

**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fifth session, 12–16 August 2019****Opinion No. 34/2019 concerning Vladimir Alushkin (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 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 5 April 2019 the Working Group transmitted to the Government of the Russian Federation a communication concerning Vladimir Alushkin. The Government submitted a late response on 24 June 2019. 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, 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. Vladimir Alushkin, born in June 1964, is a citizen of the Russian Federation. He usually resides in the city of Penza in the Russian Federation. He is a religious minister of Jehovah's Witnesses.

#### (a) Background

5. The source reports that, on 20 April 2017, the Supreme Court of the Russian Federation granted the application of the Ministry of Justice (supported by the Prosecutor General) and ruled to liquidate the national Administrative Centre and 395 local religious organizations of Jehovah's Witnesses in the Russian Federation ("the liquidation decision"). On 17 July 2017, the Appellate Chamber of the Supreme Court upheld the liquidation decision and it entered into legal force that same day.

6. The source adds that this liquidation decision is the culmination of a decades-long State attack on Jehovah's Witnesses. The State has allegedly used the purported aim of combating extremism as a "cover" to conceal its real aim, which is to wipe out the religious practices of Jehovah's Witnesses, to intimidate individual Jehovah's Witnesses into abandoning their faith and to stir up public hatred and suspicion against them so that others do not join their faith. The source also adds that two applications challenging the liquidation decision are now pending before the European Court of Human Rights. The Court has given both applications priority status.<sup>1</sup>

7. At the time of the submission by the source, State authorities have reportedly initiated criminal proceedings against at least 103 Jehovah's Witnesses in 35 different cities of the Russian Federation, of whom more than 55 have been placed in pretrial detention or under house arrest. Those cases all rely on the liquidation decision and allege that it is now a criminal offence to practise the faith of Jehovah's Witnesses in the Russian Federation, including meeting together to worship, possessing their religious publications and sharing their religious beliefs with others.

#### (b) Arrest and detention

8. According to the source, on 11 July 2018, a criminal case was initiated by an investigator against Mr. Alushkin under article 282.2 (1) of the Criminal Code (organizing the activity of an extremist organization) and a second case against "unidentified" Jehovah's Witnesses under article 282.2 (2) of the Criminal Code (participating in the activity of an extremist organization). The criminal charges alleged that Mr. Alushkin was a religious minister of Jehovah's Witnesses and "exercised overall supervision" of their religious activity in the city of Penza. It was alleged that Mr. Alushkin and individual Jehovah's Witnesses in Penza had committed a criminal offence by practising their faith, which purportedly contravened the liquidation decision. In particular, it was alleged that they had committed a criminal offence "by holding conversations in public places and residential premises with the inhabitants of the city of Penza ... by recruiting new members from among their relatives, friends and residents of the city of Penza" and holding religious services "to study their ideology".

9. That same day, 11 July 2018, the Investigative Directorate of the Investigative Committee of the Russian Federation for the Penza Region reportedly ruled to combine the two criminal cases, and the Pervomayskiy District Court of the city of Penza granted the investigator a motion to search the residence of Mr. Alushkin. The source adds that the Court did so even though the investigator did not attend the court hearing to explain and substantiate his request for the search warrant. The only reason given to justify the search of Mr. Alushkin's home was the assertion that "documents relevant to the criminal case",

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<sup>1</sup> See *Administrative Centre of Jehovah's Witnesses in Russia and Kalin v. Russia* (application No. 10188/17), communicated on 1 December 2017; and *GLAZOV LRO and others v. Russia* (application No. 3215/18), communicated on 7 May 2018.

namely, religious literature and other religious items, might be found “showing that the members of the organization had friendly relationships among themselves”. The source notes that it should have been self-evident to the Court that none of those religious items could possibly have been relevant to a lawful criminal investigation. Nor was it a criminal offence for Mr. Alushkin and his fellow believers to have “friendly relationships among themselves”. Separately, the Court also granted the investigator’s motion to search the homes of three other individuals.

10. The source reports that, on 15 July 2018, heavily armed police conducted simultaneous raids of the homes of Mr. Alushkin and the three other individuals. At approximately 4 p.m., Mr. Alushkin was at home with his family and about eight guests. When one of the guests opened the door to leave, approximately 11 heavily armed police, including officers from the Special Purpose Police Unit wearing masks and armed with assault rifles, forced their way into the home. The police pointed their rifles at Mr. Alushkin and his guests, ordering the guests to put up their hands and stand against the wall. They then pushed Mr. Alushkin into the kitchen and began to search the home on the basis of a warrant. The police seized copies of the Bible, religious literature published by Jehovah’s Witnesses, mobile telephones, electronic devices and other personal possessions. The search began at 4.10 p.m. and ended at 8.25 p.m.

11. According to the source, Mr. Alushkin was arrested and detained by the police in the context of this search. He was subsequently taken by the police to the Investigative Directorate for interrogation. He was formally detained at 9.45 p.m. and placed in a temporary holding facility of the Penza Directorate of the Ministry of Internal Affairs.

12. On 16 July 2018, Mr. Alushkin was reportedly indicted under article 282.2 (1) of the Criminal Code. The grounds for the criminal charge are identical to those for opening the criminal case (see para. 8 above).

13. On 17 July 2018, the investigator applied to the Pervomayskiy District Court of the city of Penza to place Mr. Alushkin in pretrial detention. The source adds that the presiding judge was the same judge who, on 11 July 2018, authorized the search of his home. In granting the investigator’s motion to place Mr. Alushkin in pretrial detention for two months, until 14 September 2018, the Court did not cite any evidence that established a reasonable suspicion that he had committed a crime. Instead, it summarily ruled that the suspicion was justified by “materials submitted to the Court”, without specifying what those materials were or what evidence in those materials established a reasonable suspicion of guilt. The Court also failed to provide any reasons why it considered that pretrial detention was necessary, relying instead on the stereotyped reasoning that Mr. Alushkin “had been accused of a grave crime” and that he had an international passport with a valid Schengen visa and therefore might abscond. The Court failed to consider, however, that Mr. Alushkin’s passport had been seized by the investigator, and it was obviously impossible for him to leave the Russian Federation based on that Schengen visa.

14. Mr. Alushkin was subsequently transferred to a pretrial detention centre, namely FKU, SIZO-1, Federal Penitentiary Service, Penza. The source adds that his appeal of the pretrial detention decision was rejected on 1 August 2018 by the Penza Regional Court.

15. On 11 September 2018, the Pervomayskiy District Court reportedly granted the investigator’s motion to extend the period of pretrial detention by two months, until 14 November 2018, because the investigator had not completed the criminal investigation. The Court again failed to establish a reasonable suspicion that Mr. Alushkin had committed a crime or that pretrial detention continued to be necessary. Mr. Alushkin’s appeal of that decision was rejected on 28 September 2018 by the Penza Regional Court.

16. According to the source, on 12 November 2018, the Pervomayskiy District Court granted the investigator’s motion for a second extension of pretrial detention for a further two months, until 14 January 2019, because the criminal investigation was not complete. Once again, the Court failed to establish a reasonable suspicion that Mr. Alushkin had committed a crime or that pretrial detention continued to be necessary. The source adds that the Court attempted to justify the detention, not by referring to the actions of Mr. Alushkin, but those of his fellow believers who, according to covert surveillance, were continuing “to arrange secret [religious] meetings” and who were exercising their right against self-

incrimination guaranteed by article 51 of the Constitution by refusing to answer any questions asked of them during police interrogations.

17. The source reports that, in ordering that Mr. Alushkin be placed in pretrial detention, the Pervomayskiy District Court relied on articles 97 and 99 of the Criminal Procedure Code in a stereotyped and abstract way to conclude that pretrial detention was necessary. The Court reportedly repeated that same error when granting the two extensions to the pretrial detention order.

18. On 14 January 2019, the Pervomayskiy District Court changed Mr. Alushkin's preventive measure from pretrial detention to house arrest until 14 March 2019. At that point, he had been held in pretrial detention for almost six months. On 11 March 2019, the Court extended Mr. Alushkin house arrest until 14 May 2019.

(c) Analysis of violations

19. The source submits that Mr. Alushkin's arrest and detention were arbitrary under categories II, III and V of the categories applied by the Working Group.

(i) Category II

20. The source submits that Mr. Alushkin was arrested and detained simply for peacefully exercising his personal religious beliefs, including by gathering together for worship with fellow believers. In doing so, he was exercising his rights to freedom of religion and freedom of expression as guaranteed by articles 18 and 19 of the Universal Declaration of Human Rights and articles 18 and 19 of the Covenant.

(ii) Category III

21. The source also submits that the State authorities gave no reasons to justify the order to place Mr. Alushkin in police custody and the subsequent decisions to place him in pretrial detention, in violation of article 9 of the Covenant. The national courts merely repeated the general wording of articles 97 and 99 of the Criminal Procedure Code without pointing to any evidence that justified detention.

(iii) Category V

22. The source further submits that the State authorities targeted Mr. Alushkin for prosecution because they consider him to be a religious leader of Jehovah's Witnesses in Penza. His arrest and prosecution were ostensibly based on the liquidation decision of the Supreme Court, which the State authorities have construed as imposing a total ban on the religious activity of Jehovah's Witnesses. Mr. Alushkin was thus targeted for prosecution and detention based on the discriminatory grounds of his religious beliefs, contrary to articles 18 and 26 of the Covenant.

(d) Legal arguments put forward by the source

23. The source submits that Mr. Alushkin has been subjected to arbitrary arrest and detention and deprivation of his liberty in at least three respects: (a) he was arrested and detained at his home on 15 July 2018 from 4 p.m. to 8.25 p.m. by at least 11 police officers while they conducted a search of his home; (b) he was formally detained in police custody on 15 July 2018 from 9.45 p.m. until 17 July 2018; and (c) from 17 July 2018 until 14 January 2019, he was detained in pretrial detention.

24. According to the source, the arrest of Mr. Alushkin on 15 July 2018 and his police detention were arbitrary and in violation of article 9 (1) of the Covenant. The sole motive of that arrest and detention was that Mr. Alushkin was practising his faith as one of Jehovah's Witnesses, including by meeting for peaceful worship, all of which are "legitimate" activities protected under the Covenant.<sup>2</sup>

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<sup>2</sup> The source refers to the Working Group's opinion No. 62/2017, paras. 36 and 39.

25. According to the source, the decision of the Pervomayskiy District Court of 17 July 2018 placing Mr. Alushkin in pretrial detention and the decisions dated 11 September and 12 November 2018 extending the period of pretrial detention were also arbitrary, and in violation of article 9 (3) of the Covenant. Neither the investigator nor the Pervomayskiy District Court referred to any evidence that established a reasonable suspicion that Mr. Alushkin had committed any crime. The sole reason he was arrested and placed in pretrial detention was because he was a religious minister of Jehovah's Witnesses and continued to meet with fellow believers for worship, rights that are fully protected by the Covenant. The source asserts that his arrest and detention is therefore arbitrary and discriminatory.

26. The source notes that, when ordering that Mr. Alushkin be detained in pretrial detention, the Pervomayskiy District Court provided no reasons proving that such detention was necessary. The source adds that the Court cited no evidence, because there was none.<sup>3</sup>

27. The source also submits that the fact that the police had a court order authorizing the search of Mr. Alushkin's home does not turn an otherwise unlawful search into a lawful one. It is further submitted that the sole purpose of the search undertaken on 15 July 2018 was reportedly based on a fundamentally flawed and discriminatory criminal investigation in which it was wrongly claimed that it was illegal for Jehovah's Witnesses to gather in the city of Penza for worship. The source adds that the rights to freedom of religion and freedom of association protected by the Covenant guarantee that Mr. Alushkin, his family and fellow believers have the right to freely practise their faith. It follows that the police search of the home of Mr. Alushkin and the seizure of Bibles, religious literature, mobile telephones and other personal goods were arbitrary and unlawful, contrary to article 17 (1) of the Covenant.

28. The source further submits that the decision to arrest Mr. Alushkin and place him in pretrial detention because of his religious beliefs and practices as a religious minister of Jehovah's Witnesses has interfered with his rights under article 18 (1) of the Covenant. The search of his home and the seizure of his Bibles and religious texts, which he uses for worship, have also interfered with his rights under this provision as has the pretrial detention order, which prevents him from meeting for worship with his fellow believers.<sup>4</sup>

29. The source also refers to article 18 (2) of the Covenant, whereby no one shall be subject to coercion that would impair his or her freedom to have or to adopt a religion or belief of his or her choice. However, according to the source, this was precisely the intent of the State authorities in the present case. Their heavy-handed actions during the home search and the subsequent pretrial detention order were allegedly designed to terrorize Mr. Alushkin, his family and fellow believers into abandoning their faith as Jehovah's Witnesses.

30. The source adds that the State has allegedly used its purported aim of combating "extremism" as "a cover" to conceal its real aim of attempting to wipe out the religious practice of Jehovah's Witnesses in the Russian Federation, to intimidate individual Jehovah's Witnesses into abandoning their faith and to stir up public hatred and suspicion against them so that others do not join their faith. In doing so, the State has exercised unlawful coercion. The source notes that these same actions also violate article 5 of the Covenant, which prohibits the State from engaging in any activity or act "aimed at the destruction" of rights guaranteed by the Covenant.

31. The source underlines that, far from being a criminal offence, Mr. Alushkin's peaceful religious activity is protected by article 18 of the Covenant. None of his activity, or the activity of his fellow believers, could be legitimately described as "extremist". The Bible, the religious publications of Jehovah's Witnesses and the religious services of Jehovah's Witnesses are entirely peaceful and do not contain calls to violence or incitement of religious hatred or statements that are "gratuitously offensive". Accordingly, there has also been a violation of article 18 (3) of the Covenant.

<sup>3</sup> Ibid., para. 45.

<sup>4</sup> Ibid., para. 39.

32. The source adds that Jehovah's Witnesses are a religious minority in the Russian Federation. The actions of the State authorities, as described in the present case, have denied Mr. Alushkin, his family members and their fellow believers the right to profess and practise their own religion freely. Although in a comparable situation to members of other religions, they have received less-favourable treatment without "reasonable and objective grounds" for such a difference in treatment. According to the source, the sole difference for that treatment is religious beliefs.

33. The source submits that the State's actions were solely motivated by its discriminatory aim to stop the religious practices of Jehovah's Witnesses in the Russian Federation. The source adds that no other religious organization in the Russian Federation, much less a "traditional religion", has been treated in such a manner by Russian officials.<sup>5</sup>

34. The source notes that the facts of the present case must also be considered in the context of the State's ongoing attack against Jehovah's Witnesses, which culminated with the Supreme Court's liquidation decision. The Administrative Centre and all 395 local religious organizations of Jehovah's Witnesses have now been liquidated and put on the federal list of banned non-commercial organizations and on the federal list of terrorists and extremists.

35. According to the source, as of 9 December 2018, the State authorities had initiated criminal proceedings against at least 103 Jehovah's Witnesses in 35 different cities of the Russian Federation, of whom more than 55 had been placed in pretrial detention or under house arrest. A number of those accused persons are already included in on the federal list of extremists and terrorists, including Mr. Alushkin. The source adds that, in 2017 and 2018, nearly 2,000 Jehovah's Witnesses fled the Russian Federation, seeking asylum in Europe or North America as victims of the State's religious persecution. Some have reportedly already been granted asylum on the grounds that Jehovah's Witnesses in the Russian Federation are the victims of State religious persecution. The source asserts that in no other modern-day democratic country has a peaceful religious minority sustained such a severe State attack on its beliefs and practices. The source thus submits that Mr. Alushkin has suffered a violation of his rights under articles 26 and 27 of the Covenant.

#### *Response from the Government*

36. On 5 April 2019, 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 4 June 2019, detailed information about the current situation of Mr. Alushkin and to clarify the legal provisions justifying his continued detention, and its compatibility with the State's obligations under international human rights law, in particular with regard to the treaties that it had ratified. Moreover, the Working Group called upon the Government to ensure his physical and mental integrity.

37. On 24 June 2019, the Working Group received a reply from the Government. The reply was late and the Working Group regrets that the Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work. The Working Group therefore cannot accept the reply as if it were presented within the time limit.

#### **Discussion**

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

39. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

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<sup>5</sup> Ibid., paras. 47–50.

40. Before embarking upon an examination of the substance of the claims made by the source, the Working Group must first examine two preliminary issues.

41. First, the Working Group notes that Mr. Alushkin is no longer held in pretrial detention given that, on 14 January 2019, he was placed under house arrest, which remains the case to date. The Working Group notes, however, that the charges against Mr. Alushkin remain and the investigations are ongoing. If convicted, Mr. Alushkin faces a serious term of imprisonment. Moreover, Mr. Alushkin spent six months in pretrial detention. The Working Group also takes the view that the present case raises a serious issue as it concerns the impact of the liquidation of the Jehovah's Witnesses as a legal entity in the Russian Federation. Consequently, and in accordance with paragraph 17 (a) of its methods of work, in which the Working Group reserves the right to render an opinion, on a case-by-case basis, on whether the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned, the Working Group shall proceed to examine the submission.

42. Second, the Working Group notes that the source submits that two applications are now pending before the European Court of Human Rights, challenging the decision of the Supreme Court to liquidate Jehovah's Witnesses organizations in the Russian Federation (see para. 6 above). The Working Group must therefore examine whether the application to the European Court of Human Rights precludes the Working Group's entertainment of the source's submission in the present case.<sup>6</sup>

43. The competence of the Working Group is defined in the resolutions of the Human Rights Council (formerly the Commission on Human Rights until 2006) and the Working Group's methods of work.<sup>7</sup> As such, the Working Group has a duty to process communications that relate to the issues that fall within the mandate conferred upon it by the Human Rights Council and that have been submitted in accordance with its methods of work. The applicable procedural rules do not stipulate that the Working Group should refrain from considering matters that are being or have been examined under other regional human rights protection systems. In this context, it should be recalled that, for instance, the Working Group has declared itself competent to deal with cases that had also been considered by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.<sup>8</sup>

44. The Working Group recalls that recently it considered a case that had been examined by the European Court of Human Rights on two occasions.<sup>9</sup> In that case, the Working Group declared that there was nothing to prevent it from examining the case and the Working Group sees no reasons to do otherwise in the present case, especially taking into consideration that the two applications noted by the source do not address the individual circumstances of the detention of Mr. Alushkin and both of them are still to reach the stage of a consideration of the merits.

45. Throughout its activities, the Working Group adheres to its methods of work and to practice consistently used and accepted by the parties to the proceedings. For these reasons, the Working Group considers itself fully competent and obliged to consider the present case in the interests of justice and human rights.

46. The source submits that the arrest and detention of Mr. Alushkin was arbitrary and falls under categories II, III and V of the Working Group. The Government has chosen not to respond to any of these allegations in a timely fashion, nor to request an extension of the time limit. The Working Group shall examine the submissions made in turn.

47. The source submits that Mr. Alushkin was arrested and detained merely for peacefully exercising his religious beliefs, including by gathering together for worship with fellow believers. In doing so, he was exercising the rights to freedom of religion and freedom of expression as guaranteed by articles 18 and 19 of the Universal Declaration of

<sup>6</sup> See the Working Group's previous discussion in opinion No. 52/2011, paras. 25–38.

<sup>7</sup> See Human Rights Council resolution 33/30 and A/HRC/36/38.

<sup>8</sup> See, e.g., opinions No. 9/2005, No. 52/2011, No. 21/2013, No. 16/2016, No. 57/2016 and No. 53/2018.

<sup>9</sup> See opinion No. 89/2018.

Human Rights and articles 18 and 19 of the Covenant. The Government has chosen not to reply to these allegations in a timely manner. However, the Government submits that the Supreme Court ruled, on 20 April 2017, on the liquidation of Jehovah's Witnesses organizations due to their extremist activities. According to the Government, since Mr. Alushkin renewed the work of this extremist organization, as well as organized its work in the city of Penza, he committed a criminal offence for which he was prosecuted, as required by national legislation.

48. The Working Group observes that article 18 (1) of the Covenant states that everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom, either individually or in community with others and in public or private, to manifest one's religion or belief in worship, observance, practice and teaching. As this right applies to "everyone", it undoubtedly applies to the Jehovah's Witnesses' religious practices and manifestations.<sup>10</sup>

49. In its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion (para. 4), the Human Rights Committee explains that the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to the building of places of worship. In addition, the practise and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.

50. The Working Group recalls that the right to hold or adopt a religion or belief is an absolute right upon which no restrictions can be permitted and from which no derogations are possible.<sup>11</sup> However, the freedom to manifest religion is not an absolute right and article 18 (3) permits restrictions to the right to manifest religion if these are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. As the Human Rights Committee argues in its general comment No. 22 (para. 8), limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated.

51. The source argues that Mr. Alushkin is charged with two crimes: (a) organizing the activity of an "extremist" organization; and (b) participating in the activity of an "extremist" organization, allegations that the Government has chosen not to deny. The criminal charges alleged that Mr. Alushkin was a religious minister of Jehovah's Witnesses and "exercised overall supervision" of their religious activity in Penza, which was illegal following the liquidation decision of the Supreme Court. In particular, it was alleged that they had committed a criminal offence "by holding conversations in public places and residential premises with the inhabitants of the city of Penza ... recruiting new members from among their relatives, friends and residents of the city of Penza" and holding religious services "to study their ideology".

52. The Working Group is unable to accept that any of these activities could be described as organization of or participation in the activities of an extremist organization; nor can it see any other reasons that might justify the limitation of Mr. Alushkin's rights under article 18 of the Covenant. All the activities that Mr. Alushkin engaged in were entirely peaceful religious discussions. It is clear to the Working Group that Mr. Alushkin did nothing more than exercise his right to freedom of religion under article 18 of the Covenant and for this he was detained by the authorities and ultimately spent six months in pretrial detention. The Working Group is particularly mindful of the fact that, even in its late response, the Government does not provide any examples of extremist activities or the organization of such that Mr. Alushkin has engaged in.

53. Moreover, the search of Mr. Alushkin's home and the seizure of his Bibles and religious texts, which he uses for worship, have also interfered with his rights under article

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<sup>10</sup> See also opinions No. 40/2018, No. 69/2018 and No. 11/2019.

<sup>11</sup> See Human Rights Committee, general comment No. 22, para. 3. See also opinion No. 69/2018.



18 of the Covenant. The Working Group therefore concludes that the arrest of Mr. Alushkin falls under category II. The Working Group refers the present case to the Special Rapporteur on freedom of religion or belief, for appropriate action.

54. Given its finding that the deprivation of liberty of Mr. Alushkin is arbitrary under category II, the Working Group wishes to emphasize that Mr. Alushkin should not have been arrested and held in pretrial detention and no trial of Mr. Alushkin should take place.

55. However, Mr. Alushkin was arrested and held in pretrial detention and, although his pretrial detention has been replaced by house arrest now, the investigation against him is ongoing. The source submits that the arrest and detention of Mr. Alushkin was arbitrary and falls under category III since no reasons were given to place him in pretrial detention. The national courts merely repeated the general wording of articles 97 and 99 of the Criminal Procedure Code without pointing to any evidence that justified the application of pretrial detention. The source also argues that Mr. Alushkin's rights were violated as he was arrested and detained at his home on 15 July 2018 from 4 p.m. to 8.25 p.m. by at least 11 police officers while they conducted a search of his home and that he was formally detained in police custody on 15 July 2018 from 9.45 p.m. until 17 July 2018.

56. In relation to the claims of the source indicating that Mr. Alushkin's rights were violated during his initial detention between 15 and 17 July 2018, the Working Group has already concluded that Mr. Alushkin should not have been arrested and detained nor should the search have been conducted (see para. 55 above) as those violated his rights under article 18 of the Covenant.<sup>12</sup>

57. Turning to his pretrial detention, the Working Group recalls that it is a well-established norm of international law that pretrial detention should be the exception and not the rule, and that it should be ordered for as short a time as possible.<sup>13</sup> Article 9 (3) of the Covenant sets forth two cumulative obligations, namely to be brought promptly before a judge within the first days of the deprivation of liberty and to have a judicial decision rendered without undue delay, in the absence of which the person is to be released (A/HRC/19/57, para. 53). The Working Group recalls that this would normally be within 48 hours.<sup>14</sup>

58. This provision is completed by the second part of article 9 (3), which provides that it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. It follows that liberty is recognized as a principle and detention as an exception in the interests of justice (A/HRC/19/57, para. 54).

59. The provisions contained in article 9 (3) of the Covenant can be summarized as follows: any detention must be exceptional and of short duration; and release may be accompanied by measures intended only to ensure representation of the defendant in judicial proceedings (A/HRC/19/57, para. 56).

60. The Working Group also wishes to refer to the Human Rights Committee's general comment No. 35 (2014) on liberty and security of person (para. 38), in which the Committee states that it should not be the general practice to subject defendants to pretrial detention. Detention pending trial 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. The relevant factors should be specified in law and should not include vague and expansive standards such as "public security". Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.

<sup>12</sup> See also opinion No. 67/2017, para. 19.

<sup>13</sup> See opinions No. 28/2014, No. 49/2014 and No. 57/2014; and A/HRC/19/57, paras. 48–58. See also A/HRC/30/19; *Kovsh (Abramova) v. Belarus* (CCPR/C/107/D/1787/2008); CAT/C/TGO/CO/2, para. 12; A/HRC/25/60/Add.1, para. 84; E/CN.4/2004/56, para. 49; and CCPR/C/TUR/CO/1, para. 17.

<sup>14</sup> See Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 33.

61. In the case of Mr. Alushkin, the Working Group notes that the Government has chosen not to explain the reasons that led to the decision to remand Mr. Alushkin in custody; nor to respond to the allegations made by the source that, in granting and then extending Mr. Alushkin's pretrial detention, the Pervomayskiy District Court and the appellate court, the Penza Regional Court, failed to provide any reasons that would justify the imposition of this measure. The Working Group notes that the Government has chosen not to deny this.

62. The Working Group therefore accepts that neither the court of first instance, nor the appellate court provided any reasons justifying the pretrial detention of Mr. Alushkin. Moreover, it appears that the pretrial detention was granted to allow the investigating bodies time to complete their work and there was never any suggestion that Mr. Alushkin would interfere with the investigation or witnesses and, as the source explains, he has surrendered his passport to the investigating authorities (see para. 13 above).

63. The Working Group thus concludes that the imposition of pretrial detention upon Mr. Alushkin without the provision of any reasons justifying such, as well as the failure of the appellate court to provide such reasons, constitutes a violation of article 9 (3) of the Covenant. The Working Group therefore finds that the pretrial detention of Mr. Alushkin had no legal basis as the Pervomayskiy District Court and the Penza Regional Court failed to respect the basic premise for its imposition. Consequently, the pretrial detention of Mr. Alushkin falls under category I and not category III, as the source argues.

64. The source asserts that the State authorities targeted Mr. Alushkin for prosecution simply because he is a Jehovah's Witness, arguing that his arrest and prosecution were ostensibly based on the liquidation decision of the Supreme Court, which the investigator has construed as imposing a total ban on the religious activity of Jehovah's Witnesses. The source therefore submits that the arrest and detention of Mr. Alushkin falls under category V. The Working Group notes that the Government has chosen not to challenge these allegations.

65. The Working Group recalls that it recently examined a very similar case concerning the Russian Federation.<sup>15</sup> It also observes that there have been at least five joint urgent actions by special procedure mandates holders since 2015 expressing concerns at the banning of the religious activities of Jehovah's Witnesses in the Russian Federation; about amendments under the Yarovaya Law, including restrictions on religious expression and activities; and about the violations of the rights to freedom of expression and freedom of association and peaceful assembly of Jehovah's Witnesses in the Russian Federation.<sup>16</sup> The Working Group specifically wishes to emphasize the latest letter of allegation in which special procedure mandate holders expressed concerns about a pattern of persecution of Jehovah's Witnesses.<sup>17</sup>

66. The Working Group is also mindful that, on 14 May 2018, the third cycle of the universal periodic review for the Russian Federation took place. Among the recommendations addressed to the Russian Federation were recommendations to refrain from outlawing religious groups, including Jehovah's Witnesses, as "extremist" (A/HRC/39/13, paras. 147.199–147.204).

67. As stated earlier, the actions of Mr. Alushkin have always been entirely peaceful and there is no evidence to suggest that he or indeed Jehovah's Witnesses in the Russian Federation have ever been violent or incited others to violence. The Working Group notes that Mr. Alushkin is only one of the now ever-growing number of Jehovah's Witnesses in the Russian Federation who have been arrested, detained and charged with criminal activity on the basis of the mere exercise of freedom of religion, a right protected by article 18 of the Covenant. The Working Group therefore concludes that the arrest and pretrial detention of Mr. Alushkin was discriminatory on the basis of religion and therefore falls under category V of the Working Group.

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<sup>15</sup> See opinion No. 11/2019.

<sup>16</sup> See AL RUS 22/2018 of 20 December 2018, AL RUS 19/2018 of 14 September 2018, AL RUS 2/2017 of 23 March 2017, OL RUS 7/2016 of 28 July 2016 and AL RUS 6/2015 of 11 November 2015.

<sup>17</sup> See AL RUS 22/2018 of 20 December 2018.

68. The Working Group wishes to observe that, while this is only the second case to come before its regular communications procedure on the situation of Jehovah's Witnesses in the Russian Federation, numerous other such cases have been raised through the joint urgent action procedure by the Working Group and other special procedures (see para. 65 above). All these cases concern the branding of the peaceful religious activities of Jehovah's Witnesses as "extremist activities", which has resulted in the arrest and detention of individuals belonging to this religion. Therefore, although the present opinion concerns the particular circumstances of Mr. Alushkin, the Working Group wishes to emphasize that its findings in this opinion apply to all others in situations similar to that of Mr. Alushkin.

### **Disposition**

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

The deprivation of liberty of Vladimir Alushkin, being in contravention of articles 2, 3, 7, 9 and 18 of the Universal Declaration of Human Rights and articles 2, 9, 18 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and V.

70. The Working Group requests the Government of the Russian Federation to take the steps necessary to remedy the situation of Mr. Alushkin 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.

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

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

73. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on freedom of religion or belief, for appropriate action.

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

### **Follow-up procedure**

75. 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. Alushkin has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Alushkin;
- (c) Whether an investigation has been conducted into the violation of Mr. Alushkin's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Russian Federation with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

76. 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.

77. 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.

78. 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>18</sup>

*[Adopted on 12 August 2019]*

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<sup>18</sup> See Human Rights Council resolution 33/30, paras. 3 and 7.