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Human Rights Council Working Group on Arbitrary Detention

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Opinion No. 60/2020 concerning Maria Lazareva (Kuwait)*

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 19 July 2019 the Working Group transmitted to the Government of Kuwait a communication concerning Maria Lazareva. The Government replied to the communication on 4 September 2019 and 14 October 2019. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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



Submissions

Communication from the source

4. Maria Lazareva is a national of the Russian Federation, born in 1973. She resides in Al-Farwaniyah, Kuwait. Ms. Lazareva moved to Kuwait in 2004, to work as the Head of Strategic Development for a logistics company called the Kuwait and Gulf Link Transportation Company. In 2007, Ms. Lazareva became Vice-President and Chief Executive Officer of that company.

(a) Arrest and detention

5. Reportedly, Ms. Lazareva was arrested and detained for interrogation in January, August and September 2016 and in January 2017 in relation to complaints from a former employee alleging, inter alia, misappropriation of public funds and money-laundering. The source reports that in each case the interrogations lasted for up to eight hours (except in one instance, which was as long as 12 hours), without adequate breaks, comfort or necessities such as food and water. Moreover, the Attorney General imposed a travel ban on Ms. Lazareva on 18 January 2016, which remained in place until 7 February 2017, being lifted only after Ms. Lazareva had obtained a court order. The Attorney General filed another accusation report with the Kuwaiti criminal court on 26 April 2017. The accusations were essentially the same as the allegations by the company's former employee, namely mismanagement and embezzlement of Kuwaiti public funds.

6. The source explains that Ms. Lazareva was arrested again on 28 November 2017 in relation to a number of connected criminal cases associated with her work with the Port Fund, an investment vehicle managed by the company.¹ In the accusation report, dated 19 December 2017, Ms. Lazareva and others were accused of assisting the former Chief Financial Officer of the Kuwait Ports Authority to embezzle public funds. Ms. Lazareva specifically was alleged to have signed three documents requiring payment for advisory services allegedly never performed, the effect of which was allegedly to facilitate the corrupt transfer of 9 million dinars (approximately \$30 million) from the Kuwait Ports Authority to the company.

7. The source explains that Ms. Lazareva's defence requested her temporary release on bail on multiple occasions.² The applications for pretrial release were finally granted on 4 February 2018 upon joint payment, with a co-accused, of 9 million dinars. Ms. Lazareva and her co-accused deposited the amount with the court on 7 February 2018. The source points out that the bail amount was unusually high, indeed the highest ever set in Kuwait at the time.

8. The source reports that Ms. Lazareva's defence was repeatedly denied access to the prosecution's records and witness testimony being used as evidence. The source specifies that, at multiple hearings,³ the court declined to decide on Ms. Lazareva's request for production and examination of the evidentiary basis of the case. Instead, it adjourned the hearings. Furthermore, the source reports that, on 22 April 2018, the court allowed the defence to question only one prosecution witness, an official with the State Audit Bureau, and without the benefit of access to the evidentiary basis beyond the allegations contained in the accusation report. At the hearing held on 29 April 2018, the court once again declined to rule on the request for the evidentiary basis and scheduled the next hearing for 6 May 2018, when it would rule on the requests for documents. Yet, allegedly, instead of hearing the request to produce and examine evidence on 6 May 2018, the court closed the record in the case and issued a verdict summarily convicting Ms. Lazareva in case No. 1942/2015 and immediately placing her back in custody. The source explains that Ms. Lazareva was sentenced to 10 years' imprisonment and hard labour. Ms. Lazareva, jointly with her co-defendant, was also ordered to pay 11 million dinars in damages and a fine of 22 million dinars.

¹ Cases No. 1496/2012, No. 547/2013, No. 1719/2014, No. 1942/2015 and No. 1596/2018.

² Requests were made on 14 December 2017, 24 December 2017 and 14 January 2018.

³ The hearings concerned were held on 18 February 2018, 1 April 2018, 22 April 2018 and 29 April 2018.

9. The source states that a detailed expert report dated December 2018 rebuts all the prosecution's allegations of wrongdoing in these cases and concludes that the activities in question were legitimate business transactions. However, the Attorney General has reportedly refused to accept this evidence, and it has not been allowed to be entered into the record by the court of first instance.

10. According to the source, on 19 June 2018, shortly after their conviction and having already paid 9 million dinars in bail on 7 February 2018, Ms. Lazareva and her co-defendant paid an additional 2 million dinars.⁴ This payment was made to facilitate an effective application for their release on bail pending their appeal in another case.⁵ Notwithstanding these payments, Ms. Lazareva and her co-defendant were not released from prison.

11. The source indicates that Ms. Lazareva's defence appealed the court's verdict and has repeatedly applied for her temporary release on bail pending the appeal.⁶ These requests have not been considered by the court, which has either orally rejected them on a summary basis or simply declined to deal with them at hearings. In addition, there is no evidence that the prosecution has ever opposed any of these requests.

12. The source explains that, in separate, parallel civil proceedings, the judge reached a different verdict on 25 March 2019.

13. With regard to the appeal process, the source states that, similarly to the process in the trial court, Ms. Lazareva has been denied basic human rights. She has repeatedly been denied access to the evidence and has not been allowed to call any defence witnesses or to question the prosecution's witnesses without interference by the presiding judge. Allegedly, at a hearing before the court of appeal on 10 March 2019, the presiding judge was overheard stating that Ms. Lazareva and her co-defendant would not be released that day. The court of appeal also heard testimony that day from a former employee who admitted that falsified documents had been used as evidence against Ms. Lazareva, but the presiding judge took no action in response to the testimony. At a hearing on 24 March 2019, the court of appeal denied a request to release Ms. Lazareva, prevented the printing of electronic documents to make them available for review by the defence and allowed two witnesses to be questioned in a closed room away from Ms. Lazareva and her co-defendant.

14. Moreover, the source explains that, in the course of the appeal, Ms. Lazareva's legal counsel attempted twice, on 21 April 2019 and 28 April 2019, to have the court of appeal hear the testimony of two defence witnesses. On 21 April 2019, the presiding judge of the court of appeal announced that he would be recusing himself from the case, without giving reasons. He later withdrew the recusal, again without giving reasons, and oversaw subsequent hearings on 28 April 2019 and 5 May 2019. On 5 May 2019, the court of appeal decided to nullify the lower court decision on conviction, ordering Ms. Lazareva's release on the condition that she posted another 20 million dinars (approximately \$65 million) in bail. This amount was in addition to the 11 million dinars already paid to court. The court ordered that the travel ban should continue and set another hearing date for 9 June 2019.

15. The source claims that, throughout the proceedings, Ms. Lazareva has suffered a pattern of arbitrary treatment in Kuwait, including repeated instances of arbitrary arrest and detention, exacerbated by the imposition of travel bans.

16. First, the source recalls that Ms. Lazareva was detained at the request of the Attorney General on several occasions during the period from 2015 to 2017. She was also interrogated in January and September 2016, and was released and no formal charges were brought. She has been the subject of monitoring during periods when she was not in detention. She has also been subjected to travel bans, covering four periods, instituted by the Kuwaiti authorities.

⁴ This payment was required to take the total sum held by the court to 11 million dinars, an amount equal to the damages awarded.

⁵ Case No. 1596/2018.

⁶ Applications were made on 16 May 2018 (heard on 24 May 2018), 7 June 2018, 5 August 2018, 13 August 2018, 26 August 2018, 7 January 2019, 27 January 2019, 10 March 2019, 24 March 2019, 21 April 2019 and 28 April 2019.

17. The source claims that there is concern regarding the treatment of the Kuwaiti lawyer representing Ms. Lazareva, as he is facing criminal prosecution for “insulting a State investigator”. The source argues that he is being prosecuted for simply trying to stop the unprofessional behaviour of an investigator, raising fair trial concerns.

18. The source states that there have been other human rights concerns during the proceedings. The source specifically refers to a failure to provide details of the alleged offences upon arrest, and the conditions under which Ms. Lazareva was interrogated. At the time of her arrest, she was not shown any of the material evidence upon which the prosecution relied.

19. In addition, the source states that there has been a continuous failure to provide Ms. Lazareva with adequate opportunity to consult with her lawyers and prepare her defence. In fact, at the time of Ms. Lazareva’s initial arrest and questioning in 2017, she was not permitted meaningful time with her lawyers to allow her to have a fair and proper opportunity to have the case against her explained and to instruct her lawyers. Her lawyers were also excluded from some of the initial interviews. In addition, the source reports that, in relation to two criminal trials,⁷ Ms. Lazareva received extensive disclosure material (18,000 pages in total). However, her legal team was given less than a week to review these evidentiary documents before the court, without prior warning, closed the record and issued a guilty verdict on 6 May 2018. Some of the material was provided in electronic form only, and facilities were not provided to Ms. Lazareva to enable her to review them. She has not been permitted to use a confidential laptop to review the electronic material, and hard copies have not been provided to her. She has thus been unable to properly review the extensive evidence provided or properly consult with lawyers about the material.

20. Further, the source alleges that Ms. Lazareva has not been provided adequate facilities in prison that would enable her to hold confidential consultations with her lawyer in a manner compatible with legal professional privilege.

21. The source indicates that Ms. Lazareva has not been provided with adequate translations of materials, namely English translations of Arabic documents, English being the common language spoken by the defence. Only after her conviction, at a hearing in January 2019, did the court of appeal give permission to have the documents translated into Russian only, at Ms. Lazareva’s own expense. According to the source, therefore, the court order, rather than facilitating her rights to a fair trial, actually obstructed her right to understand the evidence allegedly against her.

22. The source argues that there has been a failure to provide bail and adequate opportunities for Ms. Lazareva to challenge her pretrial detention. According to the source, Ms. Lazareva was denied bail for over two months. She was then released on bail briefly, between 7 February 2018 and the criminal conviction on 6 May 2018, after having paid 9 million dinars. The source states that Ms. Lazareva complied at all times with her bail conditions during this period. Following her conviction, she was denied release on bail pending appeal, despite the fact that, together with her co-defendant, she had paid to court an amount equal to the damages awarded – comprising the 9 million dinars in bail ordered on 4 February 2018 and the additional 2 million dinars paid on 19 June 2018 pending her appeal – and despite the fact that she did not pose a flight risk and has complied with all court orders and travel restrictions to date. As an illustration, the source explains that Ms. Lazareva voluntarily returned to Kuwait from Europe in April 2017 to face the charges against her. Repeated attempts to challenge the necessity of her continued detention failed. On 5 May 2019, the court of appeal nullified the underlying conviction but ordered that Ms. Lazareva and her co-defendant continue to be held pending appeal, unless Ms. Lazareva and her co-defendant each made a payment of 20 million dinars in bail, which was an unprecedented amount.

23. Moreover, the source states that Ms. Lazareva’s conviction is based on insufficient evidence and that there was a failure to permit a full and proper defence at trial. To support

⁷ Case No. 1942/2015, in which she has been convicted; and the separate, connected criminal matters, including case No. 1496/2012, which are pending.

this claim, the source recalls that, in the case in which she was convicted,⁸ the prosecution adduced only one expert witness, a State auditor. Ms. Lazareva alleges that the documents relied upon for her conviction are forgeries, yet no forensic analysis of the documents was permitted and the prosecution has admitted that it cannot produce the original documents, only photocopies. At the hearing on 10 March 2019 before the court of appeal, an employee admitted that the documents used as evidence against Ms. Lazareva had been falsified. The source reports that neither the lower court judge nor the presiding judge of the court of appeal permitted the defence counsel to cross-examine the prosecution witness. Neither was the defence provided advance access to the material to prepare for any cross-examination, had it been allowed. If Ms. Lazareva had been given adequate opportunity to defend herself through her legal counsel at trial, the problem with the evidence would have been set out for the court and there would have been no basis for her conviction. Concerns about her ability to mount a defence are also worsened by the criminal prosecution of her defence counsel, as explained above.

(b) Legal analysis

24. The source argues that Ms. Lazareva's detention constitutes arbitrary deprivation of liberty under categories I and III, as Kuwait has failed to observe international norms relating to the right to a fair trial, as set out in the International Covenant on Civil and Political Rights, to which Kuwait is a party.

(i) Category I

25. According to the source, Ms. Lazareva has been sentenced and detained pursuant to criminal investigations in relation to case No. 1942/2015.

26. The source reports that Ms. Lazareva was initially denied bail in circumstances when the other accused were granted bail (for 5,000 dinars). No reason was given for her different treatment despite the fact that the charges were identical and she had always complied with travel bans and did not pose a flight risk. She was briefly released on bail in February 2018 – until her conviction in May 2018 – after payment of 9 million dinars jointly with her co-defendant, an amount of bail far greater than the other accused. Hers was already the largest bail payment ever required in Kuwait. She continued to be held in detention after conviction pending appeal despite her payment to court of an additional 2 million dinars, together with her co-defendant. This payment brought their total payments to court to 11 million dinars. Repeated challenges to her continued detention failed, despite the fact that there was no reason for it under domestic law. In addition, there are questions as to whether her original detention complied with domestic law given that other defendants were not placed in pretrial detention.

27. With regard to the legality of the detention, according to the source, the pretrial detention and continued post-conviction detention pending appeal does not comply with Kuwaiti law or international law. The source argues that the pretrial detention was not reasonable or necessary in circumstances in which other defendants were not detained pending trial and no reasons were provided to justify the detention of Ms. Lazareva. Moreover, the continued detention pending determination of her appeal was completely unjustified given that bail was ordered and the amount was paid. Lastly, the amount of bail set is excessive, unrealistic and unprecedented and provides no real alternative to detention. Less invasive non-custodial measures could have been imposed, such as bail conditions to prevent flight from Kuwait and reporting requirements, if that were a concern. Kuwait has not provided evidence substantiating any such concern and explaining why there are no alternatives to pretrial detention and why the amount of bail set is required to ensure Ms. Lazareva's attendance at trial when she does not pose a flight risk. Under such circumstances, her detention is arbitrary under article 9 (1) of the Covenant.

28. The source submits that it appears that Ms. Lazareva is being denied a proper opportunity to challenge the legality of her detention. There is no evidence that the Kuwaiti court has properly weighed the possibility of releasing her on bail. This is a breach of her

⁸ Case No. 1942/2015.

right, under article 9 (4), to take proceedings before a court in order that it might decide on the lawfulness of her continued detention.

29. The source claims that it is likely that, in addition to release, Ms. Lazareva would be entitled to compensation for the violations by Kuwait of article 9.

(ii) Category III

30. With regard to the right to a fair trial, the source argues that Ms. Lazareva was denied access to a trial court hearing on 14 January 2018. The court of appeal also did not allow a witness to be questioned in open court in the presence of the defendants, instead permitting questioning to occur only in judicial chambers.

31. To the source, there is evidence of breaches of the right to a fair trial under article 14 of the Covenant. Ms. Lazareva's right to be presumed innocent was fundamentally undermined by the discriminatory refusal to grant her bail in circumstances in which there was no principled distinction between her and the other defendants, her pretrial detention and detention post-conviction without justification, and the unprecedented amount of the bail payments set in her case.

32. The source submits that it is obvious from the concerns raised in respect of the evidence that there is no credible basis for Ms. Lazareva's conviction or continued prosecution. These concerns demonstrate that the prosecution failed to meet the evidential burden to justify prosecuting her at all, let alone to justify her conviction. This failure breached Ms. Lazareva's right to be presumed innocent.

33. The source alleges that there is clear evidence that Ms. Lazareva has not been afforded the opportunity to properly mount a defence. This is evidenced by: (a) the failure of Kuwait to provide disclosure with time or adequate facilities for Ms. Lazareva to consider the material with counsel in advance of trial; (b) the failure of Kuwait to provide material in a language that she can understand; (c) the failure of Kuwait to provide facilities for her to have legally privileged consultations with her lawyers; (d) the failure of the trial court to permit counsel to question witnesses and properly test the evidence against them; and (e) the failure of the trial court and the court of appeal to allow Ms. Lazareva to present defence witnesses, including expert witnesses.

34. The source argues that the prosecution of Ms. Lazareva's defence counsel for action taken during the conduct of his professional duties in her defence raises serious concerns as to whether Kuwait is seeking to deny her right to a defence and to be defended by a lawyer of her choosing.

35. Lastly, the source raises concerns about the impartiality and independence of the tribunal in Ms. Lazareva's case. On 5 May 2019, the appeal judge quashed her conviction and ordered an exorbitant bail payment even though he had earlier recused himself from a hearing on 21 April 2019, without giving reasons. Yet, the same judge returned to the case for the hearing on 28 April 2019 and reserved verdict until 5 May 2019, without giving reasons as to why he now considered himself sufficiently independent to hear her case. The source finds this to be particularly concerning given the punitive and sui generis nature of the bail payment that the judge set for her release, and given that the same judge would be presiding over the following hearing, on 9 June 2019.

36. The source concludes that these circumstances are likely to amount to a breach by Kuwait of article 14 of the Covenant and amount to arbitrary deprivation of liberty under category I.

37. The source argues that the violations of the right to a fair trial and due process suffered by Ms. Lazareva are grave enough to give the deprivation of liberty an arbitrary character under category III, for the same reasons that it falls under category I.

(c) Addendum to the communication

38. The source explains that Ms. Lazareva was released on bail on 12 June 2019. Serious concerns remain regarding Ms. Lazareva's treatment following her release on bail, the ongoing proceedings against her and the prospect of further periods of arbitrary detention.

39. The source reports that Ms. Lazareva's detention from 5 May to 2 June 2019 had no legal basis under Kuwaiti law and was therefore illegal. Indeed, when Ms. Lazareva's conviction was nullified on 5 May 2019, the court of appeal did not issue a new detention order as required in the circumstances. As a result, Ms. Lazareva should have been released (pursuant to articles 224 and 226 of Act No. 17 of 1960), but she was not. It was only after a public announcement regarding the submission of the petition that the court of appeal, at an unscheduled hearing on 2 June 2019, issued a belated order for Ms. Lazareva's detention. In these circumstances, the court's imposition of bail at 20 million dinars, on 5 May 2019, further indicates the court's intention effectively to deprive Ms. Lazareva of her liberty despite lacking the legal grounds to do so lawfully.

40. The detention order issued on 2 June 2019 by the court of appeal represented an acknowledgement that there had been no valid detention order applying to the preceding 28 days, during which time Ms. Lazareva had remained imprisoned. The source argues that the retrospective order does not change the fact that following the nullification of her conviction, Ms. Lazareva was detained illegally. Furthermore, the court failed to give any reason for ordering the Ms. Lazareva's detention. According to the source, the result was therefore a violation of the right of persons awaiting trial not to be detained in the absence of a criminal conviction, detention being reserved for exceptional circumstances only. In this instance, since Ms. Lazareva's circumstances had not changed since her original conviction, there was no basis under Kuwaiti law and procedure for her to be remanded in custody following the nullification of her conviction.

41. As well as issuing an order for Ms. Lazareva's detention, the court of appeal ordered a significant reduction in the bail payment required, from 20 million dinars, under the court order issued on 5 May 2019, to 1 million dinars. It was only after supporters of Ms. Lazareva provided a loan to pay the additional 1 million dinars that Ms. Lazareva was released on bail, on 12 June 2019.

42. The source alleges that, despite Ms. Lazareva's release on bail, there have been further delays in her case, constituting continued violations of her fundamental rights.

43. The source explains that the court postponed the hearing due to be held on 9 June 2019 to 23 June 2019 and indicated that there would be a final defence hearing and verdict very shortly afterwards, within a period of days. At the hearing on 23 June 2019, the court unexpectedly postponed the subsequent hearing by nearly three months to 15 September 2019. No reasons justifying such a significant delay were provided by the court, except that the presiding judge would be on vacation leave. To the source, this reasoning is unsatisfactory given the long history of unnecessary delays in this case, including after the conviction was overturned on 5 May 2019, and raises further concerns about the judicial management of the case.

44. The source also submits that, upon release, Ms. Lazareva was followed by people in three cars who tracked and monitored her. Surveillance has been maintained continuously while Ms. Lazareva has been on bail, despite there being no known court order providing for such interference with her liberty. Under Kuwaiti law, such surveillance can only be approved by a court order. The source notes that Ms. Lazareva was subject to the same round-the-clock extrajudicial surveillance when she was released on bail between 7 February 2018 and her conviction on 6 May 2018. According to the source, this significant level of intimidation and harassment continues to take a toll on Ms. Lazareva's health. In addition, anyone meeting with Ms. Lazareva is also followed by surveillance personnel, a move that appears designed to intimidate and deter those trying to support her. The surveillance and monitoring extend to Ms. Lazareva's international legal team.

45. The source adds that Ms. Lazareva remains subject to travel bans under cases No. 1942/2015 and No. 1496/2012. However, the source argues that there is no good reason for the continuation of these restrictions. The travel bans are proving particularly problematic given that there are compelling and urgent humanitarian reasons for permitting travel.

46. Furthermore, the source argues that Ms. Lazareva continues to be the target of unwarranted court proceedings. In case No. 1496/2012, involving allegations of misappropriation of funds, the source explains that there is no evidence that any funds were stolen or misappropriated as alleged or at all. After over eight months of inactivity, a hearing

took place on 5 August 2019, but no material steps were taken by the court. Instead, an additional hearing was scheduled for 9 September 2019, at which the defence's closing arguments and memoranda were to be provided. The source therefore argues that there is a lack of evidence to justify the continuation of the case. The source is concerned that rather than having been dismissed, as plainly it ought to have been, this case has been restarted despite having been dormant since 17 December 2018. To the source, the fact that the restarting of case No. 1496/2012 coincides with the court having overturned the separate conviction in case No. 1942/2015 (now case No. 1596/2018 in the court of appeal) gives rise to questions about the Kuwaiti authorities' motivation, and whether, as it seems, this is simply a means of continuing to target Ms. Lazareva for non-judicial reasons.

47. Moreover, the source claims that the authorities are aggressively threatening Ms. Lazareva's international legal team with prosecution in connection with their work. The source specifies that at the centre of the cases involving Ms. Lazareva is a Kuwaiti governmental institution, the Kuwait Ports Authority, whose director is a member of the ruling family of Kuwait. According to the source, the action taken by the Kuwait Ports Authority therefore engage the State's responsibility as a matter of international law.

48. Specifically, the source claims that on 17 August 2019, the Kuwait Ports Authority issued a press release in which it directly and in clear, unambiguous terms threatened the international legal team working on Ms. Lazareva's case. It also criticized one of the law firms for having issued legitimate instructions to individuals working on Ms. Lazareva's case, and condemned the fact that complaints had been filed with United Nations special procedures (including the Working Group) alleging violations of the Covenant. This, to the source, constitutes reprisal. According to the source, the press release equated the work of Ms. Lazareva's legal team, including its legitimate engagement with United Nations special procedures, with "treason", and threatened those working on Ms. Lazareva's case by stating that advisors had been "warned" of the consequences of continuing with their work. In addition, according to the source, the statements concerning the payments of these legal representatives in the press release are inaccurate. To the source, these threats are aimed at undermining Ms. Lazareva's ability to legitimately challenge and draw attention to the arbitrariness of her detention.

49. Moreover, these actions have led to a breach of the State's international obligations to ensure the right to a fair trial, including by seeking to deprive Ms. Lazareva of the legitimate legal defence of her choosing.

50. The source also claims that the press release contained a warning to Ms. Lazareva of potential new criminal charges for treason and international breach of Kuwaiti national security solely in relation to the legitimate conduct of her legal defence. The press release characterised the steps taken by Ms. Lazareva to enforce her rights, engaging individuals and institutions outside the Kuwaiti criminal justice system, as an "attack" on Kuwait and its Government.

51. The source explains that Ms. Lazareva's co-defendant remains in prison despite having paid sufficient funds to satisfy bail. This failure to release him on bail, notwithstanding a court order issued on 2 June 2019 and satisfaction of the bail demand, is a further instance of serious procedural irregularities that have occurred in Ms. Lazareva's case. The source argues that the reason that the co-defendant's case was not heard on 18 August 2019, as had been scheduled, is that the court received direct instructions from a judge not to review his release. The source thus raises concerns about the independence and impartiality of that judge. The source states that this judge has already improperly interfered in Ms. Lazareva's case on previous occasions. He is now doing so with increased frequency in cases connected with Ms. Lazareva. This causes acute concern ahead of upcoming decisive hearings in Ms. Lazareva's cases in September 2019, and raises the question as to whether Ms. Lazareva can ever obtain a fair trial.

52. In conclusion, the source argues that Ms. Lazareva's case demonstrates sustained arbitrary detention and total disregard for due process rights. Kuwait has already shown willingness to return Ms. Lazareva to prison after temporary periods of release, and there are concerns that subsequent proceedings will continue to fall below international fair trial norms.

Response from the Government

53. On 19 July 2019, the Working Group transmitted the allegations by the source to the Government under its regular communications procedure. The Working Group requested the Government to provide its response by 17 September 2019. On 22 July 2019, the Government requested an extension, in accordance with paragraph 16 of the Working Group's methods of work, which was granted, with a new deadline of 17 October 2019. The Government submitted its reply on 4 September 2019. On 10 September 2019, an addendum to the communication was sent to the Government, to which the Government replied on 11 September 2019 and 14 October 2019.

54. In its response dated 4 September 2019, the Government asserts that the information provided by the source is intended to influence the course of the judicial procedures concerning Ms. Lazareva. The Government mainly argues that the allegations put forward by the source do not include any supporting documents or proof.

55. The Government asserts that the restriction of Ms. Lazareva's freedom and all the procedures and trials against her were conducted in compliance with national law and the international obligations of Kuwait.

56. In its response, the Government confirms, that two cases have been filed against Ms. Lazareva. In case No. 1496/2012, Ms. Lazareva was charged with several acts of money transfer with the purpose of embezzling. On 26 April 2017, the Public Prosecutor's Office referred the above-mentioned case, in which the defendant and others were charged, to the criminal court. The case is still being examined by the criminal court. In case No. 1942/2015, the Public Prosecutor's Office reviewed all the documents and technical reports, interrogated Ms. Lazareva and charged her with the crime of assisting and facilitating the embezzlement of the public funds. The case was scheduled to go back before the court of appeal on 15 September 2019.

57. Regarding the allegations of arbitrary treatment, including repeated incidents of arbitrary arrest and detention, the Government asserts that Ms. Lazareva was brought before the Public Prosecutor's Office on the day of her arrest without any delay. The Public Prosecutor's Office allowed her access to her attorneys. All interrogation sessions were conducted with the appropriate timing considering the defendant's situation and the availability of food or drinks as she requested. The Government confirms that the defendant was not subjected to any procedures restricting her freedom in any manner that contradicted the stipulations and the legal deadlines set forth by the law. First, the Public Prosecutor's Office ordered the arrest of the defendant on 27 November 2017 on the basis of case No. 1942/2015, and that order was executed on 28 November 2017. She was then kept in custody based on the renewal order issued by the judge on 14 December 2017 for an additional 15 days. Second, Ms. Lazareva remained in custody on a pretrial basis after the case was referred to criminal court on 19 December 2017, and released by court order on 4 February 2018. Lastly, she was imprisoned based on the verdict issued by the criminal court on 5 May 2018 and released based on the order issued by the court of appeal on 2 June 2019.

58. The Government further asserts that Ms. Lazareva's rights were respected at all times as she never was prevented from meeting with her attorneys and there was always a defence attorney present at the six interrogation sessions during which Ms. Lazareva was questioned. According to the Government, a specialized interpreter attended the defendant throughout the entire interrogation and during her trial. Between 17 September 2018 and 28 May 2019, Ms. Lazareva received 25 visits from her lawyers and 13 visits from other individuals, including during her time in prison.

59. The Government explains that the bail amount is substantial only because the amount embezzled was also substantial.

60. The Government asserts that the accusations against Ms. Lazareva were based on sufficient evidence, comprising testimonies provided by 11 witnesses, statements by a number of defendants, technical reports, banking documents, official records, minutes of meetings of inspection committees, financial records and financial statements. The Government furthermore asserts, without giving more detailed information, that all the witnesses for the prosecution were heard publicly.

61. The Government claims that the detailed expert report dated December 2018 mentioned by the source was never presented to the Public Prosecutor's Office. Furthermore, nothing would have prevented Ms. Lazareva from submitting such a report.

62. Concerning the fact that, in separate, parallel civil proceedings, the judge reached a different verdict, the Government states that the subject of the civil case is different than those of the charges filed against the defendant in both criminal cases.

63. According to the Government, Ms. Lazareva was not placed under surveillance after her release. Article 74 of the Criminal Code stipulates that surveillance is an ancillary punishment, which is ordered following completion of the original sentence for certain crimes; Ms. Lazareva's crime is not one of them.

64. The Government confirms that all the procedures followed with respect to Ms. Lazareva were legal and valid. They were conducted based on judicial orders and under impartial and fair judicial supervision. All the defendant's rights to a fair trial were guaranteed pursuant to the standards and procedures of the Universal Declaration of Human Rights and the Covenant.

65. The Government reaffirms that Ms. Lazareva benefited from all legal guarantees, including access to an attorney, defence arguments, consideration of witness testimonies and a fair trial. Her rights were reserved in all the legal and objective procedures pursuant to the Kuwaiti Constitution and national laws, as well as the international conventions to which Kuwait is party and which have precedence over its national laws in accordance with its regulations.

66. The Government states that as at the date of its response, Ms. Lazareva was in good physical condition and not under arrest, therefore free to move around Kuwait.

67. In its response dated 14 October 2019, the Government contests the source's argument regarding the lack of legal basis for Ms. Lazareva's detention from 5 May 2019 to 2 June 2019. The Government explains that a legal arrest was executed in accordance with the verdict of the criminal court issued on 6 May 2018, pursuant to article 214 of the Code of Criminal Procedure and Trials. The court of appeal ruled on 5 May 2019 to annul the appealed verdict issued against Ms. Lazareva, and ordered her release, on the condition that she paid a financial guarantee of 20 million dinars. At the hearing held on 2 June 2019, it was proved that Ms. Lazareva was unable to pay the financial guarantee issued by the court of appeal, and the defence requested that the value of the guarantee be reduced. The court decided to reduce the value of that guarantee to 1 million dinars. On 12 June 2019, Ms. Lazareva paid the guarantee and she was released.

68. With regard to allegations about an absence of credible evidence to support the charges against Ms. Lazareva in case No. 1942/2015, and concerning the forgery of documents and discrepancies in treatment, the Government states that the documents resulting from the investigations by the Public Prosecutor's Office comprised 543 pages, and that it took two years to gather evidence in this case. The evidence consisted of the testimony of 11 witnesses, statements by a number of defendants, technical reports and documents, bank records, official records, minutes of meetings of inspection committees, accounting entries and budgets. Moreover, the defendant and the staff of the State Audit Bureau are treated equally and the defence rights of both are being respected. The Government refutes the alleged claim, since different entities are in charge of prosecuting and ruling on the various defendants' cases, pursuant to article 167 of the Constitution and articles 4, 7 and 9 of the Code of Criminal Procedure and Trials.

69. Concerning the hearing delayed from 9 June 2019 until 15 September 2019, allegedly without grounds, the Government recalls in detail the minutes of the court and reports that the delays were due to postponement by Ms. Lazareva's defence attorney each time, from 9 June 2019 until 29 September 2019, and not to the unilateral decision of the court of appeal.

70. The Government also contests the claim that Ms. Lazareva was under surveillance following her release. The claim is unfounded, since placement under police supervision, in accordance with article 74 of the Criminal Code, is an ancillary punishment which is ordered as a follow-up measure to the original sentence for certain crimes only, not including the charges attributed to Ms. Lazareva.

71. Ms. Lazareva's travel ban was instituted as a precautionary measure in accordance with the above-mentioned law. The defendant exercised all the legally stipulated guarantees in respect of this procedure by filing several grievances before the competent courts. A representative of the Embassy of the Russian Federation also made similar requests. The court approved one of her requests in February 2017 by lifting the travel ban in case No. 1496/2012.

72. The Government also contests the allegations regarding threats to Ms. Lazareva's legal team in the press release issued by the Kuwait Ports Authority. The Government recalls that the principle of freedom of the press is guaranteed in the Constitution and contests the veracity of the statements made by the source, which misrepresented the facts.

Further observations from the source

73. On 4 September 2019, the Government's response was sent to the source for further comment. The source responded on 10 September 2019 to the Government's first reply and on 31 January 2020 to the Government's second reply.

74. In its first response, the source argues that the order issued on 2 June 2019 does not change the fact that following the nullification of her conviction, Ms. Lazareva was detained illegally. Furthermore, the court failed to give any reason for ordering the detention of Ms. Lazareva.

75. The source explains that the court postponed the hearing due to be held on 9 June 2019 to 23 June 2019 and indicated that there would be a final defence hearing and verdict very shortly afterwards, within a period of days. At the hearing on 23 June 2019, the court unexpectedly postponed the subsequent hearing by nearly three months to 15 September 2019. No reasons justifying such a significant delay were provided by the court, except that the presiding judge would be on vacation leave. To the source, this reasoning is unsatisfactory and results in unnecessary delays in this case.

76. The source also submits that, upon release, Ms. Lazareva was followed by people who monitored her. Surveillance has been maintained while Ms. Lazareva has been on bail, despite there being no known court order providing for such interference with her liberty. Under Kuwaiti law, such surveillance can only be approved by a court order. The source notes that Ms. Lazareva was subject to the same round-the-clock extrajudicial surveillance when she was released on bail between 7 February 2018 and her conviction on 6 May 2018. According to the source, this significant level of intimidation and harassment continues to take a toll on Ms. Lazareva's health.

77. Furthermore, the source argues that Ms. Lazareva continues to be the target of unwarranted court proceedings. After over eight months of inactivity, a hearing took place on 5 August 2019, but no material steps were taken by the court. Instead, an additional hearing was scheduled for 9 September 2019, at which the defence's closing arguments and memoranda were to be provided. The source therefore argues that there is a lack of evidence to justify the continuation of the case. To the source, the fact that the restarting of case No. 1496/2012 coincides with the court having overturned the separate conviction in case No. 1942/2015 (now case No. 1596/2018 in the court of appeal) gives rise to questions about the Kuwaiti authorities' motivation, and whether, as it seems, this is simply a means of continuing to target Ms. Lazareva for non-judicial reasons.

78. In its second response, the source contests the response from the Government with regard to the alleged acts of reprisal against Ms. Lazareva and reiterates its claims.

79. With regard to the matter of the forged documents, the source states that the Government does not dispute that the documents were forged. Instead, it insists on the fact that the individuals were tried by different entities, which demonstrates, to the source, the Government's lack of understanding of and respect for due process protections, including the right to be presumed innocent.

80. The source reiterates its arguments that the detention of Ms. Lazareva violated national and international law, and which the Government did not successfully challenge.

Discussion

81. The Working Group thanks the source and the Government for their extensive submissions.

82. The Working Group welcomes Ms. Lazareva's release from detention on 12 June 2019. According to paragraph 17 (a) of its methods of work, the Working Group reserves the right to render an opinion on whether the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. In the present case, according to the source, Ms. Lazareva was arrested on 28 November 2017 and deprived of her liberty for more than 440 days. In addition, the source makes substantial allegations regarding human rights violations by the Government that warrant consideration. For those reasons, the Working Group considers that a reasoned decision is still needed despite the release.

83. In determining whether Ms. Lazareva's detention was 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 international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68). The Working Group recalls that, where it is alleged that a person has not been afforded by a public authority certain procedural guarantees to which he or she was entitled, the burden of proof should rest with the public authority, because the latter is in a better position to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law.⁹

84. As a preliminary matter, the Working Group notes that the parties have made extensive submissions beyond the page limits and updates containing new allegations were submitted by the source, which required that the Government be notified in order to provide it with an opportunity to respond. The Working Group recalls the limit of 20 page, pursuant to paragraphs 11 and 15 of its methods of work, intended to facilitate timely consideration of communications.

85. The source argues that Ms. Lazareva's detention is arbitrary and falls under categories I and III, while the Government denies these allegations. The Working Group will proceed to examine each of the categories in turn.

(i) *Category I*

86. The Working Group notes, in view of the submissions of both parties, that Ms. Lazareva was arrested on 28 November 2017, in the context of case No. 1942/2015, pursuant to an order from the Public Prosecutor's Office. She was referred on the same day to the Public Prosecutor's Office, and her interrogation continued the following day and until 3 December 2017. The Public Prosecutor's Office then ordered a pretrial detention order, which was extended by a judge on 14 December 2017. The source adds that the accusation report was issued on 19 December 2017. The Working Group thus notes that it took 16 days before Ms. Lazareva was brought before a judicial authority for a review of her detention. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge must be brought promptly before a judge or other officer authorized by law to exercise judicial power. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient following arrest to transport the individual and to prepare for the judicial hearing, thus satisfying the requirement of bringing a detainee "promptly" before a judge; any longer delay must remain absolutely exceptional and be justified under the circumstances.¹⁰ The Working Group finds that Ms. Lazareva was not brought promptly before a judicial authority, in violation of article 9 (3) of the Covenant. The Working Group recalls that the prosecutorial body cannot be considered a judicial authority for the purposes of article 9 (3) of the Covenant.¹¹ As a result, the authorities failed to establish the legal basis of her detention in accordance with the provisions of the Covenant.

⁹ For example, opinion No. 51/2018, para. 75.

¹⁰ General comment No. 35 (2014), paras. 32–33.

¹¹ *Ibid.*, para. 32; A/HRC/45/16/Add.1, para. 35; and opinions No. 14/2015, para. 28; No. 5/2020, para. 72; No. 6/2020, para. 47; and No. 41/2020, para. 60.

87. Moreover, the source reports that Ms. Lazareva was detained from 27 November 2017 until 7 February 2018, when she was released on bail. Then, on 6 May 2018, she was sentenced to 10 years' imprisonment and hard labour under case No. 1942/2015. However, on 5 May 2019, the court of appeal quashed her sentence, and a *de novo* trial was ordered. The source argues that it was only on 2 June 2019 that a court order was issued for her detention. She was then released on bail on 12 June 2019. The source thus argues that there was no legal basis for her detention between 5 May 2019 and 2 June 2019. The Government, on the other hand, explains that the court of appeal ruled on 5 May 2019 to annul the appealed verdict issued against Ms. Lazareva, and ordered her release, on the condition that she paid a financial guarantee of 20 million dinars; otherwise, she would remain imprisoned pending the case. At the hearing held on 2 June 2019, the bail amount was reduced. The new amount was paid on 12 June 2019, enabling her release. In view of these arguments, the Working Group is not convinced that the Government breached article 9 of the Covenant.

88. The source argues that the pretrial detention of Ms. Lazareva was not justified as she did not pose a flight risk, and challenges the amount of bail as unprecedented. The source states that the decision of the court with regard to the amount of bail was discriminatory. The Government responds that the amount was set in view of the overall amount allegedly embezzled. In view of the arguments by the Government concerning the need to hold Ms. Lazareva in pretrial detention and the fact that the numerical value of the bail in itself is not sufficient to determine whether it led to a violation of the Covenant, the Working Group is unable to reach a conclusion with regard to the individual assessment of her pretrial detention.

89. The source also argues that Ms. Lazareva has been denied an opportunity to challenge her detention and that the judicial authorities have not properly weighed the possibility of releasing her on bail. The Government explains that bail orders were requested during hearings in December 2018, and that the court ordered her release on bail on 4 February 2018 then again on 5 May 2019 with a further order on 2 June 2019 reducing the bail. The Working Group notes that an individual assessment was conducted and the possibility of her release weighed, leading to bail more than two months after her arrest. The Working Group is therefore unable to conclude, as suggested by the source, that there was a violation of article 9 (4) of the Covenant.

90. The Working Group therefore concludes that the Government violated article 9 (3) of the Covenant and article 9 of the Universal Declaration of Human Rights, which renders the deprivation of liberty of Ms. Lazareva arbitrary under category I.

(ii) *Category III*

91. The source has alleged that there were numerous instances in which the fairness of the procedure fell short, which the Working Group will analyse here.

92. The source reports that the presiding judge at trial recused himself and later withdrew his recusal, all without any explanation. The Government had the opportunity to rebut the allegation but failed to do so. The Working Group recalls that not only must the judicial decisions be reasoned, but any reversal must also be explained. The Working Group holds the view that it is difficult, without exceptional reasons, to withdraw a recusal, and that the judicial body owes the parties, especially the accused person, detailed reasons for the recusal. The lack of explanation in this instance jeopardized Ms. Lazareva's right to a fair trial because the defence had no means of knowing whether the failure of the judge to recuse himself had any impact on the proceedings, and was not able to challenge the reasoning.

93. The source also reports that the defence was not given access to the entirety of the case file, and that it did not have enough time to review the extensive disclosure material. The Government has not meaningfully rebutted the allegation. Given the volume of disclosure material, appropriate time was required for the defence to review the material and develop its own work and strategy. If the defence is not accorded the necessary time, the purpose of the disclosure is lost. In the present case, the defence was given a week to review some 18,000 pages of disclosure material. The Government has not provided any explanation in that regard. Article 14 (3) (b) of the Covenant requires that everyone charged with a criminal offence be given adequate time and facilities to prepare a defence. The Working Group finds it difficult to accept that this guarantee was observed in the present case and that

the time given to the defence was sufficient to study the charges in such a complex case. However, the source has also failed to explain whether the defence team submitted requests for more time to be provided and whether such requests were denied. Without such information, the Working Group is unable to conclude that there has been a breach of article 14 (3) (b).¹²

94. The source alleges that Ms. Lazareva was denied access to some hearings, for instance on 14 January 2018. The Government failed to rebut the allegation. The Working Group recalls that, pursuant to article 14 (3) (d) of the Covenant, the accused person has the right to be present at her trial. Any denial of the right to be tried in her presence must be duly justified and limited. In view of the failure of the Government to explain the situation, the Working Group concludes that the right to be present at her trial has been violated.

95. The source alleges that a Kuwaiti lawyer in Ms. Lazareva's defence team was subject to prosecution on the basis of his work. The Government states that the lawyer was investigated for having insulted a public official. Moreover, the source has reported alleged reprisals against the defence team, which the Government has refuted. The Working Group is not convinced by the response, without evidence, of the Government.

96. The Working Group also notes with concern the allegations of serious intimidation of the lawyers, which is a serious interference with the right to legal assistance, in violation of article 14 (3) (b) and (d) of the Covenant. It is the legal and positive duty of the State to protect everyone on its territory or under its jurisdiction against any violation of human rights and to provide remedies whenever such a violation occurs. In particular, the Working Group recalls that, according to 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, "[l]egal counsel shall be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment" (A/HRC/30/37, annex, para. 15).¹³ The Working Group is of the view that this matter must be referred to the Special Rapporteur on the independence of judges and lawyers, for further consideration.

97. The source further alleges that the defence was unable to conduct its examination of the witnesses without undue interference. In some instances, the defence was unable to call the witnesses that it needed, and in other instances, the defence was disrupted in its cross-examination and was prevented from cross-examining other witnesses. The Government has provided detailed information with regard to these matters and the Working Group, in view of the general allegations of the source, is unable to determine whether the rights of the defence were violated in this regard.

98. The source alleges that a translation of part of the evidence was not provided, or was not provided on time. Moreover, translation was provided into Russian instead of English, which is the common language spoken by the defence, and the translation was not of good quality. The Government contested these allegations. The Working Group recalls that the right to have the free assistance of an interpreter if the accused cannot understand or speak the language used in court, as provided for by article 14 (3) (f) of the Covenant, enshrines another aspect of the principles of fairness and equality of arms in criminal proceedings.¹⁴ However, the Working Group notes that the Human Rights Committee has stated that it is important for the guarantee of fair trial that the defence has the opportunity to familiarize itself with the documentary evidence against an accused, but this does not entail that an accused who does not understand the language used in court has the right to be furnished with translations of all relevant documents in a criminal investigation, provided that the relevant documents are made available to the accused's counsel.¹⁵ In the case at hand, the Working Group notes that Ms. Lazareva had Arabic-speaking lawyers and that she did benefit from translations of documents in some instances. In those circumstances, the Working Group cannot conclude that there has been a violation of article 14 (3) (f) in the present case.

¹² Opinion No. 2/2018, para. 66.

¹³ See opinions No. 29/2017, No. 70/2017 and No. 66/2019. See also opinion No. 14/2017, para. 58.

¹⁴ Human Rights Committee, general comment No. 32 (2007), para. 40.

¹⁵ *Harward v. Norway* (CCPR/C/51/D/451/1991), annex, paras. 9.4–9.5.

99. The source also reports that Ms. Lazareva was unable to have private and confidential consultations with her lawyers, as the meetings were held in public spaces or with agents near them. The Working Group recalls that the right to communicate with counsel requires that the accused is granted prompt access to counsel, and counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.¹⁶ In the present case, the Working Group notes that the Government has provided a list containing the dates of lawyers' consultations with Ms. Lazareva while she was in detention, but has provided no explanation as to the lack of privacy during those meetings. The Working Group thus finds in the present case a violation of article 14 (3) (b) of the Covenant.

100. The source makes numerous other arguments which were either insufficiently substantiated or pertained to an analysis of national legislation or to the question of Ms. Lazareva's innocence, which fall outside of the mandate of the Working Group. It will thus not address these arguments.

101. In view of the above, the instances of violations of the right to a fair trial provided for in article 14 of the Covenant and article 10 of the Universal Declaration of Human Rights, considered together, are serious enough for the Working Group to conclude that Ms. Lazareva's detention was arbitrary under category III.

Disposition

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

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

103. The Working Group requests the Government of Kuwait to take the steps necessary to remedy the situation of Ms. Lazareva 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.

104. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Ms. Lazareva an enforceable right to compensation and other reparations, in accordance with international law.

105. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Lazareva and to take appropriate measures against those responsible for the violation of her rights.

106. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

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

Follow-up procedure

108. 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 compensation or other reparations have been made to Ms. Lazareva;

¹⁶ Human Rights Committee, general comment No. 32 (2007), para. 34. See also United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 61 (1); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 18; and Basic Principles and Guidelines, guideline 8.

(b) Whether an investigation has been conducted into the violation of Ms. Lazareva's rights and, if so, the outcome of the investigation;

(c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Kuwait with its international obligations in line with the present opinion;

(d) Whether any other action has been taken to implement the present opinion.

109. 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.

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

111. 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.¹⁷

[Adopted on 28 August 2020]

¹⁷ Human Rights Council resolution 42/22, paras. 3 and 7.