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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020

#### Opinion No. 48/2020 concerning Huseyn Abdullayev (Azerbaijan and Turkey)\*

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 14 November 2019 the Working Group transmitted to the Governments of Azerbaijan and Turkey a communication concerning Huseyn Abdullayev. The Government of Azerbaijan replied to the communication on 8 January 2020 while the Government of Turkey replied on 12 February 2020. Both States are parties to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
  - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
  - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
  - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
  - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation,

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\* Seong-Phil Hong did not participate in the discussion of the present case.



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. Huseyn Abdullayev is a citizen of Azerbaijan born in 1967, who was living in Germany before his arrest. He is a vocal opponent of the Government of Azerbaijan. Mr. Abdullayev was an elected member of the National Assembly of Azerbaijan from November 2005 to May 2007. He was charged with affray and hooliganism and convicted in May 2007, and sentenced to two years on parole, after a fight in the National Assembly. After fleeing to Germany in February 2013 and publishing a song criticizing the Government of Azerbaijan, he was convicted in absentia of tax evasion on 25 June 2013. On 26 November 2013, Mr. Abdullayev was granted asylum in Germany on political grounds.

#### (a) Arrest and detention

5. According to the source, Mr. Abdullayev was arrested on 21 April 2018 in Istanbul, Turkey, where he was on holiday, by approximately 15 police officers. The Turkish officials did not show a warrant for the arrest, however it was later made public that the Yasamal District Court of Baku had issued an order for the arrest on 11 October 2016. The authorities of Azerbaijan announced that an International Criminal Police Organization (INTERPOL) Red Notice had been issued, but the document they showed to the media had been cancelled in November 2014.

6. The source indicates that Mr. Abdullayev was detained for one night in Istanbul by the Turkish police. He was not allowed to communicate with his German lawyer or a Turkish lawyer. He was allowed only one visit, from the family member who was in Turkey with him. He was handed over to Azerbaijani officials on 22 April 2018 and accompanied by two officials of the Ministry of Internal Affairs of Azerbaijan on a commercial flight to Baku. The German embassy could not be contacted in time, as the arrest and transfer occurred during the weekend.

7. The source states that Mr. Abdullayev's arrest was first ordered by Yasamal District Court on 26 June 2013, after he was convicted in absentia of tax evasion. The authorities justified the detention order as a precautionary measure given that he had allegedly absconded during the investigation.

8. The source states that Mr. Abdullayev was charged under the following articles of the Azerbaijan Penal Code: 178.2.1, 178.2.2 and 178.2.4 (fraud); 182.2.1, 182.2.2, and 182.2.4 (repeated and premeditated extortion through the use of threats by an organized group to obtain significant property); 192.2.1 and 192.2.2 (illegal business activities involving large sums of money, carried out by an organized group); 193.2.1 and 193.2.2 (money laundering); 213.2.1 and 213.2.2 (tax evasion); 308.2 (abuse of power); 312.2 (illegal influence over the decision of an official); 313 (forgery); and 318 (illegal border crossing).

9. Reportedly, the Government of Azerbaijan considers that Mr. Abdullayev is leading the family company Araz Inc., although he has no legal role in the company, and has charged him with illegal entrepreneurship, tax evasion, and carrying out construction work without a licence, all related to the company's operations. He is also charged with abuse of power and extortion in relation to an incident involving the detention of a family member for an attempt to illegally cross the border from Azerbaijan into Georgia at the checkpoint connected to Balakan. Articles 154 and 155 of the Criminal Procedure Code of Azerbaijan allow for pretrial detention where there are sufficient grounds to conclude that an accused has, among other things, fled, obstructed the investigation or committed additional crimes.

10. According to the source, there are few facts and little documentary evidence supporting charges in the indictment. For instance, the charges against Mr. Abdullayev under article 313 (forgery) are unsupported by any facts in the indictment. Moreover, many of the charges relating to tax evasion and illegal entrepreneurship date back to 2000–2012, so the statute of limitations for those charges has expired.

11. The source contends that after Turkish and Azerbaijani officials rendered Mr. Abdullayev to Azerbaijan, he was first brought before the Nasimi District Court in Baku on 25 April 2018, more than 48 hours after his arrest in, and rendition from, Turkey. The Court ordered his pretrial detention without referring to any specific fact or circumstances justifying it. His detention was extended on 31 May 2018, 9 June 2018, 12 September 2018 and 25 February 2019.

12. The source adds that, since his arrival in Azerbaijan, Mr. Abdullayev has not been allowed any contact with his family. Additionally, he has not been permitted access to his international counsel, who unsuccessfully sought to visit him in prison and whose formal request to visit him was denied by the Ministry of Justice of Azerbaijan. Although Mr. Abdullayev could afford to appoint his own counsel and legally should have been allowed to do so, the Government appointed a public defender to represent him during the hearing on 25 April 2018. He was not allowed to appoint his own counsel until a week after his return to Azerbaijan.

13. The source submits that Mr. Abdullayev was unlawfully rendered to Azerbaijan, where he was detained by the Penitentiary Service at the Kurdekhani investigative institution under the order of the Investigation Department of the Office of the Prosecutor General of the Republic of Azerbaijan.

14. The source underlines that Mr. Abdullayev was indicted along with a family member and four Azerbaijani border guards, who were allegedly implicated in the border crossing. Because of the inclusion of the border guards in the indictment, Mr. Abdullayev was tried before the Baku Military Court under article 68.2 of the Criminal Procedure Code. The trial began on 2 April 2019. During the court proceedings, Mr. Abdullayev and two of the border guards who were refused bail were held in a cage with metal bars. The cage was approximately 90 cm by 90 cm, barely large enough to place a chair. If Mr. Abdullayev's attorneys wished to speak to him, they had to get permission from the judge to approach the cage, which allegedly greatly limited such communications and Mr. Abdullayev's ability to participate in the court proceedings.

15. According to the source, Mr. Abdullayev was sentenced on 1 October 2019 to six years in prison by the Baku Military Court.

(b) Legal analysis

(i) Category I

16. The source submits that there was no legal basis for Mr. Abdullayev's arrest on 21 April 2018 in Turkey nor for his subsequent return to Azerbaijan. As such, his continued detention and prosecution in Azerbaijan amount to arbitrary detention under category I of the Working Group.

17. First, the source alleges that neither the Turkish nor the Azerbaijani authorities acted in conformity with article 9 (2) of the Covenant or similar requirements enshrined in article 19 of the Constitution of Turkey and article 67 of the Constitution of Azerbaijan. Mr. Abdullayev was not shown a warrant and was not given access to counsel by Azerbaijani authorities. He was in possession of a valid visa for Turkey and there was no active INTERPOL Red Notice for his arrest. It appears that no administrative extradition proceedings were initiated in Turkey. The arrest order issued by a Baku court in October 2016 was not sufficient to justify Mr. Abdullayev's arrest in Turkey, without a formal request for extradition issued and processed by a Turkish court.

18. Second, the source cites articles 9 (4) and 13 of the Covenant, arguing that extraordinary rendition violates those articles and has been previously considered by the Working Group to be incompatible with international law.

19. Moreover, the source submits that Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), to which both Azerbaijan and Turkey are parties, requires procedural safeguards for an alien in expulsion proceedings. Both countries are also parties to the European Convention on Extradition, which establishes that "the procedure with regard to extradition and provisional arrest shall be governed solely by the law of the requested Party". The source argues that Turkey, as the party from which extradition was apparently requested,

was bound by article 18 (4) of the Penal Code of Turkey, which provides that an extradition cannot be executed until the Serious Criminal Court has ruled that it may proceed; it also explicitly permits an individual to appeal the Court's decision.

20. Consequently, the source concludes that Mr. Abdullayev's arrest in Istanbul and his forcible return to Azerbaijan constitute an extraordinary rendition, as the procedure for conduct of extradition proceedings was not respected. Even if Mr. Abdullayev's removal was sanctioned by a judicial or administrative authority in Turkey, the resulting extradition order is *ultra vires* because he was not given the opportunity to challenge his removal or to appeal the extradition order before he was removed to Azerbaijan. These procedural safeguards are required under both international law and Turkish law and are meant to prevent refoulement.

21. The source adds that the unlawful actions taken by Turkey in arresting, detaining, and assisting in the extraordinary rendition of Mr. Abdullayev render Turkey liable for the subsequent human rights violations he experienced in Azerbaijan.

(ii) Category II

22. The source notes that the detention of Mr. Abdullayev is also arbitrary under category II, as he was arrested as a direct consequence of his exercise of his right to freedom of expression, which is protected under domestic and international law.

23. The source alleges that the Government of Azerbaijan has consistently tracked Mr. Abdullayev for his political opposition and criticism of the President and his Government. While Mr. Abdullayev's arrest is based on allegations of tax fraud allegedly committed by his family's company, the investigation was opened just one day after he posted a video of himself highlighting human rights abuses by the police of Baku against protesters. This claim is further substantiated by the fact that Mr. Abdullayev has no legal link to the company and that the company has already paid substantial amounts in fines to the Government.

24. The source underlines that discussion of government policy and activities, political debate, reporting on human rights and similar activities protected under the freedom of expression can never be restricted under the justification of public order and national security.

(iii) Category III

25. The source further states that Mr. Abdullayev's detention violates his due process rights and as such is arbitrary under category III.

26. First, the source reiterates that article 9 (2) of the Covenant was violated, as was article 19 of the Constitution of Turkey and article 67 of the Constitution of Azerbaijan, containing similar requirements. Mr. Abdullayev was not shown a warrant, was not given access to his file through lawyers, and a Red Notice cancelled in November 2014 was the only justification for his arrest. No administrative extradition proceedings in Turkey were initiated.

27. Second, the source recalls article 9 (3) of the Covenant, and that, as emphasized by the Human Rights Committee, an arrested person should be before a judge within 48 hours unless there are exceptional circumstances.<sup>1</sup> This provision is reflected in both the Constitution of Turkey and the Criminal Procedure Code of Azerbaijan. Moreover, article 9 (4) of the Covenant upholds the right to challenge the legality of detention before a court. The source notes that Mr. Abdullayev was not presented to any court before being extraordinarily rendered to Azerbaijan and was then only brought before the court five days after his arrest.

28. Third, the source notes article 9 (3) of the Covenant and the explanation by the Human Rights Committee that pretrial detention must be based on an individualized determination that it is reasonable and necessary, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.<sup>2</sup> Similarly, article 155 of the

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<sup>1</sup> General comment No. 35 (2014) on liberty and security of person, para. 33.

<sup>2</sup> *Ibid.*, para. 38.

Criminal Procedure Code of Azerbaijan provides that, in order to impose pretrial detention on an accused, there must be “sufficient grounds” to suspect that the accused will, for instance, flee, obstruct the investigation or commit additional crimes. The source submits that the Government of Azerbaijan provided no evidence to justify Mr. Abdullayev’s pretrial detention, and the court did not make an individualized determination that it was reasonable and necessary.

29. Furthermore, the source affirms that Mr. Abdullayev was denied the presumption of innocence as set out in article 14 (2) of the Covenant. The Human Rights Committee has stated that defendants should normally not be shackled or kept in cages during trial or otherwise presented to the court in a manner indicating that they may be dangerous criminals.<sup>3</sup> Mr. Abdullayev was, however, held in a cage with metal bars during his trial, in direct violation of the presumption of innocence.

30. The source also submits that Mr. Abdullayev was denied an independent and impartial tribunal, as described in article 14 (1) of the Covenant. The trial of civilians by a military court can effectively harm the right to an independent and impartial tribunal, and should, as stated by the Human Rights Committee, be exceptional, that is, limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.<sup>4</sup> The source notes that the Working Group has, along the same lines, recalled that military tribunals should never try civilians, even if civilians are indicted alongside military personnel. Mr. Abdullayev, a civilian, was tried before Baku Military Court. The Government of Azerbaijan has sought to justify this under article 68.2 of the Criminal Procedure Code, which provides for civilians to be tried before military courts when offences committed by military personnel involve the participation of a civilian. However, Azerbaijan has not shown that trying Mr. Abdullayev by a military tribunal was necessary and justified by objective and serious reasons, nor that regular civilian courts were unable to undertake the trial. The source submits that the Government has provided insufficient justification for why the border guards could not be tried before a civilian court or why the cases could not be separated.

31. The source also highlights that Mr. Abdullayev was denied access to counsel by Turkey and then Azerbaijan in violation of the provisions of article 14 (3) (b) of the Covenant. It recalls that the Constitution of Azerbaijan also protects the right to counsel. Moreover, the Criminal Procedure Code of Azerbaijan states that the Government “shall have no right to suggest that the suspect or the accused instruct a certain defence counsel” (art. 92.14), and that a public defender should be appointed only “if the financial position of the detainee does not enable him to retain a lawyer at his own expense” (art. 153.2.7). Mr. Abdullayev was not allowed to contact his lawyers nor to choose a lawyer and was appointed a public defender despite being able and willing to appoint his own counsel. Also, he was returned to Azerbaijan without having had access to legal counsel. Mr. Abdullayev’s international counsel was repeatedly refused access to his client while Mr. Abdullayev was in detention in Baku.

32. Finally, the source submits that the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) underline that communication with family shall not be denied and that visits and correspondence with the outside world should be allowed. Mr. Abdullayev has not been able to see, talk on the phone with, or correspond with family since his extraordinary rendition. His only interaction with his family has been brief moments during or after his court hearings. Although his family attempted to visit him at the detention facility for his birthday in May 2019, they were not permitted to see him.

(iv) Category IV

33. According to the source, Mr. Abdullayev’s arrest and extraordinary rendition to Azerbaijan despite his refugee status in Germany constitutes a refoulement by Turkey in

<sup>3</sup> General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 30.

<sup>4</sup> Ibid., para. 22.

violation of international and domestic law, and thus his ongoing detention is arbitrary under category IV.

34. The source mentions the Convention Relating to the Status of Refugees, to which both Azerbaijan and Turkey are States parties, establishes that no contracting State is to expel or return a refugee in any manner whatsoever to the frontiers of territories where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion (art. 33 (1)). Guidance from the Office of the United Nations High Commissioner for Refugees indicates that an asylum determination by one country must be respected and honoured by other countries.

35. In the case of Mr. Abdullayev, the source recalls that Germany granted him asylum on 26 November 2013. Mr. Abdullayev communicated this fact to the Turkish authorities during his arrest and detention in Turkey prior to being handed over to Azerbaijani officials. The Government of Turkey was obliged under the European Convention on Extradition and broader international legal standards to ensure that the extradition request of Azerbaijan was not politically motivated. It was also obliged to respect Mr. Abdullayev's refugee status and not to return him to the country from which he sought refuge.

(v) Category V

36. Lastly, the source submits that Mr. Abdullayev's detention is arbitrary because it constitutes a violation of international law on the grounds of discrimination based on political or other opinion, as there is a strong presumption that detention based on the exercise of fundamental civil and political rights will also constitute discrimination based on political opinion.

37. In the view of the source, Mr. Abdullayev is being targeted for his outspoken criticism of the Government of Azerbaijan. The charges against Mr. Abdullayev stem from an investigation of his family's company that the Ministry of Taxes initiated the day after Mr. Abdullayev posted a video condemning police violence against opposition protesters in Baku. Therefore, the source concludes that Mr. Abdullayev's detention is arbitrary, as the authorities of Azerbaijan have targeted him because of his political opposition to the President and his Government.

*Response from the Government of Turkey*

38. On 14 November 2019, the Working Group transmitted the allegations from the source to the Government of Turkey under its regular communications procedure. The Working Group requested Turkey to provide, by 13 January 2020, detailed information about the circumstances of the arrest and detention of Mr. Abdullayev. The Working Group further requested the Government to clarify legal provisions justifying the arrest and detention, as well as the compatibility of the arrest and detention with the obligations of Turkey under international human rights law, and in particular regarding the treaties ratified by Turkey.

39. On 13 January 2020, the Government of Turkey requested an extension, which was granted with the new deadline of 13 February 2020. On 12 February 2020, the Government of Turkey submitted its reply, in which it argues that Mr. Abdullayev, owing to an INTERPOL notice against him for crimes of tax evasion and illegal business administration, was assessed by the Turkish authorities as posing a threat against public order and security. Therefore, a deportation order against him was issued in accordance with article 54 of Law No. 6458. Accordingly, the Directorate General of Migration Management requested the General Directorate of Security to authorize the arrest, in order to commence the deportation procedure in accordance with Law No. 6458, taking into account also article 4 (on the principle of non-refoulement) and article 55 (exemption from a deportation decision) of the Law.

40. The Government refers to the case law of the European Court of Human Rights, in which the Court has stated that, as a rule, a State has the authority not to accept an alien, to deport an alien who has unlawfully entered the country or who unlawfully tries to stay in the country, to return an individual who committed a crime in the country where he or she is located or to return an alien to another country where he or she committed a crime. Furthermore, Protocol No. 7 to the European Convention on Human Rights, which Turkey

ratified on 2 May 2016, clearly sets out that an alien may be expelled before the exercise of his rights (the right to submit reasons against his expulsion, the right to have his case reviewed, and the right to be represented for these purposes before the competent authority) when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

41. According to the Government, Mr. Abdullayev was arrested in Istanbul on 21 April 2019 and the Istanbul provincial directorate of migration management made an assessment based on the information gathered regarding him. Noting the active restriction orders on his passport for fraud and the INTERPOL notice against him for crimes of tax evasion and illegal business administration, a decision to deport was made pursuant to article 54.1.d of Law No. 6458, which clearly includes being a threat to public order or security among the grounds for deportation.

42. Mr. Abdullayev received a medical examination after he was arrested, and his lawyer was informed of his arrest upon his request. Therefore, on 22 April 2019, Mr. Abdullayev was not extradited to Azerbaijan but rather deported in accordance with the decision of the competent Turkish authorities in line with the relevant legislation and international law. As a sovereign State, Turkey has the right to deport persons it deems a threat to public security.

43. Consequently, the Government of Turkey rejects the claims of arbitrary detention of Mr. Abdullayev.

*Response from the Government of Azerbaijan*

44. On 14 November 2019, the Working Group transmitted the allegations from the source to the Government of Azerbaijan under its regular communications procedure. The Working Group requested Azerbaijan to provide, by 13 January 2020, detailed information about the circumstances of the detention of Mr. Abdullayev. The Working Group also requested the Government to provide it with detailed information regarding Mr. Abdullayev's current situation and to clarify legal provisions justifying his detention and its compatibility with the obligations of Azerbaijan under international human rights law, and in particular with regard to the treaties ratified by Azerbaijan. Moreover, the Working Group called upon the Government of Azerbaijan to ensure the physical and mental integrity of Mr. Abdullayev.

45. On 8 January 2020, the Government submitted its reply, in which it informed the Working Group that on 7 June 2013, the Ministry of Taxes had initiated a criminal case against Mr. Abdullayev under article 213.2.2. of the Criminal Code (tax evasion in a large amount) and that on 25 June 2013 the relevant investigator had decided to charge Mr. Abdullayev under article 213.2.2 as an accused.

46. The Government states that there was substantial evidence that Mr. Abdullayev violated the national Tax Code and evaded paying the equivalent of approximately \$1.8 million in taxes. Subsequently, on 25 June 2013, the investigator issued a warrant to search for the accused as provided for in articles 150.1 and 278 of the Code of Criminal Procedure. The Yasamal District Court, upon the application submitted by the Office of the Prosecutor General, and given that Mr. Abdullayev was charged with an offence punishable by the deprivation of liberty for more than two years, chose two months of pretrial detention as a restrictive measure against him.

47. On 2 July 2013, the investigator issued another decision to charge Mr. Abdullayev under articles 192.2.2 and 213.2.2 of the Criminal Code, given that the company controlled by Mr. Abdullayev had submitted distorted tax declarations and was operating without permits, thus accumulating significant profits.

48. On 22 November 2013, the criminal prosecution was suspended, given that the whereabouts of Mr. Abdullayev were unknown. On 12 December 2013, Mr. Abdullayev's legal counsel requested that the charges against his client be dropped given that Mr. Abdullayev had paid all taxes. On 16 December 2013, the request was rejected as being baseless.

49. On 11 April 2014, an extradition request was sent to the German authorities, and was declined on 8 May 2015. On 6 May 2014, the case was reopened. On 7 May 2014, the

Prosecutor General's motion asking for Mr. Abdullayev's arrest was approved by the court, taking into account the fact that he had absconded from the authorities.

50. On 31 May 2016, a new criminal case was instigated against Mr. Abdullayev, given the emergence of further facts relating to the charge of tax evasion. On 27 September 2016, the two criminal cases were linked. On 11 October 2016, the court chose to impose on Mr. Abdullayev 1 month and 14 days of arrest as a restrictive measure, in accordance with articles 154–158 and 452 of the Criminal Procedure Code.

51. On 14 February 2018, a new criminal case was opened against Mr. Abdullayev on the basis of articles 178.3.2 and 320.1 of the Criminal Code, given that the company controlled by him had forged official documents to appropriate another person's property on a large scale.

52. On 7 March 2018, on the basis of information received by the authorities about Mr. Abdullayev's frequent travels to Turkey, an extradition request was sent to Turkey. While no reply to the request was received from Turkey, on 22 April 2018, Mr. Abdullayev was deported from Turkey to Azerbaijan and handed over to airport police.

53. On 23 April 2018, Mr. Abdullayev was handed over to investigation authorities and on the same date he was informed, in the presence of his two lawyers, of the charges brought against him by the investigator from the Ministry of Taxes under articles 192.2.2 and 213.2.2 of the Criminal Code. Mr. Abdullayev was arrested in accordance with the decision of Yasamal District Court on 11 October 2016, which imposed 1 month and 14 days of pretrial detention as a restrictive measure.

54. On 25 April 2018, the Main Organized Crime Department of the Ministry of Internal Affairs charged Mr. Abdullayev as an accused under articles 178.3.1, 182.3.1, 192.2.2, 192.2.3, 213.2.1, 213.2.2, 308.2 and 318.2 of the Criminal Code. These charges were announced to him on the same day. The Government stated that the Nasimi District Court extended the pretrial detention of Mr. Abdullayev on 31 May 2018, 6 September 2018 and 12 February 2019.

55. Among Mr. Abdullayev's criminal activities, according to investigation materials, was construction without a licence, tax evasion, extortion through the use of threats, and organization of the illegal border crossing of a family member through the bribing of border officials.

56. On 4 March 2019, the pretrial investigation on the above-mentioned facts was concluded; on 19 March 2019, the case was sent to Baku Military Court. On 1 October 2019, Baku Military Court found Mr. Abdullayev guilty of legalization of money or property obtained by crime, illegal influence over the decision-making of an official, forgery of official documents and having official accomplices and sentenced him to six years of imprisonment. Proceedings for an appeal lodged by Mr. Abdullayev are pending before the Baku Court of Appeal. Mr. Abdullayev is currently held in Baku detention facility No. 1.

57. The Government observes that, as evident from the facts above and as the materials of the criminal case clearly show, there was sufficient evidence to indict Mr. Abdullayev. The investigation gathered irrefutable sufficient evidence demonstrating his guilt in, inter alia, tax evasion, illegal business activities and illegal border crossing.

58. Furthermore, as regards the statute of limitations, the charge for tax evasion was brought sometime between 2009 and 2013. Pursuant to article 75 of the Criminal Code, the statute of limitations for that crime is seven years.

59. Pursuant to article 75.3 of the Criminal Code, the clock on the statute of limitations pauses if an accused absconds. The clock on the statute of limitations therefore stopped on 25 June 2013, when the search warrant for the accused was issued by an investigator from the Ministry of Taxes. Moreover, no statute of limitations could apply in this case as the criminal actions were regarded as continuing.

60. The Government further challenges the source's allegations that Mr. Abdullayev was brought before the Nasimi District Court on 25 April 2018 more than 48 hours after his arrest. It observes that there is no information in the case file about Mr. Abdullayev's appearance before the court on that date. There were several court decisions ordering Mr. Abdullayev's arrest; the last such decision was dated 11 October 2016. Mr. Abdullayev had



been wanted for arrest since June 2013 and was not brought back to Azerbaijan until 22 April 2018; he was informed of the charges against him on 23 and 25 April 2018 in the presence of his two lawyers. Therefore, it was not necessary to bring him to court to arrest him. Mr. Abdullayev has not appealed the decision of 11 October 2016 and neither he nor his lawyers complained that he had not been brought before a court within 48 hours of his arrest.

61. The Government observes that adequate living conditions, and the right to make calls and receive parcels, have been ensured for Mr. Abdullayev. He has received several parcels and has had confidential meetings with lawyers. On 21 November 2019, he met with officials of the German embassy.

62. Pursuant to article 26 of the law on lawyers and legal practice, the rendering of legal assistance by lawyers who are foreigners in Azerbaijan is to be restricted to the provision of advice on the application of laws of the State of birth of the foreign lawyer or international law.

63. The Government reiterates that Mr. Abdullayev's two lawyers were present from the day he was handed over to investigation authorities (23 April 2018), including when he was informed of the charges against him.

64. Pursuant to article 68.2 of the Criminal Procedure Code, military courts are to hear cases concerning offences committed by military staff, and if the offence is committed with the participation of a person who is not military, that person's case is also to be heard by the military court. This was the case of Mr. Abdullayev and four military officers who co-organized the illegal border crossing of his family member. Military courts function as first instance courts, do not have any extraordinary functions and are composed of only civilian judges. Article 127 of the Constitution sets requirement for the independence of judges, and the law on courts and judges prohibits establishment of any extraordinary courts. Mr. Abdullayev and his lawyers never contested the hearing of his case before the Baku Military Court.

65. Finally, in relation to the source's claim that the detention of Mr. Abdullayev is due to his exercise of his right to freedom of expression and that there is no legal link between him and the company, the Government notes that the materials of the case are full of irrefutable evidence of Mr. Abdullayev's criminal wrongdoings and that it is regretful that the source is attempting to politicize the case.

*Additional comments from the source*

66. The replies from both Governments were sent to the source for comments. The source replied, noting that the Governments' responses do not, in many instances, refute clear evidence of violations of international law.

67. According to the source, while the Government of Turkey admits key facts asserted in the petition, its response contains misrepresentations that undermine its credibility, such as assertions that Mr. Abdullayev was "deported", that there were restriction orders on his passport and that there was an INTERPOL notice against him. The source insists that Mr. Abdullayev's rendition from Turkey to Azerbaijan violated international, European and Turkish law.

68. In relation to the response of the Government of Azerbaijan, the source submits that despite the Government's claims to the contrary, Mr. Abdullayev's arrest and ongoing detention are arbitrary and in violation of international law. The source insists that Mr. Abdullayev is being detained and was prosecuted due to his criticism of the Government of Azerbaijan. In addition, Mr. Abdullayev was arrested in Turkey without a warrant and forcibly and illegally transferred to Azerbaijan in circumstances that constituted an extraordinary rendition. He has also been denied numerous due process rights, including his rights to have access to counsel and family, the presumption of bail, the presumption of innocence, and prompt appearance before a judge.

69. The source notes that the Government does not deny that Mr. Abdullayev was convicted in May 2007 on politically motivated charges after he criticized the President during a parliamentary session, nor mention that the European Court of Human Rights

ruled in March 2019 that the 2007 conviction had violated Mr. Abdullayev's right to a fair trial.<sup>5</sup>

70. The Government also does not deny that in June 2013, Mr. Abdullayev released a video on the Internet depicting scenes of Baku police forces dispersing protesters and calling for protests against the Government of Azerbaijan, and that the next day the Ministry of Taxes opened a criminal investigation for tax evasion against the company Araz Inc. The Government's response does not deny that Mr. Abdullayev was arrested in Turkey without an arrest warrant, that he was not informed of the reason for his arrest at the time of his arrest, or that the 11 October 2016 court decision in Azerbaijan cannot authorize or justify Mr. Abdullayev's arrest in Turkey.

71. Furthermore, according to the source, the Government's response does not deny a number of the due process violations described, such as that Mr. Abdullayev was forcibly transferred from Turkey to Azerbaijan without being brought before a court for proceedings relating to either an extradition or deportation, that he was rendered to Azerbaijan despite having obtained asylum in Germany due to persecution he faced in Azerbaijan, or that at least two officials with the Ministry of Internal Affairs of Azerbaijan accompanied Mr. Abdullayev on the commercial flight to Baku. Neither has the Government claimed or asserted that when Mr. Abdullayev was forcibly transferred he had an Azerbaijani passport or an Azerbaijani visa with him that would have allowed him to legally travel to Azerbaijan.

72. Finally, the source states that the Government's response contains misrepresentations that undermine its credibility, such as assertions that Mr. Abdullayev owned and controlled Araz Inc. and Araz Construction, that he failed to pay taxes and that his rights have been respected in detention.

### Discussion

73. The Working Group thanks the source and the Governments of Azerbaijan and Turkey for their submissions and appreciates the cooperation and engagement of the parties in the present matter.

74. In determining whether the deprivation of liberty of Mr. Abdullayev is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a *prima facie* case for breach of the international law constituting arbitrary detention, the burden of proof should be understood to rest upon the two Governments if they wish to refute the allegations. Mere assertions by the two Governments that lawful procedures have been followed are not sufficient to rebut the source's allegations (A/HRC/19/57, para. 68).

75. Noting that allegations have been made against both Governments, the Working Group will proceed to examine these separately.

#### *Allegations in relation to Turkey*

76. As a preliminary issue, the Working Group notes that the situation of Mr. Abdullayev falls within the scope of the derogations that Turkey has made under the Covenant. Through a communication dated 21 July 2016, the Government of Turkey informed the Secretary-General that it had declared a state of emergency for three months, in response to severe dangers to public security and order, amounting to a threat to the life of the nation within the meaning of article 4 of the Covenant.<sup>6</sup>

77. While acknowledging the notification of these derogations, the Working Group emphasizes that, in the discharge of its mandate, it is also empowered under paragraph 7 of its methods of work to refer to the relevant international standards set forth in the Universal Declaration of Human Rights and, when appropriate, to other international standards. Moreover, in the present case, articles 9 and 14 of the Covenant are most relevant to the alleged detention of Mr. Abdullayev. As the Human Rights Committee has stated, States parties derogating from provisions of the Covenant must ensure that such derogations do

<sup>5</sup> *Abdullayev v. Azerbaijan*, Application No. 6005/08, Judgment, 7 March 2019, para. 66.

<sup>6</sup> See <https://treaties.un.org/doc/publication/cn/2016/cn.580.2016-eng.pdf>.

not exceed those strictly required by the exigencies of the actual situation.<sup>7</sup> The Working Group welcomes the lifting of the state of emergency in Turkey in July 2018 and the revocation of derogations made from its obligations under the Covenant.

78. The Working Group observes that it is not disputed that Mr. Abdullayev was arrested in Istanbul on 21 April 2018 by Turkish authorities and subsequently deported to Azerbaijan the following day. According to the source, this violated Mr. Abdullayev's rights under article 9 of the Covenant, as he was not shown an arrest warrant and not given an opportunity to contest the legality of his detention.

79. The Government of Turkey has argued that Mr. Abdullayev was arrested following an assessment that he posed a threat to national security. Such assessment was made on the basis of an INTERPOL notice against Mr. Abdullayev for crimes of tax evasion and illegal business administration. The Government therefore argues that the decision to arrest and deport Mr. Abdullayev was duly made by the respective Turkish authorities.

80. While the Working Group does not dispute the right of each State to deport aliens who pose threats to its national security,<sup>8</sup> this does not place such aliens outside the protection of law.<sup>9</sup> In particular, the right to challenge the legality of his or her detention before a court, as envisaged in article 9 (4) of the Covenant, belongs to everyone without exception. The Working Group wishes to recall that the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society (A/HRC/30/37, paras. 2–3). This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty (*ibid.*, para. 11), and applies to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention and detention under counter-terrorism measures.<sup>10</sup> Moreover, it also applies irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.<sup>11</sup> Therefore, the right to challenge the legality of his detention also belonged to Mr. Abdullayev when he was arrested on 21 April 2018. The Working Group notes that the Government has not provided an explanation as to why this right was not afforded and the Working Group therefore finds a breach of article 9 (4) of the Covenant.

81. The Working Group further recalls that in order to ensure an effective exercise of the right to challenge the legality of detention, detained persons should have access, from the moment of arrest, to legal assistance of their own choice, as stipulated in principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court. This too was denied to Mr. Abdullayev, which had an adverse impact on his ability to effectively exercise his right to challenge the legality of his detention, further denying him his rights under article 9 (4) of the Covenant.

82. Moreover, the Government has not replied to the allegations by the source that Mr. Abdullayev was never presented with an arrest warrant or indeed any other document explaining the legal basis for his detention. The Working Group therefore finds a breach of article 9 (1) of the Covenant.

83. The Government should have considered the threat of removing Mr. Abdullayev to a country where he could be at real risk of arbitrary detention. Instead, it forcibly deported him to Azerbaijan, a country he had fled, without regard for the dangers that he might face or having performed any assessment of the charges and evidence against him. The Working Group considers that this represents a violation of the principle of non-refoulement.

<sup>7</sup> General comments No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, para. 4; and No. 35, paras. 65–66. See also Human Rights Committee, general comments No. 32, para. 6; and No. 34 (2011) on the freedoms of opinion and expression, para. 5.

<sup>8</sup> See Human Rights Committee, *V.M.R.B. v. Canada*, communication No. 236/1987 and *J.R.C. v. Costa Rica*, communication No. 296/1988.

<sup>9</sup> See Human Rights Committee, *Alzery v. Sweden* (CCPR/C/88/D/1416/2005).

<sup>10</sup> United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, para. 47 (a).

<sup>11</sup> *Ibid.*, para. 47 (b).

84. Noting all of the above, the Working Group finds that the detention of Mr. Abdullayev in Turkey on 21 April 2018 was arbitrary, falling under category I.

85. The Working Group observes that when arguing that Mr. Abdullayev was not extradited but deported as an alien posing a threat to national security, the Government has not explained what threat he posed to its national security, or how he posed such a threat. The Government has also not explained why an assessment was not carried out when Mr. Abdullayev applied for a holiday visa prior to his arrival in Turkey, especially since there had been previous extradition requests, including one in March 2018, which would have alerted the Turkish authorities of the case.

86. The Government has not responded to the allegations made by the source that the INTERPOL notice regarding Mr. Abdullayev had been cancelled before the arrest. Finally, if indeed he was deported from Turkey, the Working Group notes that Mr. Abdullayev was not returned to the country of his residence (Germany), which had granted him refugee status. Finally, the Working Group finds it implausible that the agents from Azerbaijan simply happened to be in Turkey and offered to escort Mr. Abdullayev out of Turkey to Azerbaijan. Rather, it appears to the Working Group that the removal of Mr. Abdullayev was coordinated between the Turkish and Azerbaijani authorities to avoid legal extradition procedures.

87. In view of this, the Working Group is convinced that Mr. Abdullayev was not merely deported from Turkey, but that his removal was in fact extradition due to pending proceedings against him in Azerbaijan. Mr. Abdullayev was simply arrested and taken to the airport by the Turkish authorities and handed over to the authorities of Azerbaijan for removal. The Working Group cannot accept that this describes a duly constituted extradition procedure. The Government of Turkey has therefore also violated its obligations under article 13 of the Covenant to ensure that aliens lawfully in its territory are expelled only in pursuance of a decision reached in accordance with the law, and to allow them to submit the reasons against the expulsion and to have the case reviewed by, and be represented before, a competent authority. Moreover, given that the detention and extradition of Mr. Abdullayev took place in disregard of the established extradition procedures, thus denying him fair trial rights anchored in article 14 of the Covenant, the Working Group also finds that his detention is arbitrary under category III.

88. Since this detention ensured the transfer of Mr. Abdullayev to Azerbaijan, the Working Group considers that the Government of Turkey is responsible for its own actions in the arrest, detention and deportation of Mr. Abdullayev as well as the subsequent violations of his rights in Azerbaijan.

89. The Working Group would welcome the opportunity to conduct a country visit to Turkey. Given that a significant period has passed since its last visit to Turkey, in October 2006, and noting the State's standing invitation to all special procedures, the Working Group considers that it is an appropriate time to conduct another visit in accordance with the Working Group's methods of work.

#### *Allegations in relation to Azerbaijan*

90. As a preliminary issue, the Working Group wishes to clarify that the procedural rules governing its consideration of communications on alleged cases of arbitrary detention are contained in its methods of work. There is no provision in the methods of work that prevents the Working Group from considering communications due to the lack of exhaustion of domestic remedies in the country concerned. The Working Group has also confirmed in its jurisprudence that there is no requirement for petitioners to exhaust domestic remedies for a communication to be considered admissible.<sup>12</sup>

91. Turning to the specific allegations made against the Government of Azerbaijan, the Working Group observes that the source has argued that the detention of Mr. Abdullayev falls under categories I, II, III, IV and V of the Working Group. The Government denies these allegations. The Working Group shall examine the allegations in turn.

<sup>12</sup> See, for example, opinions No. 19/2013 and No. 11/2000. See also opinions No. 41/2017, para. 73; No. 38/2017, para. 67; No. 11/2018, para. 66; No. 20/2019, para. 81; and No. 53/2019, para. 59.

## (i) Category I

92. The Working Group recalls that it considers a detention to be arbitrary and falling under category I if such detention lacks a legal basis. In the present case, the Working Group once again observes that it is not disputed that Mr. Abdullayev was arrested in Istanbul on 21 April 2018 by Turkish authorities and deported to Azerbaijan the following day. The Working Group is mindful that the Government has explained the ongoing investigations into the financial affairs of Mr. Abdullayev, the various charges brought against him, and the search and arrest warrants issued against him since 2013. The Government has also explained two extradition requests made in respect of Mr. Abdullayev: one in 2014, addressed to Germany, which was denied and one in March 2018, addressed to Turkey, which, according to the submissions from the Government, was not responded to. According to the Government of Azerbaijan, Mr. Abdullayev was simply deported from Turkey on 22 April 2018.

93. The Working Group, however, is mindful that the Government has chosen not to respond to the allegations by the source that the deportation of Mr. Abdullayev to Azerbaijan was in fact an extradition. The Government has not advanced an explanation as to why Mr. Abdullayev, an individual who had been granted asylum in Germany and who was not in possession of an Azerbaijani passport, would be extradited to Azerbaijan. Neither has the Government of Azerbaijan responded to the allegations that once arrested in Turkey, Mr. Abdullayev was handed over to officials of Azerbaijan at Istanbul Airport and that those officials accompanied him on the flight to Azerbaijan. If indeed this was a deportation of an alien from Turkey, the presence of officials of Azerbaijan at the airport at the same exact time is highly irregular.

94. The Working Group has already established that it is convinced that Mr. Abdullayev was not merely deported from Turkey. The Working Group notes the failure of the Government to acknowledge the arrest and forcible transfer of Mr. Abdullayev. The Government of Azerbaijan had the opportunity to afford Mr. Abdullayev his due process rights through a properly conducted extradition process from Turkey but it chose not to do so, and is therefore responsible for his arbitrary detention in Turkey.

95. Moreover, the Working Group observes that Mr. Abdullayev was arrested by Azerbaijani authorities upon arrival and was not brought before a judicial authority. The Government has argued that this was unnecessary, as a valid arrest warrant had been in place since 2016. The Working Group cannot accept this as compatible with the safeguards of article 9 of the Covenant. In particular, as the Working Group has consistently argued,<sup>13</sup> in order to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged in article 9 (4) of the Covenant. The Working Group wishes to recall that the right to challenge the lawfulness of detention before a court is a self-standing human right which is essential to preserve legality in a democratic society (A/HRC/30/37, paras. 2–3). This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty (*ibid.*, para. 11), and applies to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures.<sup>14</sup>

96. The Working Group further considers that judicial oversight of detention is a fundamental safeguard of personal liberty (A/HRC/30/37, para. 3) and is essential in ensuring that detention has a legal basis. In the present case, Mr. Abdullayev was not presented before a judge and the Government has simply cited compliance with its national law as an explanation for this and argued that Mr. Abdullayev could have challenged the 2016 arrest warrant. The Working Group once again recalls that its role is not to assess the compliance of the national authorities with the provisions of domestic law. It is, however, for the Working Group to assess the overall proceedings of the court and the law itself to

<sup>13</sup> See opinions No. 1/2017, No. 6/2017, No. 8/2017, No. 30/2017, No. 2/2018, No. 4/2018, No. 42/2018, No. 43/2018, No. 79/2018 and No. 49/2019.

<sup>14</sup> United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, para. 47 (a).

determine whether they meet international standards.<sup>15</sup> In the present case, the international standard on the right to challenge the legality of detention was clearly violated, as this right can be exercised only if the detained person is promptly brought before a judge. Consequently, without the prompt presentation of Mr. Abdullayev before a judicial authority to allow him to challenge the legality of detention, it cannot be said that his detention was lawful, as it violated article 9 (4) of the Covenant. It also violated article 9 (3) of the Covenant, as Mr. Abdullayev was not promptly brought before a judge.

97. Furthermore, since during the initial days of detention Mr. Abdullayev was not able to challenge his continued detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated.

98. Noting all of the above, the Working Group therefore concludes that the detention of Mr. Abdullayev was arbitrary and falls under category I.

(ii) Category II

99. The source argues that Mr. Abdullayev was detained due his political activism. However, from the information received, the Working Group is unable to make any assessments concerning the claims under category II.

(iii) Category III

100. The source submits that the detention of Mr. Abdullayev falls under category III due to numerous violations of his fair trial rights during the trial in Azerbaijan following his forcible return there. The Government denies these claims.

101. The Working Group, however, notes that the Government has chosen not to respond to the very specific allegations made by the source that, during the trial, Mr. Abdullayev was held in a cage measuring approximately 90 cm by 90 cm, with metal bars, and that if his lawyers wished to converse with him, they had to get permission from the judge to approach the cage, greatly limiting such communications and Mr. Abdullayev's ability to participate in the court proceedings.

102. The Working Group recalls that presumption of innocence is the cornerstone of the fair trial rights as encapsulated in article 14 of the Covenant. It is fundamental to the protection of human rights and ensures that the accused has the benefit of doubt and requires that persons accused of a criminal act must be treated in accordance with this principle. The presumption of innocence therefore imposes a duty for all public authorities to refrain from prejudging the outcome of a trial and, as noted by the Human Rights Committee, defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.<sup>16</sup> This principle was clearly violated in the case of Mr. Abdullayev and the Working Group therefore finds a breach of article 14 (2) of the Covenant.

103. Moreover, the Working Group also observes the serious impediments in the ability of the lawyers to converse with their client during the trial, which have not been rebutted by the Government. Equally, the source has alleged that the Mr. Abdullayev's international lawyer was not permitted to meet with him. While the Government explains that international lawyers are permitted to engage only with issues of international law, it did not explain why this was not permitted in the case of Mr. Abdullayev. Moreover, Mr. Abdullayev was assigned a lawyer by the Government although he had expressed a wish to have a lawyer of his choosing. The Government has not provided any explanation as to why Mr. Abdullayev was not allowed to have a lawyer of his choosing. The Working Group therefore finds a breach of article 14 (3) (b) and (d).

104. The source has also submitted that the trial of Mr. Abdullayev by a military court violated his fair trial rights. Although the Government asserts in its response that its procedures are in accordance with domestic legislation, the Working Group is still entitled

<sup>15</sup> Opinion No. 33/2015, para. 80. See also opinions No. 15/2017, No. 49/2019, No. 58/2019 and No. 60/2019.

<sup>16</sup> Human Rights Committee, general comment No. 32, para. 30.

to assess the overall proceedings of the court and the law itself to determine whether they meet international standards.<sup>17</sup>

105. In relation to the jurisdiction of the military court, the Working Group in its practice has consistently argued that the trial of civilians by military courts is in violation of the Covenant and customary international law and that under international law, military tribunals can only be competent to try military personnel for military offences (A/HRC/27/48, paras. 67–70).<sup>18</sup> Moreover, all the cases against Mr. Abdullayev, including those of his alleged tax evasion and other financial crimes, appear to have been transferred to the jurisdiction of the military court. The Government had the opportunity to explain the transfers, but has failed to do so. The Working Group therefore concludes that there has been a breach of article 14 (1) of the Covenant.

106. The Working Group further notes the absence of Government's response in relation to allegations made by the source concerning the denial to Mr. Abdullayev of contact with his family. The Working Group therefore finds a violation of principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 58 of the Nelson Mandela Rules.

107. Noting all of the above, the Working Group concludes that the detention of Mr. Abdullayev is arbitrary and falls under category III.

(iv) Category IV

108. The source has argued that the detention of Mr. Abdullayev falls under category IV, since his arrest and return to Azerbaijan despite his status as a person who has been granted political asylum in Germany was an unlawful refoulement by Turkey, which renders his subsequent detention in Azerbaijan ultra vires. The Government denies these allegations.

109. The Working Group recalls that, in accordance with its methods of work, a detention is arbitrary and falls under category IV when asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy. In the present case, it is not alleged by the source or the Government that Mr. Abdullayev has been held in administrative detention. On the contrary, both the source and the Government argue that he has been detained in the criminal justice context. Therefore, category IV is not applicable to circumstances of Mr. Abdullayev.

(v) Category V

110. The Working Group has already noted its views concerning the political activism of Mr. Abdullayev and the alleged links of that activism with the present case. Given these, the Working Group is unable to make any assessment concerning category V.

111. The Working Group would welcome the opportunity to conduct a follow-up country visit to Azerbaijan, noting that over four years have passed since its visit in May 2016. The Working Group considers that it is an appropriate time to conduct another visit in accordance with the Working Group's methods of work.

### Disposition

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

Regarding Turkey:

The deprivation of liberty of Huseyn Abdullayev, being in contravention of articles 3, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2 (3), 9, 13 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

<sup>17</sup> Opinion No. 33/2015, para. 80. See also opinions No. 15/2017, No. 49/2019, No. 58/2019 and No. 60/2019.

<sup>18</sup> See also opinions No. 44/2016, No. 30/2017, No. 28/2018, No. 32/2018 and No. 66/2019.

Regarding Azerbaijan:

The deprivation of liberty of Huseyn Abdullayev, being in contravention of articles 3, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2 (3), 9, 13 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

113. The Working Group requests the Governments of Turkey and Azerbaijan to take the steps necessary to remedy the situation of Mr. Abdullayev without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

114. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be: (a) for the Government of Azerbaijan to release Mr. Abdullayev immediately; and (b) for the Government of Turkey and the Government of Azerbaijan to accord Mr. Abdullayev an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government of Azerbaijan to take urgent action to ensure the immediate release of Mr. Abdullayev.

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

116. The Working Group requests the two Governments to disseminate the present opinion through all available means and as widely as possible.

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

117. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the two Governments to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

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

118. Both Governments are invited to inform the Working Group of any difficulties they 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.

119. The Working Group requests the source and the two Governments to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.



120. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>19</sup>

*[Adopted on 26 August 2020]*

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<sup>19</sup> See Human Rights Council resolution 42/22, paras. 3 and 7.