

**Amicus Curiae Brief in Support of Bolot Mamatkasymovich Temirov**

**Presented by**

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## I. Statement of Interest

1. The undersigned *amici curiae* humbly submit the following brief for consideration to the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic in the cassation appeal of Bolot Mamatkasymovich Temirov. The *amici curiae* are law professors and international human rights lawyers from the Center for International Human Rights (“CIHR”), a center within Northwestern University Pritzker School of Law’s Bluhm Legal Clinic in Chicago, Illinois, United States. Collectively, they have expertise in international and regional fair trial standards, freedom of expression, and press freedom.
2. The CIHR supports the acquittal of Mr. Temirov of all charges and the reversal of his deportation order. *Amici* take the position, consistent with the views of the Human Rights Committee (HRC or Committee), United Nations (UN) Special Procedures, and numerous international and regional tribunals, that criminal prosecutions aiming to silence journalists and impede the public’s right to access to information violate international human rights law.<sup>1</sup> The *Amici Curiae* have an interest in the outcome of this case based on the CIHR’s mission to secure human rights for vulnerable individuals and human rights defenders across the globe.

## II. Summary of the Argument

3. This brief will first set forth the facts underlying Mr. Temirov’s arbitrary prosecution and deportation to the Russian Federation. It will then explain how the trial and appellate courts violated Mr. Temirov’s fair trial rights, freedom of expression, right to be free from arbitrary detention, right to *non-refoulement*, and right to nationality under international human rights law throughout the proceedings. These violations require that Mr. Temirov’s conviction and deportation order be overturned, and that he be allowed to return to Kyrgyzstan and resume his protected journalistic activities.

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<sup>1</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, arts 2(1), 3, 26, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR]. Kyrgyzstan ratified the ICCPR on October 7, 1994, and ceded to the ICCPR in accordance with Decision No. 1406-XII of 12 January 1994, adopted by the Zhogorku Kenesh. Human Rights Committee, *Third periodic report submitted by Kyrgyzstan under article 40 of the Covenant*, due in 2018 CCPR/C/KGZ/3, para. 1 (May 12, 2020); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, G.A. Res. 39/46, U.N. Doc. A/39/51 (December 10, 1984) [hereinafter CAT]. Kyrgyzstan ratified the CAT on September 05, 1997; *Abdurakhmanov v. Uzbekistan*, CCPR/C/125/D/2295/2013, para. 2.7 (May 2019); *Nagla v. Latvia*, Eur.Ct.H.R. App. No. 73469/10 (2013).

### III. Statement of Facts

a. Mr. Temirov's Background and Work as an Anti-Corruption Journalist and Human Rights Defender

4. Mr. Temirov is a 44-year-old Kyrgyz journalist and founder of New Media, a non-profit organization, and Temirov LIVE, a prominent anti-corruption platform. He was previously the editor-in-chief of Factcheck.kg, a media organization. He has been called “Central Asia’s leading anti-corruption journalist.”<sup>2</sup> In 2021, the U.S. State Department awarded Mr. Temirov the International Anti-Corruption Champions Award.<sup>3</sup> He was also a finalist for the Reporters without Borders Press Freedom Award in 2022.<sup>4</sup> Prior to the instant case, he did not have a criminal record.
  
5. Temirov LIVE is an investigative YouTube channel that reports on state corruption in the Kyrgyz Republic. Examples of Mr. Temirov’s programming on Temirov LIVE include reporting on corrupt activities of high-ranking customs official Raimbek Matraimov, and a groundbreaking investigation into the oil dealings of the family of Kamchybek Kydyrshaevich Tashiev, the head of the State Committee for National Security (SCNS), with the Kyrgyz Petroleum Company.<sup>5</sup> Mr. Temirov published the investigation into Mr. Tashiev two days before his arrest. Prior to publication of that investigation, Mr. Temirov contacted Mr. Tashiev and Mr. Tashiev’s nephew, Baigazy Matisakov, for comment. Mr. Temirov then published the investigation. Two days later, Temirov was arrested. The day after his arrest, Mr. Tashiev appeared in a press conference and stated: “All investigations of Temirov LIVE are lies.”<sup>6</sup>

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<sup>2</sup> Committee to Protect Journalists, *Kyrgyz authorities deport investigative journalist Bolot Temirov to Russia*, (Nov. 23, 2022), available at:

<https://cpj.org/2022/11/kyrgyz-authorities-deport-investigative-journalist-bolot-temirov-to-russia/>

<sup>3</sup> Radio Free Europe, *New U.S. Award Names Kyrgyz, Ukrainian Anti-Corruption Figures Among Its 12 Recipients* (Feb. 24, 2021), available at:

<https://www.rferl.org/a/united-states-anti-corruption-award-ukraine-kyrgyzstan/31118948.html>

<sup>4</sup> Radio Free Europe/Radio Liberty, *Kyrgyz Journalist Shortlisted For Press Freedom Award Unable To Travel As Passport Revoked* (Nov. 14, 2022), available at:

<https://www.rferl.org/a/kyrgyz-journalist-press-freedom-award-passport-revoked/32130026.html>

<sup>5</sup> Temirov Live, *Как заработать 37 миллионов сомов за два дня? Садыр Жапаров и схема Ташиевых*, available at: <https://www.youtube.com/watch?v=CNNUpazBJ2k> (last accessed June 28, 2023).

<sup>6</sup> Central Asian Bureau for Analytical Reporting, *The Case of Bolot Temirov: The Authorities of Kyrgyzstan Seem to Lose*.

6. Mr. Temirov was born in the city of Osh, Kyrgyzstan, on November 25, 1979.<sup>7</sup> He later moved with his family to Russia. He attended school in Moscow from grades 2 to 11 and completed university studies at Moscow State University between 1996 and 2001.<sup>8</sup>
7. Mr. Temirov is a dual citizen of the Kyrgyz Republic and the Russian Federation.<sup>9</sup> Mr. Temirov acquired Kyrgyz citizenship through his Kyrgyz parents by birth and held a Kyrgyz passport from July 11, 2008, until May 2022, when it was invalidated as a result of the instant case. Like many people born during the Soviet era, Mr. Temirov was a citizen of the Soviet Union and later acquired Russian citizenship in 2002. He was then issued a Russian passport. After his schooling in Russia, he returned to Kyrgyzstan after a few years and worked as member of the press in the service of the President’s office.<sup>10</sup>

*b. Mr. Temirov’s Arrest*

8. On Saturday, January 22, 2022, at 19:36, just two days after Mr. Temirov published the anti-corruption report on Mr. Tashiev, law enforcement conducted a search —**without judicial approval**— on the offices of New Media.<sup>11</sup> Employees and witnesses were forced to the ground in handcuffs and described the raid as a traumatic experience.<sup>12</sup>
9. The police-created warrant was based on a purported tip from a woman named Aiperi Adyl-kyzy, who told the police that a man named “Bolot” forced her to ingest narcotics.<sup>13</sup> She did not provide the surname of “Bolot” to the police.<sup>14</sup>
10. During the alleged drug search, the police seized property far beyond the scope of the purported charges, including journalistic equipment, computers, laptops, memory cards, a mobile phone, and video recorders connected to the office’s cameras. Moreover, at

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<sup>7</sup> Decision of the Sverdlovsk District Court, Criminal Case No. 567/22B4, p. 1 (Sep. 2022).

<sup>8</sup> *Id.*

<sup>9</sup> Decision of the Sverdlovsk District Court, Criminal Case No. 567/22B4, p. 1 (Sep. 2022).

<sup>10</sup> Decision of the Sverdlovsk District Court, Criminal Case No. 567/22B4, p. 8 (Sep. 2022).

<sup>11</sup> A provision in Kyrgyz criminal procedure allows for warrantless searches by law enforcement where there is a high risk that evidence may be destroyed or concealed, provided that a judge legitimizes the search within 24 hours after it is conducted. *See Criminal Procedural Code of the Kyrgyz Republic*, Art. 212(9), available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/112308> (Статья 212. Основание и порядок производства обыска и выемки: «В исключительных случаях, когда имеется реальное опасение, что разыскиваемый и подлежащий изъятию объект может быть из-за промедления с его обнаружением утрачен, поврежден или использован в преступных целях либо разыскиваемое лицо может скрыться, обыск и выемка могут быть произведены без решения следственного судьи, но с последующим направлением ему в течение 24 часов письменного уведомления о произведенном обыске.»)

<sup>12</sup> Decision of the Bishkek City Court, No. UD-567/22 B4 (Nov. 23, 2022).

<sup>13</sup> *Id.* at 17.

<sup>14</sup> *Id.* at 17.

trial, an expert witness noted that the computers' hard drives were corrupted after the search.

11. After the search of New Media, the police asserted that they found 7.6 grams of cannabis, in a cellophane bag, in the back left pocket of Mr. Temirov's jeans.
12. However, several eyewitnesses testified about the search at trial, including Mr. Temirov's ex-wife, former brother-in-law, and an employee who worked on Temirov LIVE. Mr. Temirov's ex-wife, Makhabat Taichibek kyzy, testified that she saw the police commander reach his hands into Mr. Temirov's pocket. All three testified that the police would have been able to access Mr. Temirov's pockets, and that when the police pulled the narcotics from his pockets, Mr. Temirov exclaimed that the drugs were planted.
13. Mr. Temirov was arrested, detained at the police headquarters, and taken to a drug testing center. Both his blood and his hands tested negative for narcotics. While Article 45 of the Code of Criminal Procedure provides that suspects have "[t]he right to be assisted by counsel as soon as they have been notified that they are suspected of having committed an offence," Mr. Temirov was held overnight, without access to counsel.<sup>15</sup> He was not informed of the charges against him until 10:00 am the next day - approximately 14 hours after his arrest.<sup>16</sup> He was charged with illegal possession of narcotics with intent to distribute, and released from custody with orders not to leave the country.

*c. Mr. Temirov's Trial and Appeal*

14. In April 2022, the government filed additional charges against Mr. Temirov.<sup>17</sup> In addition to the drug charges, the prosecution asserted three offenses stemming from his allegedly fraudulent procurement of a Kyrgyz passport: fraudulently possessing a military ID in 2001 under a different name; forging a temporary certificate to obtain a Kyrgyz passport in 2008; and illegally crossing the border of Kyrgyzstan using the fraudulently obtained passport repeatedly between 2010 and 2021. In May 2022, his Kyrgyz passport was listed as invalid in the database of the National Registration Agency, which was based solely on the determination of an investigator in violation of Kyrgyzstan's criminal procedures

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<sup>15</sup> Access to counsel during pre-trial detention and interrogation is a core fair trial right. See *Abdurakhmanov v. Uzbekistan*, CCPR/C/125/D/2295/2013, para. 195 (May 2019).

<sup>16</sup> Decision of the Sverdlovsk District Court, Criminal Case No. 567/22B4, p. 15 (Sep. 2022).

<sup>17</sup> *Id.* at 13.

15. The prosecution argued that on August 28, 2001, Mr. Temirov forged a military ID, which according to the government's version of events belonged to an individual named Adylbek Kanibekovich Kerimbekov, and that he used Kerimbekov's military ID to illegally obtain a Kyrgyz passport on July 11, 2008.<sup>18</sup> Mr. Kerimbekov was interviewed during the police investigation but not cross-examined at trial. The report of the interview with Mr. Kerimbekov conducted during the investigation that was introduced at trial revealed that he served in the Kyrgyz military, moved to Russia, served in the Russian military, and became a citizen there.<sup>19</sup>
16. The prosecution argued that Mr. Temirov used the forged military ID to unlawfully obtain a Kyrgyz passport, which he then allegedly used to illegally cross the border on several occasions between 2010 and 2021. Eight witnesses for the government were interviewed about the forgery, but none could actually show the court that Temirov himself submitted an application for the military ID with the serial number presented by the prosecution.<sup>20</sup> Neither witness Musabekov, former head of the passport office of the Ugensk Division, nor witness-employee Bekeshov could recall signing the passport forms.<sup>21</sup>
17. The prosecution presented a color copy of the 2008 passport application packet, consisting of Mr. Temirov's birth certificate from Osh, the military ID, Mr. Temirov's parents' passports, and information about Mr. Temirov's residence in 2008. The prosecution never produced the original passport application, and its handwriting experts only reviewed a color copy, which was unauthenticated. Indeed, the trial court, the prosecutor, and the defense never saw the original passport application at all.
18. The prosecution also submitted that Mr. Temirov could not have obtained a military ID because he did not serve in the actual military or alternative service. However, Mr. Temirov showed that while he was never in the active army, he was in alternative service from 2003 to 2004.<sup>22</sup> The defense further argued that the prosecution did not prove that the military ID actually belonged to Mr. Kerimbekov.<sup>23</sup>

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<sup>18</sup> *Id.* at 31.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 11.

<sup>21</sup> *Id.* at 31.

<sup>22</sup> *Id.* at 15.

<sup>23</sup> *Id.* at 11.

19. At trial, Mr. Temirov emphasized the insufficiency of the evidence and argued that the prosecution was an attempt to silence his journalistic activities, pointing to the timing of his anti-corruption investigation into Mr. Tashiev and his arrest.<sup>24</sup>
20. On September 28, 2022, the trial court acquitted Mr. Temirov of the drug possession charge and illegal border crossing charges but found him guilty of using forged documents. The trial court found that the three-year statute of limitations on the document forgery charge had already run and did not impose a penalty.<sup>25</sup> Prosecutors then appealed the entire ruling to the Bishkek City Court, and Mr. Temirov's lawyers appealed the guilty verdict on the use of forged documents charge. In their request to the Bishkek City Court, prosecutors asked the court to order Mr. Temirov's expulsion from the Kyrgyz Republic.
21. The Bishkek City Court affirmed the decision of the trial court on the drug charges, noting that the prosecution did not establish beyond a reasonable doubt that the drugs belonged to Temirov.<sup>26</sup> The appellate court disagreed with the prosecution and held that the illegal border crossing charge was also not proven beyond a reasonable doubt.<sup>27</sup> However, despite a clearly applicable statute of limitations, the appellate court affirmed Mr. Temirov's conviction for using forged documents.<sup>28</sup>
22. The appellate court concluded its opinion by ordering Mr. Temirov's expulsion from the Kyrgyz Republic to the Russian Federation.

*d. Mr. Temirov's Incommunicado Detention and Summary Deportation to Russia*

23. Mr. Temirov was then forcibly removed from the appellate courtroom and held incommunicado for several hours, then deported.<sup>29</sup> He was not afforded a separate hearing to challenge the deportation order, nor was he provided a written deportation order outside of the appellate judgment. He was not given an opportunity to meaningfully challenge the merits of the expulsion or confer with counsel. He was expelled without

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<sup>24</sup> *Id.* at 13.

<sup>25</sup> *Id.* at 35.

<sup>26</sup> *Id.* at 27.

<sup>27</sup> *Id.* at 29.

<sup>28</sup> *Id.* at 29. The trial court had found Mr. Temirov guilty on the document fraud charges but held that the statute of limitations precluded criminal punishment.

<sup>29</sup> Front Line Defenders, *Human Rights Defender and Journalist Deported to Russia*, (Nov. 24, 2022), available at: <https://www.frontlinedefenders.org/en/case/human-rights-defender-and-journalist-bolot-temirov-deported-russia>



any identity documents, including his Russian passport.<sup>30</sup> His family was notified only of his expulsion after he arrived in Moscow.<sup>31</sup>

24. Due to the deportation order, Mr. Temirov is unable to return home and remains in Moscow at the time of this appeal. Administrative deportation of foreigners can trigger a ban on re-entry to Kyrgyzstan ranging from ten years to a permanent ban on entry.<sup>32</sup> Due to the ongoing crackdown on press freedom and independent journalism in Russia, Mr. Temirov fears for his safety.

#### IV. Applicable Law

25. Numerous international human rights instruments are applicable to this Court’s resolution of the petitioner’s cassation appeal. Specifically, this brief draws upon the International Covenant on Civil and Political Rights (ICCPR);<sup>33</sup> the UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT);<sup>34</sup> and the Universal Declaration of Human Rights (UDHR).<sup>35</sup> In signing and ratifying the ICCPR and CAT, Kyrgyzstan is bound by their terms and must comply with the treaty provisions “in good faith.”<sup>36</sup> Kyrgyzstan has not entered any reservations to the ICCPR or CAT.<sup>37</sup> While the UDHR is a non-binding document, many of its provisions, such as the right to a fair trial and freedom of expression, have achieved the status of customary international law, thereby taking on a binding legal character.<sup>38</sup> This brief will also draw from the decisions of regional human rights tribunals and authoritative human rights bodies interpreting the above-referenced instruments, such as the UN Human Rights Committee,

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Law of the Kyrgyz Republic on External Migration from July 17, 2000, № 61*, Article 19. *Закон Кыргызской Республики О внешней миграции от 17 июля 2000 года № 61*, ст. 19: «Сроки лишения права въезда и пребывания на территории Кыргызской Республики иностранных граждан или лиц без гражданства, наложенного решением суда, могут составлять от десяти лет до постоянного, в зависимости от степени совершенного правонарушения и общественной опасности.»

<sup>33</sup> ICCPR, *supra* note 1.

<sup>34</sup> CAT, *supra* note 1.

<sup>35</sup> UN General Assembly, *Universal Declaration of Human Rights*, 217 A (III) (Dec. 10 1948).

<sup>36</sup> UN OHCHR, *Ratification Status for Kyrgyzstan* (last accessed May 22, 2023), available at: <https://indicators.ohchr.org/>

<sup>37</sup> UN ICCPR Reservations (last accessed May, 30, 2022), available at:

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=\\_en#EndDec;](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en#EndDec;)  
UN CAT Reservations (last accessed May, 30, 2022), available at:

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en)

<sup>38</sup> Hurst Hannum, *The UDHR in National and International Law*, 3 *Health and Human Rights* 2, p. 149 (1998)(“Almost all would agree that some violations of the Declaration are violations of international law”).

which is the treaty body charged with interpreting the ICCPR.<sup>39</sup> Kyrgyz domestic courts, including this Supreme Court, have been guided by the ICCPR and decisions of the HRC in a number of cases.<sup>40</sup>

26. Pursuant to Article 6 of the Kyrgyz Constitution, international treaties are recognized as part of Kyrgyz law.<sup>41</sup> The Constitution also guarantees individual rights and freedoms in accordance with international treaties to which Kyrgyzstan is a party and consistent with well-recognized norms under customary international law.<sup>42</sup>

## V. Legal Analysis

### a. Mr. Temirov's Trial Violated International Law

27. Mr. Temirov's conviction and deportation order should be overturned based on the multiple violations of international human rights law that occurred throughout his trial and appeal, including the denial of fair trial rights, including the presumption of innocence; violations of the right to be free from arbitrary detention; violations of the rights to nationality and *non-refoulement*; and violations of the freedom of expression and the freedom of press.

#### i. Kyrgyzstan Violated Mr. Temirov's Fair Trial Rights, including the Right to the Presumption of Innocence

28. All persons accused of crimes have the right to a number of fair trial rights at every critical stage of prosecution. Certain components of the right to a fair trial, such as the presumption of innocence, have achieved the status of *jus cogens*, making it a right from

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<sup>39</sup> Matthew Craven, *The Covenant on Economic, Social and Cultural Rights: A Perspective on its Development*, 9 (1995) (noting that the decisions of UN treaty bodies interpreting treaties are considered to be authoritative and carry "considerable legal weight").

<sup>40</sup> Human Rights Committee, *Third periodic report submitted by Kyrgyzstan under article 40 of the Covenant*, due in 2018 CCPR/C/KGZ/3, para. 11 (May 12, 2020) (of particular relevance are: the Supreme Court Ruling of 14 March 2016 and Constitutional Chamber Decision No. 2 of 2 September 2015 reflecting on fair trial rights and Article 14 of the ICCPR).

<sup>41</sup> Constitution of Kyrgyzstan, Art. 6. (June 27, 2010), available at: <http://cbd.minjust.gov.kg/act/view/ruru/202913?cl=ru-ru>.

<sup>42</sup> *Id.* at Art. 40.

which no derogations are permitted, even during times of public emergency.<sup>43</sup> The main source of fair trial rights under international law is codified in Article 14 of the ICCPR.<sup>44</sup> Article 14 provides for thirteen fundamental procedural protections, including the presumption of innocence codified in Article 14(2), which encompasses the burden of proof and sufficiency of the evidence.<sup>45</sup> There is also precedent that Article 14's list is non-exhaustive and dynamic, functioning more as a "bundle of rights," and may be interpreted to include other rights that are essential for ensuring the overall fairness of proceedings, including the right to be free from arbitrary detention in Article 9 of the ICCPR.<sup>46</sup>

29. In this case, the government violated Mr. Temirov's right to the presumption of innocence and failed to meet its burden of proof by relying on insufficient evidence to sustain the document forgery charges.<sup>47</sup> Mr. Temirov's right to be presumed innocent was also violated due to prejudicial statements made by public officials in advance of his trial. Mr. Temirov's conviction and deportation violate procedural fairness insofar as the court failed to apply the statute of limitations on the use of forged documents, and to grant Mr. Temirov a hearing prior to the deportation taking place. Finally, the totality of the circumstances indicates that the charges against Mr. Temirov were politically motivated, in violation of Article 14 of the ICCPR.

### *Sufficiency of the Evidence*

30. The presumption of innocence is the cornerstone of a fair trial, stemming from the need to protect accused persons from the unchecked power of the State.<sup>48</sup> Without the presumption of innocence, all other fair trial rights are moot.<sup>49</sup> At its core, the presumption of innocence requires that prosecutors meet a high standard of proof, usually beyond a reasonable doubt, which was the standard contemplated by the framers of the ICCPR.<sup>50</sup> The presumption of innocence may be violated when the burden of proof shifts from the prosecutor to the defendant, requiring the accused to prove their innocence.<sup>51</sup> It

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<sup>43</sup> See Human Rights Committee, *General Comment No. 29 on States of Emergency*, CCPR/C/21/Rev.1/Add.11 para. 16 (2001).

<sup>44</sup> ICCPR, Art. 14.

<sup>45</sup> ICCPR, Arts. 14(2) and 14(3) ('everyone shall be entitled to ... minimum guarantees [of a fair trial], in full equality').

<sup>46</sup> Amal Clooney and Philippa Webb, *The Right to a Fair Trial Under International Law*, 9 (2021) (discussing the majority and dissenting opinion in ICJ, *Jadhav Case (India v. Pakistan)*, Judgment of 17 July 2019, 36).

<sup>47</sup> *Vella v. Malta*, Eur. Ct. H.R. App. No. 69122/10, para. 38 (Feb. 11, 2014).

<sup>48</sup> *Vella*, at para. 38.

<sup>49</sup> See *Turner v. United States* 396 U.S. 398, 430 (US Supreme Court, 1970), (dissenting J. Black and J. Douglas) ("each of the weapons given ... to the criminal accused to defend his innocence—the right to counsel, the right to confront the witnesses against him and to subpoena witnesses in his favor, the privilege against self-incrimination—is nullified to the extent that the Government to secure a conviction does not have to introduce any evidence to support essential allegations of the indictment it has brought").

<sup>50</sup> Amal Clooney and Philippa Webb, *The Right to a Fair Trial Under International Law*, 206 (2021)

<sup>51</sup> *Larrañaga v. Philippines*, CCPR/C/87/D/1421/2005, para. 7.4 (July 2006).

may also be violated when proceedings are “manifestly arbitrary” given the insufficiency of the evidence provided.<sup>52</sup> Under Article 14(5) of the ICCPR, an appellate court has a “duty to review substantively, both on the basis of sufficiency of evidence and of law, the conviction and sentence such that the procedure allows for due consideration of the nature of the case. A review that is limited to the formal or legal aspects of the conviction without any consideration whatsoever of the facts is not sufficient under the Covenant.”<sup>53</sup> The trial and appellate courts violated Mr. Temirov’s right to the presumption of innocence and to hold the government to its burden of proof beyond a reasonable doubt by finding him guilty of using forged documents based on insufficient evidence.

31. The case of *Abdurakhmanov v. Uzbekistan* before the Human Rights Committee is instructive. In *Abdurakhmanov*, the Committee examined the case of an anti-corruption journalist and human rights defender who was convicted of drug possession with the intent to sell after the police found marijuana and opium in the trunk of his car.<sup>54</sup> Despite only being charged with drug possession, the police seized journalistic equipment and questioned the journalist about his work. The defendant believed the drugs were planted and sought to introduce evidence at trial of a forensic drug test taken on the day of his arrest that showed the traces of drugs on his fingers were from when he touched the drugs at the behest of the police.<sup>55</sup> His blood had also tested negative for drugs.<sup>56</sup> At trial, prosecutors played a heavily edited video of the vehicle search, with three hours of footage missing, and refused to play the full video.<sup>57</sup> The Committee found that the court’s refusal to allow the defense to admit this evidence and failure to consider the journalist’s human rights activities gave rise to a violation of fair trial rights under Article 14(1).<sup>58</sup>
32. Importantly, the Committee found a nexus between the defendant’s journalistic activities and the fair trial violations:

The Committee also notes that the State party has seized journalistic materials and questioned the [defendant] about his work as a journalist and as a human rights activist, and that the State party has failed to justify such interference with his freedom of expression. In the absence of further explanations by the State party, the Committee considers therefore that the author has established that [the defendant] was arrested, detained, tried and convicted because of his journalistic

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<sup>52</sup> Human Rights Committee, *Ashurov v. Tajikistan*, U.N. Doc. CCPR/C/89/D/1348/2005, para. 6.7 (Mar. 20, 2007) (finding the domestic proceedings manifestly arbitrary due to insufficiency of evidence where the accused was detained in another country on the day the crime was allegedly commissioned).

<sup>53</sup> Human Rights Committee, *Dávila v. Colombia*, CCPR/C/122/D/2490/2014 para. 3.4 (2018).

<sup>54</sup> Human Rights Committee, *Abdurakhmanov v. Uzbekistan*, CCPR/C/125/D/2295/2013, para. 2.7 (May 2019)

<sup>55</sup> *Id.* at para. 2.2.

<sup>56</sup> *Id.* at para. 2.3.

<sup>57</sup> *Id.* at para. 3.2.

<sup>58</sup> *Id.* at para. 7.5.

and human rights work, and that the actions of the authorities of the State party were aimed at intimidating and silencing him.<sup>59</sup>

33. The procedural violations in the instant case are strikingly similar to those in *Abdurakhmanov*, and are arguably more egregious. Prior to his arrest, Mr. Temirov and the employees at New Media experienced a months-long campaign of surveillance and harassment.<sup>60</sup> UKMK employees enacted an elaborate entrapment scheme to coerce a young female News Media employee into providing incriminating information about Mr. Temirov, including threatening to release a non-consensual video of her having sexual relations with an undercover agent.<sup>61</sup> Furthermore, the search of New Media offices was not initially authorized by a judge, and the reliability and veracity of the tip underlying the search warrant are dubious,<sup>62</sup> At trial, a police officer testified that source of the tip was a woman named Aiperi Adyl-kyzy, but failed to provide the details generally required to show that a tip is credible.<sup>63</sup>
34. In carrying out the search, the police wore balaclavas, hid their badges, and did not identify themselves. They also did not allow Mr. Temirov access to a lawyer during his custodial interrogation and detention. Both the trial and appellate courts agreed that the drug police should have continuously videotaped the search and seizure of the narcotics from the moment they entered the premises.<sup>64</sup>
35. During the search, officers seized multiple laptops and computers, flash drives, a mobile phone, and a video recorder that was connected to the video-surveillance system in the office. As the HRC noted in *Abdurakhmanov*, this evinces intent to punish Mr. Temirov for engaging in protected journalistic activities and reporting on high-level corruption in the Kyrgyz Republic.<sup>65</sup>

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<sup>59</sup> *Id.* At para. 7.4 ("Комитет также отмечает, что государство-участник изъяло журналистские материалы отца автора, что он был допрошен относительно его деятельности в качестве журналиста и правозащитника и что государство-участник не обосновало такое вмешательство в его свободу выражения мнения. Таким образом, в отсутствие дальнейших пояснений со стороны государства-участника Комитет считает, что автор доказал, что его отец был арестован, взят под стражу, предан суду и осужден по причине его журналистской и правозащитной деятельности и что действия властей государства-участника были направлены на то, чтобы запугать его и заставить замолчать").

<sup>60</sup> Radio Free Europe/Radio Liberty, *Inside Kyrgyzstan's Campaign To Silence Journalist Bolot Temirov* (Jan. 31, 2022), available at: <https://www.rferl.org/a/kyrgyzstan-temirov-journalist-special-investigation/31677591.html>

<sup>61</sup> *Id.*

<sup>62</sup> Decision of the Sverdlovsk District Court, Criminal Case No. 567/22B4, p. 17 (2022).

<sup>63</sup> *Id.*; see generally *Illinois v. Gates*, 462 U.S. 213 (U.S. Supreme Court, 1983) (describing balancing of factors showing that an anonymous tip is veracious and reliable and thus admissible).

<sup>64</sup> *Id.* at 25.

<sup>65</sup> *Abdurakhmanov*, *supra* note 51 at para. 7.4

36. Given the weak evidence presented in support of the forgery and use of forged documents charges, the standard of proof beyond a reasonable doubt was not met in Mr. Temirov's case. The principle of *dubio pro reo*, holding that doubts must be taken to benefit the accused, is a specific expression of the presumption of innocence.<sup>66</sup> This principle may be violated when a court's guilty verdict is not properly reasoned based on the evidence.<sup>67</sup>
37. The evidence presented at Mr. Temirov's trial casts his guilt into serious doubt, as there were reasons to question the authenticity and reliability of the physical evidence used in the prosecution's case-in-chief. The trial and appellate courts noted that the original passport application that was used to prove the document forgery charge was never produced. Handwriting experts who opined that Mr. Temirov's signature was on the document were similarly working off of an unauthenticated copy, as the court, the prosecutors, and the defense never saw the original application.<sup>68</sup> The prosecution also presented evidence that the government database did not show that Mr. Temirov served in the army, and argued that this supported fraudulently obtained a military ID. However, Mr. Temirov noted that while he was not a member of the active army, he was in alternative service from 2003 to 2004, which allowed him to lawfully obtain a military ID. Moreover, as the appellate court noted, the government's own submission shows that the government archives did not meet the standard for completeness and trustworthiness.<sup>69</sup> Therefore, the courts' failure to address Mr. Temirov's objections regarding the authenticity and probative value of the evidence violates principles of procedural fairness and the right to a fair trial under Article 14 of the ICCPR.
38. Finally, neither Mr. Kerimbekov's relationship with Mr. Temirov nor Kerimbekov's possession or ownership of the allegedly forged military ID were established at trial. Mr. Kerimbekov did not testify at trial; his out-of-courtroom interview testimony was used to support the document forgery charge. The right to cross-examine key witnesses is an essential feature of an adversarial trial, and a witness's absence may violate the right to a fair trial where there is no good reason for the absence, the witness is decisive in building the case, and no counterbalancing factors exist eliminating prejudice to the defendant.<sup>70</sup> The court did not cite any such factors for Mr. Kerimbekov's absence. Because of the central importance of Mr. Kerimbekov's military ID in the document forgery, the court's reliance on his uncontested interview violated Mr. Temirov's right to sufficiency of evidence.

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<sup>66</sup> *Barberà, Messegué and Jabardo v. Spain*, Eur.Ct.H.R. App. No. 10590/83, para. 77 (1988).

<sup>67</sup> *Melich and Beck v. the Czech Republic*, Eur.Ct.H.R. App. No. 35450/04, paras. 49-55 (2008).

<sup>68</sup> Decision of the Bishkek City Court, No. UD-567/22 B4, p. 13 (Nov. 23, 2022).

<sup>69</sup> *Id.* at 15.

<sup>70</sup> *Schatschaschwili v. Germany*, Eur.Ct.H.R. App. No. 9154/10, paras. 103, 105-109 (2015).

39. In relying on this collective evidence, the court's reasoning for sustaining Mr. Temirov's conviction was insufficient, and this Court should overturn the guilty verdict.<sup>71</sup>

### *Statute of Limitations*

40. Statutes of limitations are an important procedural aspect of the overall fundamental fairness and equity of a trial, depriving a court of jurisdiction over a matter.<sup>72</sup> As the appellate court noted, statutes of limitation are “an absolute unconditional kind of exemption from criminal liability. After the expiration of the legally established deadlines, the state loses the right to hold a person criminally accountable.”<sup>73</sup> Pursuant to Article 58, the trial court found that more than fourteen years had passed since the commission of the alleged document fraud and held that the three-year statute of limitations barred the imposition of criminal punishment.<sup>74</sup> In a brief and insufficiently reasoned decision, the appellate court reversed the lower court's decision without a legal basis.<sup>75</sup>
41. The only exception under Kyrgyz law for suspension of a statute of limitations is if the defendant actively impedes a police investigation.<sup>76</sup> As the appellate court noted, there is no evidence that Mr. Temirov did so. Therefore, there was no basis in law to override such an important provision as the statute of limitations. Despite this, the appellate court found Mr. Temirov guilty and ordered his deportation as an additional form of punishment in violation of Kyrgyzstan's obligations under the ICCPR.

### *Public Comments by Officials*

42. The presumption of innocence may also be violated when public officials comment on the guilt of the defendant before a verdict has been rendered. It is “a duty for all public authorities to refrain from pre-judging the outcome of a trial.”<sup>77</sup> For example, the HRC has found that public statements by high-ranking officials such as the head of police or head of state that comment prematurely on the guilt of a defendant before trial may violate the presumption of innocence.<sup>78</sup>

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<sup>71</sup> *Larrañaga v. the Philippines*, CCPR/C/87/D/1421/2005, para. 7.4 (2006).

<sup>72</sup> Human Rights Committee, *General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial*, CCPR/C/GC/32, para. 62 (2007).

<sup>73</sup> Decision of the Bishkek City Court, No. UD-567/22 B4, p. 35 (Nov. 23, 2022) («это обязательный безусловный вид освобождения от уголовной ответственности. По истечении установленных законом сроков государство теряет право на привлечение лица к уголовной ответственности.»)

<sup>74</sup> Decision of the Sverdlovsk District Court, Criminal Case No. 567/22B4, p. 16 (Sep. 2022).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> HRC, *General Comment No. 13 on Article 14*, U.N. Doc. HRI/GEN/1/Rev.1, para. 7 (1994).

<sup>78</sup> Human Rights Committee, *Gridin v. Russia*, CCPR/C/69/D/770/1997, paras. 3.5 and 8.3 (2000) (finding a violation of the presumption of innocence where the head of police announced that he was sure the defendant was the murderer); see also *Khadzhiyev v. Turkmenistan*, CCPR/C/122/D/2252/2013, para. 5.4 (2018) (finding that the presumption of innocence was violated when President Niyazov of Turkmenistan commented on a criminal trial of two journalists and human rights defenders, calling them “traitors” during a televised meeting the day after they were arrested).

43. Both President Sadyr Japarov and Mr. Tashiev made inappropriate and prejudicial comments that painted Mr. Temirov as guilty prior to the trial. In April 2022, before the trial had begun, President Japarov spoke in no uncertain terms to Mr. Temirov's guilt, explaining that "he showed up here, acquired a passport of a citizen of Kyrgyzstan using a falsified military ID. He stole the military ID, pasted his photo into it, and changed the surname. He is himself a citizen of Russia. Now, we found that owner of the military ID. The Ministry of Defense also confirmed that Mr. Temirov never served in the Kyrgyz army."<sup>79</sup> Mr. Tashiev, the subject of Mr. Temirov's investigation, also made two separate public comments to the media about Mr. Temirov's case in April 2022. First, he commented on the arrest and stated that "Bolot Nazarov routinely visited Temirov LIVE office and from there Bolot got the drugs."<sup>80</sup> Next, Mr. Tashiev stated Mr. Temirov "stole the military ID from an ordinary person, pasted his picture onto it, and used this military ID to get a Kyrgyz passport. He should answer for this under the law."<sup>81</sup> Public officials, especially those like Mr. Tashiev who have a clear conflict of interest and personal stake in the outcome of the trial, must refrain from commenting on the guilt of a defendant, otherwise there can be no fair trial.

#### *Politically Motivated Charges*

44. Circumstantial evidence may be used to prove that charges were politically motivated where the reasoning of the authorities lacks facial credibility.<sup>82</sup> The bundle of fair trial rights in Article 14 of the ICCPR includes the right to be free from politically motivated prosecution.<sup>83</sup> The European Court of Human Rights (ECtHR) looks to the presence or absence of an ulterior purpose, which denotes the abuse of state power.<sup>84</sup> Several factors can support the presence of an ulterior purpose, including specific and personal targeting, public comments by authorities, timing and manner of the arrest, and the broader legislative and political climate.<sup>85</sup>

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<sup>79</sup> 24.kg, *Садыр Жапаров прокомментировал уголовные дела против Болота Темирова* (April 25, 2022), available at: [https://24.kg/vlast/232004\\_sadyir\\_japarov\\_prokommentiroval\\_ugolovnyie\\_dela\\_protiv\\_bolota\\_temirova/](https://24.kg/vlast/232004_sadyir_japarov_prokommentiroval_ugolovnyie_dela_protiv_bolota_temirova/) («Он, оказывается, получил паспорт гражданина Кыргызстана по поддельному военному билету. Военный билет украл, переклеил в нем фото и сменил фамилию. Он сам гражданин России. Сейчас нашли хозяина военного билета. Министерство обороны тоже подтвердило, что Болот Темиров никогда не служил в кыргызской армии.»)

<sup>80</sup> *Что сказал Камчыбек Ташиев по поводу задержание Болота Темирова*, YouTube, available at: <https://www.youtube.com/watch?v=jnfkdX2qGd8>

<sup>81</sup> kloop, *Ташиев: Болот Темиров украл военный билет* (Apr. 25, 2022), available at: <https://kloop.kg/blog/2022/04/25/tashiev-bolot-temirov-ukral-voennyj-bilet/>

<sup>82</sup> *Lutsenko v. Ukraine*, Eur. Ct. H.R. App. No. 6492/11, para. 107 (2012); *Tymoshenko v. Ukraine*, Eur. Ct. H.R. App. No. 49872/11, para. 295 (2013).

<sup>83</sup> Article 9 of the ICCPR, an accompaniment to Article 14, provides that "no one shall be subjected to arbitrary arrest or detention."

<sup>84</sup> See *Merabishvili v. Georgia*, Eur. Ct. H.R., App. No. 72508/13, paras. 312–17 (2017); *Navalnyy v. Russia*, Eur. Ct. H.R., App. No. 29580/12, paras. 168–170 (2018).

<sup>85</sup> *Selahattin Demirtaş v. Turkey*, Eur. Ct. H.R. Application No. 14305/17, paras. 426–431 (2020); *Ilgar Mammadov v. Azerbaijan*, Eur. Ct. H.R. Application No. 15172/13, para. 142 (2014).



45. The totality of the circumstances shows that the actual purpose of Mr. Temirov’s prosecution and deportation was to punish and suppress his political and press activities. First, the charges themselves reflect the selective targeting of an individual. Second, the timing of the arrest is illuminating, as it was carried out just two days after the publication of a major anti-corruption investigation into Mr. Tashiev and after Mr. Temirov sought comments from Mr. Tashiev’s nephew. Notably, there was a significant length of time between the trial and the underlying criminal events, the bulk of which allegedly transpired between 2001 and 2008. The lapse of the statute of limitations on the document forgery charges is also probative of ulterior motive. Mr. Temirov is one of many journalists in Kyrgyzstan who have recently been targeted for engaging in freedom of expression and are caught up in what appears to be a trend of the government deploying criminal law to deter political opposition and dissent.<sup>86</sup> The politically motivated prosecution of Mr. Temirov categorically violates the right to fair trial and requires that this Court reverse his conviction and expulsion from the country.

## ii. Kyrgyzstan Violated Mr. Temirov’s Right to Freedom of Expression and Press

46. Governments across the world are waging a campaign of persecution against the free press, silencing journalists through extra-judicial killings, arbitrary criminal prosecutions, and targeted surveillance.<sup>87</sup> According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), between 2016–2021, nearly 455 journalists were killed globally in retaliation for their reporting.<sup>88</sup> Reporters Without Borders documented the jailing of 533 journalists in 2022 *alone*.<sup>89</sup> The ECtHR has held that the use of criminal prosecution to disrupt a journalistic investigation may constitute “a kind of censorship.”<sup>90</sup> Such actions engender a broad chilling effect on independent journalism, deter further reporting, and violate the right to freedom of expression.<sup>91</sup>

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<sup>86</sup> Amnesty International, *Kyrgyzstan: Government move to close radio station is latest blow to the right to freedom of expression* (2023), available at: <https://www.amnesty.org/en/latest/news/2023/01/kyrgyzstan-government-move-to-close-radio-station-is-latest-blow-to-the-right-to-freedom-of-expression/>

<sup>87</sup> UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Reinforcing media freedom and the safety of journalists in the digital age*, A/HRC/50/29, para. 28 (Apr. 22, 2022), available in Russian at: <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/50/29&Lang=R>

<sup>88</sup> *Id.*

<sup>89</sup> Thomas Reuters Foundation, *Weaponizing the Law: Attacks on Media Freedom*, 6 (Apr. 2023).

<sup>90</sup> *Dammann v. Switzerland*, Eur. Ct. H.R. App. No. 77551/01, para. 57 (2006).

<sup>91</sup> *Id.*

47. Because the press functions as a “public watchdog” –integral to protecting democracy and the rule of law– international law affords media actors explicit human rights protections.<sup>92</sup> In fact, the HRC has noted that

[t]he societal relevance of independent, free and pluralistic news media – as a pillar of democracy, a tool to support accountability and transparency, and a means to sustain open deliberation and encourage the exchange of diverse views – underscores the importance of journalism as a public good. Journalists are not above the law, but by virtue of their function and the public interest in disclosure, they are entitled to specific legal protection.<sup>93</sup>

48. The freedom of expression is a unique human right, as it is both “a fundamental right as well as an enabler of other human rights and a guardian of democratic values.”<sup>94</sup> Article 19 of the ICCPR provides an expansive international legal framework for media activities and journalism.<sup>95</sup> The UDHR also enshrines the freedom of expression in Article 19.<sup>96</sup> Just as journalists have a right to impart information, the public has a complementary right to seek and access press information.<sup>97</sup> “Freedom of speech is not merely freedom to speak; it is also freedom to read.”<sup>98</sup>

49. Restrictions to press freedom are lawful only in the extremely limited circumstances outlined in Article 19(3) of the ICCPR. According to that three-part test, a government must demonstrate all three elements of this test: (i) a clear prescription in law for the restriction (legality); (ii) a link to upholding the rights of others under the ICCPR

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<sup>92</sup> *Bedat v. Switzerland*, Eur.Ct.H.R. App. No. 56925/08, para. 79 (2016).

<sup>93</sup> *Id.* at para. 13 (“Общественная значимость независимых, свободных и плюралистических новостных средств массовой информации — как опоры демократии, инструмента содействия подотчетности и прозрачности и механизма для поддержания открытых дискуссий и поощрения обмена различными мнениями — подчеркивает важность журналистики как общественного блага. Журналисты не выше закона, однако ввиду их функций и общественной заинтересованности в раскрытии информации они имеют право на особую правовую защиту”).

<sup>94</sup> See *United Nations and Organization for Security and Cooperation in Europe, Joint Declaration on Media Freedom and Democracy*, 2 (2023), available at: <https://www.ohchr.org/sites/default/files/documents/issues/expression/activities/2023-JD-Media-Freedom-and-Democracy.pdf>;

<sup>95</sup> See ICCPR, Art. 19(2) (“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”); see Human Rights Committee, *General Comment No. 34 on Article 19: Freedoms of opinion and expression*, U.N. Doc. CCPR/C/GC/34, para. 15 (September 12, 2011) (explaining that “[t]here is now a global network for exchanging ideas and opinions that does not necessarily rely on the traditional mass media intermediaries...” and that “States parties should take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto.”).

<sup>96</sup> UDHR, *supra* note 1.

<sup>97</sup> UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Reinforcing media freedom and the safety of journalists in the digital age*, A/HRC/50/29, para. 11 (Apr. 22, 2022).

<sup>98</sup> *King v. Federal Bureau of Prisons*, 415 F. 3d 634, 638 (7th Circuit 2005).

(legitimacy); (iii) a restriction that is both necessary and proportional.<sup>99</sup> The third prong of this Article 19(c) analysis, the Human Rights Committee has held that “the principle of necessity and proportionality deems that journalists should not be prosecuted for disseminating information that is of legitimate public interest.”<sup>100</sup> Moreover, the HRC has emphasized that “arrests and prosecutions of journalists leading to heavy fines and harsh prison sentences serve not only to intimidate and punish the individuals charged but also to create a climate of fear, chilling critical reporting by other journalists.”<sup>101</sup>

50. Mr. Temirov’s reporting –the product of exhaustive investigative work, critical of some within the government, and undoubtedly of public interest—spurred his arrest, prosecution, and removal. Indeed, in convicting Mr. Temirov for using forged documents, the appellate court validated the retaliation against him, violated his right to engage in newsgathering activities and impart information to the public, and contributed to an environment where future journalists have reason to be afraid of engaging in democracy-reinforcing reporting.

51. *Abdurakhmanov* further stands for the proposition that the politically motivated prosecution and harassment of journalists, “irrespective of th[e] legal qualification” of the authorities’ actions, amounts to a restriction on the right to impart information and ideas to the public under Article 19(2) of the ICCPR.<sup>102</sup> In *Abdurakhmanov*, the HRC concluded that the 19(3) standard assessing the legality of restrictions of expression had not been met because “neither the State party nor the national courts provided any explanations for the seizure by the police of the materials related to the journalistic activities of the [defendant].”<sup>103</sup> In Mr. Temirov’s case, the pretextual reason offered by the head of the SCNS that information related to the drugs may have been found on the company’s computers is insufficient to overcome the presumption that the criminal case was set in motion to curtail Mr. Temirov’s freedom of expression.<sup>104</sup>

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<sup>99</sup> Human Rights Committee, *Tae-Hoon Park v. Republic of Korea*, Communication No. CCPR/C/64/D/628/1995, at para. 10.3 (Nov. 3, 1998) (holding that the general national security threat of North Korean communists in South Korea was neither necessary nor proportionate to prosecution of the petitioner under the National Security Law for praising an anti-State organization).

<sup>100</sup> *Supra* note 97 para. 20 (“В соответствии с принципом необходимости и соразмерности журналисты не должны подвергаться судебному преследованию за распространение информации, представляющей законный общественный интерес, однако многие правительства используют законы об охране национальной безопасности, общественного порядка и нравственности населения в целях пресечения деятельности журналистов, критикующих их политику”).

<sup>101</sup> *Id.* at para. 53 (“Аресты и судебные преследования журналистов, ведущие к крупным штрафам и вынесению суровых приговоров к тюремному заключению, служат не только для запугивания и наказания обвиняемых, но и для создания атмосферы страха, препятствующей критическому освещению событий другими журналистами”).

<sup>102</sup> *Abdurakhmanov*, *supra* note 51 at para. 7.6.

<sup>103</sup> *Id.*

<sup>104</sup> See also *Nagla v. Latvia*, Eur.Ct.H.R. App. No. 73469/10 (2013) (finding a violation of the right to freedom of expression when the state conducted a search to seize journalistic materials in order to force a journalist to reveal her

52. Finally, in attempting to silence Temirov’s journalism through deportation, the Kyrgyzstan government has employed a textbook anti-democracy tactic that is condemned by human rights courts around the world. Across a myriad of locations, jurisdictions, and governing charters, courts repeatedly have ruled that deporting journalists or speakers, in retaliation for reporting on or criticism of government, is a brazen violation of guaranteed free expression rights.<sup>105</sup> The pretextual nature of Temirov’s deportation placed a thin veil over the government’s true designs: retaliation for his prior publications and prevention of his future work. This anti-expression strategy constitutes a violation of longstanding international human rights standards.

### **iii. Kyrgyzstan Violated Mr. Temirov’s Right to be Free from Arbitrary Detention**

53. The violations of Mr. Temirov’s fair trial rights and right to freedom of expression were of such gravity as to render his detention arbitrary. Mr. Temirov was arbitrarily detained both when he was falsely arrested at the Temirov LIVE offices on fabricated charges, and again when he was held incommunicado in the hours leading up to his summary deportation.

54. Article 9(1) of the ICCPR states that “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as

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source); *Lohé Issa Konaté v. The Republic of Burkina Faso*, Afr. Ct. H. People’s R., App. No. 004/2013 (2014) (finding that the freedom of expression was violated where the state criminally prosecuted a journalist for defamation after he published articles about a senator’s corruption).

<sup>105</sup> See e.g., *Zimbabwe Lawyers for Human Rights v. Zimbabwe*, Afr. Cm. H. P. R., Case No. 294/04 (2009), available at: <https://ihlda.uwazi.io/en/document/bp0zq3asfq8ahxhthkvq8pvi?page=1> (denouncing violation of free expression rights under African Charter on Human and People’s Rights, where foreign journalist was wrongly accused of publishing a “false” article allegedly dangerous to the security of Zimbabwe, forced into a car, and deported from the country “in order to silence him”); *Cox v. Turkey*, Eur. Ct. H.R. App. No. 2933/03, paras. 348-353 (2012) (finding deprivation of non-citizen speaker’s European Convention art. 10 free expression rights where she was twice deported for criticizing Turkey and was “precluded from re-entering [Turkey] on grounds of her past opinions and, as a result, is no longer able to impart information and ideas within that country”); *Attorney General v. Clarke*, Supreme Court of Zambia, Appeal No. 96A/2004 (2008), available at: [https://www.cehurd.org/wp-content/uploads/2012/04/right%20to%20health%20data%20base/CASES/ZAMBIA/Attorney-General%20v%20Clarke%20\(2008\)%20AHLR%20259%20\(ZaSC%202008\).pdf](https://www.cehurd.org/wp-content/uploads/2012/04/right%20to%20health%20data%20base/CASES/ZAMBIA/Attorney-General%20v%20Clarke%20(2008)%20AHLR%20259%20(ZaSC%202008).pdf) (ruling that deportation of alien author contravened free expression rights under Zambian Constitution, and suggesting that citizen would have even greater rights against deportation); *Piermont v. France*, Eur. Ct. H.R. App. Nos. 15773/89 and 15774/89, paras. 317-321 (1995) (concluding that expulsion of German member of European Parliament from French Polynesia, where deportation was based on her criticism of French government, constituted deprivation of European Convention art. 10 free expression rights).

are established by law.”<sup>106</sup> In accordance with the long-standing jurisprudence of the HRC, “‘arbitrariness’ is not to be equated with ‘against the law,’ but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability and due process of law.”<sup>107</sup> A classic example of arbitrary detention is the use of “an arrest... as punishment for the legitimate exercise of the rights as guaranteed by the Covenant, including freedom of opinion and expression.”<sup>108</sup>

55. A key component of the right to liberty and security of person is the right to be informed of the precise nature of criminal charges during the arrest stage. Article 9(2) of the ICCPR states that “[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”<sup>109</sup> The officers who arrested Temirov did not read him his rights or specify the article under which he was arrested, protections that are required under domestic law and the ICCPR to protect against arbitrary detention.

56. Access to counsel is critical to protect against prolonged false arrest and arbitrary detention. The ECtHR has held that in order to uphold fair trial rights, “access to a lawyer should be provided as from the first interrogation of a suspect by the police...”<sup>110</sup> The fact that Mr. Temirov was not provided with any opportunity to confer with a lawyer during his arrest or detention prior to being deported contributed to his arbitrary detention.<sup>111</sup>

#### **iv. Kyrgyzstan Violated Mr. Temirov’s Right to Nationality and the Principle of *Non-Refoulement***

57. Citizenship and nationality are a core “element of a person’s social identity.”<sup>112</sup> Because the right to nationality underpins the enjoyment of all other human rights, international tribunals and UN Special Procedures have held that the right to hold a nationality is a non-derogable right that has entered the realm of customary international law.<sup>113</sup>

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<sup>106</sup> ICCPR, Art. 9(1).

<sup>107</sup> Human Rights Committee, *Zelaya Blanco v. Nicaragua*, CCPR/C/51/D/328/1988, para. 10.3 (1994).

<sup>108</sup> *Abdurakhmanov v. Uzbekistan*, CCPR/C/125/D/2295/2013, para. 7.2 (May 2019).

<sup>109</sup> ICCPR, Art. 9(2).

<sup>110</sup> *Sakhnovskiy v. Russia*, Eur. Ct. H.R., No. 21272/03, paras. 63, 103 (Nov. 2, 2010).

<sup>111</sup> See also Committee Against Torture, *Ali Aarrass v. Morocco*, No. 477/2011, para 10.3 (May 19, 2014) (noting that prompt access to a lawyer is critical to prevent torture while detained).

<sup>112</sup> *Mennesson v. France*, Eur. Ct. H.R. App. No. 65192/11, para. 97 (2014).

<sup>113</sup> *Case of the Girls Yean and Bosico v. Dominican Republic*, InterAm. Ct. H.R. (Ser. C) No. 130, para. 136 (2005); Independent Expert on Minority Issues, *Report on the Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, UN Doc. A/HRC/7/ 23 para. 35 (2008).

58. No State may expel their own citizens. Article 15 of the UDHR states that "[e]veryone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."<sup>114</sup> Article 13 of the UDHR further provides that "everyone has the right to leave any country, including his own, and to return to his country."<sup>115</sup> Article 12(2) of the ICCPR contains a similar provision, while article 12(4) guarantees that "no one shall be arbitrarily deprived of the right to enter his own country."<sup>116</sup>

59. States have the right under international law to regulate nationality laws and, in very limited instances, revoke citizenship or nationality.<sup>117</sup> In a 2009 report, the UN Secretary General on Arbitrary Deprivation of Nationality reiterated the standard for lawful revocation of nationality

While international law allows for the deprivation of nationality in certain circumstances, it must be in conformity with domestic law and comply with specific procedural and substantive standards, in particular the principle of proportionality. Measures leading to the deprivation of nationality must serve a legitimate purpose that is consistent with international law and, in particular, the objectives of international human rights law. Such measures must be the least intrusive instrument of those that might achieve the desired result, and they must be proportional to the interest to be protected... the notion of arbitrariness could be interpreted to include not only acts that are against the law but, more broadly, elements of inappropriateness, injustice and lack of predictability also.<sup>118</sup>

60. The procedures used to revoke Mr. Temirov's Kyrgyz nationality did not comply with international law and rendered his loss of citizenship arbitrary. In May 2022, a Ministry of Interior investigator unilaterally listed Mr. Temirov's Kyrgyz passport as invalid in the national passport registry without a judicial decision, resulting in a *de facto* loss of citizenship. The stated reason was that Mr. Temirov is a citizen of the Russian Federation

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<sup>114</sup> UDHR, *supra* note 1 at Art. 13.

<sup>115</sup> *Id.*

<sup>116</sup> ICCPR, *supra* note 1 at Art. 12.

<sup>117</sup> Barbara von Rütte, "Defining the Right to Nationality" in *The Human Right to Citizenship*, 225 (2022); *Liechtenstein v. Gautemala (Nottenbohm Case)*, ICJ 1 [1955].

<sup>118</sup> Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality*, A/HRC/13/34 para. 25 (Dec. 14, 2009) («Меры, приводящие к лишению гражданства, должны быть направлены на достижение легитимной цели, которая не противоречит международному праву и, в частности, нормам международного права прав человека. Такие меры должны быть наименее интрузивными среди мер, которые могут достигнуть поставленной цели, и должны быть соразмерны защищаемым интересам.... Понятие произвольности может не только толковаться как действия, направленные против закона, но должно также толковаться шире для охвата аспектов неадекватности, несправедливости и непредсказуемости»); *see also K2 v United Kingdom*, Eur. Ct. H.R. App. No. 42387/13, para. 50 (2017).

and did not notify the Kyrgyz authorities of his dual citizenship. However, pursuant to the Citizenship Act of Kyrgyzstan, the lawful acquisition of dual citizenship is permitted, and does not automatically result in the revocation of Kyrgyz citizenship. Kyrgyz citizenship law states that dual citizens are first and foremost only recognized by the Kyrgyz government as citizens of Kyrgyzstan.<sup>119</sup> Accordingly, under Article 6 the acquisition of dual citizenship does not entail an automatic revocation of Kyrgyz citizenship.<sup>120</sup> During the trial and on appeal, defense counsel also argued that pursuant to Art. 20 of the Kyrgyz Constitution, no Kyrgyz citizen may lawfully be stripped of their nationality.

61. Further, expulsion as punishment may not be applied to Kyrgyz citizens. Under the Citizenship Act, a criminal court may only order expulsion or deportation for foreign citizens or stateless persons after an initial punishment such as incarceration has been rendered. The City Court of Bishkek wrongfully deported Mr. Temirov, who has a right to Kyrgyz citizenship. The deportation was also arbitrary because it bypassed due process norms that require notice and an opportunity to be heard.<sup>121</sup> Therefore, the trial and appellate courts mis-applied domestic laws on revocation of nationality, leading to the consequent violation of international human rights law.<sup>122</sup>

62. International law provides additional protections where, as here, a person is expelled to a country where the person would face grave human rights violations such as torture and cruel, inhuman, or degrading treatment.<sup>123</sup> Both Article 7 of the ICCPR and Article 3 of the CAT contain protections against the *refoulement* of persons in such cases.<sup>124</sup> Courts must weigh the “foreseeable consequences” of expulsion or extradition, taking into account the general human rights situation in the destination country and an assessment of individual risk to the applicant.<sup>125</sup> The starting point for this analysis is the overall situation of violence in the recipient country, including systematic violence against a particular group.<sup>126</sup> The Bishkek City Court did not conduct a generalized or an

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<sup>119</sup> Decision of the Bishkek City Court, No. UD-567/22 B4, p. 23 (Nov. 23, 2022).

<sup>120</sup> *Id.*

<sup>121</sup> ICCPR, arts. 9(2) & 14(1).

<sup>122</sup> Adilet, *Правовая позиция ОФ «Правовая клиника «Адилет» по факту выдворения Б.Темирова за пределы КР* (Nov. 11, 2022), available at: <https://adilet.kg/ky/tpost/aozbr0hms1-pravovaya-pozitsiya-of-pravovaya-klinika>

<sup>123</sup> Article 3 of the UN Convention Against Torture (CAT) enumerates the principle of *non-refoulement*, going beyond the Refugee Convention of 1951 to protect all persons from expulsion “where there are substantial grounds for believing that he would be in danger of being subjected to torture.” The CAT Committee will take into account factors including the human rights record of the receiving country, past instances of torture, and whether the expelled person has continued their political activities. *See* Committee Against Torture, *General Comment No. 1 Implementation of Article 3 of the Convention in the Context of Article 22*, CAT/C/60/R.2 para. 8 (Nov. 1997).

<sup>124</sup> Article 7 of the ICCPR has been interpreted as including a prohibition of expulsion if there is a risk of torture. *See* Human Rights Committee, *General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, para. 9 (Mar. 10, 1992); CAT Committee, *General Comment No. 1 on the implementation of article 3 of the Convention in the context of article 22*, CAT/C/60/R.2 para. 8 (Feb. 2 2017).

<sup>125</sup> *See Case of Khasanov and Rakhmanov*, Eur.Ct.H.R. App. Nos. 28492/15 and 49975/15, para. 93 (2022).

<sup>126</sup> *Id.* at para. 96.

individualized assessment into whether Mr. Temirov would face a risk of torture or ill-treatment upon expulsion to Russia.<sup>127</sup>

63. In light of the ongoing repression in Russia, Mr. Temirov faces significant risk to his personal safety as a public figure and anti-corruption journalist in Russia. In November 2022, the HRC issued its Concluding Observations on the Eighth Periodic Review of Russia and noted with grave concern widespread impunity for torture and ill-treatment in spaces of detention and the targeted persecution of “journalists, including criminal prosecution, searches of their homes and seizure of electronic devices, arrests, physical attacks and threats, including against their relatives.”<sup>128</sup> Given legitimate reports by UN treaty bodies and civil society organizations of torture and the criminalization of the freedom of expression in Russia, and the personal risk to Mr. Temirov’s as a high-profile, outspoken journalist, the deportation violates the absolute prohibition on *non-refoulement* under the ICCPR and CAT and must be overturned.

## VI. Conclusion

64. For the foregoing reasons, the *amici* urge the Supreme Court of the Kyrgyz Republic to remedy the fair trial and freedom of expression violations to which Mr. Temirov was subjected. Specifically, the Center for International Human Rights urges the Court to overturn the trial and appellate courts’ verdicts and unlawful deportation order and acquit Mr. Temirov.

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<sup>127</sup> See also *Case of Khasanov and Rakhmanov v. Russia*, Eur. Ct.H.R. App. Nos. 28492/15 and 49975/15, para. 24 (2022).

<sup>128</sup> Human Rights Committee, *Concluding observations on the eighth periodic report of the Russian Federation*, CCPR/C/RUS/CO/8, para. 20, 26, 28 (Dec. 1, 2022).