

**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. 38/2019 concerning Alexandre Vernot (Colombia)**

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in its resolution 1991/42. 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 16 January 2019 the Working Group transmitted to the Government of Colombia a communication concerning Alexandre Vernot. The Government did not reply to the communication in a timely manner. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group considers that deprivation of liberty is 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. Mr. Vernot is a Colombian and French national, a lawyer and human rights defender. The source reports that, in addition to practising law, Mr. Vernot has taken part in investigations into matters of public interest, as well as in the making and publication of films, documentaries, books and newspaper or opinion articles. He was a candidate for mayor of Bogotá and an adviser to a former mayor of that city, and has collaborated with the political parties Progresismo, Alianza Verde and Partido Liberal.

Detention

5. According to the source, Mr. Vernot was arrested on 27 September 2018, at the Andino commercial centre in the city of Bogotá, by officers of the Technical Investigation Corps. The officers produced a warrant at the time of the arrest. At a hearing on the same day, he was charged with bribery in the context of criminal proceedings (Criminal Code, sect. 444), and an application was submitted for a custodial preventive measure, which was granted by due-process judge No. 31.

6. The source argues, however, that the real reason for Mr. Vernot's detention is his exercise of freedom of expression and his work in defence of human rights. Furthermore, it is alleged that the restrictions on his liberty are the result of a judicial procedure that was not fair, independent and impartial, as fundamental guarantees of due process were violated.

Publication of a newspaper article

7. Regarding the claim that his detention was a result of the exercise of freedom of expression, the source indicates that Mr. Vernot was arrested three days after the publication of an investigative article in the weekly *La Nueva Prensa* on 24 September 2018, in which the Attorney General of Colombia was publicly accused of being involved in illegal acts.¹ While the article was not written by Mr. Vernot, the person who wrote it was a close colleague and friend of his and has collaborated with him on many occasions in making films about human rights and other political or public interest issues.

Antitrust action and civil lawsuit against an automobile company

8. It is alleged that Mr. Vernot's detention was also motivated by his activities as defence attorney for one of his clients. This client is president of, and a shareholder in, a company that sells cars, which was represented in an antitrust action and civil lawsuit by a team of lawyers led by the current Attorney General of the Nation, when he was practising law with a law firm. According to the source, it is necessary to look at some of the events that occurred in this civil lawsuit in order to understand the irregularities surrounding Mr. Vernot's detention.

9. According to the information received, the team of lawyers led by the current Attorney General agreed with the president of the automobile company to accept a success bonus as payment for representing him in the antitrust action or lawsuit. In August 2016, when he was elected to the position of Attorney General, the team leader ceased to represent the automobile company. The legal mandate was held by the rest of the team from the same law firm until it was terminated on 30 September 2016, before the case was resolved. On 7 December 2016, the parties to the judicial dispute reached agreement on a negotiated settlement. Faced with this, the legal team that had been led by the current Attorney General demanded payment of the success bonus.

¹ *La Nueva Prensa*, "Fiscal General de Colombia oculta bienes y fondos en España con una empresa fachada panameña de su propiedad" (Attorney General of Colombia hides property and assets in Spain through a Panamanian front company he owns), 24 September 2018.

Criminal investigation for irregularities in the assignment of the civil case

10. The source also reports that, in September 2016, a media outlet published an article claiming there had been irregularities in the assignment of the case in the aforementioned antitrust action, producing evidence that an offence may have been committed. In light of this, the Attorney General's Office reportedly opened an investigation.

11. In January 2018, the Attorney General's Office filed criminal charges against a group of individuals for offences related to interference in the assignment of files in the antitrust action against the automobile company. On 28 May 2018, the Attorney General asked to be recused from the case by the Supreme Court, invoking legal ground 4 of article 56 of Act No. 906 of 2004: "Where the judicial officer has been a proxy or defence counsel for any of the parties."

12. On 21 June 2018, the Plenary Chamber of the Supreme Court responded to the Attorney General's recusal request, noting that it had verified the existence of "a condition that may have an impact on the judgment or impartiality of the official or, at least, on the confidence of the parties to the proceedings and the community at large in the justice system". In view of this, the Supreme Court ordered "that the matter be dealt with by the Deputy Attorney General of the Nation".

13. The source points out that the Attorney General was not recused between his inauguration on 1 August 2016 and 21 June 2018, and that in this period the institution he headed conducted investigations and proceedings, determined the approach and position of the Attorney General's Office as regards the prioritization of the case, established the main thrust of the investigation, preferred charges and applied for arrest warrants.

14. According to the source, the case brought by the Attorney General's Office against Mr. Vernot's client is based on statements by accused persons who are being held in custody and who are allegedly facing prison sentences of up to 15 years. It is pointed out that they were arrested and charged when the Attorney General was in charge of the institution responsible for managing the case.

15. On 1 June 2018, four days after the Attorney General had submitted his recusal request to the Supreme Court, but before the Court had granted it, the Attorney General's Office obtained an arrest warrant for Mr. Vernot's client, the president of, and a shareholder in, the automobile company, for allegedly committing various offences. The Office also obtained a blue tracking notice from the International Criminal Police Organization (INTERPOL). The Office issued a press release on the issuance of the arrest warrant.

16. The hearing to arraign and decide on preventive measures for Mr. Vernot's client took place on 3-4 October 2018. On this occasion, the defence alleged a lack of due process, questioning why one of the defence lawyers, Mr. Vernot, had been arrested the week before the hearing, on 27 September 2018. His arrest intimidated the defence team, who feared that other members of the team might be arrested while carrying out their duties (interviewing witnesses and gathering evidence). The Attorney General's Office charged the accused with four aggravated crimes: giving or offering a bribe, as the principal (Criminal Code, art. 407), and, as an accessory, unlawful use of communication networks (art. 197), abusive access to a computer system (art. 269A) and damage to an information technology system (art. 269D). At the same hearing, the Attorney General's Office requested a custodial preventive measure, which was granted by the due-process judge. This decision led to the extradition of Mr. Vernot's client, who was in Spain at the time, under a red notice issued by INTERPOL.

17. The source indicates that the Counsel-General's representative, who was present at the hearing and was struck by the judge's imperfect knowledge of the documentation, intervened to question the nature and purpose of the hearing and to stress the importance of reviewing the available evidence and verifying the information. The representative asked the senior judge to annul the hearing and entrust it to a judge who could carry out a direct, substantive and exhaustive analysis of the evidence and take the corresponding decision.

Persecution of lawyers and family members

18. The source indicates that Mr. Vernot's case is part of a wider pattern of persecution against persons close to his client. Members of his client's family and other members of his legal team have suffered reprisals.

19. For instance, the brothers of Mr. Vernot's client have allegedly been threatened by the Attorney General's Office with prosecution if he was not handed over to the Colombian authorities. Likewise, one of the brothers has been the subject of a criminal investigation in the so-called "mega-mansions" case, into allegations of fraud and environmental offences.

20. Meanwhile, lawyers acting for the same client are apparently facing arbitrary criminal proceedings against a backdrop of preventive custody, disciplinary proceedings and threats coming directly from the Attorney General's Office.

21. One of the lawyers on the same team of legal representatives as Mr. Vernot has reportedly been followed and had her phone tapped, received threats from the Attorney General's Office and had disciplinary proceedings opened against her. On 8 October 2018, she received three calls from the Attorney General's Office, and then a text message on her personal cell phone threatening to put her in jail, telling her, "We're going to do to you what we did to Vernot". The source indicates that the telephone numbers from which the calls were made are from the Attorney General's Office, as can be seen on its website. According to the source, this irregularity has been reported to the Deputy Attorney General's Office for undermining the right to a defence in civil proceedings, as well as the practice of law in Colombia.

22. The source further reports that the president of the disciplinary chamber ordered the same lawyer to be investigated for allegedly violating the ethics of the legal profession by publicly expressing opinions on issues of public interest and commenting on her client's case.

23. According to the information received, another lawyer from the same legal team as Mr. Vernot and the lawyer referred to above has also received death threats in connection with the exercise of legal representation.

Criminal case against Mr. Vernot

24. According to the information received, Mr. Vernot was arrested on the public highway and brought before a judge. On 27–28 September 2018, the hearing was held before Municipal Criminal Court No. 49 with responsibility for ensuring due process; at the hearing, the defence rejected the charges.

25. According to the source, the Attorney General's Office claimed, with no evidence to support its claim, that Mr. Vernot had offered money to an individual held in the National Model Prison in an attempt to bribe him not to testify against his client (the witness is also a lawyer and had apparently represented Mr. Vernot's client in the past). According to the Attorney General's Office, the alleged bribe was intended to make the detainee "shut up" and not involve Mr. Vernot's client in the criminal case. Subsequently, the judge said that Mr. Vernot's criminal responsibility could reasonably be inferred from the statement of the detained individual whom there had allegedly been an attempt to bribe.

26. The source states that the persecution of the lawyers in this case is evident, to the point where, in order to arrest Mr. Vernot, his cell phone was tapped, without a warrant, to discover his location. It is pointed out that it was the Attorney General's Office that took action in these criminal proceedings, not the Deputy Attorney General's Office, despite the fact that the Attorney General should have been recused and had no legitimacy to apply for a preventive measure, as he allegedly had a direct interest in the case.

27. At the preliminary hearing, the Attorney General's Office stated that the purpose of the arrest warrant was to formulate an indictment and request the imposition of a custodial measure to be served in a prison, in relation to events that allegedly occurred on 8 and 13 August 2018. The arrest warrant was issued for the offence of bribery in the context of criminal proceedings pursuant to article 444 A of the Criminal Code.

28. In arguing for a preventive measure, the Attorney General's Office said that it had sufficient evidence, namely: (a) the statement of the alleged witness who was in detention, who said that Mr. Vernot offered him money; (b) the interview with another lawyer who was allegedly present, stating that he heard no such offer being made; (c) a verified call from Mr. Vernot, in which, according to the witness, the latter only told him that they had nothing to talk about; and, lastly, (d) proof that Mr. Vernot made a trip to Madrid, where his client was staying.

29. The source emphasizes that article 308 of the Code of Criminal Procedure establishes that one of the conditions for obtaining a custodial measure is that "it can reasonably be inferred that the accused may be the perpetrator of or participant in the criminal conduct under investigation". In the present case, it is claimed that the Attorney General's Office reached this conclusion on the basis of illogical, and thus manifestly arbitrary, reasoning. The assumption that a witness detained as a preventive measure and to whom the Attorney General's Office has offered benefits intended to ensure he receives the minimum penalty, corroborated, according to the Attorney General's Office, by an interview with a witness who had not heard the subject of the conversation, by a telephone conversation that did not take place and by a trip from Spain to Colombia by Mr. Vernot. It is claimed that this conclusion by the Attorney General's Office, which was shared by the judge who decided on the custodial measure, is pure sophistry, a bogus argument glossed over as the truth.

30. Mr. Vernot was imprisoned in a maximum security wing of La Picota penitentiary and prison complex in Bogotá, where visits are highly restricted. The source says that various Colombian and foreign lawyers have tried to visit Mr. Vernot in the compound but have been denied access to him.

31. At the same hearing on 28 September 2018, an appeal was lodged against the oral judgment issued on the same day. It was heard on 23 November 2018 by Criminal Circuit Court No. 16 with jurisdiction in the city of Bogotá. At this hearing, according to the source, it was stated that the imposition of a custodial measure on Mr. Vernot was not commensurate with the tenuous or questionable evidence produced by the prosecution, whereas, at this stage of the proceedings, evidence was expected to be probative. In other words, the use of testimony as supreme proof for an indictment is contrary to the presumption of innocence, as testimony is subject to cross-examination during the trial, especially if it comes from a person who has been charged with an offence and is seeking to have his sentence reduced.

32. The judge upheld the decision of Municipal Criminal Court No. 49. The source notes that the decision on the appeal refrained from examining the relevance and effectiveness of alternative, non-custodial measures, such as release on bail or a ban on leaving the country.

Category III

33. In this case, according to the source, the issuance of the custodial measure was a violation of due process and Mr. Vernot's right to a defence.

34. In the first place, the source contends that the proceedings were not impartial or independent, since it was the Attorney General's Office that acted in the trial, and not the Deputy Attorney General's Office, despite the fact that the Attorney General was disqualified from the case, having requested the Supreme Court to be recused in a case that was inseparable from this one. Not to mention that his colleague had been called by the Attorney General's Office, with threats "to do to you what we did to Vernot". It is claimed that the disqualification of the Attorney General compromised the impartiality of the prosecutors involved in Mr. Vernot's detention.

35. The source emphasizes that article 251 of the Constitution provides, among other things, that: "The following are special duties of the Attorney General of the Nation: ... (2) To appoint and dismiss, in accordance with the law, the officials in his or her charge; (3) To undertake investigations and prosecutions directly, irrespective of the state they are in, as well as to freely assign and move officials in investigations and prosecutions. Likewise, under the principles of managerial and hierarchical unity, to determine the approach and

position of the Office, without prejudice to the independence of the prosecutors, on the terms and conditions established by law.”

36. It is noted that the Attorney General, on 28 May 2018, asked to be recused by the Supreme Court in a case intrinsically linked to the case of Mr. Vernot. The Plenary Chamber of the highest court in the land agreed to his request on 21 June 2018. The source alleges that the recusal of the Attorney General affects the impartiality of all action taken by prosecutors working on Mr. Vernot’s case, which led to his detention, given the principles of managerial and hierarchical unity established in article 251 (3) of the Constitution. According to the source, the threats from a hierarchical superior and the phone calls originated in the Attorney General’s Office, and therefore it is obvious that the entire organizational structure of the Office serves the interests of the recused person. For the source, this leads to the conclusion that prosecutors are disqualified under article 56 of the Code of Criminal Procedure, as they are subordinates of the Attorney General, who, though not intervening personally, does so through the intermediary of the officials beneath him who owe him a duty of obedience.

37. The source also claims that, that in order to arrest Mr. Vernot, the latter’s cell phone was tapped so as to determine his location, in contravention of article 235 (3) of the Code of Criminal Procedure, which prohibits the issuance of judicial orders to intercept communications of lawyers in this way.

38. The source argues that there has been a violation of the fundamental principle of the presumption of innocence, since there is no reasonable inference that Mr. Vernot was the perpetrator of the offence with which he is charged, which is a prerequisite for granting a pretrial detention order. All that remains is the version of the detained witness, who was heard and presented as a person without any interest in the case, which is false, since he is deprived of liberty and is negotiating benefits from the Attorney General’s Office in exchange for his testimony. Moreover, this witness stated that Mr. Vernot’s client owed him a fee for his professional services, which proves there was a conflict of interest in his statement. These circumstances are more than sufficient to show that it cannot reasonably be inferred from the statement of the detained witness that Mr. Vernot committed the crime with which he is charged. Moreover, the source states that the rest of the so-called proof is absolutely irrelevant: the statement of a witness who did not hear the subject of the conversation; a call from Mr. Vernot in which nothing was said; and a trip from Spain to Colombia, which is not proof of any criminal conduct. The source stresses that there is not a single piece of evidence against Mr. Vernot – no audio, written or video evidence that could incriminate him.

39. It is also alleged that the judge in Municipal Criminal Court No. 49, with responsibility for ensuring due process, claimed that the actions of the lawyer Alexandre Vernot could pose a risk of obstruction of justice in the future. However, the judge’s conclusion is based on arbitrary reasoning. This is because it appears to be based on a circumstantial and arbitrary premise, whereby she accepts the prosecution’s allegations with respect to the imputed acts (bribery) and, on the basis of that first arbitrary conclusion, concludes that there is therefore a proven risk that Mr. Vernot might, at some time in the future, obstruct justice.

40. In addition to this, as stated at the hearing, in the analysis of the danger posed by Mr. Vernot in this case, the material evidence provided by the defence were not taken into account.

Category II

41. It is clear to the source that Mr. Vernot’s deprivation of liberty also falls into category II, since he is a human rights defender, and that the real reasons for his detention are twofold.

42. First, the source claims that his detention is the result of the publication of the newspaper article reporting that the current Attorney General is the real owner, through a Panamanian company, of an apartment worth more than €3 million, which may have been purchased with money not declared to the tax authorities.

43. And second, the source argues that the detention results from Mr. Vernot's defence of human rights in Colombia in general and of one client in particular, a businessman and former client of the current Attorney General, to whom the client allegedly failed to pay a large professional fee for work done before he became Attorney General. Mr. Vernot's client is now facing criminal prosecution, apparently for other reasons, by the Attorney General's Office.

Government reply

44. On 16 January 2019, the Working Group transmitted to the Government the communication sent by the source and set a deadline for reply of 60 days, in accordance with its working methods. The Working Group regrets the fact that the Government neither requested an extension nor responded to the communication before the deadline, i.e. by 18 March 2019. The Government's reply was received on 22 March 2019 and cannot therefore be considered to have been submitted in a timely fashion. In accordance with paragraph 16 of its methods of work, the Working Group will render its opinion based on all the information it has obtained.

Discussion

45. In the absence of a timely response from the Government, the Working Group has decided to render the present opinion on the basis of all the information submitted, in accordance with its methods of work.

46. The Working Group has in its jurisprudence established how it deals with evidentiary issues. If the source has established a prima facie case for a 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.² In the present case, in the absence of a reply within the time limit set, the allegations made by the source are considered reliable in principle, having been corroborated by the information to which the Working Group had access, including the reply from the Government received on 22 March 2019.

47. From the information at its disposal, the Working Group is convinced that Mr. Vernot was arrested on 27 September 2018 by the Colombian authorities. The officers produced a warrant at the time of the arrest. At the arraignment hearing on the same day, charges were preferred for bribery in the context of criminal proceedings and an application was submitted for a custodial preventive measure, which was granted by the competent court.

48. The Working Group wishes to recall that it is not an appellate body and does not assess evidence presented in the course of domestic proceedings, including remand proceedings. Rather, in accordance with its methods of work and its settled practice, the Working Group examines violations of internationally recognized guarantees of due process that are of sufficient gravity for the detention of a person to be considered arbitrary under category III.

49. The source argues that the reason for Mr. Vernot's detention is his exercise of freedom of expression and his work in defence of human rights. However, the Working Group received no compelling information to show that his arrest, three days after the publication of an investigative newspaper article written by a close colleague of his, had any connection with his arrest. Moreover, the same source informed the Working Group that the investigation into Mr. Vernot may have been opened months in advance, which weakens the proposition that a case could have been made against him in three days.

Category III

50. Both the Universal Declaration of Human Rights and the Covenant recognize the right of everyone accused of an offence to a fair and public hearing, with every guarantee,

² A/HRC/19/57, para. 68.

by a competent, independent and impartial tribunal.³ The Working Group considers, as does the Human Rights Committee, that this right is fundamental to the protection of human rights, which is aimed at ensuring the proper administration of justice and guaranteeing a number of specific rights.⁴ The Human Rights Committee has recalled that the requirement of competence, independence and impartiality of judicial bodies is an absolute right that is not subject to any exception.⁵ Impartiality should be understood, first, as a way of preventing judges from allowing their decisions to be influenced by personal bias or prejudice, or harbouring preconceptions about the particular case before them, or acting in ways that promote the interests of one of the parties to the detriment of another. Second, the judicial body must also appear to a reasonable observer to be impartial.⁶

51. The Special Rapporteur on the independence of judges and lawyers has noted that the Guidelines on the Role of Prosecutors are, “at the global level, the main instrument specifically aimed at regulating the profession of prosecutors”.⁷ With this in mind, the Working Group would like to recall that the Guidelines, in the preamble, reaffirm the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal.⁸ These rights are recognized in the Universal Declaration of Human Rights,⁹ in the Covenant¹⁰ and also, among others, in the American Convention on Human Rights.¹¹

52. The Working Group is of the view that the criteria of competence, impartiality and independence, and in general the guarantees of a fair trial required of judges, are also applicable to prosecutors, as the latter play an essential role in the administration of justice and the fight against crime. In this connection, as pointed out by the Special Rapporteur on the independence of judges and lawyers:

Prosecutors are the essential agents of the administration of justice, and as such should respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system. Prosecutors also play a key role in protecting society from a culture of impunity and function as gatekeepers to the judiciary.¹²

53. In following these Guidelines, the Working Group emphasizes that prosecutors have a duty to perform their duties fairly, consistently and expeditiously, and to respect and protect human dignity and uphold human rights.¹³ Their duties include carrying out their functions impartially, acting with objectivity and paying attention to all relevant circumstances, irrespective of whether they are to the disadvantage of the suspect.¹⁴

54. In this regard, the Working Group stresses the importance of the active role or function of prosecutors in criminal proceedings, including the institution of prosecutions, the investigation of crime, supervision of the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.¹⁵

55. The Special Rapporteur also noted that, in assessing the independence and impartiality of prosecutors, it is important to examine both the structural independence of prosecutors’ offices and their operational independence and impartiality, or functional

³ Article 10 of the Declaration and article 14 of the Covenant.

⁴ General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 2.

⁵ *Ibid.*, para. 19.

⁶ *Ibid.*, para. 21.

⁷ A/HRC/20/19, para. 20.

⁸ A/CONF.144/28/Rev.1, second and fifth preambular paragraphs.

⁹ Articles 10 and 11.

¹⁰ Article 14.

¹¹ Article 8.

¹² A/HRC/20/19, para. 93.

¹³ A/CONF.144/28/Rev.1, guideline 12.

¹⁴ *Ibid.*, guideline 13 (a) and (b).

¹⁵ *Ibid.*, guideline 11.

independence, and that the “lack of autonomy can erode the credibility of the authority responsible for investigating crimes objectively and undermine confidence in its ability to do so”.¹⁶ In this context, the United Nations Guidelines emphasize that States have a duty to ensure that prosecutors can carry out their functions without improper interference.¹⁷ In the present case, the Working Group will examine whether the Attorney General’s Office acted independently and impartially in the investigation and criminal indictment of Mr. Vernot.

56. In this connection, the Working Group received information, which was not refuted by the State party, that Mr. Vernot was a defence lawyer for a client who was president of, and a shareholder in, an automobile company, and that he himself was represented by a team of lawyers led by the current Attorney General, who, in August 2016, on being appointed to that post, ceased to represent that automobile company. That team of lawyers agreed with Mr. Vernot’s client to accept as payment a success bonus in a case involving that company, which ended in a negotiated settlement between the parties. It appears that the fee had not been paid by December of that year, even though the team of lawyers had demanded payment.

57. The Working Group received compelling information, which was not contested by the State party, about a number of criminal charges and threats against clients and other lawyer colleagues of Mr. Vernot who worked on the same case. Similarly, the Government did not respond to the claim by the source that, in January 2018, the Attorney General’s Office indicted a group of individuals for offences relating to interference in the assignment of files in the antitrust action against the aforementioned automobile company.

58. In the light of the information received, the Working Group is convinced that, since 21 June 2018, the Attorney General was disqualified from pursuing Mr. Vernot’s case, as decided by the Plenary Chamber of the Supreme Court in its response to a recusal request from the Attorney General himself in accordance with Colombian legislation. The Court ruled that the case should be dealt with by the Deputy Attorney General of the Nation.

59. The Working Group is also convinced that the Attorney General has the power to appoint and dismiss officials in his charge; to undertake investigations and prosecutions directly, and to freely assign and move officials in investigations and prosecutions, as well as to determine the approach and position of the Attorney General’s Office. This implies that public prosecutors are subordinate to the Attorney General, who, though not intervening personally, does so through the intermediary of the officials beneath him who owe him a duty of obedience.

60. Taking into account the nature of the offence with which Mr. Vernot has been charged, the managerial and hierarchical rules applicable to the Attorney General in respect of his subordinates, the criminal charges and threats against people close to the case and the recusal of the Attorney General by decision of the Supreme Court, the Working Group considers that there is sufficient evidence to believe that, from the perspective of a reasonable observer, the entire organizational structure of the Attorney General’s Office may have acted to advance the interests of the recused person.

61. Moreover, the Working Group noted that the Attorney General was not disqualified between his inauguration on 1 August 2016 and 21 June 2018, and that in this period the institution he headed conducted investigations and proceedings and determined the approach and position of the Attorney General’s Office in the course of the investigation. In January 2018, the Attorney General’s Office charged a group of individuals with offences related to interference in the assignment of files in the antitrust action against the automobile company.

62. For the above reasons, the Working Group is of the view that the action of the Attorney General’s Office was not objective or impartial in the investigation and indictment of Mr. Vernot, which constitutes a partial but serious failure to respect the international norms for a fair trial set out in article 10 of the Universal Declaration of Human Rights and

¹⁶ A/HRC/17/30/Add.3, para. 16. See also para. 87.

¹⁷ A/HRC/20/19, para. 26.

article 14 of the Covenant, meaning that the detention was arbitrary and falls into category III.

Disposition

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

The deprivation of liberty of Alexandre Vernot, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and of articles 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within category III.

64. The Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Vernot 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 Covenant.

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

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

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

Follow-up procedure

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

69. 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.

70. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take action of its own 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.

71. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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.¹⁸

[Adopted on 13 August 2019]

¹⁸ Human Rights Council resolution 33/30, paras. 3 and 7.