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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fifth session, 14 – 18 November 2022

#### Opinion No. 78/2022 concerning Alexey Gorinov (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 27 July 2022 the Working Group transmitted to the Government of the Russian Federation a communication concerning Alexey Aleksandrovich Gorinov. The Government replied to the communication on 23 September 2022. 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).

## Submissions

### *Communication from the source*

4. Alexey Aleksandrovich Gorinov is a Russian national, born on 26 July 1961. He usually resides in Moscow, and he is currently held in detention in the City of Moscow.

5. According to the source, Mr. Gorinov is an independent member of Krasnoselsky Municipal Council in Moscow. He is also a human rights defender and active member of Russian civil society who held many lectures on political and civil rights matters on, inter alia, how to behave during detentions and how to observe elections. Mr. Gorinov participated himself in organizing elections as member of the territorial election commission and as an election observer. The source adds that Mr. Gorinov received the "Defender of Free Elections" medal and collaborated with "Golos" – the biggest association of Russian citizens for independent observation of elections. He was also an organiser of many peaceful assemblies throughout the years, such as the March of Millions on 15 September 2012; the March of Truth on 13 April 2014; the all-Russian peace march on 21 September 2014; and several marches in memory of Boris Nemtsov.<sup>2</sup> Finally, Mr. Gorinov's activities as a human rights defender reportedly include defending people detained at the rallies in the police stations and courts for more than 15 years.

### Context

6. The source alleges that since the invasion of Ukraine on 24 February 2022, the Russian Federation has widely used established and new repressive mechanisms to combat anti-war dissent. It notes that as of 11 July 2022, more than 16,300 people have reportedly been detained for peaceful anti-war protests in more than 100 Russian cities, and 182 criminal cases have been initiated against people expressing their anti-war opinion in various forms.

7. Moreover, while Russian authorities have allegedly blocked more than 5300 websites, including all independent media outlets reporting on war, the media and digital watchdog Roskomnadzor informed the media that only official information about the armed conflict in Ukraine shall be reported and imposed that media delete any publications where the words "war" or "invasion" are used instead of "a special military operation", and any reports on shelling cities or claiming Russian personnel losses, otherwise threatening to block and fine them (up to ~78 200 USD).

8. The source also alleges that several repressive laws have rapidly come into force, including the newly established criminal article 207.3, which made "*public dissemination of deliberately false information about the use of the Russian armed forces or government authorities' activities outside Russia*" punishable with a penalty of up to 15 years in prison and is being used to prosecute anti-war speeches.<sup>3</sup> The source notes that article 207.3 was

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<sup>2</sup> Opposition politician murdered in 2015.

<sup>3</sup> Article 207.3 of the Criminal Code of the Russian Federation:

*"1. Public dissemination under the guise of reliable reports of deliberately false information containing data on the use of the Armed Forces of the Russian Federation in order to protect the interests of the Russian Federation and its citizens, maintaining international peace and security, as well as containing data on the exercise by state bodies of the Russian Federation of their powers outside territory of the Russian Federation for the said purposes, - shall be punishable by a fine in the amount of seven hundred thousand to one and a half million rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of one year to eighteen months, or by corrective labor for a term of up to one year, or by compulsory labor for a term of up to three years, or by deprivation of liberty. for the same period.*

*2. The same act committed:*

*a) by a person using his official position;*

*b) a group of persons, a group of persons by prior agreement or an organized group;*

*c) with the artificial creation of evidence for the prosecution;*

*d) for selfish motives;*

*e) for reasons of political, ideological, racial, national or religious hatred or enmity, for reasons of hatred or enmity towards any social group, - shall be punishable by a fine in the amount of three*

introduced on 4 March 2022 and expanded on 25 March 2022 to specifically target those who publicly criticize the Russian government and Armed Forces regarding the war in Ukraine. The source also notes that emerging law enforcement practice clearly demonstrates that the term “*unreliable information*” implies any information that is not identical with official positions of Russian authorities. Allegedly, these new laws thus essentially established censorship.

9. In this respect, the source refers to a cross-regional joint statement on human rights and fundamental freedoms in Russia delivered on 21 March 2022 on behalf of a group of over 50 States during the 49th session of the UN Human Rights Council, expressing “*great alarm at recently adopted Russian legislation that would punish those who contradict the Russian government’s false narratives about its war against Ukraine with up to 15 years imprisonment*” and concerns about the “*attempts made by Russian authorities to silence all critical voices, including those of Russian citizens protesting Russia’s invasion of Ukraine*”.<sup>4</sup> The source also refers to a joint statement on Russia’s invasion and importance of freedom of expression issued on 4 May 2022.<sup>5</sup>

#### Arrest, detention and trial

10. The source reports that on 26 April 2022, the apartment of Mr. Gorinov and the premises of the Council of Deputies of the Krasnoselsky District were searched on the basis of a warrant by employees of the Main Investigation Department of the Investigative Committee of Russia for Moscow. After the search had ended, Mr. Gorinov was arrested on the basis of a warrant issued by the Main Investigation Department. The legal basis for the search and arrest were article 182 of the Criminal Procedure Code (Grounds and procedure for conducting a search) and article 91 of the Criminal Procedure Code (Grounds for the arrest of the suspect), respectively. Mr. Gorinov was subsequently taken from his apartment to the Investigative Committee for interrogation.

11. On the following day, 27 April 2022, the Presnensky District Court in Moscow, upon the request of the Investigative Committee, reportedly imposed on Mr. Gorinov a measure of restraint in the form of detention until 25 June 2022 (2 months).

12. According to the source, on 1 May 2022, Mr. Gorinov received a final indictment order and a notice of completion of investigative actions, meaning that the investigation of his case took exactly 6 days. The indictment order was issued by the major cases investigator of the Main Office of the Investigative Committee of the Russian Federation in Moscow.

13. On 1 June 2022, the Meshchansky District Court extended Mr. Gorinov’s detention until 19 November 2022, (6 months) on the grounds of ‘*if the measure of restraint is changed for the accused, he may hide or put pressure on witnesses.*’ In addition, the court reportedly ignored Mr. Gorinov’s defence that he was not going to hide from the investigation.

14. On 8 July 2022, the Meshchansky District Court of Moscow reportedly found Mr. Gorinov guilty of committing a public dissemination under the guise of reliable reports of deliberately false information containing data on the use of the Armed Forces of the Russian Federation in order to protect the interests of the Russian Federation and its citizens, maintain international peace and security, by a person using his official position, by a group of persons

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*million to five million rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of three to five years, or by compulsory labor for a term of up to five years, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to five years, or imprisonment for a term of five to ten years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to five years.*

*3. The acts provided for by the first and second parts of this Article, if they caused grave consequences, - shall be punishable by deprivation of liberty for a term of ten to fifteen years, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to five years.”*

<sup>4</sup> Joint Statement on Human Rights and Fundamental Freedoms in Russia, delivered by the Permanent Representative of Poland on behalf of a group of over 50 states, Human Rights Council, 49th Session, 21 March 2022.

<sup>5</sup> Joint statement on Russia’s invasion and importance of freedom of expression and information, issued by freedom of expression mandate holders from the United Nations, the African Commission of Human Rights, the Inter-American Commission for Human Rights and the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe, 4 May 2022.

by prior agreement, by the motives of political hatred, actions qualified as a crime under paragraph "a, b, d" of part 2 of article 207.3 of the Criminal Code.<sup>6</sup> The District Court imposed a sentence of imprisonment for a period of 7 years to be served in a correctional colony of general regime, along with a deprivation of the right to hold positions in state bodies, local self-government bodies, state and municipal institutions related to the exercise of managerial functions, the performance of organizational and administrative and economic powers for a period of 4 years.

Internal steps, including domestic remedies

15. The source reports that during the court sessions, the court did not take into account any arguments of the defence, including the state of health of Mr. Gorinov and his conditions of detention.

16. According to the source, the defence party has appealed to the Federal Penitentiary Service, but measures have not yet been taken. Mr. Gorinov's attorney reportedly received a response on 8 June 2022, where the Federal Penitentiary Service claimed that sufficient medical help is provided to Mr. Gorinov, and that the conditions of his detention are satisfactory.

17. The source notes that on 27 May 2022, an appeal was sent to the Russian Commissioner for Human Rights, whose main task is to help anyone in protecting guaranteed rights and freedoms. However, no response to the complaint was received. On 27 May 2022, an appeal was also sent to the Russian Human Rights Council, which is a body under the President of Russia to assist the head of state in exercising his constitutional powers in the field of ensuring and protecting human and civil rights and freedoms, informing the President about the state of affairs in this area, and promoting the development of civil society institutions. However, no response has been received. In addition, a joint appeal of 60 deputies was sent to the Prosecutor's Office of Moscow, the Commissioner for Human Rights in the Russian Federation and the Commissioner for Human Rights in Moscow on 23 June 2022, but no replies have been received.

Analysis of violations

18. The source submits that the arrest and detention of Mr. Gorinov is arbitrary under categories II and III as established by the Working Group.

i. Violation of the right to freedom of expression (category II)

19. The source submits that the deprivation of liberty of Mr. Gorinov is the result of his peaceful exercise of the right to freedom of expression. The source thus asserts that the Russian Federation violated article 19 of the International Covenant on Civil and Political Rights and article 19 of the Universal Declaration of Human Rights by depriving Mr. Gorinov of his liberty as the result of his peaceful exercise of the right to freedom of expression and imposing an arbitrary limitation to it using a legal basis in Russian domestic law that grants officials unfettered discretion to criminalize speech about the war, which is neither absolutely necessary nor proportionate and with no ground that can justify silencing the peaceful expression of Mr. Gorinov about the war in Ukraine.

Deprivation of liberty is the result of peaceful exercise of right to freedom of expression

20. The source refers to the Working Group's case law, whereby article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights extend to ideas that offend or disturb the State and "protect peaceful political discourse and commentary on public affairs via the Internet, including the expression of ideas that may be regarded as offensive"<sup>7</sup> as one of the cores of political rights in a free and democratic society.<sup>8</sup>

21. The source notes that in the case at hand, Mr. Gorinov was arrested, prosecuted, sentenced and is currently being detained to punish him for publicly expressing his opinion on the war in Ukraine.

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<sup>6</sup> See footnote 3 above for the text of this provision.

<sup>7</sup> Opinion No. 44/2016, para. 29.

<sup>8</sup> Opinion No. 13/2011, para. 9.

22. According to the source, the following actions are alleged against Mr. Gorinov: “on 15.03.2022 in the period from 18:00 to 21:00, while in the premises of the Council of the Krasnoselsky district of Moscow at the address: Russia, Moscow, Nizhnyaya Krasnoselskaya street, acting intentionally, realizing the illegal nature and public danger of their actions, foreseeing the inevitability of the onset of socially dangerous consequences in the form of undermining the authority and discrediting the current state power and the Armed Forces of the Russian Federation, as well as the fact that by their actions they will mislead an unlimited circle of persons regarding the legality of the actions of the Armed Forces of the Russian Federation during a special military operation, creating the appearance of illegal, violating international law, activities of both the Armed Forces of the Russian Federation individually and the state authorities of the Russian Federation as a whole, will cause citizens the feeling of anxiety, fear, uneasy and unprotectedness on the part of the state, guided by the motive of political hatred, expressed in a dismissive, unfriendly, hostile and aggressive attitude towards the current executive and legislative authorities of the Russian Federation, in the presence of at least 5 persons who took part in this event, verbally conveyed to these persons under the guise of reliable information knowingly false information containing data on the use of the Armed Forces of the Russian Federation in order to protect the interests of the Russian Federation and its citizens, maintain international peace and security, namely:

- on the conduct of military aggressive actions by the Russian Federation on the territory of another sovereign state, calling them not a special military operation, but a war;
- about the direction of the Armed Forces of the Russian Federation to the territory of Ukraine in order to seize its territory, eliminate its independence, change its political or social system;
- about the daily deaths of children on the territory of Ukraine as a result of the conduct of military operations by the Russian Federation;
- that the actions of the Armed Forces of the Russian Federation on the territory of Ukraine, as an element of the system of state power, are the actions of the “fascist state”<sup>9</sup>

At the same time, the content of the revealed statements of A.A. Gorinov and his accomplice about the facts of the use of the Armed Forces of the Russian Federation, or about their actions on the territory of Ukraine does not correspond to the content of the official position of the Ministry of Defense of the Russian Federation, set out in official briefings on 02/24/2022 and 02/26/2022. The statements of A.A. Gorinov and his accomplice negatively characterize the actions of the Armed Forces of the Russian Federation carried out on the territory of Ukraine. In the statements of A.A. Gorinov there are linguistic and psychological signs of justification of the need to counter the use of the Armed Forces of the Russian Federation on the territory of Ukraine.”

23. The source adds that Mr. Gorinov is more specifically blamed for making the following statements:

- “I believe that all the efforts of civil society should be aimed only at stopping the war and withdrawing Russian troops from the territory of Ukraine; to stop the war, withdraw the troops from the territory of a neighboring state, suspend aggressive actions”;
- “children die every day, for information I will say that about a hundred children died in Ukraine, children become orphans”;
- “when military operations are conducted on the territory of a neighboring sovereign state, our country carries out aggression”;
- “I think this is the main issue now of the entire civil society - stop the war, withdraw troops from the territory of a neighboring state, suspend aggressive actions”.

24. The source asserts that the speech of Mr. Gorinov is manifestly peaceful in its nature and cannot be characterized as advocating for violence. The source adds that the context, the crime with which Mr. Gorinov was charged, and the conduct of the subsequent trial clearly

<sup>9</sup> Emphasis added by the source.

evidence a reprisal for expressing a peaceful political opinion and speech related to human rights which therefore must receive the heightened scrutiny and standard of review.<sup>10</sup>

25. The source therefore submits that the deprivation of liberty of Mr. Gorinov is the sole result of his peaceful exercise of the right to freedom of expression.

#### Arbitrary limitation to right to freedom of expression

26. According to the source, the jurisprudence of the Working Group establishes that although speech may be limited according to article 19(3) of the Covenant and article 29(2) of the Universal Declaration of Human Rights, the sole fact that it may be criminalized under domestic law does not deprive individuals of their right to freedom of speech under international law.<sup>11</sup> The source refers in particular to the Working Group's Deliberation No. 8 on deprivation of liberty linked to/resulting from the use of the Internet.<sup>12</sup>

27. The source notes that the decision of the Meshchansky District Court of Moscow of 8 July 2022 considered that: “[I]t is necessary to note that Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, along with the proclamation of the right of everyone to freely express their opinion, proceeds from the fact that the exercise of such freedom imposes duties and responsibilities and may be associated with certain formalities, conditions, restrictions or sanctions that are provided for in the law and are necessary in a democratic society in order to protect health and morals. The proclaimed right to freely adhere to one's beliefs and the right to freedom of expression, including freedom to seek, receive and disseminate all kinds of information and ideas by any means and regardless of State borders, simultaneously correspond to the standards enshrined in international legal acts establishing that the exercise of these rights and freedoms may be restricted, in particular, in the interests of security or public order, the prevention of riots or crimes (articles 18, 19 and paragraph 2 of article 29 of the Universal Declaration of Human Rights, article 19 of the International Covenant on Civil and Political Rights, articles 9 and 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms), therefore, the arguments of the defense about the absence of the defendant's actions the elements of the crime incriminated to him, about the realization by A.A. Gorinov of the right to express his opinion, are unfounded”.<sup>13</sup>

28. However, the source asserts that the fact that the exercise of the right to freedom of expression may be restricted cannot grant the Russian Federation unfettered discretion to criminalize the peaceful exercise of the right to freedom of expression. The source adds that such restriction must indeed be necessary and proportionate - which is not the case at hand - and there are no grounds that can justify silencing the peaceful expression of Mr. Gorinov about the war in Ukraine.

a. Legal basis in domestic law grants unfettered discretion to criminalize peaceful exercise of right to freedom of expression

29. The source refers to the jurisprudence of the Working Group, which establishes that an offense shall not be too vague, too broad, or too imprecise to grant officials unfettered discretion to criminalize the peaceful exercise of the right to freedom of expression.<sup>14</sup> The source notes that such vague criminal offenses include that of “*enemy propaganda*”<sup>15</sup> and “*broadcasting false or exaggerated news which would affect the morale of the country.*”<sup>16</sup>

30. In the case at hand, Mr. Gorinov was reportedly found “*guilty of committing a public dissemination under the guise of reliable reports of deliberately false information containing data on the use of the Armed Forces of the Russian Federation [...] by the motives of political*

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<sup>10</sup> Opinions No. 64/2011, para. 20 and No. 19/2015, para. 18.

<sup>11</sup> Opinion No. 39/2015, para. 22.

<sup>12</sup> Deliberation No. 8; E/CN.4/2006/7, para. 43.

<sup>13</sup> Emphasis added by the source.

<sup>14</sup> Opinion No. 38/2015, para. 73.

<sup>15</sup> Opinion No. 1/1998, para. 3(a).

<sup>16</sup> Opinion No. 10/2008, para. 25.

*hatred, actions qualified as a crime under paragraph "a, b, d" of Part 2 of Article 207.3 of the Criminal Code of the Russian Federation.*"<sup>17</sup>

31. The source asserts that article 207.3 of the Criminal Code contradicts both the Russian Constitution (namely article 13 concerning recognition of ideological and political diversity, article 28 concerning freedom to choose, hold and disseminate one's beliefs and act in accordance with them, article 29 concerning freedom of thought and speech, prohibition of compulsion to renounce one's beliefs and prohibition of censorship, article 54 concerning prohibition of arbitrary criminal prosecution) and the international obligations of the Russian Federation.

32. Moreover, the source submits that the broad, vague and imprecise wording of criminal article 207.3 does not make it possible to determine in advance which statements are legitimate and which are prohibited, even more since it was adopted only a few days before Mr. Gorinov's speech, and solely intended to silence speeches on the war.

33. The source thus submits that the criminal provision at hand is manifestly being used to target persons engaged in peaceful critical expression, falls short of international standards, aims to suppress debate on public interests concerning the war in Ukraine and creates a chilling effect on freedom of expression.

b. The restriction imposed is neither necessary nor proportionate

34. The source refers to the jurisprudence of the Working Group, whereby the necessity requirement is a strict standard meaning that restrictions must be "*absolutely necessary in a democratic society*."<sup>18</sup> Hence, the source notes that if the legitimate purpose of the state can be achieved through different means that do not violate freedom of expression, the necessity test cannot be met. A detention must be a proportionate response to the threat posed by the expression in question, taking into consideration both the form of the expression, the means of its dissemination, but also the alleged threat posed by it in light of the powers of the state.<sup>19</sup>

35. The source submits that regarding the purpose of Mr. Gorinov's speech, its content, its context, its intent, and its veracity, the Russian Federation has manifestly not struck the appropriate balance.

c. No ground can justify silencing the peaceful expression about the war in Ukraine

36. According to the source, the Working Group in its jurisprudence consistently finds that States cannot rely pretextually on the enumerated grounds in article 19(3) of the Covenant and article 29(2) of the Universal Declaration of Human Rights, and that States must show in a specific and individualized fashion the nature of the threat posed by the speech in question and a direct and immediate connection between this threat and the expression in question.<sup>20</sup>

37. The source also refers to the Working Group's Deliberation No. 8 on deprivation of liberty linked to/resulting from the use of the Internet, whereby a vague and general reference to the interests of national security or public order, without being properly explained and documented, is insufficient to convince the Working Group that the restrictions on the freedom of expression by way of deprivation of liberty are necessary.<sup>21</sup> The Working Group's jurisprudence consistently establishes that peaceful political and social discourse cannot be restricted on the basis that it represents a threat to national security,<sup>22</sup> and that the right to freedom of expression cannot be restricted merely to muzzle advocacy of democratic tenets or human rights.<sup>23</sup> As with the national security limitation, limitations on free speech cannot be justified by merely referencing disturbances to public order. The documentation must show that the restriction is necessary to preserve the interest of maintaining public order;<sup>24</sup>

<sup>17</sup> Emphasis added by the source. See also footnote 3 above.

<sup>18</sup> Opinion No. 15/2004, para. 14.

<sup>19</sup> The Siracusa Principles, principle 10(d), opinion No. 24/2008, para. 22

<sup>20</sup> Human Rights Committee, general comment No. 34 (2011), para. 35, quoted in opinion No. 23/2011, para. 24.

<sup>21</sup> E/CN.4/2006/7, para. 43, opinions No. 4/2005, para. 13 and No. 48/2011, para. 21.

<sup>22</sup> Opinion No. 50/2015, para. 22.

<sup>23</sup> Opinion No. 9/2015, para. 6.

<sup>24</sup> Opinion No. 23/2011, para. 25.

detention as a response to peaceful expression being invalid.<sup>25</sup> Finally, the source notes that the Working Group has consistently stated that government institutions such as the military are not immune from criticism and found on multiple occasions detentions to be arbitrary when they serve as punishment for criticizing<sup>26</sup> or demoralizing the military.<sup>27</sup>

38. The source therefore submits that the right to freedom of expression, guaranteed by article 19(2) of the Covenant and article 19 of the Universal Declaration of Human Rights, has been violated by the arrest, detention, and criminal prosecution of Mr. Gorinov by the Russian Federation, rendering his deprivation of liberty arbitrary.

ii. Violation of the right to participate in public affairs (category II)

39. With references to article 25 of the Covenant and article 21 of the Universal Declaration of Human Rights, the source notes that according to the Human Rights Committee, article 25 protects the right to freedom to engage in political activity, but also criticism of the government, expression containing political content and engaging in meetings or debates concerning political affairs.<sup>28</sup>

40. The source recalls that on 8 July 2022, the Meshchansky District Court of Moscow found Mr. Gorinov guilty of committing a public dissemination under the guise of reliable reports of deliberately false information “*using his official position*” during the Council of the Krasnoselsky district of Moscow and deprived him of his “*right to hold positions in state bodies, local self-government bodies, state and municipal institutions related to the exercise of managerial functions, the performance of organizational and administrative and economic powers for a period of 4 years*”.<sup>29</sup> The court confirmed the qualifying attribute of “*using his official position*” (subsection 2(a) of article 207.3) and noted that the documents submitted revealed that Mr. Gorinov had “*exercised the powers of an elected official of local government and performed the functions of a representative of the authorities, and used his position to commit the specified crime.*”

41. The source notes that Mr. Gorinov as a member of Krasnoselsky Municipal Council in Moscow (“municipal deputy”) in fact benefits from deputy immunity which under the Russian law follows from the content of part 1 of article 40 of the Federal Law on the General Principles of Organization of Local Self-Government in the Russian Federation and guarantees the municipal deputy “*unhindered exercise of powers*” implying that a municipal deputy cannot be held liable for political statements.<sup>30</sup>

42. The source thus submits that in regards to the political purpose of Mr. Gorinov’s speech, its content advertising for peace, its context during the Krasnoselsky Municipal Council in Moscow and the fact that it was delivered in his capacity of independent member of the said Council, the Russian Federation has manifestly violated Mr. Gorinov’s right to participate to public affairs by arresting and detaining him for the said speech and depriving him of his right to hold positions in state bodies, local self-government bodies, state and municipal institutions related to the exercise of managerial functions, the performance of organizational and administrative and economic powers for a period of 4 years.

iii. Violation of the general rule against pretrial detention (category III)

43. The source refers to the Human Rights Committee General Comment No. 35, whereby article 9(3) of the Covenant requires an individualized determination that it is reasonable and necessary, taking into account all the circumstances and whether less restrictive measures are available to ensure a criminal defendant’s appearance at trial.<sup>31</sup> The source notes that the Working Group’s practice is aligned on the Committee’s rules limiting pretrial detention and reiterated several times that pretrial detention must be an individualized exception rather than

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<sup>25</sup> Opinions No. 20/1996, para. 7 and No. 25/2011, para. 29.

<sup>26</sup> Opinions No. 50/2011, No. 53/1992 and No. 28/1998.

<sup>27</sup> Opinion No. 3/1994.

<sup>28</sup> *Aduayom, et al. v. Togo*, CCPR/C/57/D/422-424/1990, 19 August 1996; Human Rights Committee, general comment No. 25, para. 8.

<sup>29</sup> Emphasis added by the source.

<sup>30</sup> Emphasis added by the source.

<sup>31</sup> The Committee’s general comment No. 35 (2014), para. 38.

a default mechanism, affirming that “*release must be the rule and provisional detention the exception.*”<sup>32</sup>

44. The source notes that in the case at hand, on 27 April 2022, the Presnensky District Court imposed on Mr. Gorinov a measure of restraint in the form of detention until 25 June 2022 (2 months), and on 1 June 2022, the Meshchansky District Court extended the detention until 19 November 2022 (6 months), on the grounds of “*if the measure of restraint is changed for the accused, he may hide or put pressure on witnesses.*”

45. According to the source, the court ignored Mr. Gorinov’s defence that he was not going to hide from the investigation, and it did not seek less restrictive measures. Moreover, the court ignored Mr. Gorinov’s state of health and his detention conditions. On 30 April 2022, three days after entering the pre-trial detention center, Mr. Gorinov fell ill with cough and fever, but adequate medical care and treatment was not provided to him. His defence reportedly appealed to the Federal Penitentiary Service, but measures have not yet been taken and his attorney received a response on 8 June 2022, where the Federal Penitentiary Service claimed that sufficient medical help is provided to Mr. Gorinov, and that the conditions of his detention are satisfactory.

46. However, according to two letters sent by Mr. Gorinov to his counsel, no adequate medical care and treatment was provided to him - the staff only gave him the last five bromhexine tablets and nothing else despite the fact that prior to his detention, he was diagnosed with tuberculosis, as a result of which part of his lung was removed – and that he was reportedly subject to harsh pre-trial conditions in overcrowded cells in violation of the Body of Principles for the protection of all persons under any form of detention or imprisonment.

47. The source thus submits that the measure of restraint in the form of detention and its extension was neither reasonable nor necessary and was therefore in violation of the general rule against pretrial detention guaranteed by article 9(3) of the Covenant.

iv. Disproportionate and excessive sentencing (category III)

48. According to the source, the established practice of the Working Group affirms that detentions that are in response to the exercise of the freedom of opinion and expression require a “*particularly vigilant review of the application of fair trial guarantees.*”<sup>33</sup> More specifically, laws that restrict freedom of speech may have legitimate means but are prone to abuse, and violation of such laws that stifle freedom of expression should not be punished by detention at all, as such the punishment is disproportionate<sup>34</sup>, and on this issue, the General Comment No. 34 of the Human Rights Committee is unambiguous: “*imprisonment is never an appropriate penalty.*”<sup>35</sup>

49. The source recalls that on 8 July 2022, the Meshchansky District Court of Moscow “*imposed a sentence of imprisonment for a period of 7 years to be served in a correctional colony of general regime, along with a deprivation of the right to hold positions in state bodies, local self-government bodies, state and municipal institutions related to the exercise of managerial functions, the performance of organizational and administrative and economic powers for a period of 4 years*”.

50. The source thus submits that the sentencing of Mr. Gorinov is disproportionate and excessive and renders his detention arbitrary.

*Response from the Government*

51. On 27 July 2022, 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 26 September 2022, detailed information about the current situation of Mr. Gorinov and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of the Russian Federation under international

<sup>32</sup> Opinion No. 24/2015, para. 37.

<sup>33</sup> Opinion No. 4/2010, para. 21.

<sup>34</sup> Opinion No. 35/2008, para. 36; Lohé Issa Konaté v. The Republic of Burkina Faso, Application No. 004/2013, Judgment, African Court on Human and Peoples’ Rights, 5 December 2014; Herrera-Ulloa v. Costa Rica, Judgment, Inter-American Court of Human Rights, 2 July 2004.

<sup>35</sup> Emphasis added by the source. See the Committee’s general comment No. 34, para. 47.

human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of the Russian Federation to ensure his physical and mental integrity.

52. On 23 September 2022, the Government submitted its reply, in which it explains that, on 25 April 2022, the Central Investigation Department for Moscow, a unit of the Investigative Committee of the Russian Federation, opened a criminal case against Mr. Gorinov and a Ms. K.

53. The case was brought on the basis of evidence of offences under article 207.3 (2) (a), (b) and (e) (Public dissemination, under the guise of credible reports, of knowingly false information containing data on the use of the Armed Forces of the Russian Federation to protect the interests of the Russian Federation and its citizens and to maintain international peace and security, by a person using his or her official position or by a group of persons by prior conspiracy, for reasons of political hatred) of the Criminal Code of the Russian Federation.

54. It was established that, on 15 March 2022, at a videorecorded meeting of the Council of Deputies of the Krasnoselsky municipal district of Moscow, Ms. K. – for reasons of political hatred, using her official position, being aware that her actions were illegal and constituted a danger to society and foreseeing the inevitability of socially dangerous consequences, namely, that she would undermine the authority of and discredit the current Government and the Armed Forces of the Russian Federation – by prior conspiracy with Mr. Gorinov, publicly disseminated, under the guise of credible reports, knowingly false information containing data on the use of the Armed Forces of the Russian Federation.

55. On 17 March 2022, in order to publicize the aforementioned knowingly false information, a video recording of this meeting was posted, with the knowledge of Ms. K. and Mr. Gorinov, online, on the YouTube channel of the Krasnoselsky municipal district, which is accessible to an unlimited number of users, under the title “Fifth Meeting of the Council of Deputies of the Krasnoselsky municipal district on 15 March 2022”.

56. The decision of the Investigative Committee to initiate criminal proceedings was recognized as lawful by the Moscow City Prosecutor's Office.

57. On 26 April 2022, Mr. Gorinov was detained under articles 91 and 92 of the Code of Criminal Procedure of the Russian Federation. On the same day, he was charged under the aforementioned articles of the Criminal Code.

58. On 27 April 2022, the Presnensky district court in Moscow remanded Mr. Gorinov in custody, by way of a preventive measure, until 25 June 2022. The petition of the accused and his counsel for him to be placed under house arrest, with bail set at 2.5 million roubles, or prohibited from engaging in certain activities was rejected by the court (this decision was upheld by Moscow City Court on 8 June 2022).

59. As a result of Ms. K.'s absconding from the authorities conducting the preliminary investigation, on 1 May 2022, a separate criminal case was opened against Mr. Gorinov, also under article 207.3 (2) (a), (b) and (e) of the Criminal Code.

60. On 19 May 2022, the case was sent for trial by the Meshchansky district court in Moscow, a bill of indictment having been duly approved.

61. On 1 June 2022, at the request of the public prosecutor, the court extended Mr. Gorinov's remand in custody until 19 November 2022, explaining that no new circumstances had arisen that would entail the application of another, milder preventive measure in respect of the accused, no relevant evidence in that regard having been presented by the defence (this decision was upheld by Moscow City Court on 12 July 2022).

62. On 8 July 2022, the Meshchansky district court in Moscow found Mr. Gorinov guilty of publicly disseminating, under the guise of credible reports, knowingly false information containing data on the use of the Armed Forces of the Russian Federation to protect the interests of the Russian Federation and its citizens and to maintain international peace and security, by a person using his or her official position or by a group of persons by prior conspiracy, for reasons of political hatred.

63. The court found that Mr. Gorinov, acting with an accomplice, had used his official position as a member of the Council of Deputies of the Krasnoselsky municipal district of

Moscow to criticize the actions of the Armed Forces of the Russian Federation in Ukraine and had knowingly posted online the related video recording, which, as a result, had been viewed by about 43,000 people.

64. In substantiation of its finding of guilt, the court referred to the testimony of witnesses who were present at the meeting of the Council of Deputies, the conclusions of forensic examinations of Mr. Gorinov's statements and the testimony of experts questioned in court.

65. The court sentenced Mr. Gorinov to 7 years' deprivation of liberty, with forfeiture of the right to occupy positions in central and local government bodies and in State and municipal institutions that involve carrying out managerial functions or exercising organizational, administrative or executive authority for a period of 4 years.

66. On the basis of article 72 (3.1) (b) of the Criminal Code, the time spent by Mr. Gorinov on remand between 26 April 2022 and the date on which his sentence becomes enforceable will be counted towards the period of deprivation of liberty, with one and a half days on remand credited as one day served in a general regime correctional colony.

67. As at 19 September 2022, the sentence had not become enforceable owing to its appeal by the defence.

68. Mr. Gorinov is being held at Remand Centre No. 1, a federally funded institution under the Federal Penal Service's department for the city of Moscow. He has been provided with an individual sleeping place. According to the results of ad hoc checks carried out on 17 August 2022 by a specialist from the Main State Public Health Inspectorate, a federally funded health institution under the Federal Penal Service, the condition of the cell where Mr. Gorinov is being held is satisfactory and the available living space complies with approved requirements. The cell is cleaned and contact surfaces treated with disinfectants, and hand sanitizer is available. In addition, during a personal interview on the same day, Mr. Gorinov stated that he had no complaints about his conditions of detention.

69. Mr. Gorinov is receiving medical care in accordance with the Procedure for the provision of medical care to remand prisoners and persons serving custodial sentences, approved by Order No. 285 of the Ministry of Justice of 28 December 2017. During his detention, he has been examined on multiple occasions and seen by medical specialists. No violations of the requirements of Federal Act No. 323-FZ of 21 November 2011 on the Principles of Health Care for Citizens of the Russian Federation have been identified in his case.

70. In order to prevent the outbreak and spread of new infections with the coronavirus disease, a set of essential public health (preventive) measures has been organized in the institutions of the Federal Penal Service in Moscow, in accordance with the relevant decisions of the Service's Chief State Medical Officer. However, according to the Prosecutor's Office, from 19 to 28 May 2022, Mr. Gorinov was held in cells at the remand centre that provided less than 4 square metres of living space per inmate, in breach of article 23 of Federal Act No. 103-FZ of 15 July 1995 on the Custody of Suspects and Accused Persons. Moreover, contrary to article 33 of the Act, from 28 May to 3 June 2022, Mr. Gorinov was held in a cell with a person accused of organizing a criminal association (organization). In connection with the violations identified, on 30 June 2022 a recommendation was made to the head of the local agency of the Federal Penal Service, which was considered and complied with under the established procedure.

71. At present, Mr. Gorinov is accommodated in a cell measuring 22 square metres and equipped with four bunks, in which four people are being held, including himself.

*Additional comments from the source*

72. On 27 September 2022, the Government's response was sent to the source for further comments, which it provided on 6 October 2022.

73. The source argues that the Government had not refuted the allegations listed in the complaint demonstrating that Mr. Gorinov's arrest and detention were arbitrary. The Government's recitation of the facts and procedures followed, as well as the conditions of detention and the medical care supposedly provided, did not undermine the allegations made by the source.

74. The source notes, in particular, that the Government did not contest that Mr. Gorinov was convicted based on the statements reported in the complaint. The source states that the procedural recitation in the Government's response was accurate apart from its omission to mention that on 19 September 2022, the appellate instance of the Moscow City Court changed the sentence. In this respect, the source adds that the court of appeal found that "despite the fact that Mr. Alexey Gorinov's statements were not factual statements, but his opinions, it is still irrelevant, because his opinions were not corresponding to the official position of the Russian government" and "lowered" his sentence from 7 year of imprisonment to 6 years and 11 months.

75. In relation to Mr. Gorinov's conditions of detention and medical care, the source argues that the Government's response acknowledges two violations of Russian Federal Law, first with respect to holding him, from May 19 to May 28, in the cells of the pre-trial detention center, in less than 4 square meters per person; and second for holding him, from May 28 to June 3, 2022, in a cell room together with other detainees accused of organizing a criminal association.

76. The source states that Mr. Gorinov remains held in the pre-trial detention center 1 of the city of Moscow "Matrosskaya Tishina", in a cell which is adapted for the maintenance of four people, but an additional place have been installed in this cell and five people are kept inside.

### Discussion

77. The Working Group thanks the source and the Government for the submissions. In determining whether Mr. Gorinov's deprivation of liberty 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 for breach of the 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.<sup>36</sup>

#### i. Category II

78. Looking to category II, the source submits that the deprivation of liberty of Mr. Gorinov is the result of his peaceful exercise of the right to freedom of expression under article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights, and his right to engage in political activity under article 25 of the Covenant and article 21 of the Universal Declaration of Human Rights. Conversely, the Government argues that he was convicted for, together with another, publicly disseminating information that he knew to be false under the guise of credible reports, which contained "data" on the use of the Armed Forces of the Russian Federation.

79. The Working Group recalls that that freedom of opinion and freedom of expression as expressed in article 19 of the Covenant are indispensable conditions for the full development of the person and are essential for any society and in fact constitute the foundation stone for every free and democratic society.<sup>37</sup> Freedom of expression includes the right to seek, receive and impart information and ideas of all kinds regardless of frontiers and this right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions.<sup>38</sup> It protects the holding and expression of opinions, including those which are critical of, or not in line with, government policy.<sup>39</sup>

80. The Government refers to the fact that Mr. Gorinov was convicted on the basis of a law – specifically criminal article 207.3, which made "*public dissemination of deliberately false information about the use of the Russian armed forces or government authorities' activities outside Russia*" punishable with a penalty of up to 15 years in prison. However, the Working Group notes that, whereas speech may be limited according to article 19(3) of the Covenant and article 29(2) of the Universal Declaration of Human Rights, the sole fact that

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<sup>36</sup> A/HRC/19/57, para. 68.

<sup>37</sup> Human Rights Committee, general comment No. 34, para 2.

<sup>38</sup> Ibid., para 11.

<sup>39</sup> Opinions No. 79/2017, para. 55 and No. 8/2019, para. 55.

it may be criminalized under domestic law does not deprive individuals of their right to freedom of speech under international law. In this respect, 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, certain types of expression should never be subject to restrictions such as discussion of government policies, and *political activities, including for peace or democracy* (emphasis added).<sup>40</sup> It has called on States to refrain from imposing restrictions under article 19 (3) that are not consistent with international human rights law.<sup>41</sup> Moreover, the Working Group recalls that in a Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda, adopted in Vienna on 3 March 2017, several experts (including the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression) stated that general prohibitions on the dissemination of information based on vague and ambiguous ideas, including false news or information, are incompatible with international standards for restrictions on freedom of expression and should be abolished.<sup>42</sup>

81. The Working Group considers that Mr. Gorinov’s statements fell within the right to freedom of opinion and expression protected under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant and that he was detained for exercising this right. Mr. Gorinov’s statements, as reported, did not call for violence or war. To the contrary, they highlighted the harmful impacts of war and called for its end. It is difficult to imagine an issue falling more squarely within the protective ambit of the right to freedom of expression. Indeed, prohibiting this type of speech would turn the Covenant on its head, particularly article 20(1), according to which “[a]ny propaganda for war shall be prohibited by law.”

82. The right to take part in the conduct of public affairs is protected under article 21 of the Universal Declaration of Human Rights and article 25 (a) of the Covenant. The Human Rights Committee has stated that citizens may take part in the conduct of public affairs by exerting influence through public debate.<sup>43</sup> This right is also applicable when the citizen is a publicly elected or appointed official. It protects the freedom to engage in political activity, including criticism of the government and its policies and engaging in meetings or debates concerning political affairs.<sup>44</sup>

83. The Working Group notes that Mr. Gorinov is an independent member of Krasnoselsky Municipal Council in Moscow and an active member of Russian civil society engaged in political and civil rights issues. He has clearly been detained for statements made in relation to his participation in public life. His detention will impede his ability to exercise his rights in this respect. The Working Group considers that this constitutes a violation of article 21 of the Universal Declaration of Human Rights and article 25 (a) of the Covenant

84. The Government did not present any argument or evidence to the Working Group justifying limitations on these rights and freedoms permitted under the Universal Declaration of Human Rights and the Covenant in the present case, nor did it demonstrate why bringing charges against Mr. Gorinov was a legitimate, necessary and proportionate response to his anti-war statements. To the extent Mr. Gorinov’s comments were portrayed as criticisms of the actions of the Russian Federation and its armed forces, this does not remove them from the protection of the right to freedom of expression. The Working Group has repeatedly stated that the State and its military is not immune from criticism.<sup>45</sup> Similarly, the Human Rights Committee has explicitly confirmed that “States parties should not prohibit criticism of institutions, such as the army or the administration”.<sup>46</sup>

85. Noting all of the above, the Working Group concludes that the detention of Mr. Gorinov resulted from the legitimate exercise of his right to freedom of expression and his right to participate in public life, as protected by articles 19 and 25 of the Covenant and articles 19 and 21 of the Universal Declaration of Human Rights. His detention is therefore

<sup>40</sup> A/HRC/14/23, para. 81(i).

<sup>41</sup> A/HRC/RES/12/16, para. 5(p).

<sup>42</sup> <https://www.ohchr.org/Documents/Issues/Expression/JointDeclaration3March2017.doc>, para. 2.a. See also opinions No. 46/2020, para. 54 and No. 77/2020, para. 73.

<sup>43</sup> See the Committee’s general comment No. 25 (1996), para. 61.

<sup>44</sup> *Ibid.*, para. 8.

<sup>45</sup> Opinions No. 50/2011, para.18 and No. 28/1998, para.13.

<sup>46</sup> The Committee’s general comment No. 34, para. 38.

arbitrary, falling under category II. 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, for appropriate action.

ii. Category III

86. Given its finding that the deprivation of liberty of Mr. Gorinov is arbitrary under category II, the Working Group wishes to emphasize that no trial of Mr. Gorinov should have taken place. However, the trial did take place, and Mr. Gorinov was sentenced to a lengthy term of 7 years imprisonment (subsequently reduced to 6 years and 11 months). The source has submitted that there were severe violations of the fair trial rights of Mr. Gorinov, especially with regard to his pretrial detention, and that his subsequent detention was disproportionate, and thereby his detention falls under category III. The Government, for its part, disputes that Mr. Gorinov was deprived of his due process rights and provides details as to the various stages of the proceedings against him and the laws under which those proceedings were undertaken. Regarding his pre-trial detention, it points out that this was ordered on the basis that he may “hide or put pressure on witnesses”.

87. The Working Group recalls that article 9 (3) of the Covenant provides that “it shall not be the general rule that persons awaiting trial shall be detained in custody”. The Human Rights Committee has confirmed that pretrial detention should be an exception and as short 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, such as bail, electronic bracelets, or other conditions, would render detention unnecessary in the particular case.<sup>47</sup>

88. In addressing the claims under category III, it is important to bear in mind the underlying conduct for which Mr. Gorinov was prosecuted consisted of several statements. There is no indication that he engaged in or called for any kind of violence; in fact his statements indicate the opposite. In this respect, the Human Rights Committee has observed in related to prosecutions concerning speech and expression that

“restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected... [t]he principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law.”<sup>48</sup>

89. Given that the allegations against Mr. Gorinov concerned speech, with no indication of violent threats, the onus was on the Government to demonstrate, on an objective and substantiated basis, another accepted justification for the imposition of exceptional pretrial detention. However, the Working Group does not consider that the Government’s speculative and vague statement that he “may hide or put pressure on witnesses” was a sufficient basis explanation for his pretrial detention. The Government’s reference to another person (“Mrs. K”) allegedly “absconding” is similarly vague, lacking an explanation as to its relevance to Mr. Gorinov, and, in any event, is insufficient to constitute an individualised assessment of the necessity for Mr. Gorinov’s pretrial detention.

90. In light of the circumstances set out above, as well as Mr. Gorinov’s sentence, which the Working Group discusses in the following section, and bearing in mind the context of Mr. Gorinov being criminally prosecuted for demonstrably non-violent statements, the Working Group concludes that the violation of Mr. Gorinov’s due process rights are of such gravity as to give Mr. Gorinov’s deprivation of liberty an arbitrary character under category III.

iii. Category V

91. In the present case, the Working Group has found under category II that Mr. Gorinov’s detention resulted from the legitimate exercise of his right to freedom of expression and his

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<sup>47</sup> The Committee’s general comment No. 35 (2014), para. 38.

<sup>48</sup> General comment No. 27, para. 14; reiterated by HRC in relation to freedom of expression in the general comment No. 34, para. 34.

right to participate in public life. 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 based on political or other views.<sup>49</sup> Accordingly, the Working Group will examine the allegations under category V.

92. In this respect, the source has demonstrated that Mr. Gorinov was detained and sentenced to imprisonment under article 207.3 for expressing anti-war sentiments. The source has also demonstrated that many thousands of people in Russia have been imprisoned for expressing anti-war views and that article 207.3 has been used to target those who criticize the Russian government and Armed Forces regarding the war in Ukraine. For its part, the Government acknowledges that Mr. Gorinov's statements were political in nature, by referring to them as "political hatred". However, it offers no explanation as to which detention was a necessary and proportionate measure and instead simply asserts that it was done "to protect the interests of the Russian Federation and its citizens and to maintain international peace and security". Such claims cannot override international human rights law obligations, including the obligation not to discriminate against people based on their political opinions. Consequently, the Working Group concludes that his detention has been conducted on a discriminatory basis, namely due to his anti-war political opinion, and constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2(1) and 26 of the Covenant. It is accordingly arbitrary under category V.

iv. Concluding Remarks

93. In relation to his sentence, the Working Group notes that Mr. Gorinov has been sentenced to 7 years imprisonment (reduced to 6 years 11 months). The Government indicates that once Mr. Gorinov's sentence becomes enforceable, the number of days that he has been held in detention will be taken into consideration. However, he is still due to be detained for a lengthy period of time, merely for exercising his human rights and on the basis of the flawed application of the judicial procedures. While the appropriate sentence is a matter for domestic judicial bodies to determine, the Working Group has previously noted its concern about custodial sentences for matters related to freedom of expression. As noted, Mr. Gorinov's statements, as reported, did not call for violence or war, but instead highlighting the harmful impacts of war and calling for its end. The Working Group has already concluded that prosecuting this speech constituted a violation of inter alia Mr. Gorinov's right to freedom of expression. It considers that the imposition of a custodial sentence on Mr. Gorinov for exercising his freedom of expression and participating in public life indicates that the violations of his rights set out above, were particularly aggravated. This further reinforces the arbitrariness of his detention.

94. Additionally, the Working Group noted with concern the allegations that inadequate medical care and treatment was provided to Mr. Gorinov and he was diagnosed with tuberculosis, as a result of which part of his lung was removed, as well as that he was reportedly subjected to pre-trial conditions in overcrowded cells. The Working Group feels obliged to remind the Government that in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect to the inherent dignity of the human person and that denial of medical assistance constitutes a violation of the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rules 1, 24, 25, 27 and 30 in particular.

**Disposition**

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

The deprivation of liberty of Mr. Gorinov, being in contravention of articles 2, 3, 7, 9, 19 and 21 of the Universal Declaration of Human Rights and articles 2(1), 9 (3), 19, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories II, III, and V.

96. The Working Group requests the Government of Russia to take the steps necessary to remedy the situation of Mr. Gorinov 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.

<sup>49</sup> Opinions No. 88/2017, para. 43, No. 13/2018, para. 34 and No.59/2019, para. 79.

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

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

99. 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, for appropriate action.

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

#### **Follow-up procedure**

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

102. 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.

103. 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 any failure to take action.

104. 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>50</sup>

*[Adopted on 16 November 2022]*

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<sup>50</sup> Human Rights Council resolution 51/8, paras. 6 and 9.