124. 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.

125. 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.[56]

[*Adopted on 12 November 2024*]

[56] Human Rights Council resolution 51/8, paras. 6 and 9.