



General Assembly

Distr.: General
26 June 2019

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 24 April–3 May 2019

Opinion No. 10/2019 concerning Mustafa Ceyhan (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 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 18 December 2018 the Working Group transmitted to the Government of Azerbaijan and to the Government of Turkey a communication concerning Mustafa Ceyhan. The Government of Turkey replied to the communication on 14 February 2019 and the Government of Azerbaijan replied to the communication on 15 March 2019. 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, 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. Mustafa Ceyhan, born in 1974, is a Turkish citizen who has been residing in Georgia for the past four years. He is a business person who has owned and managed a car sales business. He is married and has two sons. His usual place of residence is Batumi, Georgia.

Context

5. According to the source, since 2014, the Government of Turkey has pursued a persistent, coordinated and systematic campaign against Hizmet/Gülen movement institutions and individuals in the country and abroad by claiming that they are an extension of a “parallel State”. Ever since, many members, or simply alleged sympathizers, of the Hizmet/Gülen movement have been routinely subjected, inter alia, to seizure of property, arbitrary detention and arrest, and ill-treatment and punishment. The source alleges that an unprecedented purge targeting citizens from all walks of life, in particular the education, media, military and justice sectors, is still ongoing – with measures introduced under the umbrella of the state of emergency and the measures after the state of emergency severely limiting individual rights and liberties.

6. Furthermore, the source notes the serious situation facing Turkish nationals in Azerbaijan, with several individuals having been detained and deported to Turkey without due process and any possibility of challenging their detention. According to the source, there is currently no avenue for the victim to receive redress either in Turkey or in Azerbaijan.

Arrest and detention in Azerbaijan

7. The source reports that on 20 April 2017, Mr. Ceyhan was arrested at the Kirmizi Kopru (Red Bridge) border crossing point (between Georgia and Azerbaijan), by the Azerbaijani border police. The Kirmizi Kopru border crossing point is located south of the Georgian capital, Tbilisi. As Mr. Ceyhan crossed into Azerbaijan, the Azerbaijani police informed him that his passport was invalid, and arrested him immediately. The Azerbaijani authorities charged Mr. Ceyhan with crossing the border illegally.

8. The source submits that the incident follows a wider pattern. From July 2016 to December 2017, the authorities in Turkey revoked 234,419 passports of those living in Turkey.¹ Allegedly, in order to prevent Turkish dissidents abroad from travelling, Turkish authorities employ different methods, including deprivation of nationality, refusal to provide consular services, and non-registration of births, resulting in children being born stateless.

9. According to the source, another method applied is false declarations made by unknown individuals (probably State agents) to the authorities in Turkey that a passport of an individual has been lost, so that the passport is cancelled without the knowledge of its holder. The victims in such cases, including Mr. Ceyhan, are unaware of the cancellation of their passports, and only find out about it when attempting to cross an international border. In some cases, such as the case of Mr. Ceyhan, the cancellation of the passport has devastating consequences. In other cases, victims have been able to escape arrest and subsequent transfer to Turkey.

10. The source submits that Azerbaijan, however, harshly penalized Mr. Ceyhan for his alleged “unlawful entry”. In April 2017, Mr. Ceyhan was sentenced by Gazakh District Court in Azerbaijan to one year’s imprisonment, in the absence of any wrongdoing.

¹ Turkey Purge, “Turkish interior minister: 55,665 jailed, 234,419 passports revoked since coup attempt”, 13 December 2017, available at <https://turkeypurge.com/turkish-interior-minister-55665-jailed-234419-passports-revoked-since-coup-attempt>.

Request for extradition to Turkey

11. The source submits that after serving an unfair one-year prison sentence for allegedly having attempted to enter Azerbaijan with a cancelled passport, Mr. Ceyhan was due for release in April 2018. However, while he was serving the sentence, the Government of Turkey lodged a request with the Azerbaijani authorities for his extradition to Turkey, on reportedly fabricated charges of alleged membership of a terrorist organization. The source notes that the Government of Turkey has designated the Hizmet/Gülen movement as a terrorist organization.

12. The source reports that at the time of the arrest and illegal transfer, Mr. Ceyhan's request for international protection was under consideration. The Office of the United Nations High Commissioner for Refugees (UNHCR) in Azerbaijan issued a protection letter in respect of Mr. Ceyhan, which was valid at least until 20 June 2018.

Hearing before the court in Baku to decide on the extradition request by Turkey

13. The source reports that the court hearing to decide on the extradition request by Turkey was initially scheduled for 30 April 2018. However, the hearing was rescheduled for 26 April 2018, without the lawyers for Mr. Ceyhan being informed and aware of this important procedural fact. According to the source, this was part of an overall plan to ensure that Mr. Ceyhan would be detained, disappeared and later transferred to Turkey, in the absence of any witnesses. The lawyers for Mr. Ceyhan only learned about this important change in the schedule by chance, and consequently attended the hearing.

14. The source reports that on 26 April 2018, Mr. Ceyhan was brought before the Baku Court on Grave Crimes. After hearing arguments from Mr. Ceyhan's lawyers, the Ministry of Justice of Azerbaijan, the Prosecutor General's Office of Azerbaijan, and the representative of the Embassy of Turkey, the judge decided not to extradite Mr. Ceyhan to Turkey and ordered his immediate release.

Forcible abduction on 26 April 2018 and illegal transfer to Turkey

15. The source submits that pursuant to the court's ruling, Mr. Ceyhan was released. As Mr. Ceyhan and his lawyers were leaving the court, at around 12 noon, Mr. Ceyhan was forcibly abducted in front of the court by a group of eight men from the Azerbaijani intelligence services and the State Migration Service of Azerbaijan, using a black Range Rover vehicle with the number plate 90 PR 665. The vehicle then left, heading in an unknown direction. After the abduction, Mr. Ceyhan's lawyers called the United Nations office for help, to no avail. Mr. Ceyhan's wife in Batumi, Georgia, was informed about the abduction on the same day, at around 5 p.m.

16. The source expresses its concern that Mr. Ceyhan was reportedly tortured following his abduction in Azerbaijan. Mr. Ceyhan received electric shocks two or three times, until he passed out. He was shown video footage of his sons in a minibus coming from school and was threatened that they would be kidnapped unless he gave up his resistance and came to the airport to be transferred by plane to Turkey.

17. The source reports that while details of the illegal transfer are unknown, Turkish media outlets reported on 27 April 2018 that the International Criminal Police Organization (INTERPOL) in Baku had illegally and clandestinely transferred Mr. Ceyhan to Istanbul, where he had been remanded in custody.² Azerbaijani media also reported on the abduction at around the same time, specifying that Mr. Ceyhan had been handed over at Istanbul Atatürk Airport by members of the Azerbaijani police.³ According to the source, the behaviour by the Turkish authorities in this case appears consistent with other cases and follows a pattern of even "parading" before television cameras those abducted and illegally transferred, once they have been forcibly brought to Turkey.

² See www.hurriyet.com.tr/azerbaycanda-tutuklu-bulunan-fetocu-istanbula-40819358.

³ See <http://axar.az/news/toplum/270678.html>.

18. The source submits that the procedure that seems to have been carried out in the case of Mr. Ceyhan, with the Azerbaijani police accompanying the victim to Turkey, constitutes a forcible removal and expulsion. The source argues that none of the guarantees provided in the domestic legal framework and in article 13 of the Covenant were observed. In addition, the Azerbaijani authorities are in breach of the relevant provisions of protocol 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), to which Azerbaijan has been a contracting party since 1 July 2002.

Detention in Turkey

19. The source reports that for several weeks, it was not possible to establish the whereabouts of Mr. Ceyhan, until his relatives found out that he had been remanded in custody in Istanbul. Mr. Ceyhan remains in custody, accused of membership of a terrorist organization. Family members of Mr. Ceyhan have little information regarding the current health, legal and other conditions of Mr. Ceyhan in Turkish prisons.

20. In light of all the above, the source submits that the deprivation of liberty of Mr. Ceyhan is arbitrary under categories I, III and V of the Working Group.

Responses from the Governments to the communications

21. On 18 December 2018, the Working Group transmitted the allegations from the source to the Government of Azerbaijan and the Government of Turkey, under its regular communication procedure.

22. The Working Group requested the Government of Azerbaijan to provide it with detailed information about the situation of Mr. Ceyhan, and clarify the legal provisions justifying his deprivation of liberty from 20 April 2017 to 27 April 2018, as well as its compatibility with the obligations of Azerbaijan under international human rights law, particularly in regard to the treaties ratified by the State.

23. The Working Group requested the Government of Turkey to provide it with detailed information about the situation of Mr. Ceyhan, and clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Turkey under international human rights law, particularly in regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Turkey to ensure Mr. Ceyhan's physical and mental integrity.

Response from the Government of Azerbaijan

24. On 14 February 2019, the Government of Azerbaijan requested an extension to the deadline, which was granted, with the new deadline set as 18 March 2019.

25. In its reply of 15 March 2019, the Government of Azerbaijan states that the deprivation of the applicant's liberty from 20 April 2017 to 27 April 2018 was in accordance with the law and was compatible with the obligations of Azerbaijan under international human rights law.

26. The Government of Azerbaijan states that Mr. Ceyhan's case has already been referred to the European Court of Human Rights. The Government therefore requests that the Working Group transmit Mr. Ceyhan's case to the European Court of Human Rights in accordance with paragraph 33 (d) (ii) of the Working Group's methods of work.

27. The Government states that it considers the applicant's allegations to be unfounded and unsubstantiated. Azerbaijan is a party to almost all vital international human rights treaties and has always honoured commitments and obligations undertaken before the international bodies, especially with respect to human rights. Furthermore, the Government is committed to the principles of the universality, interdependence and indivisibility of all human rights and fundamental freedoms. These commitments are expressed in the Constitution of Azerbaijan, where article 12 expressly provides that human rights and freedoms are the highest objective of the State, and article 28 ensures that everyone has the right to liberty, which may be restricted only as specified by law.

28. The Government submits that on 20 April 2017, Mr. Ceyhan attempted to cross the border from Georgia at the Sixli checkpoint, in Gazakh district, with fake documents, and was apprehended by State border service officers. On 24 April 2017, he was charged with attempting to illegally cross the State border, under article 29, 318.1 of the Criminal Code of Azerbaijan, and was remanded in custody for two months, a decision that was upheld by Baku Court of Appeal on 1 May 2017.

29. The Government states that the decision to remand Mr. Ceyhan in custody as a restrictive measure was made on the basis of evidence gathered by the prosecution which was of a nature that would satisfy an objective observer that the applicant might have committed the offence. Reportedly, Mr. Ceyhan also partly admitted his guilt. Therefore, Sabail District Court found that there were reasonable grounds to believe that Mr. Ceyhan had committed a criminal offence.

30. The Government notes that on 20 July 2017, the court of first instance delivered its decision and reasoning. The Government states that the court thoroughly evaluated Mr. Ceyhan's case and relied on legal provisions in its decision.

31. The Government submits that the prosecution provided evidence that Mr. Ceyhan's passport had been forged. Furthermore, the court considered that the claim that Mr. Ceyhan had come to Azerbaijan to seek political asylum was groundless and unsubstantiated. Mr. Ceyhan lived in Georgia, not Turkey, where he was not subjected to persecution and had every opportunity to appeal to international organizations or to the consulate of Azerbaijan for political asylum. Reportedly, he also did not make any mention of seeking political asylum when attempting to cross the border.

32. The Government submits that in determining his sentence, the court took account of mitigating factors, such as Mr. Ceyhan's two children and the fact that he was a first-time offender. He was sentenced to one year in prison rather to the maximum of three years, pursuant to article 29, 318.1 of the Criminal Code. The decision was upheld by Ganja Court of Appeal on 4 October 2017. On 8 May 2018, the Supreme Court reviewed the case and found that the lower courts had determined the matter on its merits. The Government states that Mr. Ceyhan was represented by legal counsel in all instances.

Response from the Government of Turkey

33. On 14 February 2019, the Government of Turkey submitted a reply to the Working Group.

34. In its reply, the Government states that the Republic of Turkey is a democratic State of law, is a member of the United Nations and a founding member of the Council of Europe and is devoted to human rights, the rule of law and democracy. The Constitution of Turkey imposes a positive obligation upon the State to ensure the welfare, peace and happiness of the people and the society, to protect the Republic and democracy, and to remove any obstacles that limit the fundamental rights and freedoms of the person.

35. The Government states that in line with its positive constitutional obligations, Turkey must take measures necessary to protect its people from terrorism. The Government indicates that it fights terrorist organizations within its constitutional and domestic legal framework and in compliance with fundamental principles of democracy and international law.

36. According to the Government, two arrest warrants were issued against Mr. Ceyhan, by the Konya First Criminal Magistrates' Office on 23 September 2016 (decision No. 2016/4091) and by the Aksaray Criminal Magistrate's Office on 8 February 2017 (decision No. 2017/932), on suspicion of his being a member of the Fetullahist Terrorist Organization/Parallel State Structure (FETÖ/PDY) armed terrorist organization, under article 314 (2) of the Criminal Code of Turkey. Mr. Ceyhan was arrested in accordance with those warrants upon his arrival in Turkey on 27 April 2018.

37. The Government states that Mr. Ceyhan was brought before the Thirty-sixth Assize Court of Istanbul on the same day as his arrest. The court reportedly took his statement in the presence of his lawyer. In weighing the nature of the offence attributed to him and the total body of evidence, the Second Assize Court of Aksaray decided to detain Mr. Ceyhan

in pretrial detention based on a strong suspicion that he had committed the offence attributed to him under article 100 of the Code of Criminal Procedure. The court further assessed that there was a flight risk and judicial control measures would not be adequate. The court requested the Public Prosecutor's Office to notify Mr. Ceyhan's relatives of the decision. Mr. Ceyhan was informed that he had the right to object against the decision of detention before the First Assize Court of Aksaray within a period of one week.

38. The Government notes that according to the European Court of Human Rights, the existence of a reasonable suspicion or plausible reasons that the person concerned committed the offence in question, as determined by an objective observer test, is a *sine qua non* of pretrial detention. Furthermore, the persistence of a reasonable suspicion that the person has committed the offence is a requirement for the lawfulness of his or her continued detention.

39. The Government submits that the accusations regarding Mr. Ceyhan were based on concrete evidence, therefore it cannot be alleged that the proceedings regarding detention are baseless and arbitrary. The Government submits that the criminal proceedings have been carried out in accordance with domestic law as well as in line with the obligations of Turkey under international human rights law.

40. The Government reports that Mr. Ceyhan was duly informed of the accusations against him and that his statement was taken in the presence of his lawyer. Furthermore, all decisions of arrest, custody and detention were rendered by independent judges. These decisions contained detailed reasoning regarding the grounds on which the measures were taken, meaning that they were not arbitrary. In addition, Mr. Ceyhan has the right to object to these decisions. The Government states that he has been represented by his lawyer during the criminal proceedings.

41. According to the Government, Mr. Ceyhan also has the right to lodge an individual application with the Constitutional Court, which, under Law No. 6216, may review any allegations that public authorities have violated the fundamental rights and freedoms guaranteed by the Constitution within the framework of the European Convention on Human Rights and its additional protocols to which Turkey is a party. The European Court of Human Rights has found that an individual application to the Constitutional Court is an effective remedy that should be exhausted before the case can be taken to the European Court of Human Rights. The Government notes that as at 27 December 2018, Mr. Ceyhan had not lodged an application with the Constitutional Court. Therefore, he did not exhaust domestic remedies.

42. In relation to the conditions of Mr. Ceyhan's detention, the Government submits that he was placed in the Silivri Closed Prison on 27 April 2018, in accordance with article 9 (2) of Law No. 5275 on the Execution of Penalties and Security Measures. Under article 116 of Law No. 5275, detainees may be held in closed penal institutions with maximum security during their detention period. In line with the decision of the prison's Administration and Supervision Board, Mr. Ceyhan was placed in a single room. Reportedly, Mr. Ceyhan has not objected to the decision to place him in a single room. Furthermore, in line with the Regulation on Administration of Penal Institutions and Execution of Penalties and Security Measures, he is allowed to have a 10-minute telephone call once a week, to accept presents, to send and receive petitions and letters, and to meet with his lawyer(s). He has the right to medical assistance, and in cases where advanced medical care is needed he can be transferred to other medical treatment facilities.

43. According to the Government, Mr. Ceyhan did not receive disciplinary penalties in the prison. Although he has a right to, Mr. Ceyhan has not filed any complaints about his detention conditions before the appropriate office.

Comments from the source on the response from the Government of Azerbaijan

44. On 15 March 2019, the Working Group transmitted the reply received from the Government of Azerbaijan to the source. On 27 March 2019, the source submitted its further comments on the information provided by the Government of Azerbaijan.

45. The source submits that the Government has avoided addressing the incident that is the subject of the submission. The Government's reply fails to refer to the court decision of 26 April 2018, which set Mr. Ceyhan free and rejected the Turkish extradition request. Furthermore, the source submits that the Government has purposely avoided responding to any of the allegations regarding the abduction of Mr. Ceyhan on 26 April 2018.

46. The source states that the Working Group is not precluded from examining the present case simply because it has been referred to the European Court of Human Rights. The European Court of Human Rights is not a United Nations body as stipulated in the methods of work, but a regional human rights court. The claims before the European Court of Human Rights and the Working Group, although cross-cutting, are not the same. Furthermore, the applications do not refer to the same respondent States. The application to the European Court of Human Rights only concerns Azerbaijan, and not Turkey. For these reasons, the Working Group is not precluded from reviewing Mr. Ceyhan's submission.

47. The source states that Mr. Ceyhan was unfairly arrested at the border of Azerbaijan, a situation which it attributes to actions taken by Turkey to arbitrarily deprive Turkish nationals living abroad of their nationality and of consular services.

48. The source states that after being sentenced and serving his entire one-year sentence Mr. Ceyhan was placed in pre-extradition detention on 17 April 2018, pending his court appearance on 26 April 2018 immediately after which he was abducted without any due process. The source submits that his detention between 17 and 26 April 2018 and his subsequent abduction are arbitrary under categories I, III and V.

Comments from the source on the response from the Government of Turkey

49. On 26 February 2019, the Working Group transmitted the reply received from the Government of Turkey to the source. On 8 March 2019, the source submitted its further comments on the information provided by the Government of Turkey.

50. The source states that in recent years and in particular in the aftermath of the December 2013 corruption scandal, the authorities in Turkey have established a track record of suppressing dissent and gradually restricting human rights and fundamental freedoms. The attempted coup of 15 July 2016 led to a backsliding in the areas of freedom of expression, freedom of assembly, freedom of association, and procedural and property rights. This situation has led to a massive crackdown on human rights in the country and abroad. The source states that the Government of Turkey, in its response to the attempted coup of 15 July 2016, has not respected the principles of necessity and proportionality. The measures taken by the Government, either during or after the state of emergency, have been highly disproportionate, and the practice of abductions and illegal transfers across international boundaries jeopardizes important international human rights obligations. Measures by the Government of Turkey have retroactively equated what have otherwise been legitimate and normal activities with terrorism, thereby effectively criminalizing freedom of expression, freedom of association and other important rights.

51. The source states that the warrants issued in relation to Mr. Ceyhan were themselves in violation of the principle of legality, as Mr. Ceyhan does not meet any of the criteria set out by Turkish authorities for being considered to be a member of the FETÖ/PDY. The only "evidence" put forward against Mr. Ceyhan has been that he has been a subscriber to the high-circulation *Zaman* daily newspaper, which the Government has not mentioned. The source indicates that the Government's response lacks information on any concrete charge to link Mr. Ceyhan to the attempted coup, or even to any alleged wrongdoing in Georgia, Azerbaijan or Turkey. Activities carried out by Mr. Ceyhan have had nothing to do with terrorism or any other wrongdoing.

52. The source also states that the Government fails to mention how Mr. Ceyhan arrived in Turkey. Mr. Ceyhan's arrival was not voluntary, but the result of coercion and torture on the part of Azerbaijani authorities at the behest of Turkey. This practice by Turkey has reportedly been documented in other similar cases involving countries other than Azerbaijan.

53. In response to the Government's statement that there are appeal routes still open to Mr. Ceyhan, the source states that there is no obligation to exhaust domestic remedies before submitting an application to the Working Group. Moreover, the Government's reprisals against lawyers and judges following the attempted coup of 15 July 2016 seriously call into question the independence and impartiality of the Turkish judicial system. The source indicates that this has seriously limited Mr. Ceyhan's options for appeal and legal counsel. Furthermore, it is not realistic or appropriate for Mr. Ceyhan to seek out all domestic remedies when he was subjected to abduction, arbitrary detention, illegal transfer, torture and ill-treatment, and doing so would only have prolonged his unlawful and arbitrary detention.

54. The source submits that the abduction, illegal transfer, torture, and ongoing arbitrary detention of Mr. Ceyhan are contrary to the Turkish and Azerbaijani domestic legal framework and both Governments are in serious breach of international law.

55. In response to the Government's statements about the conditions of Mr. Ceyhan's detention, the source states that he has been subjected to prolonged and unlawful solitary confinement for several months, amounting to torture or other ill-treatment. The fact that he has not complained about his detention does not justify his ongoing isolation.

Discussion

56. The Working Group thanks the source and both Governments for their submissions and appreciates the cooperation and engagement of all parties in this matter. The present case involves two States, and the Working Group will discuss the issues relating to each State separately.

57. In determining whether the deprivation of liberty of Mr. Ceyhan is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Governments if they wish to refute the allegations. The Governments can meet this burden of proof by producing documentary evidence in support of their claims.⁴ Mere assertions by the Governments that lawful procedures have been followed are not sufficient to rebut the source's allegations (A/HRC/19/57, para. 68).

Allegations in relation to Azerbaijan

58. As a preliminary matter, the Working Group will consider the submission by the Government of Azerbaijan that Mr. Ceyhan lodged an application with the European Court of Human Rights on 8 August 2017 for the alleged breaches of his rights which occurred in the circumstances that the Working Group has been asked to examine in the present opinion. The Government of Azerbaijan, therefore, relying on paragraph 33 (d) (ii) of the Working Group's methods of work, is of the opinion that the Working Group should transmit the case to the other body concerned with the case, that is, the European Court of Human Rights. The Working Group therefore must examine whether the application to the European Court of Human Rights precludes the Working Group's consideration of Mr. Ceyhan's submission in the present case.⁵

59. The competence of the Working Group is defined in the resolutions of the Human Rights Council (formerly the Commission on Human Rights, until 2006) and in the

⁴ See opinion No. 41/2013, in which the Working Group notes that the source of a communication and the Government do not always have equal access to the evidence, and frequently only the Government has the relevant information. In that opinion, the Working Group recalled 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 to prove the negative fact asserted by the applicant is on the public authority, because the latter is "generally able to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law... by producing documentary evidence of the actions that were carried out". See also *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Merits, Judgment*, I.C.J. Reports 2010, para. 55.

⁵ See the Working Group's previous discussion in opinion No. 52/2011, paras. 25–38.

Working Group's methods of work.⁶ As such, the Working Group has a duty to process communications relating to the issues that fall within the mandate conferred upon it by the Human Rights Council and which have been submitted in accordance with its methods of work. The applicable procedural rules do not stipulate that the Working Group should refrain from considering matters that are being or have been examined under other, regional human rights protection systems. In this context, it should be recalled that, for instance, the Working Group has declared itself competent to deal with cases that had also been considered by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.⁷

60. The Working Group recalls that recently it specifically and in detail addressed the situation of a case that it processed through its regular communication procedure, which had been examined by the European Court of Human Rights twice.⁸ The Working Group then declared that there was nothing that prevented it from examining the case, and it sees no reasons to do otherwise in the present case, noting especially that the European Court of Human Rights is yet to consider the merits of the case.

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

62. The Working Group notes that, in its reply, the Government of Azerbaijan has provided a relatively detailed explanation of the proceedings in Azerbaijan against Mr. Ceyhan, which arose from the incident with Mr. Ceyhan's passport on 20 April 2017 at the border between Georgia and Azerbaijan, leading to his arrest. The Government has argued that Mr. Ceyhan was duly arrested, charged and sentenced for committing the crime – namely, attempted illegal crossing of the border. The Government explains that the sentence imposed by Gazakh District Court was of one year's duration; Mr. Ceyhan appealed that sentence to Ganja Court of Appeal, which examined the case on its merits on 4 October 2017 and upheld the decision of the court of first instance. The case was also reviewed by the Supreme Court on 8 May 2018, which upheld the decision of the two lower courts.

63. However, the Working Group notes that the Government of Azerbaijan has chosen not to address the points raised by the source that the Government of Turkey had submitted an extradition request in relation to Mr. Ceyhan; that Mr. Ceyhan appeared before the Baku Court on Grave Crimes on 26 April 2018 for an extradition hearing; and that the judge ruled against extradition and ordered Mr. Ceyhan's release, but he was released and subsequently abducted outside the courthouse by a group of eight men from Azerbaijani intelligence services and the State Migration Service of Azerbaijan on the same day and forcibly deported to Turkey the following day.

64. The Working Group considers that the information submitted by the source indicates that the arrest, detention and deportation of Mr. Ceyhan was carried out without any legal basis. Accordingly, the Working Group finds that Mr. Ceyhan was abducted outside the Baku Court on Grave Crimes on 26 April 2018 by the Azerbaijani agents without any legitimate legal procedure having been followed. That is, the arresting officers did not identify themselves, no arrest warrant was presented, no reasons were given to Mr. Ceyhan for his arrest, and he was taken to and detained at a secret location until the following day when he was forcibly removed to Turkey. The Working Group finds that the Government of Azerbaijan violated Mr. Ceyhan's rights under article 9 (1) and (2) of the Covenant to protection from arbitrary arrest and detention.⁹

⁶ See Human Rights Council resolution 33/30; and A/HRC/36/38, part VII.

⁷ See, for example, opinions Nos. 9/2005, 52/2011, 21/2013, 16/2016, 57/2016 and 53/2018.

⁸ See opinion No. 89/2018.

⁹ The Working Group has made similar findings in other cases involving the detention of individuals at an undisclosed location prior to their removal to another country to face criminal charges in relation to alleged terrorism offences. See, for example, opinions Nos. 57/2013 and 2/2015.

65. Furthermore, the Working Group finds that Mr. Ceyhan was held incommunicado at a secret location for a day from his arrest on 26 April 2018 until he was forcibly deported to Turkey the following day. As the Working Group has consistently held, holding persons incommunicado violates their right to be brought before a court, under article 9 (3) of the Covenant, and to challenge the lawfulness of their detention before a court, under article 9 (4) of the Covenant.¹⁰ Judicial oversight of detention is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.¹¹

66. The Working Group considers that not only was there no legal basis invoked by the authorities for the actions taken against Mr. Ceyhan, but the authorities also arrested, detained and deported Mr. Ceyhan in violation of Azerbaijani law. The source has alleged that the Baku Court on Grave Crimes refused the extradition request from Turkey and ordered the release of Mr. Ceyhan, and has produced documentary evidence to that effect. As Mr. Ceyhan walked free from the courthouse on 26 April 2018 after that hearing, he was abducted by State agents in plain disregard of the order that had just been made by the court. Moreover, Mr. Ceyhan was extradited to Turkey on the following day, in egregious defiance of a judicial order.

67. For these reasons, the Working Group considers that there was no legal basis established for the arrest, detention and deportation of Mr. Ceyhan, under article 9 of the Covenant. The Working Group therefore concludes that his deprivation of liberty from 26 April 2018 to 27 April 2018 was arbitrary, under category I.

68. The Working Group also considers that, in arresting, detaining and deporting Mr. Ceyhan, the Government of Azerbaijan committed serious violations of his right to a fair trial.

69. Firstly, the Government of Azerbaijan placed Mr. Ceyhan in secret detention for a day without disclosing his whereabouts to his family, friends and colleagues or acknowledging his detention. In 2010, the Working Group and several special procedure mandate holders completed a joint study on global practices in relation to secret detention in the context of counter-terrorism (A/HRC/13/42). The experts reiterated that international law prohibited secret detention, which violated several human rights norms, including the right to a fair trial (see paras. 27 and 282). The experts found that certain practices inherent in secret detention, such as the use of secrecy, and insecurity caused by the denial of contact with the outside world, placed detainees in a situation of heightened vulnerability to violations of the right to a fair trial – including forced confession of guilt, denial of the presumption of innocence, inability to challenge the lawfulness of detention, denial of access to legal representation, and torture and ill-treatment.¹² Moreover, in its resolution 37/3, the Human Rights Council stressed that no one should be held in secret detention, and urged States to ensure that all persons held in detention under their authority were provided with access to courts and also to investigate all alleged cases of secret detention, including under the pretext of counter-terrorism.¹³

70. In the present case, the Government of Azerbaijan placed Mr. Ceyhan in a vulnerable situation while he was held incommunicado and in secret detention for a day. The use of incommunicado and secret detention deprived him of his rights to challenge his detention and to legal assistance during his detention.¹⁴ In doing so, the Government of Azerbaijan violated articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 (3) (b) of the Covenant. The Government of Azerbaijan also placed Mr. Ceyhan beyond the protection of the law, in violation of his right to recognition as a person

¹⁰ See, for example, opinions Nos. 45/2017, 46/2017, 79/2017 and 11/2018.

¹¹ See 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, para. 3.

¹² See also opinions No. 14/2009, para. 21, and No. 5/2001, para. 10 (iii), in which the Working Group found that secret detention was per se a violation of the right to a fair trial, under category III.

¹³ See paras. 8–9.

¹⁴ See the United Nations Basic Principles and Guidelines, principle 9 and guideline 8.

before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.¹⁵

71. Secondly, as the Working Group has previously observed,¹⁶ international law regarding extradition provides procedures that must be observed by countries, when arresting, detaining and returning individuals to face criminal proceedings in another country, and to ensure that their right to a fair trial is protected. Those procedures have not been observed in the present case, and the Working Group considers that the clandestine arrest, detention and deportation of Mr. Ceyhan did not meet any minimum international standards of due process.

72. As the Working Group has stated, individuals should not be expelled to another country when there are substantial grounds for believing that their life or freedom would be at risk, or they would be in danger of being subjected to torture or ill-treatment (see A/HRC/4/40, paras. 44–45). In addition, the Working Group considers that the risk of arbitrary detention in the receiving State must also be among the elements taken into consideration before individuals are expelled, particularly in the context of counter-terrorism efforts. To remove a person to a State when there is a genuine risk that the person will be detained without legal basis or denied the right to a fair trial is not compatible with the obligation under article 2 of the Covenant to ensure the Covenant rights for all persons within the State's territory and subject to its jurisdiction (*ibid.*, paras. 47–49).

73. Several United Nations bodies have documented widespread violations of human rights in Turkey, particularly since the attempted coup in July 2016. These include extrajudicial killings in the context of counter-terrorism operations, the arbitrary detention of people arrested under the state-of-emergency measures, the use of torture and ill-treatment during pretrial detention, and mass dismissals of teachers accused of being associated with the Gülen movement.¹⁷ Moreover, the Working Group cannot help but notice the striking similarities between the present case and that of the Kaçmaz family which the Working Group considered recently.¹⁸

74. The Government of Azerbaijan should have taken that information into account in its decision to arrest, detain and deport Mr. Ceyhan. Instead, Azerbaijani authorities abducted him from outside the court which had just ordered his release, and forcibly deported him the following day to Turkey, without any apparent regard for the dangers that he might face and in defiance of the order of its own court that he was not to be extradited. The Working Group considers that this represents a violation of the principle of non-refoulement, which was particularly serious given that, at the time, Mr. Ceyhan held a UNHCR protection letter, which the source has produced as evidence. The Working Group observes that Azerbaijan is a party to both the Convention relating to the Status of Refugees, of 1951, and its 1967 Protocol – international treaties which it blatantly ignored when it chose to extradite Mr. Ceyhan to Turkey. The Working Group recalls that article 33 (1) of the 1951 Convention enshrines the principle of non-refoulement, and the obligation not to repatriate individuals who have reason to fear persecution is also customary in nature.¹⁹

75. Moreover, the Government of Azerbaijan violated its obligation, under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and under article 7 of the Covenant,²⁰ not to return Mr. Ceyhan to another State

¹⁵ See also opinions No. 46/2017, para. 23; and No. 47/2017, para. 25.

¹⁶ See, for example, opinions No. 57/2013, No. 2/2015 and No. 11/2018.

¹⁷ See, for example, Office of the United Nations High Commissioner for Human Rights (OHCHR), “Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East” (March 2018), available at www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf; opinions No. 1/2017, No. 38/2017 and No. 41/2017; communications issued by the Working Group and other special procedures (TUR 12/2017, TUR 11/2017, TUR 9/2017, TUR 8/2017, TUR 7/2017 and TUR 6/2017); and CAT/C/TUR/CO/4.

¹⁸ See opinion No. 11/2018.

¹⁹ See A/HRC/13/42, para. 43; and UNHCR, “The principle of non-refoulement as a norm of customary international law” (1994), available at www.refworld.org/docid/437b6db64.html.

²⁰ See Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 9.

where there were substantial grounds for believing that he would be in danger of being subjected to torture or other ill-treatment.

76. The Working Group is mindful of the concluding observations of the Committee against Torture regarding Azerbaijan, in which the Committee expressed its concerns at “reports of individuals falling outside the scope of asylum applications proceedings who do not enjoy the protection of the law” as well as at “cases of extraordinary rendition based on bilateral extradition agreements”, and called on the Azerbaijani authorities “to ensure that individuals who may face a risk of torture in their countries of origin are not returned, extradited or deported to those countries” (see CAT/C/AZE/CO/4, paras. 34–35).

77. The Government of Azerbaijan has 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 law, and to allow them to submit reasons against the expulsion and to have the case reviewed by, and be represented before, a competent authority. Thus, the Working Group considers that the Government of Azerbaijan is responsible for its own actions in the arrest, detention and deportation of Mr. Ceyhan, as well as the subsequent violations of his rights in Turkey (see paras. 83–96 below).

78. The Working Group concludes that these violations of the right to a fair trial are of such gravity as to give the deprivation of liberty of Mr. Ceyhan an arbitrary character according to category III.

79. The present case is the ninth case concerning individuals with alleged links to the Gülen movement that has come before the Working Group in the past two years.²¹ In these cases, the Working Group has found that the detention of the individuals concerned was arbitrary, and it appears that a pattern is emerging whereby those with alleged links to the Gülen movement are being targeted on the discriminatory basis of their political or other opinion. Accordingly, the Working Group finds that the Government of Azerbaijan has, at the request of the Government of Turkey, detained Mr. Ceyhan on the basis of a prohibited ground of discrimination, and that the case falls within category V.

80. The Working Group is concerned at the alleged ill-treatment of Mr. Ceyhan by Azerbaijani authorities on 26 April 2018. The Working Group is of the opinion that the allegations disclose a *prima facie* breach of the absolute prohibition on torture and of article 7 of the Covenant as well as of the Convention against Torture. The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for further consideration.

Allegations in relation to Turkey

81. 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 a 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 in order for a communication to be considered admissible.²²

82. As a further preliminary issue, the Working Group wishes to consider the responsibility of the Government of Turkey for actions taken against Mr. Ceyhan in Azerbaijan before and during his deportation to Turkey. In the Working Group’s regular communication of 18 December 2018, the alleged incidents in Azerbaijan and Turkey were conveyed to both Governments. In its response, the Government of Turkey did not comment upon the allegations relating to the arrest, detention and deportation of Mr.

²¹ See opinions Nos. 1/2017, 38/2017, 41/2017, 11/2018, 42/2018, 43/2018 and 78/2018.

²² See, for example, opinions No. 19/2013 and No. 11/2000. See also opinions No. 41/2017, para. 73; and No. 38/2017, para. 67; and No. 11/2018 at para. 66 in which the Working Group clarified that it did not require the exhaustion of domestic remedies.

Ceyhan in Azerbaijan, and focused solely on his arrest and detention upon his arrival in Turkey.

83. However, the Working Group observes that Mr. Ceyhan did not arrive in Turkey of his own free will. The Working Group considers that the detention and deportation of Mr. Ceyhan from Azerbaijan to Turkey occurred at the request of the Turkish authorities on the basis of an extradition request made by the Turkish authorities. The source alleges, and the Government of Turkey has not denied, that a representative of the Embassy of Turkey was present at Mr. Ceyhan's 26 April 2018 extradition hearing before the Baku Court on Grave Crimes, a hearing at which the extradition request was denied. The source has alleged that Mr. Ceyhan was abducted by Azerbaijani intelligence services and the State Migration Service of Azerbaijan and was transferred to Istanbul the following day. As the Government of Turkey notes in its reply, Mr. Ceyhan was arrested upon his arrival in Turkey on 27 April 2018. The Working Group wishes to emphasize that the Government has chosen not to provide any details of this arrest, which leads the Working Group to conclude that the Turkish authorities knew of the clandestine manner of Mr. Ceyhan's transfer to Turkey. In this regard, the Working Group is mindful of its and other special procedure mandate holders' communications to several Governments in relation to the deportation of Turkish citizens at the request of the Government of Turkey.²³ The Working Group believes that there are strong grounds to conclude that the Government of Turkey is collaborating with other States, in some cases outside the protection of the law, to forcibly return Turkish citizens in connection with terrorism charges.

84. Accordingly, the Working Group finds that the Government of Turkey is jointly responsible with the Government of Azerbaijan for the abduction and deportation of Mr. Ceyhan to Turkey without any legal basis. As the Working Group and other experts stated in the joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42, para. 36):

Secret detention, involving the denial or concealment of a person's detention, whereabouts or fate has the inherent consequence of placing the person outside the protection of the law. The practice of "proxy detention", where persons are transferred from one State to another outside the realm of any international or national legal procedure ... for the specific purpose of secretly detaining them, or to exclude the possibility of review by the domestic courts of the State having custody of the detainee, or otherwise in violation of the well-entrenched principle of non-refoulement, entails exactly the same consequence. The practice of "proxy detention" involves the responsibility of both the State that is detaining the victim and the State on whose behalf or at whose behest the detention takes place.

85. Turning to the allegations against Turkey, the Working Group notes that the situation of Mr. Ceyhan falls within the scope of the derogations that Turkey had made under the Covenant. On 21 July 2016, the Government of Turkey informed the Secretary-General of the United Nations 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.²⁴

²³ See, for example, UA KSV 1/2017, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23435>; AL KSV 1/2018, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23776>; UA KSV 2/2018, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23954>; AL GAB 2/2018, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23850>; and UA AFG 1/2018, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23572>. See also opinion No. 11/2018.

²⁴ See depositary notification C.N.580.2016.TREATIES-IV.4 of 11 August 2016 (notification under article 4 (3): Turkey), available at <https://treaties.un.org/doc/Publication/CN/2016/CN.580.2016-Eng.pdf>.

86. 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 to customary international law. Moreover, in the present case, articles 9 and 14 of the Covenant are the most relevant to the alleged detention of Mr. Ceyhan. As the Human Rights Committee has stated, States parties derogating from articles 9 and 14 must ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation.

87. The Working Group notes that the Government of Turkey has submitted that there were two arrest warrants issued in relation to Mr. Ceyhan and that these served as a legal basis for the arrest of Mr. Ceyhan upon his arrival in Turkey on 27 April 2018. Indeed, these two warrants served as the basis for the extradition request submitted to the Azerbaijani authorities by the Turkish authorities in relation to Mr. Ceyhan. However, the Working Group observes that article 9 (1) of the Covenant requires any deprivation of liberty to have a legal basis and to be carried out in accordance with the procedure established by law.

88. The Working Group accepts that the two arrest warrants may have served as a legal basis justifying the extradition request in relation to Mr. Ceyhan. However, these arrest warrants should have been executed in accordance with the procedure established by law. The Working Group cannot accept that the abduction of a person outside a court and ill-treatment and forceful transfer to Turkey by the agents of another country collaborating with Turkish agents could under any circumstances be deemed to be procedure as established by law, as required under article 9 (1) of the Covenant. The Working Group therefore concludes that the arrest of Mr. Ceyhan on 27 April 2018 was carried out in blatant disregard for article 9 (1) of the Covenant and was therefore arbitrary, falling within category I of the Working Group.

89. Furthermore, the Government of Turkey states that Mr. Ceyhan was charged on the basis of credible suspicion of being a member of the FETÖ/PDY armed terrorist organization. The Government has explained that there are two proceedings against Mr. Ceyhan and that these are ongoing while he is held in pretrial detention, which was affirmed by the court on the date of his arrest, 27 April 2018.

90. The Working Group observes that although the Government has gone into much detail explaining that “reasonable suspicion” is sufficient grounds for arresting an individual, it has chosen not to provide any details of the alleged crimes of Mr. Ceyhan. In fact, the Working Group has not been provided with any information as to what Mr. Ceyhan has allegedly done as a member of the FETÖ/PDY armed terrorist organization. The Working Group cannot accept this as satisfactory, especially in the light of a rather large number of cases the Working Group has considered that all concern the practice in Turkey of bringing terrorism charges against individuals on the basis of vague affiliation with the FETÖ/PDY organization.²⁵

91. As the Council of Europe’s Commissioner for Human Rights has noted:

Despite deep suspicions about its motivations and modus operandi from various segments of the Turkish society, the Fethullah Gülen movement appears to have developed over decades and enjoyed, until fairly recently, considerable freedom to establish a pervasive and respectable presence in all sectors of Turkish society, including religious institutions, education, civil society and trade unions, media, finance and business. It is also beyond doubt that many organizations affiliated to this movement, which were closed after 15 July, were open and legally operating until that date. There seems to be general agreement that it would be rare for a

²⁵ See opinions Nos. 1/2017, 38/2017, 41/2017, 11/2018, 42/2018, 43/2018 and 78/2018.

Turkish citizen never to have had any contact or dealings with this movement in one way or another.²⁶

92. In the light of the above, the Commissioner pointed out that there was a need “when criminalizing membership and support of this organization, to distinguish between persons who engaged in illegal activities and those who were sympathizers or supporters of, or members of legally established entities affiliated with the movement, without being aware of its readiness to engage in violence”.²⁷

93. Accordingly, the Working Group finds that the Government of Turkey has not established that there was a legal basis for the arrest and detention of Mr. Ceyhan, as the Government has failed to demonstrate what actions by Mr. Ceyhan led to the alleged criminal activity. This is a further breach of article 9 of the Covenant rendering the arrest and detention of Mr. Ceyhan arbitrary, which falls within category I. Given its concerns regarding the lack of a legal basis for terrorism charges in the present case, the Working Group refers the case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for further consideration.

94. In addition, the Government of Turkey asserts that Mr. Ceyhan was afforded his rights, including the rights to be notified of the charges against him, to have his detention reviewed by a judicial authority and to have the assistance of legal counsel. However, the Working Group observes that once again there is a prominent lack of detail in the response provided by the Government. Equally, the Government has argued that Mr. Ceyhan has been entitled to have 10-minute telephone calls once a week, to accept presents, to send and receive petitions and letters and to meet with his lawyer(s). However, the Government has not presented any evidence that he has actually been able to exercise any of those rights. The Working Group specifically observes that not even the name of Mr. Ceyhan’s lawyer has been provided and the Government is referring to “lawyer(s)”, which seemingly indicates that the Government is unsure of how many lawyers Mr. Ceyhan has.

95. The Working Group finds it striking that Mr. Ceyhan appears never to have attempted to contest any of the proceedings against him or to have protested his innocence, despite being charged with such serious criminal offences. The Working Group also wishes to emphasize that the source has alleged that the family members of Mr. Ceyhan have been unable to obtain any information regarding the legal and other conditions of Mr. Ceyhan, an allegation that the Government of Turkey has chosen not to respond to.

96. As noted earlier, the burden of proof is on the Government to provide evidence, and mere assertions that lawful procedures have been followed are not sufficient. The Working Group therefore concludes that Mr. Ceyhan is being denied his rights under article 14 of the Covenant, namely the right to prepare his defence with the assistance of counsel of his own choosing. The Working Group therefore finds his detention arbitrary, falling within category III.

97. Moreover, the Government has submitted that Mr. Ceyhan has been placed in a single cell, which he has not objected to. Once again, the Government has produced no evidence to support this, although it argues that it is not solitary confinement and that Mr. Ceyhan has not been subjected to any punishments. The Working Group must remind the Government that, according to rule 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement must only be used in exceptional cases as a last resort, for as short a time as possible, be subject to independent review, and be authorized by a competent authority.

98. For similar reasons to those outlined above (see para. 79) in relation to the Government of Azerbaijan, the Working Group considers that the Government of Turkey

²⁶ See the memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, CommDH (2016)35, of 7 October 2016, p. 4. Available at <https://rm.coe.int/16806db6f1>.

²⁷ Ibid.

has deprived Mr. Ceyhan of his liberty on the basis of his political or other opinion, in violation of category V.

99. In the past two years, the Working Group has noted a significant increase in the number of cases brought to it concerning arbitrary detention in Turkey; the present case is the ninth that the Working Group has been seized of.²⁸ And, as mentioned above, the Working Group cannot help but notice the striking similarities between the present case and that of the Kaçmaz family which the Working Group considered recently.²⁹

100. 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. However, the Working Group is aware that a large number of individuals were arrested following the attempted coup d'état of 15 July 2016, including judges and prosecutors, and that many remain in detention and are still undergoing trial. The Working Group urges the Government to resolve these cases as quickly as possible in accordance with its international human rights obligations.

101. The Working Group would welcome the opportunity to conduct a country visit to Turkey. Given that a significant period of time has passed since its last visit to Turkey, in October 2006, the Working Group considers that it is an appropriate time to conduct another visit. The Working Group recalls that the Government of Turkey issued a standing invitation to all thematic special procedure mandate holders in March 2001, and looks forward to a positive response to its country visit requests of 15 November 2016 and 8 November 2017.

Disposition

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

In relation to Azerbaijan:

The deprivation of liberty of Mustafa Ceyhan, being in contravention of articles 6, 8, 9 and 10 of the Universal Declaration of Human Rights and articles 2, 9, 13, 14, 16 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V;

In relation to Turkey:

The deprivation of liberty of Mustafa Ceyhan, being in contravention of articles 3, 7, 9, 11 and 13 of the Universal Declaration of Human Rights and articles 9, 13, 14 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

103. The Working Group requests the Government of Azerbaijan and the Government of Turkey to take the steps necessary to remedy the situation of Mr. Ceyhan 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 (a) for the Government of Turkey to release Mr. Ceyhan immediately; and (b) for the Government of Azerbaijan and the Government of Turkey to accord Mr. Ceyhan an enforceable right to compensation and other reparations, including for the impact on his psychological integrity from having been arrested, secretly detained and deported.

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

²⁸ See opinions Nos. 1/2017, 38/2017, 41/2017, 11/2018, 42/2018, 43/2018 and 78/2018.

²⁹ See opinion No. 11/2018.

106. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 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 both Governments to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

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

109. The 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.

110. The Working Group requests the source and the 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.

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.³⁰

[Adopted on 25 April 2019]

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