VIOLATION DECISIONS GIVEN BY THE UNITED NATIONS AFTER JULY 15, 2016

JUSTICE SQUARE

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VIOLATION DECISIONS GIVEN BY THE UNITED NATIONS

FOLLOWING 15 JULY 2016

I. DECISIONS IN 2017

1. REBİİ METİN GÖRGEÇ – (WORKING GROUP ON ARBITRARY DETENTIONS)[1]

a. Facts

The applicant was detained on August 16, 2016, without an arrest warrant and without a stated justification, on charges of FETO/PDY affiliation. His interrogation at the Police Headquarters took place in the absence of his lawyer, and he was not allowed to communicate with his wife or children, who were also detained with him. The applicant first learned of the accusations against him during his interrogation on August 21, 2016. Prior to this, he had only met with his lawyer briefly and under recorded conditions. Because the reason for his arrest was not disclosed, they were unable to prepare for the interrogation. The applicant remained in detention under inadequate and poor conditions. On August 26, 2016, he was questioned by a criminal judge of peace in a room at the Police Headquarters. He had only met with his lawyer briefly beforehand, and his lawyer was restricted from presenting his defence. He was not allowed to review the full Financial Crimes Investigation Board (MASAK) report on which the accusations were based. The judge ordered his arrest. The applicant, who was also held in Silivri Prison under poor conditions, was released on November 26, 2016.

b. Violations Found

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

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1 https://arrestedlawyers.org/wp-content/uploads/2018/12/Opinion-No.-12017-concerning-Rebii-Metin-G%C3%B6rge%C3%A7-Turkey.pdf

(b) Detention without compliance with international guarantees of the right to a fair trial – Category III.

c. Matters Regarding the Decision

The right to be promptly informed of accusations relates to notification of criminal charges and, as the Human Rights Committee has noted, applies both in connection with ordinary criminal proceedings and in connection with military prosecutions or other special punitive regimes. The authorities did not formally invoke any legal basis justifying the applicant's detention from 16 August 2016 to 26 November 2016. Consequently, the applicant's detention was arbitrary and falls within Category I (§ 45).

The facts raised, which the Government did not dispute, prima facie demonstrate a violation of Mr. Görgeç's rights under the International Covenant on Civil and Political Rights (the Covenant) (§ 48). Furthermore, the denial of meaningful assistance from a lawyer and the failure to inform family members of his whereabouts constitute a violation (§ 49). The right to challenge the lawfulness of an arrest in court is a substantive human right, vital for upholding the rule of law in a democratic society. This right encompasses equality of arms. Access to only one paragraph of the report, which was central to Mr. Görgeç's arrest and detention, cannot be considered as complying with the principle of equality of arms (§ 50).

The Working Group must also assess the extent to which conditions of detention could adversely affect detainees' ability to prepare their defence and their chances of a fair trial. Mr. Görgeç's detention took place in appalling conditions (§ 51). The Working Group is particularly concerned about the uncontested allegations of torture and ill-treatment (§ 52).

As the Council of Europe Commissioner for Human Rights has noted, it is generally accepted that it is rare for a person to have no contact or involvement with the Gülen Movement in one way or another (§ 53). Therefore, when penalizing membership of or support for FETÖ/PDY, the Commissioner for Human Rights has pointed out the need to distinguish between those who participate in illegal activities and those who sympathize with and support the Movement without being aware of their readiness to engage in violence, or who are members of legally established organizations affiliated with the Movement (§ 54).

The Working Group concludes that the failure to comply with the international rules concerning the right to a fair trial, as set out in the Universal Declaration of Human Rights and

the international instruments ratified by Türkiye, was so severe as to render Mr. Görgeç's deprivation of liberty arbitrary (Category III) (§ 56).

The Working Group is aware of the similarities between the treatment of Mr. Görgeç and his wife (§ 58). The Working Group notes with concern the apparently widespread practice of "guilt by association" in Türkiye, given that practices such as detaining suspects' family members and confiscating their passports appear to be trivial matters. The Working Group wishes to express its strongest support for the statement by the Council of Europe Commissioner for Human Rights that "any measure which treats a suspect's family members as potential suspects should not exist in a democratic society, even during a state of emergency" (§ 59).

The Working Group encourages the Turkish Government to adhere to its human rights obligations, including the fundamental elements of fair trial, even during the declared state of emergency (§ 60).

Taking into account the violations identified, the Working Group ruled that: (1) measures be taken without delay to remedy the applicant's situation and bring it into line with international norms; (1) compensation and other redress be provided to the applicant.

On the other hand, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been notified by the Working Group regarding this application.

2. KÜRŞAT ÇEVİK – (WORKING GROUP ON ARBITRARY DETENTIONS)[2]

a. Facts

The applicant, who worked for the Police Department, was detained on July 21, 2016, and arrested on July 29, 2016. A restraining order was issued on the case file that same day. The applicant was subject to restrictions regarding his right to a lawyer. The indictment, prepared on January 30, 2017, for membership in the FETÖ/PDY organization, relied on the allegation that he was a ByLock user.

2 https://docs.un.org/en/A/HRC/WGAD/2017/38

b. Violations Found

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Failure to comply with international guarantees of the right to a fair trial – Category III.

c. Matters Related to the Decision

An arrested person must be informed of the grounds for arrest and promptly informed of the charges against him. In the present case, Mr. Çevik was detained for more than six months without being formally charged (§ 74). Mr. Çevik's claim that he was "informed of the suspected crime" did not convince the Working Group that his right to be informed of the legal grounds for his detention or the criminal charges against him had been complied with (§ 75). Since the authorities formally relied on any legal basis to justify Mr. Çevik's detention, the Working Group considers his detention to be arbitrary under Category I (§ 76).

Mr. Çevik's legal representative has been unable to meet with his client frequently and confidentially, and access to the file has been restricted (§ 77). The Working Group also notes with concern that a lawyer retained by Mr. Çevik has been accused of being a Gülenist and barred (§ 78). The Working Group is not convinced that the restriction on disclosure of information to Mr. Çevik to enable him to prepare his defence was proportionate or that the failure to display the file to his lawyer and Mr. Çevik was protected by legitimate national security objectives (§ 79). Regarding the above, the Working Group is convinced that the Turkish Government has failed to respect Mr. Çevik's right to effective legal representation, to have sufficient time and facilities for the preparation of his defence, and to consult with a lawyer of his choice (§ 80). The Working Group further reiterates that legal representatives must be able to perform their duties without fear of reprisals, interference, intimidation, obstruction, or harassment (§ 81).

Mr. Çevik reportedly appealed to the Constitutional Court in September 2016, and no decision has yet been issued. The Working Group considers that such a delay violates the relevant rules of international law (§ 82).

The right to challenge the lawfulness of detention before a court is a distinct human right, vital for maintaining legitimacy in a democratic society. This right, an absolute rule of international law, applies to all forms and situations of deprivation of liberty. Any deprivation of liberty, whatever the grounds, must be subject to effective judicial oversight and control (§ 83).

The Working Group concludes that the failure to comply with international rules on fair trial was of such a gravity as to render Mr. Çevik's deprivation of liberty arbitrary and amounted to arbitrary detention under Category III (§ 87).

The Working Group encourages the Turkish Government to adhere to its human rights obligations, including the fundamental elements of fair trial, even during the state of emergency (§ 88).

Taking into account the violations identified, the Working Group ruled that: (1) measures be taken without delay to remediate the applicant's situation and bring it into line with international norms; (2) the applicant's immediate release; (3) compensation and other reparations be provided to the applicant.

On the other hand, the Special Rapporteur on the Independence of Judges and Lawyers was notified by the Working Group regarding this application.

3. TEN APPLICANT AFFILIATED WITH THE CUMHURIYET NEWSPAPER – (WORKING GROUP ON ARBITRARY DETENTIONS)[3]

a. Facts

The applicants, Mr. Çelik, Mr. Günay, Mr. Güngör, Mr. Gürsel, Mr. Kara, Mr. Kart, Mr. Sabuncu, Mr. Utku, and Mr. Öz, all employees of Cumhuriyet Newspaper, were detained on October 31, 2016, and held for four days without being allowed to see their lawyers before appearing before a judge on November 5, 2016. The applicant, Mr. Atalay, was detained on November 11, 2016, and appeared before a judge on November 12, 2016. The applicants were

3 https://docs.un.org/en/A/HRC/WGAD/2017/41

arrested on the charge of acting in furtherance of the aims of the FETÖ/PDY and PKK/KCK terrorist organizations.

B . Violations Found

Deprivation of liberty is arbitrary:

(a) Detention arising from the exercise of rights and freedoms - Category II;

(b) Failure to comply with international guarantees of the right to a fair trial – Category III.

c. Matters Related to the Decision

Everyone deprived of their liberty has the right to legal assistance, including immediately after the detention. This is an essential condition for the effective exercise of the right to challenge the lawfulness of the detention before a court, a right that cannot be derogated under common law (§ 81).

The applicants were denied access to a lawyer for the first four days of their detention. The Government relied on Article 3 of Decree Law No. 668. However, the Working Group noted that the Government failed to provide any plausible explanation for the legitimacy of this restriction and failed to provide any reasonable justification for the proportionality of the need for such restrictions (§ 82). Furthermore, lawyers were subsequently allowed to visit their clients for one hour once a week. Lawyers must be able to converse with their clients in private and to speak with suspects under conditions that fully respect the confidentiality of their conversations (§ 83). The Working Group found that the restrictions on access to a lawyer could not be considered proportionate. Applying the four-pronged proportionality test in its case-law, the Working Group considered that while the preservation of public security and order in the aftermath of a coup attempt may be a legitimate aim and that restrictions on access to a lawyer may be logically linked to this aim, less intrusive measures should be available, and if they were not, the balance should be tipped in favour of the defendant's right to a lawyer (§ 86).

The Working Group finds that the failure to comply with international rules on the right to a fair trial was of such a gravity as to render the applicants' deprivation of liberty arbitrary under Category III (§ 90).

The government's use of emergency decrees to silence dissent in the press has drawn international criticism (§ 92). The Working Group is concerned that the use of emergency decrees could have serious chilling effects on the legitimate exercise of freedom of thought and expression (§ 93). Regarding the government's suspension, the Working Group considers that there is no plausible connection between the alleged aim of rooting out put schists and the suppression of the press (§ 94).

The Working Group applies a higher standard of review in cases where freedom of thought and expression is restricted or where human rights defenders are involved (§ 95). The Working Group also notes that the investigation and prosecution of "aiding terrorist organisations in accordance with their organisational aims, without being a member" under Article 220/6 of the Criminal Code raises concerns due to the vagueness of this provision (§ 96).

Based on the foregoing, the Working Group concludes that the applicants' deprivation of liberty resulted from their exercise of their rights and freedoms and that their detention falls within Category II (§ 97).

One of the fundamental safeguards of a fair trial in criminal proceedings is the principle of legality, including the principle that there is no crime without law. Ambiguous and broadly worded laws have a chilling effect on the exercise of the right to freedom of expression, as they violate the principle of legality and are potentially abused (§ 98). The Working Group further adds weight to the finding that the violation of the principle of legality, the deprivation of liberty of the applicants, falls within Category II (§ 101).

Taking into account the violations identified, the Working Group ruled that: (1) measures be taken without delay to redress the applicants' situation and bring them into compliance with international rules; (2) the applicants be released immediately; (3) compensation and other redress be provided to the applicants.

II. DECISIONS IN 2018

1. MESUT KAÇMAZ, MERAL KAÇMAZ AND TWO CHILDREN (PAKISTAN AND TURKEY) – (WORKING GROUP ON ARBITRARY DETENTIONS)[4]

a. Facts

Mr. and Mrs. Kaçmaz, who worked as teachers in Pak-Turk schools in Pakistan, and their children held refugee documents that prevented their return to Türkiye. The Kaçmaz family was forcibly detained by plainclothes Pakistani police who raided their home in the early hours of September 27, 2017, and held incommunicado in a military barracks. The applicants' relatives appealed to the court on September 28, 2017, and the court ruled against their deportation. However, the Kaçmaz family was forcibly returned to Türkiye on October 14, 2017. Upon arrival in Türkiye, Mr. and Mrs. Kaçmaz were detained on suspicion of membership in the Gülenist Terror Organization (FETÖ/PDY), and Mr. Kaçmaz was taken to a separate location. Their children were picked up from the police by a friend. The government reported that Mr. Kaçmaz had pleaded guilty and was arrested on October 16, 2017. Mrs. Kaçmaz was also arrested. Cases have been filed against both applicants.

b. Violations

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(c) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

From Pakistan's Perspective

The Working Group finds that the Government of Pakistan violated the Kaçmaz family's right to protection against arbitrary arrest and detention (§ 46). The Kaçmaz family's inability to challenge their detention in person violated their right to an effective remedy (§ 47). The

4 https://arrestedlawyers.org/wp-content/uploads/2018/12/Kacmaz-Family.pdf

Working Group concludes that their deprivation of liberty between 27 September 2017 and 14 October 2017 constituted arbitrary Category I detention (§ 49).

The Pakistani Government was also found to have committed serious violations of the Kaçmaz family's right to a fair trial in its arrest, detention, and deportation (§ 50). Individuals should not be deported to another country if there are substantial grounds to believe that their life or freedom will be in danger or that they will be subjected to torture or ill-treatment (§ 54). Various United Nations bodies have documented widespread human rights violations in Türkiye, particularly following the coup attempt (§ 55). The Pakistani Government should have taken this information into account (§ 56).

The Pakistani Government also breached its obligation not to deport the Kaçmaz family to another country where it had substantial grounds to believe they would be in danger of torture or other ill-treatment. It also breached its obligation to ensure that aliens lawfully present in its territory are deported only pursuant to a lawful decision and to allow them to have their deportation overseen and represented before a competent authority (§ 57).

The Working Group concludes that the violations of the Kaçmaz family's right to a fair trial were of such a severity as to render their deprivation of liberty arbitrary under Category III (§ 60).

The Working Group finds that the Government of Pakistan detained the Kaçmaz family on prohibited grounds of discrimination at the request of the Turkish Government and that the case falls under Category V (§ 61).

From Türkiye's Perspective

The Working Group finds that the Turkish Government is jointly liable with the Government of Pakistan (§ 69).

The Working Group considers that the Turkish Government has not provided a satisfactory explanation as to how these statements (that he downloaded an encrypted communication program and shared information about its structure from it), if made of Mr.. Kaçmaz's free will, could demonstrate membership of an armed terrorist organization or its commission of a crime, or how criminal charges involving the use of an encrypted program could be compatible with the right to freedom of expression or association (§ 72).

As the Council of Europe Commissioner for Human Rights has noted, it is generally accepted that it is rare for a person to have no contact or involvement with the Gülen Movement in one way or another (§ 73). In this regard, the Commissioner for Human Rights has pointed out the need to distinguish between those who participate in illegal activities and those who sympathise with and support the Movement, or are members of legally established organisations linked to it, without being aware of their readiness to engage in violence (§ 74).

The Working Group finds that neither the arrest and detention of Mr. and Mr.s. Kaçmaz has a legal basis nor has it been established that their rights were recognized. The Working Group concludes that the applicants' detention was arbitrary under Categories I and III. It calls on the Turkish Government to release them immediately and unconditionally and to ensure that the Kaçmaz family's right to leave Türkiye is respected (§ 76).

The Working Group considers that the Turkish Government deprived Mr. and Mr.s Kaçmaz of their liberty on the grounds of their political or other opinions, contrary to Category V, for reasons similar to those given in relation to the Pakistani Government (§ 77).

Since the two minors were not under investigation in Türkiye for any criminal matter, the Working Group finds that their short-term detention had no legal basis and was denied any fundamental aspect of a fair trial. The Turkish Government has breached its obligation to ensure that the detention of the two minors was not unlawful or arbitrary and was a measure of last resort. Their detention therefore falls under Categories I and III (§ 79).

The Working Group encourages the Turkish Government to uphold its human rights obligations and to end the state of emergency as soon as possible (§ 81).

Taking into account the violations identified, the Working Group ruled that: (1) measures be taken without delay to redress the applicants' situation and bring them into line with international norms; (2) Mr. and Mrs. Kaçmaz be released immediately and provided with compensation and other reparations, including those aimed at redressing the psychological trauma they have suffered; (3) a full and independent investigation be conducted into the arbitrary deprivation of liberty resulting from the applicants' unlawful removal from abroad and the imposition of appropriate sanctions on those responsible for the violations.

On the other hand, the Working Group notified 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 regarding this application.

2. MUHARREM GENÇTÜRK – (WORKING GROUP ON ARBITRARY DETENTIONS)[5]

a. Facts

The applicant, a university academic, was detained on July 29, 2017, and for the first five days of his 18-day detention, he was not allowed to see anyone. His subsequent meeting with his lawyer was conducted in the presence of an officer and was audio-recorded. The applicant was held in adverse conditions and subjected to ill-treatment. He was arrested on August 18, 2016. He remained in prison in poor conditions and was not allowed to call his relatives for a period. Approximately nine months later, in an indictment, he was accused of membership in the Gülenist Terror Organization (FETÖ/PDY) on the grounds that he worked at the university, sent his children to schools affiliated with the Hizmet Movement, and had an account at Bank Asya. He was not given sufficient time to defend himself at the hearings. He was accused of being a ByLock user based on a report prepared by a police officer, without any knowledge of its contents. From the moment of his detention, the applicant was unable to receive treatment for his ear condition for an extended period. Because of his hearing impairment, he was unable to clearly understand what was being said during the hearings. The lawyer's access to the file was restricted, and a secret witness was heard in the applicant's absence. The application to the Constitutional Court was found inadmissible.

b. Violations

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Detention arising from the exercise of rights and freedoms - Category II;

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5 https://arrestedlawyers.org/wp-content/uploads/2018/12/Muharrem-Gen%C3%A7t%C3%BCrk-Turkey.pdf

(c) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(d) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

Detention incommunicado violates the right to a court of law and to challenge their detention in court. Mr. Gençtürk's right to an effective remedy was also violated because he was unable to contact anyone, particularly his lawyer (§ 77). The Working Group concludes that Mr. Gençtürk's detention during the first five days of his detention was arbitrary and that his detention during this period falls within Category I (§ 79).

The Working Group notes that the Government has failed to demonstrate how the simple use of a normal communication program such as ByLock constitutes an unlawful criminal act. Noting the widespread reach of the Gülen Movement, as recorded in the report of the Council of Europe Commissioner for Human Rights, "it would be rare for a Turkish citizen not to have contact or affiliation with that Movement in one way or another" (§ 85). The Working Group considers that even if Mr. Gençtürk had used the ByLock application, this would have been a simple exercise of the right to freedom of expression. According to the Human Rights Committee, the right to freedom of thought and expression cannot be suspended because "its suspension could never be necessary during the state of emergency" (§ 86).

The Working Group concludes that Mr. Gençtürk's arrest and detention resulted from the exercise of his rights and falls within Category II (§ 88).

Mr. Gençtürk's trial should not have taken place in the first place because his detention was arbitrary under Category II (§ 89). The Working Group points to the appearance of a lack of independence and impartiality on the part of a strong court, given the questions the Court put to the applicant and the prosecutor's reported falling asleep during the hearing (§ 91). Mr. Gençtürk's inability to hear the proceedings and the court's failure to take appropriate measures to remedy the situation deprived him of a fair opportunity to participate in his trial (§ 92).

The Working Group also feels obliged to remind the Government that all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human being (§ 93).

The denial of access to the confidential case file to Mr. Gençtürk and his lawyer constituted a grave violation of the principle of equality of arms. The government failed to demonstrate that less restrictive means would not have sufficed (§ 95). The refusal to allow the defence to examine the secret witness also points to a grave denial of equality of arms in the proceedings (§ 96). The government did not respond to Mr. Gençtürk's claim that he was able to see his lawyer for 20 minutes once a week and that a guard was present with a tape recorder. The right to a lawyer requires that the lawyer have confidential contact with the client and be able to meet with the suspect under conditions that fully respect the confidentiality of their meetings. Furthermore, the weekly 20-minute meetings cannot be said to provide the defence with adequate preparation in such a complex case as the terrorism charges (§ 97).

Finally, the failure to issue a reasoned decision on Mr. Gençtürk's requests for release constitutes a violation as it would prevent future objectors from effectively exercising their right to object (§ 98).

The Working Group concludes that the failure to comply with international norms concerning the right to a fair trial is of such gravity as to render Mr. Gençtürk's detention arbitrary (Category III) (§ 99).

The Working Group also considers that Mr. Gençtürk's detention constitutes discrimination on the grounds of his political and other opinions and falls within Category V (§ 103).

Taking into account the violations identified, the Working Group ruled that: (1) measures be taken without delay to remediate the applicant's situation and bring it into compliance with international rules; (2) the applicant's immediate release; (3) compensation and other reparations be provided to the applicant; (4) a full and independent investigation be conducted into the arbitrary deprivation of the applicant's liberty and that the necessary sanctions be imposed on those responsible.

3. AHMET ÇALIŞKAN – (WORKING GROUP ON ARBITRARY DETENTIONS)[6]

a. Facts

The applicant, a university academic, was detained on August 26, 2016, without any evidence or decision, on charges of ties to the Gülen Movement/PDY. During a search of his home, several materials and documents were seized. He was questioned by the police in the absence of his lawyer and held incommunicado until his arrest on August 31, 2016. A confidentiality order was issued for the investigation, and an indictment was issued against him on the grounds that he worked at a university affiliated with the Hizmet Movement, had an account at Bank Asya, and had been given testimony by a secret witness. The allegations against the applicant included the presence of cookies on his laptop for various websites, his attendance at a high school affiliated with the Hizmet Movement, and, according to witness testimony, his involvement in the organization and participation in its meetings.

b. Violations

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Detention arising from the exercise of rights and freedoms - Category II;

(c) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(d) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

The Working Group concludes that Mr. Çalışkan was not shown the detention order at the time of his arrest and was not properly informed of the reasons for his detention (§ 72). It is not sufficient for a detention to have a legal basis to exist; the authorities must rely on this legal basis and implement it through an arrest order, taking into account the circumstances of the case. The failure to inform Mr. Çalışkan of the reasons for his detention by 31 August 2016 constitutes a violation (§ 74).

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6 https://arrestedlawyers.org/wp-content/uploads/2018/12/Ahmet-Caliskan-Turkey.pdf

To ensure the effective exercise of the right to challenge the lawfulness of detention, detained persons must have access to legal assistance from a person of their choice from the moment of arrest. Mr. Çalışkan was denied this opportunity during the first five days of his detention. This situation seriously and negatively impacted his ability to effectively exercise his right to challenge the lawfulness of his detention (§ 76).

Given that Mr. Çalışkan's detention took place without the presentation of an arrest warrant, that no charges were brought for five days and that he was effectively prevented from exercising his right to challenge the lawfulness of his detention, the Working Group concludes that his detention was arbitrary and falls within Category I (§ 77).

The imputed acts are normal activities of any person (§ 82). Freedom of expression encompasses the right to seek, receive, and impart information and opinions of all kinds, regardless of borders, and this right extends to the expression and reception of all kinds of ideas and opinions that can be conveyed to others, including political opinions (§ 84). The Government also failed to explain how the seized documents proved links to criminal organizations and criminal activities. The Working Group considers that possession of these documents constitutes nothing less than a legitimate exercise of freedom of expression (§ 85). The Working Group concludes that Mr. Çalışkan's arrest and detention resulted from the exercise of his rights and falls within Category II (§ 86).

Since the deprivation of liberty was deemed arbitrary under Category II, no trial should have taken place (§ 87).

The requirement of independence particularly addresses the appointment procedures and qualifications of judges. A situation in which the duties and powers of the judiciary and the executive are not clearly distinguishable, or in which the latter can control and direct the former, is incompatible with the concept of an independent court (§ 90). The Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression observed that the horizontal appeals system fails to meet international standards and deprives individuals of the guarantees of a fair and lawful trial (§ 92). The Working Group concludes that Mr.. Çalışkan's detention was authorised and his trial conducted by a court that lacked the necessary degree of independence and impartiality (§ 93).

Everyone deprived of their liberty has the right to access documents relating to the detention or submitted to a court by the State, including information that may assist the detainee in arguing that the detention is unlawful or that the grounds for detention are no longer relevant. Disclosure of information may be restricted if such a restriction is necessary and proportionate in pursuing a legitimate aim, such as protecting national security, and if the State demonstrates that less restrictive measures would not achieve the same result (§ 95). In the present case, no argument has been put forward as to why the restriction on Mr.. Çalışkan's and his lawyer's access to the case file was necessary and proportionate in pursuing a legitimate aim. On this basis, the Working Group concludes that there has been a violation of Article 14(3) of the Convention (§ 96).

The allegations of violations of the right to a fair trial appear to closely follow the general pattern outlined by the Council of Europe Commissioner for Human Rights (§ 97). There was also no response to Mr. Çalışkan's allegations that he had been deprived of contact with his family. The Working Group found a violation of Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (§ 98).

The Working Group concludes that there was a partial non-compliance with international rules on the right to a fair trial, as he was deprived of his right to a trial by an independent and impartial tribunal and neither he nor his lawyer were given full access to the case file. This non-compliance was of such a gravity as to render the deprivation of liberty arbitrary (Category III) (§ 99).

The Working Group considers that Mr. Çalışkan's detention is arbitrary and falls within Category V, as it constitutes discrimination on the grounds of political or other opinion or position (§ 103).

Taking into account the violations identified, the Working Group ruled that: (1) measures be taken without delay to remediate the applicant's situation and bring it into compliance with international rules; (2) the applicant's immediate release; (3) compensation and other reparations be provided to the applicant; (4) a full and independent investigation be conducted into the arbitrary deprivation of the applicant's liberty and that the necessary sanctions be imposed on those responsible.

4. MESTAN YAYMAN – (WORKING GROUP ON ARBITRARY DETENTIONS)[7]

a. Facts

The applicant, who served as a deputy governor, was detained without an arrest warrant on September 1, 2016, the day he was dismissed from his job by statutory decree. He was not informed of the reasons for his arrest until September 7, 2016, and was not allowed to meet with anyone, including his lawyer. He was then able to speak with his lawyer in the presence of an official and under recording. The applicant was released by the prosecutor's office on September 7, 2016, but was detained again the following day and arrested on September 11, 2016. He was charged with membership in a terrorist organization for participating in the chats and was later alleged to be a ByLock user. A lawsuit was filed against him in September 2017; his requests for an investigation into ByLock and to hear witnesses were rejected, and he was unable to meet with his lawyer before the hearings. During his detention, the applicant was generally held in a crowded cell. He was not allowed to contact his relatives for approximately one year. Unlike other detainees and convicts, he was granted open visits every two months.

b. Violations

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Detention arising from the exercise of rights and freedoms - Category II;

(c) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(d) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

While an arrest warrant appears to have been issued for the first detention, this was not shown to Mr. Yayman. No justification was provided for his second detention. The Working Group therefore concludes that there has been a violation of Article 9 § 2 of the Convention (§ 76).

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7 https://arrestedlawyers.org/wp-content/uploads/2018/12/Mestan-Yayman-Turkey.pdf

Furthermore, to establish the lawfulness of a detention, a detained person has the right to challenge its lawfulness before a court. This right applies regardless of the place of detention or the legal terminology used in legislation. Any form of deprivation of liberty, on any ground, must be subject to effective judicial supervision and control (§ 77). To ensure the effective exercise of this right, a detained person must have access to legal assistance from a lawyer of their choice from the moment of arrest. The Working Group concludes that Mr. Yayman was denied access to a lawyer for at least the first five days of his detention (§ 78).

It concludes that Mr. Yayman's arrest and detention were arbitrary and fall within Category I, given that he was arrested twice without the issuance of an arrest warrant, that no formal charge was brought for six and four days in the first and second detentions, respectively, and that he was effectively prevented from exercising his right to challenge the lawfulness of his detention (§ 79).

The Working Group takes note of the report of the United Nations High Commissioner for Human Rights on the impact of the state of emergency on human rights in Türkiye (January-December 2017), which includes an update on the Southeast (§ 83). The Working Group notes that Mr. Yayman's case appears to follow the pattern identified in that report (§ 84).

The Government has failed to demonstrate any illegal conduct in Mr. Yayman's conduct that could be construed as supporting a criminal organization. His participation in the Gülen Group-organized chats in 2013 occurred well before the organization was designated a terrorist organization by the Turkish authorities nearly two years later. The Government has not presented any evidence that Mr. Yayman's participation in the chats led to any criminal activity (§ 86).

The government has failed to demonstrate how Mr. Yayman's simple use of a standard communication app like ByLock constitutes illegal criminal activity. It has not been stated how the recorded conversations allegedly obtained could be construed as criminal activity (§ 87). Even if Mr. Yayman had used ByLock, this would only constitute an exercise of the right to freedom of thought and expression. Freedom of thought can never be suspended, as its suspension during a state of emergency is never necessary (§ 88).

Furthermore, when a State party imposes restrictions on the exercise of freedom of expression, the restrictions must not jeopardize the right itself (§ 90). The Working Group observes that the Government has failed to demonstrate how engaging in peaceful and then-legitimate conversations violates the right to freedom of peaceful assembly and association (§ 92). The Working Group therefore concludes that Mr. Yayman's arrest and detention arose from the exercise of his rights and falls under Category II (§ 93).

Having found that Mr. Yayman's deprivation of liberty was arbitrary under Category II, Mr. Yayman should not have been prosecuted (§ 94).

The Working Group notes that Mr. Yayman was deprived of the opportunity to meet privately with his lawyer before the trial. Furthermore, his meeting with his lawyer was limited to 20 minutes, which could not be said to meet the requirements of Article 14 § 3 (b). Furthermore, Mr. Yayman was prevented from meeting with his lawyer before the hearings (§ 99).

The Working Group considers that, on its face, there has also been a serious violation of Mr. Yayman's rights under Article 14 § 3 (e) of the Convention (§ 100). The Working Group observes that the judge requested the defence to cut short their defence statements and took the evidence of the main witness in the absence of Mr. Yayman and his lawyer. This constitutes another serious denial of Mr. Yayman's rights (§ 101).

The Working Group concludes that there has been a partial non-compliance with international norms concerning the right to a fair trial in Mr. Yayman's case. It finds that this partial non-compliance is of such a gravity as to render the deprivation of liberty arbitrary (Category III) (§ 103).

The Working Group considers that Mr. Yayman's detention is arbitrary and falls within Category V, as it constitutes discrimination on the grounds of political or other opinion or position (§ 107).

Taking into account the violations identified, the Working Group ordered: (1) that measures be taken without delay to remediate the applicant's situation and bring it into line with international norms; (2) that the applicant be released immediately; (3) that compensation and other reparations be provided to the applicant; (4) that a full and independent

investigation be conducted into the arbitrary deprivation of the applicant's liberty and that the necessary sanctions be imposed on those responsible.

5. HAMZA YAMAN – (WORKING GROUP ON ARBITRARY DETENTIONS)[8]

a. Facts

The applicant, a member of the Court of Cassation, was detained on July 18, 2016, on the authority of the prosecutor's office. He was held in poor conditions and denied medication. He was able to speak with his lawyer for 2-3 minutes a day later, under police supervision. On July 20, 2016, his residence and workplace were searched based on a warrant approving the seizure, not a search warrant. The applicant was arrested on July 20, 2016, and later transferred to another prison and placed in solitary confinement. Due to the confidentiality order imposed during the investigation phase, neither the applicant nor his lawyer could review the file. His lawyer meetings in prison were conducted under the supervision of an official and recorded. The decisions regarding his continued detention were notified immediately after the review deadline; he was not brought before a judge for 12 months. An indictment was issued against him on January 5, 2018.

b. Violations

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(c) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

No one should be deprived of their liberty except for the reasons and procedures established by law. Mr. Yaman was detained before the prosecutor's order, and his residence was searched pursuant to a warrant, not a warrant. Any evidence obtained in this way was unlawful and could not constitute a legal basis for Mr. Yaman's detention (§ 69).

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8 https://arrestedlawyers.org/wp-content/uploads/2018/12/a_hrc_wgad_2018_78.pdf

The Government submitted that judges would be considered to have been caught red-handed at the time of their arrest. The Working Group disagreed, as it appeared to contravene the presumption of innocence. A suspect is caught red-handed if they are apprehended either during the commission of a crime, immediately thereafter, or in hot pursuit shortly after the commission of the crime. The Working Group considered that Mr. Yaman was not caught red-handed and that there was no legal basis for his detention (§ 70).

The Working Group considers that the failure to ensure timely notification of decisions concerning detention constitutes a violation of Article 9 § 4 of the Convention, which requires the court to decide without delay on the lawfulness of detention (§ 71).

The Working Group finds that Mr. Yaman's deprivation of liberty was arbitrary under Category I (§ 72).

The Working Group considers that Mr. Yaman has the right to be present in person at all hearings related to his detention and trial (§ 75). The Working Group considers that Mr. Yaman's right to full access to his file applies from the moment of his arrest and that lifting the restriction once the indictment is accepted by the court is not sufficient. This constitutes a grave violation of the principle of equality of arms, the right to a fair trial, and the right to adequate time and facilities to prepare his defence "in full equality" (§ 79).

The Working Group also considers that Mr. Yaman was denied sufficient time and facilities to prepare his defence, and the right to speak to a lawyer of his choice during the initial three days of detention and his ongoing detention. The confidentiality of meetings between a lawyer and a detainee must be respected. Consequently, his rights under Articles 10 and 11 § 1 of the Universal Declaration of Human Rights and Article 14 § 3 (b) of the Convention have been violated (§ 80).

The Working Group considers that, if the objection is well-founded, the judges in the present case should consider Mr. Yayman's request for a recusal and withdrawal from the case. Furthermore, the court responsible for assessing the arbitrariness and lawfulness of the detention should be a different body from the one that ordered the detention (§ 82). In reaching these conclusions, the Working Group took into account the significant concern about the danger of executive control over the judiciary in Turkey following the attempted coup and its negative impact on the rule of law (§ 83). The Working Group finds that, on its face, there has

been a violation of Mr. Yaman's right to a fair trial by an independent and impartial tribunal (§ 84).

The Working Group concludes that the above violations of the right to a fair trial are of such a severity as to render Mr. Yaman's deprivation of liberty arbitrary under Category III (§ 85).

A seemingly credible case has been made that Mr. Yaman was among the members of the judiciary who did not join the government-backed Judicial Unity Platform and was subsequently detained (§ 86). Allegations of discrimination against members of the judiciary require particularly rigorous scrutiny, even during times of severe emergency. The Government has failed to provide an adequate explanation to justify this heightened level of scrutiny. The information presented indicates that Mr. Yaman contributes to a safer society by serving at the highest levels of the judiciary, dealing with matters involving terrorism and organized crime, and that he requires close state protection to perform these duties. The Working Group finds that Mr. Yaman was targeted and detained on the basis of his political or other views because he did not support the government while performing his judicial duties (§ 87).

The Working Group finds that Mr. Yaman's deprivation of liberty was based on discriminatory grounds. It is therefore arbitrary under Category V (§ 88).

The Working Group expresses concern about Mr. Yaman's state of health. It is likely that restrictions on his contact with his family are one factor contributing to his poor health (§ 89). Furthermore, the Working Group considers that Mr. Yaman has been held in isolation for a long period (§ 90).

Taking into account the violations identified, the Working Group ordered: (1) that measures be taken without delay to remediate the applicant's situation and bring it into line with international norms; (2) that the applicant be released immediately; (3) that compensation and other reparations be provided to the applicant; (4) that a full and independent investigation be conducted into the arbitrary deprivation of the applicant's liberty and that the necessary sanctions be imposed on those responsible.

On the other hand, the Special Rapporteur on the Independence of Judges and Lawyers and the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment were notified by the Working Group on this application.

6. ANDREW CRAIG BRUNSON – (ARBITRARY DETENTION WORKING GROUP)[9]

a. Facts

The applicant, Brunson, who has been living legally in Izmir for approximately 20 years and is a pastor at the Izmir Resurrection Church, was detained on October 7, 2016, upon receiving a notice, at a police station. He was told that he posed a "threat to national security" and was detained pending deportation. From there, he was sent to an immigration center and, in the absence of any legal or embassy assistance, was asked to sign a document in Turkish. He did not receive any legal or embassy assistance until November 5, 2016. His lawyer, unable to access his file, objected to the applicant's detention on October 11, 2016, but this was rejected. On December 9, 2016, he was brought before a criminal court of peace and arrested for membership in an armed terrorist organization. The applicant's conversations with his lawyer were recorded. A confidentiality order was also issued for the file. On April 16, 2018, an indictment was issued against the applicant, charging him with contributing to the preparation of a coup attempt in collaboration with armed terrorist organizations. On October 12, 2018, the applicant was sentenced to three years and one and a half months in prison for aiding an organization, despite not being a member of the organization, and was released. The court lifted his house arrest and travel ban for the duration of his detention. The applicant left Türkiye and returned to the United States.

b. Violations

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

9 https://arrestedlawyers.org/wp-content/uploads/2018/12/a_hrc_wgad_2018_84.pdf

(b) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(c) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

The Working Group finds it credible that Mr. Brunson was detained in principle on October 7, 2016, and that he was deprived of embassy assistance until November 5, 2016. The Working Group observes that Mr. Brunson's initial detention was merely a pretext for his detention on December 9, 2016 (§ 57). While a decision authorizing Mr. Brunson's detention was notified of the charges against him until December 9, 2016, and his lawyer was unable to access his file during that period (§ 58). The Working Group observes that Mr. Brunson was detained without a proper explanation of the reason for his detention (§ 59).

Mr. Brunson remained in detention for over two months without knowledge of the charges against him, contrary to Article 9 § 2 of the Convention (§ 60). The fact that neither Mr. Brunson nor his lawyer were given access to the file when he sought to challenge his detention was another serious obstacle to the exercise of his right to challenge the lawfulness of his detention under Article 9 § 4 of the Convention (§ 61).

The Working Group concludes that the failure to notify Mr. Brunson of the charges against him for more than two months and the efforts to prevent him from effectively exercising his right to challenge the lawfulness of his detention constituted arbitrary detention under Category I (§ 62).

The Working Group considers that the denial of fair access to the classified case file by Mr. Brunson and his lawyer constitutes a grave violation of the principle of equality of arms under Article 10 of the Universal Declaration of Human Rights and of the right to a fair hearing and to adequate time and facilities to prepare his defence in full equality under Article 14 §§ 1 and 3 (b) of the Convention. Since the Government have not submitted any information on this matter, they have failed to demonstrate that restricting access to classified information was proportionate to the pursuit of a necessary and legitimate aim and why less restrictive measures, such as providing Mr. Brunson and his lawyer with revised extracts or copies of documents for use in the detention facility or elsewhere, would not have achieved the same result (§ 64).

The Government has not submitted any submissions regarding the allegation that Mr. Brunson's conversations with his lawyer were recorded. The Working Group emphasizes that the right to communicate with a lawyer requires that the lawyer be able to converse confidentially with his client and to communicate with the suspect under conditions that fully respect the confidentiality of their conversations. The Working Group therefore considers that there has been a grave violation of Article 14 § 3 (b) of the Convention (§ 65).

Mr. Brunson was told to sign a document in Turkish, in the absence of any legal or embassy assistance, contrary to Article 14 § 3 (f) of the Convention. The document clearly related to the criminal investigation against him, and since he did not understand the language in which it was written, he was entitled to a free interpreter (§ 66). Embassy assistance or embassy protection constitutes an important safeguard for individuals detained and arrested in a foreign country to ensure compliance with international standards (§ 68). The refusal of embassy assistance by the United States Government constitutes another violation of international law by the Turkish Government (§ 69).

The Working Group therefore concludes that the partial non-compliance with international norms concerning the right to a fair trial in Mr. Brunson's case was of such gravity as to give the deprivation of liberty an arbitrary character (Category III) (§ 70).

The Working Group recalls that Mr. Brunson has lived peacefully in Türkiye for over 20 years and is a Christian pastor who freely practices his religion in the country. It was the attempted coup of 15 July 2016 that appeared to fundamentally alter the Turkish authorities' attitude towards Mr. Brunson. The Working Group therefore considers that there are credible arguments that Mr. Brunson's detention and detention were the result of being targeted by the Turkish authorities on the basis of his nationality and faith, and thus constituted discrimination, which is expressly prohibited. Accordingly, the Working Group concludes that Mr. Brunson's detention and detention fall within Category V (§ 72).

Taking into account the violations identified, the Working Group ruled that: (1) measures be taken without delay to redress the applicant's situation and bring it into line with international norms; (2) the applicant's criminal record be erased; (3) compensation and other redress be provided to the applicant; (4) a full and independent investigation be conducted

into the arbitrary deprivation of the applicant's liberty and the imposition of necessary sanctions on those responsible.

III. UNITED NATIONS DECISIONS MADE BY IN 2019

1. İSMET ÖZÇELİK, TURGAY KARAMAN AND IA – (HUMAN RIGHTS COMMITTEE)[10]

a. Facts

The applicants, Özçelik and Karaman, who had been living in Malaysia for 13 years and were considered members of the Gülen Movement, were detained in Malaysia and forcibly returned to Türkiye on May 12, 2017, without a deportation order. The applicants were held at an undisclosed location in Türkiye, were not informed of the charges against them, and their families were not informed of their whereabouts. Their detention was extended by prosecutor's decision until May 23, 2017, when they were arrested by a criminal court of peace.

b. Violations

(1) Arbitrary detention;

(2) Violation of the right to be promptly informed of the charges;

(3) Violation of the right to be brought promptly before a judge.

c. Matters Related to the Decision

The Committee notes that the State party has not submitted any information on the effectiveness of the individual petition remedy to the Constitutional Court in cases concerning detention ordered pursuant to decree laws. The State party has not disputed the allegation that the proceedings before the Constitutional Court have been unduly prolonged. The Committee also notes that the Court has expressed concern about the effectiveness of the individual petition remedy to the Constitutional Court in cases concerning detention, as the lower courts failed to implement the Court's findings in two cases where the Constitutional Court found a violation (*Mehmet Hasan Altan v. Turkey*, no. 13237/17, 20 March 2018, § 142; *Şahin Alpay v.*

10 https://arrestedlawyers.org/wp-content/uploads/2018/12/ccpr_c_125_d_2980_2017_28518_e.pdf

Turkey , no . 16538/17, 20 March 2018, § 121). In the absence of any information to support the effectiveness of a complaint to the Constitutional Court, the Committee finds that the State party has not demonstrated that, in the applicant's circumstances, an individual complaint to the Constitutional Court would be effective to challenge his detention under the decree laws (§ 8.5).

The Committee notes that the State party has not provided any documentation demonstrating that the applicants were promptly informed of the reasons for their detention and the charges against them, nor has it provided information on the questions put to them during their interrogation. It further notes that no information was provided as to the evidence justifying Mr. Karaman's detention, while the evidence against Mr. Özçelik consisted of ByLock usage and deposits into Bank Asya. In these circumstances, the applicants' detention violated their rights under Article 9 §§ 1 and 2 of the Convention (§ 9.4).

The proper exercise of judicial power is inherent in its exercise by an objective and impartial authority, independent of the matters at hand. Therefore, a prosecutor cannot be considered an authority exercising judicial power. While the precise meaning of "promptly" may vary depending on the specific circumstances, delays should not exceed a few days from the moment of apprehension. Any delay exceeding 48 hours must be strictly exceptional and justified by the circumstances (§ 9.6).

It took 11 days for the applicants to be brought before a judge, and they were therefore not brought immediately before a judge or judicial officer. Furthermore, they did not appear before a judge or be represented by a lawyer for a review of their detention for almost two years following the detention order. The State party has not provided any information regarding the periodic review of the applicants' detention orders. Therefore, the Committee finds a violation of Article 9 § 3 of the Convention (§ 9.7).

Taking into account the violations found, the Human Rights Committee ordered: (1) the applicants to be released; (2) compensation to be paid to the applicants; (3) measures to be taken to prevent similar violations from occurring.

2. MUSTAFA CEYHAN (AZERBAIJAN AND TURKEY) – (WORKING GROUP ON ARBITRARY DETENTIONS)[11]

a. Facts

On April 26, 2018, after a hearing where Türkiye's deportation request was rejected, the applicant was abducted by Azerbaijani officials at the courthouse and held at an undisclosed location. During his detention, he was subjected to electric shocks and threatened with his family. On April 27, 2018, the applicant was forcibly returned to Türkiye and arrested on the same day on charges of membership in the Gülenist Terror Organization (FETÖ/PDY), based on two prior decisions. His relatives remained unaware of his whereabouts for several weeks.

b. Violations

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(c) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

From Azerbaijan's Perspective

The Working Group finds that Mr. Ceyhan was abducted by Azerbaijani officials without following any legitimate legal procedure, a violation of his right to protection from arbitrary arrest and detention (§ 64). Mr. Ceyhan was also detained in a secret location incommunicado. Such detention violates the right to be brought before a court and to challenge the lawfulness of his detention in a court of law (§ 65).

The Working Group considers that there was no legal basis put forward for Mr. Ceyhan's arrest, detention and deportation and that his detention between 26 and 27 April 2018 was arbitrary under Category I (§ 67).

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11 https://arrestedlawyers.org/wp-content/uploads/2018/12/a_hrc_wgad_2019_10.pdf

It also considers that the Azerbaijani Government committed serious violations of Mr. Ceyhan's right to a fair trial (§ 68). Firstly, he was placed in a secret detention facility without informing his relatives of his whereabouts and without acknowledging his detention (§ 69). Secondly, Mr. Ceyhan's secret arrest, detention and deportation did not meet minimum international fair trial standards (§ 71).

Numerous United Nations bodies have documented widespread human rights violations in Türkiye, particularly since the July 2016 coup attempt (§ 73). The Azerbaijani Government should have taken this information into account in its decision to arrest, detain, and deport Mr. Ceyhan (§ 74). The Azerbaijani Government also breached its obligation not to return Mr. Ceyhan to another State where it had substantial grounds to believe that he would be in danger of torture or other ill-treatment (§ 75). The Working Group considers that the Azerbaijani Government bears responsibility not only for its own actions but also for subsequent human rights violations in Türkiye (§ 77).

These violations of the right to a fair trial are considered to be of such a severity as to render Ceyhan's deprivation of liberty arbitrary under Category III (§ 78).

The Working Group finds that Mr. Ceyhan was detained on the basis of prohibited discrimination at the request of the Turkish Government and that the case falls within Category V (§ 79).

From Türkiye's Perspective

The Working Group considers that the Turkish authorities were aware of Mr. Ceyhan's clandestine return to Türkiye. The Working Group believes there are strong grounds to believe that the Turkish Government has, in some cases, cooperated with other States in forcibly returning Turkish citizens on charges of terrorism, outside the protection of the law (§ 83). The Working Group therefore finds that the Turkish Government is jointly responsible, along with the Government of Azerbaijan, for Mr. Ceyhan's abduction and his deportation to Türkiye without any legal basis (§ 84).

The arrest warrants against Mr. Ceyhan were required to be executed in accordance with a procedure prescribed by law. However, the abduction, ill-treatment, and forcible transfer of a person to Türkiye can under no circumstances be considered a procedure prescribed by law. The Working Group therefore considers that Mr. Ceyhan's detention on 27 April 2018 was

carried out in clear violation of Article 9 § 1 of the Convention and falls within Category I (§ 88).

No details were provided regarding the crimes allegedly committed by Mr. Ceyhan, nor was any information provided as to his alleged activities as a member of FETÖ/PDY (§ 90). The Working Group therefore finds that the Turkish Government has failed to demonstrate a legal basis for Mr. Ceyhan's arrest and detention. This is another violation that renders Mr. Ceyhan's Category I arrest and detention arbitrary (§ 93). The Working Group also finds that Mr. Ceyhan was deprived of the right to prepare his defence with the assistance of a lawyer of his own choosing and that his detention was therefore arbitrary under Category III (§ 96).

For reasons similar to those explained above regarding the Azerbaijani Government, the Working Group considers that the Turkish Government deprived Mr. Ceyhan of his liberty on the grounds of his political or other opinion, contrary to Category V (§ 98).

Taking into account the violations identified, the Working Group ordered: (1) that measures be taken without delay to remediate the applicant's situation and bring it into line with international norms; (2) that the applicant be released immediately; (3) that compensation and other reparations be provided to the applicant, including those aimed at redressing the psychological trauma he has suffered; (4) that a full and independent investigation be conducted into the arbitrary deprivation of the applicant's liberty and that the necessary sanctions be imposed on those responsible.

On the other hand, the Working Group notified 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 regarding this application.

3. MUSTAFA ÖNDER (MOROCCO) – (COMMITTEE AGAINST TORTURE)[12]

a. Facts

The applicant, a teacher at a private school in Morocco and an asylum seeker, was requested to be deported to Türkiye in June 2017 on the grounds that he is a member of the

12 https://atlas-of-torture.org/en/entity/naquhqj0x/references?page=2&file=1572882530843i2dcms8kdq9.pdf

Hizmet Movement. The Moroccan Court of Cassation issued a positive opinion in support of his deportation in September 2017. The State party notified the applicant in December 2017 that the deportation proceedings had been stayed pending a decision by the Committee Against Torture (Committee). The applicant remains in preventive detention.

b. Violations

Violation of the prohibition of deportation to a country (Türkiye) where there is a risk of torture.

c. Matters Regarding the Decision

There is an obligation of non-refoulement where there are "substantial grounds" for believing that the person concerned would be in danger of being tortured in a country to which he is to be expelled, either as an individual or as a member of a group that would be at risk of torture in the country of destination (§ 7.4). The Committee notes that the applicant was subject to an arrest warrant for his membership of the Hizmet Movement, although it does not accept that he was a member, and that reports in the file indicate that the use of torture and ill-treatment against individuals in his position was common during their detention (§ 7.5).

The successive extensions of the state of emergency have led to serious human rights violations against thousands of people, including arbitrary deprivation of freedom of movement and work, torture and ill-treatment, arbitrary detention, and violations of freedom of assembly and expression (§ 7.6). In his report on the mission to Turkey, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment noted that torture was widespread in the aftermath of the coup (§ 7.8). Regarding the direct impact of the state of emergency, the Committee takes into account the concerns expressed by the UN High Commissioner for Human Rights about the negative impact of the resulting measures on safeguards against torture and ill-treatment (§ 7.9). In authorizing the deportation, the Court of Cassation failed to assess the risk of torture that deportation would pose, particularly for individuals like the applicant, who are perceived or actually belong to the Hizmet Movement, given the situation in Turkey since the coup attempt (§ 7.10).

For these reasons, the Committee considers that sending the applicant to Türkiye would constitute a violation of Article 3 (prohibition of expulsion to a country where there is a risk of torture) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (§ 8).

Having regard to the violations found, the Committee against Torture ruled that: (1) the applicant should not be extradited to Turkey; (2) the applicant should be released; (3) measures should be taken to prevent similar violations from occurring in the future.

4. ELMAS AYDEN (MOROCCO) - COMMITTEE AGAINST TORTURE[13]

a. Facts

The applicant, who owns a business in Morocco and has applied for asylum, was detained in July 2017 on the grounds of his membership in the Hizmet Movement, based on an arrest warrant issued by Türkiye. His deportation to Türkiye was requested. The Moroccan Court of Cassation issued a positive opinion in September 2017 in support of his deportation. The State party reported that, following the Committee's decision, the applicant's deportation proceedings were suspended pending a decision. The applicant remains in detention pending deportation.

b. Violations Found

Violation of the prohibition of extradition to a country (Türkiye) where there is a risk of torture.

c. Matters Regarding the Decision

The obligation of non-refoulement exists where there are "substantial grounds" for believing that the person concerned would be in danger of being tortured in a country to which he is to be expelled, either as an individual or as a member of a group that would be at risk of torture in the country of destination (§ 8.4). The Committee notes that the applicant was subject to an arrest warrant for his membership of the Hizmet Movement, although it did not accept

13 https://atlas-of-torture.org/en/entity/9v3vm6wd5pb

that he was a member, and that reports in the file indicate that the use of torture and ill-treatment against individuals in his position was common during their detention (§ 8.5).

The successive extensions of the state of emergency have led to serious human rights violations against thousands of people, including arbitrary deprivation of freedom of movement and work, torture and ill-treatment, arbitrary detention, and violations of the freedoms of assembly and expression (§ 8.6). In his report on the mission to Turkey, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment noted that torture was widespread in the aftermath of the coup (§ 8.8). Regarding the direct impact of the state of emergency on protection against torture and ill-treatment, the Committee notes that the UN High Commissioner for Human Rights has indicated that restrictions on communication between detainees and their lawyers may be imposed, the maximum period of detention may be extended, independent torture prevention mechanisms may be closed, and the use of detention may be abused (§ 8.9). While authorizing the deportation, the Court of Cassation failed to assess the risk of torture that deportation would pose to individuals with actual or perceived ties to the Hizmet Movement, such as the applicant, given the situation in Türkiye since the coup attempt. The Committee recalls that the primary purpose of the Convention is to prevent torture and not to redress it after it has occurred (§ 8.10).

For these reasons, the Committee considers that sending the applicant to Türkiye would constitute a violation of Article 3 (prohibition of expulsion to a country where there is a risk of torture) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (§ 9).

Having regard to the violations found, the Committee against Torture ruled that: (1) the applicant should not be extradited to Turkey; (2) the applicant should be released; (3) measures should be taken to prevent similar violations from occurring in the future.

5. FERHAT ERDOĞAN (MOROCCO) – (COMMITTEE AGAINST TORTURE)[14]

a. Facts

The author, a businessman, was detained in April 2017 following a deportation request from Turkey based on an arrest warrant issued primarily on the grounds of his membership in the Hizmet Movement. He applied for asylum in May 2017. The Moroccan Court of Cassation issued a positive opinion in favor of his deportation in May 2017. The State party reported that, following the Committee's decision on the measure, the author's deportation proceedings were suspended pending a decision. The author had been detained for deportation purposes.

b. Violations Found

Violation of the prohibition of extradition to a country (Türkiye) where there is a risk of torture.

c. Matters Regarding the Decision

The obligation of non-refoulement exists where there are "substantial grounds" for believing that the person concerned would be in danger of being tortured in a country to which he is to be expelled, either as an individual or as a member of a group that would be at risk of torture in the country of destination (§ 9.4). The Committee notes that the applicant was subject to an arrest warrant for his membership of the Hizmet Movement, although it does not accept that he was a member, and that reports in the file indicate that the use of torture and ill-treatment against individuals in his position was common during their detention (§ 9.5).

The successive extensions of the state of emergency have led to serious human rights violations against thousands of people, including arbitrary deprivation of freedom of movement and work, torture and ill-treatment, arbitrary detention, and violations of freedom of assembly and expression (§ 9.6). The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in his report on the mission to Turkey, noted that the use of torture was widespread in the aftermath of the coup (§ 9.8). The Committee takes note of the concerns expressed by the UN High Commissioner for Human Rights

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[14] https://docs.un.org/en/CAT/C/66/D/827/2017

regarding the direct impact of the state of emergency on protection against torture and ill-treatment. The Commissioner notes the possibility of restrictions on contact between detainees and their lawyers, extensions of maximum periods of detention, the closure of independent torture prevention mechanisms, and the abuse of the use of detention (§ 9.9). - While authorizing the deportation, the Court of Cassation failed to assess the risk of torture that deportation would pose to individuals with actual or perceived affiliation with the Hizmet Movement, such as the applicant, given the situation in Türkiye since the coup attempt. The Committee also notes that the Turkish authorities placed the applicant's name on a list of persons threatened with termination of their citizenship. The Committee reiterates that the primary purpose of the Convention is to prevent torture, not to redress torture after it has occurred (§ 9.10).

For these reasons, the Committee considers that sending the applicant to Türkiye would constitute a violation of Article 3 (prohibition of expulsion to a country where there is a risk of torture) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (§ 10).

Having regard to the violations found, the Committee against Torture ruled that: (1) the applicant should not be extradited to Turkey; (2) the applicant should be released; (3) measures should be taken to prevent similar violations from occurring in the future.

6. MELİKE GÖKSAN AND MEHMET FATİH GÖKSAN – (WORKING GROUP ON ARBITRARY DETENTIONS)[15]

a. Facts

Applicant Mehmet Fatih Göksan, one of the applicants who became judges, was detained on July 19, 2016, and released the following day. However, he was detained again and arrested on September 5, 2016. Applicant Melike Göksan was detained and arrested on October 14, 2016. They were not informed of the charges against them at the time of their detention. The indictment stated that they used the ByLock application, but they were not shown the relevant Excel spreadsheets. Furthermore, two witnesses whose testimonies were

15 https://arrestedlawyers.org/wp-content/uploads/2018/12/a_hrc_wgad_2019_53.pdf

the basis of the indictment were not present at the hearing. The applicants were convicted at the trial, and their cases are currently pending appeal.

b. Violations Found

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Detention arising from the exercise of rights and freedoms - Category II;

(c) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(d) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

An arrested person must be informed not only of the grounds for arrest but also promptly informed of the crimes against them at the time of arrest (§ 67). As stated by the Human Rights Committee, the grounds must include not only the general legal basis for the arrest but also sufficient factual information addressing the merits of the complaint, such as the wrongful act and the identity of the alleged victim. The Government has failed to demonstrate how these requirements were met in the case of Mr. and Mr.s. Göksan (§ 68).

The Working Group considers that Mr. and Mr.s. Göksan were neither informed immediately of the charges against them nor of the grounds for their arrest at the time of their arrest, nor was their detention justified as meeting the criteria of reasonableness and necessity. A notice of detention cannot justify an unreasonable or unnecessary deprivation of liberty. The Working Group therefore concludes that the detention of Mr. and Mr.s. Göksan constitutes a violation of their rights and falls within Category I (§ 69).

In the present case, the basis of the applicants' accusations is their alleged affiliation with the Gülen Movement, stemming from their downloading and use of the ByLock application. The Government's submissions on this matter do not provide detailed explanations as to how Mr. and Mrs. Göksan's alleged use of the application could be equated with a criminal offense, and no evidence has been presented to establish that the applicants were actually members of FETÖ/PDY (§ 72). The Council of Europe's Commissioner for Human Rights has noted that it

is generally accepted that it is rare for a person to have no contact or affiliation with the Gülen Movement in one way or another (§ 1). Even if the applicants had actually used the ByLock application, this would have been merely an exercise of their freedom of expression. According to the Human Rights Committee, a derogation from Article 19 of the Convention on freedom of thought and expression in a state of emergency can never be necessary (§ 79).

This case is not the first time the Working Group has examined the detention and prosecution of Turkish citizens based on the alleged use of ByLock as a key indicator of alleged criminal conduct. In these cases, their detention was deemed arbitrary in the absence of a specific explanation of how the simple alleged use of ByLock constituted a demonstration of criminal conduct by the individual. The Working Group regrets that its assessments in these opinions were not followed (§ 81).

The Working Group concludes that the arrest and detention of Mr. and Mrs Göksan resulted from the exercise of their rights and falls within Category II (§ 82).

Since the applicants' deprivation of liberty was arbitrary under Category II, no trial should have taken place (§ 83).

The right to adequate time and facilities for the preparation of a defence must include access to documents and other evidence; this access must include information and documents that the prosecution would provide in court against the suspects or that would demonstrate their innocence. The Government has not provided an explanation as to why the defence was denied access to information and documents, including the Excel spreadsheets (related to ByLock). The Working Group therefore finds a violation of Article 15 § 3 (b) of the Convention (§ 86).

The Government also failed to respond to the prosecution's allegations that two key witnesses in the case were not present at the trial, thus preventing the defence from examining them (§ 87). No explanation was provided as to why these two witnesses were not present and what steps were taken to enable the defence to examine them otherwise. The Working Group therefore finds a violation of the principle of equality of arms (§ 88). In the Working Group's view, these two violations of the principle of equality of arms amount to a serious violation of the applicants' right to a fair trial and are of such gravity as to render their detention arbitrary under Category III (§ 89).

The present case is the tenth case to come before the Working Group in the past two years concerning individuals alleged to have links to the Gülen Movement. In all these cases, the detention of the individuals concerned has been found to be arbitrary, and a pattern emerges in which individuals alleged to have links to the Gülen Movement are targeted on the basis of their political or other views. The Working Group finds that the Turkish Government detained the applicants on the basis of prohibited grounds of discrimination and that the case falls under Category V (§ 91).

Taking into account the violations identified, the Working Group ordered: (1) that measures be taken without delay to redress the applicants' situation and bring it into line with international norms; (2) that the applicants be released immediately; (3) that compensation and other reparations be provided to the applicants; (4) that a full and independent investigation be conducted into the arbitrary deprivation of the applicants' liberty and that the necessary sanctions be imposed on those responsible.

On the other hand, the Special Rapporteur on the Independence of Judges and Lawyers was notified by the Working Group regarding this application.

7. ERCAN DEMİR – (WORKING GROUP ON ARBITRARY DETENTIONS)[16]

a. Facts

The applicant, a teacher, was detained at his home on July 25, 2016, on allegations of membership in the FETÖ/PDY organization and arrested on July 28, 2016. The allegations against him include newspaper and magazine subscriptions, purchasing certain publications, working for foundations and associations affiliated with the Hizmet Movement, attending certain social gatherings and Facts, maintaining a Bank Asya account, and downloading the ByLock application. The applicant was released on July 21, 2017, and acquitted on May 24, 2019.

16 https://arrestedlawyers.org/wp-content/uploads/2019/10/opinion-no.-79_2019-concerning-ercan-demir.pdf

b. Violations Found

Deprivation of liberty is arbitrary:

(a) Detention arising from the exercise of rights and freedoms - Category II;

(b) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

Even if Mr. Demir had used the ByLock application, this would have been merely an exercise of his freedom of expression. The same should be said for his newspaper and magazine subscriptions and his purchases of books and other publications. The freedoms of thought and expression defined in Article 19 of the Convention are essential for the full development of the individual, vital to a society, and, in fact, form the foundation of a free and democratic society. Article 19 cannot be derogated from, including during a state of emergency (§ 70). Article 19(2) of the Convention protects all forms of expression and the means of their dissemination, including audio-visual, electronic, and internet-based means of expression (§ 71).

In previous cases, the detention of individuals has been found to be arbitrary in the absence of a specific explanation of how the mere alleged use of ByLock constitutes criminal activity. The Working Group regrets that the Turkish authorities have not complied with its views in this case-law. The Working Group therefore finds that Mr. Demir's detention was the result of a peaceful exercise of his right to freedom of expression (§ 72).

Furthermore, no evidence has been adduced by the Government to suggest that any of Mr. Demir's actions were anything other than peaceful, and the Working Group therefore considers that his detention was a direct consequence of the peaceful exercise of his right to freedom of assembly under Article 21 of the Convention (§ 73).

The Working Group concludes that Mr. Demir's arrest and detention resulted from the exercise of his rights and falls within Category II (§ 74).

In all previous similar cases, the Working Group has found that the detention of the individuals concerned was arbitrary, and a pattern appears to be emerging in which individuals alleged to be associated with the Hizmet Movement are discriminated against on the basis of their political or other views. The Working Group therefore finds that the Turkish

Government detained Mr. Demir on the basis of prohibited discrimination and that the case falls within Category V (§ 77).

The Working Group has noted a significant increase in the number of cases brought before it concerning arbitrary detention in Turkey over the past two years. The Working Group expresses its grave concern at the pattern followed by all these cases and urges the Government to implement its views without further delay (§ 78).

Taking into account the violations identified, the Working Group ruled that: (1) measures be taken without delay to redress the applicant's situation and bring it into line with international norms; (2) compensation and other redress be provided to the applicant; (4) a full and independent investigation be conducted into the arbitrary restriction of the applicant's liberty and the necessary sanctions be imposed on those responsible.

8. İSMET BAKAY (MOROCCO) – (COMMITTEE AGAINST TORTURE)[17]

a. Facts

The applicant, who had established a business in Morocco, was detained in March 2017 following a deportation request from Turkey. He then applied for asylum in May 2017. The Moroccan Court of Cassation ruled in favor of his deportation in May 2017. The Committee issued an injunction against his deportation. He remains in detention pending deportation.

b. Violations Found

Violation of the prohibition of extradition to a country (Türkiye) where there is a risk of torture.

c. Matters Regarding the Decision

The successive extensions of the state of emergency have led to serious human rights violations against thousands of people, including arbitrary deprivation of freedom of movement and work, torture and ill-treatment, arbitrary detention, and violations of freedom of assembly and expression (§ 7.6).

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[17] https://atlas-of-torture.org/en/entity/uvfgranr8mm/toc?page=1

The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in his report on the mission to Turkey, noted that the use of torture was widespread in the aftermath of the coup (§ 7.8). The Committee takes note of the concerns expressed by the UN High Commissioner for Human Rights regarding the direct impact of the state of emergency on protection against torture and ill-treatment. The Commissioner notes that restrictions on contact between detainees and their lawyers may be imposed, maximum periods of detention may be extended, independent torture prevention mechanisms may be closed, and the use of detention is being abused (§ 7.9).

While authorizing the deportation, the Court of Cassation failed to assess the risk of torture that deportation would pose to individuals with actual or perceived affiliation with the Hizmet Movement, such as the applicant, given the situation in Türkiye since the coup attempt. The Committee reiterates that the primary purpose of the Convention is to prevent torture (§ 7.10).

For these reasons, the Committee considers that sending the applicant to Türkiye would constitute a violation of Article 3 (prohibition of expulsion to a country where there is a risk of torture) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (§ 8).

Having regard to the violations found, the Committee against Torture ruled that: (1) the applicant should not be extradited to Turkey; (2) the applicant should be released; (3) measures should be taken to prevent similar violations from occurring in the future.

IV. DECISIONS IN 2020

1. ABDULMUTTALİP KURT – (WORKING GROUP ON ARBITRARY DETENTIONS)[18]

a. Facts

The applicant was detained twice, in May and November 2017, but was not immediately brought before a judge and was arrested following the second detention. The charges against the applicant included having an account at Bank Asya, working at a dormitory and institution affiliated with the Hizmet Movement, being a member of a union, and participating in a protest demonstration.

b. Violations Found

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Detention arising from the exercise of rights and freedoms - Category II;

(c) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

The Government did not provide any exceptional reasons to justify the delay of more than 48 hours in bringing the applicant before a judicial authority following both detentions. As it has repeatedly stated in its case-law, even when a person's detention is carried out in accordance with national law, the Working Group must ensure that the detention is consistent with the relevant provisions of international law. The Working Group therefore finds a violation of Article 9 § 3 of the Convention (§ 61). The failure to bring Mr. Kurt before a judicial authority meant that he was unable to exercise his right to challenge the lawfulness of his detention without delay. The Working Group therefore finds a violation of Article 9 § 4 of the Convention (§ 62).

18 https://arrestedlawyers.org/wp-content/uploads/2019/10/a_hrc_wgad_2020_2_advanceeditedversion.pdf

The Working Group therefore concludes that Mr. Kurt's arrest and detention constitute a violation of his rights under Article 9 §§ 3 and 4 of the Convention and that his detention was arbitrary and falls within Category I (§ 65).

The activities attributed to the applicant could not be construed as criminal acts, but as the peaceful exercise of his rights protected by the Convention and the Universal Declaration of Human Rights. The Government did not indicate that any of these acts involved violence or incitement to violence against others (§ 69). The charges against him were based on his alleged affiliation with the Hizmet Movement, manifested through ordinary activities such as having a bank account, holding a job, and participating in a demonstration. The Government made vague allegations that these acts were part of terrorist activities, without providing concrete evidence that these ordinary activities could be construed as terrorist activities (§ 72). The Working Group therefore concludes that Mr. Kurt's arrest and detention resulted from the exercise of his rights protected by the Convention and fall within Category II (§ 73).

In the cases brought before the Working Group over the past two years concerning individuals alleged to have links to the Hizmet Movement, their detention has been found to be arbitrary, and a pattern emerges whereby those alleged to have links to the Hizmet Movement are targeted on the basis of their political or other views. The Working Group therefore finds that the Government detained Mr. Kurt on the prohibited ground of discrimination and that the case falls within Category V (§ 78).

Taking into account the violations identified, the Working Group ordered: (1) that measures be taken without delay to remediate the applicant's situation and bring it into line with international norms; (2) that the applicant be released immediately; (3) that compensation and other reparations be provided to the applicant; (4) that a full and independent investigation be conducted into the arbitrary restriction of the applicant's liberty and that the necessary sanctions be imposed on those responsible for the violation of his rights.

2. AKİF ORUÇ – (WORKING GROUP ON ARBITRARY DETENTIONS)[19]

a. Facts

The applicant, a teacher, was detained on January 17, 2017, on charges of membership in the Gülenist Terror Organization (FETÖ/PDY) without being informed of the charges and arrested on November 30, 2017. During the first days of his detention, he was not allowed to meet with his lawyer. The allegations against the applicant included membership in the organization as an executive, communication with the organization's top leaders through the ByLock application, and investments in Bank Asya. An indictment was issued against the applicant on April 2, 2018, and his first hearing was held on September 25, 2018, approximately 10 months after his detention. On June 18, 2019, the applicant was sentenced to 10 years in prison.

b. Violations Found

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Detention arising from the exercise of rights and freedoms - Category II;

(c) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(d) Detention on discriminatory grounds - Category V

c. Matters Related to the Decision

A detained person has the right to challenge the lawfulness of his detention before a court (§ 74). Mr. Oruç was not brought before a judge until 13 days after his detention. It should be noted that a suspension notice cannot justify an unreasonable or unnecessary deprivation of liberty. Since Mr. Oruç was not brought promptly before a judicial authority, his detention cannot be considered lawful (§ 75). Since the denial of legal aid prevented Mr. Oruç from exercising his right to challenge the lawfulness of his detention and no justification was

19 https://arrestedlawyers.org/wp-content/uploads/2019/10/a_hrc__wgad_2020__29_advance_edited_version.pdf

provided for his failure to have access to a lawyer from the outset of his detention, the Working Group also found a violation of Article 9 § 4 of the Convention (§ 76). Since he was unable to challenge the lawfulness of his detention for these 13 days, his right to an effective remedy was also violated (§ 77).

The Working Group observes that Mr. Oruç did not learn of the charges against him until he appeared before a criminal judge. Article 9 § 2 of the Convention requires that a detained person be informed not only of the reason for their detention at the time of their arrest but also promptly of the charges against them (§ 78). The Government have failed to demonstrate how the requirements of this article were met in Mr. Oruç's case (§ 79). The Working Group considers that the Government has failed to demonstrate that Mr. Oruç was promptly informed of the charges against him or the reason for his detention at the time of his arrest, or to demonstrate that his detention met the criteria of reasonableness and necessity (§ 80).

The Working Group therefore concludes that Mr. Fasting was arbitrary and fell into Category I (§ 81).

The Government has not presented any evidence to demonstrate that Mr. Oruç was actually a member of the organization or how his possession of a bank account constituted criminal activity (§ 83). The essence of the accusations is his alleged or perceived affiliation with the Hizmet Movement, which is said to have manifested itself primarily through his use of the ByLock application (§ 88). Even if Mr. Oruç had used the ByLock application, this would have been merely an exercise of his freedom of expression. Mr. Oruç's freedom of religion is similarly protected. The Working Group finds a violation of Article 18 of the Convention (§ 89).

The Working Group regrets that the Turkish authorities have not followed its observations in its case-law on ByLock and that the present case follows the same pattern. The Working Group concludes that Mr. Oruç's arrest and detention were the result of the exercise of his rights under Articles 18 and 19 of the Convention and fall within Category II (§ 90).

Given the finding that Mr. Oruç's deprivation of liberty was arbitrary under Category II, no trial of Mr. Oruç should have taken place (§ 91).

The Working Group notes that Mr. Oruç was detained and arrested entirely for exercising his rights and finds that the 10-month delay between his detention and trial constitutes a violation of Article 14 § 3 of the Convention (§ 93). Access to documents and other evidence must include all exculpatory material that the prosecution intends to present in court against the defendant, including not only evidence proving his innocence but also other evidence that could assist the defence. The Government has offered no explanation as to why the defence was denied access to the case materials. The Working Group thus finds a violation of Article 14 § 3 of the Convention (§ 94).

The Government did not respond to Mr. Oruç's allegations that he had been summoned by the police for what appeared to be interrogation "interviews" conducted in the absence of his lawyer and that he was only able to see his lawyer on Fridays. The Working Group therefore finds a violation of Article 14 § 3 (b) and (d) of the Convention (§ 95).

The Working Group finds that the allegation, uncontested by the Government, that a judge had manipulated a witness at a hearing and the court's failure to provide evidence as to the content of the alleged conversations between Mr. Oruç and leaders of the Hizmet Movement constitute, on its face, a violation of the principle of equality of arms and the principle of independence of the court, and finds a violation of Article 14 § 1 and 3 (e) of the Convention (§ 98).

The Working Group considers that these violations amount to a violation of Mr. Oruç's right to a fair trial and are of such a severity as to render his detention arbitrary under Category III (§ 99).

The Working Group also finds that the Government detained Mr. Oruç on the basis of the prohibited ground of discrimination and that the case falls within Category V (§ 101).

Taking into account the violations identified, the Working Group ordered: (1) that measures be taken without delay to remediate the applicant's situation and bring it into line with international norms; (2) that the applicant be released immediately; (3) that compensation and other reparations be provided to the applicant; (4) that a full and independent investigation be conducted into the arbitrary deprivation of the applicant's liberty and that appropriate sanctions be imposed on those responsible.

3. FARUK SERDAR KÖSE – (WORKING GROUP ON ARBITRARY DETENTIONS)[20]

a. Facts

The applicant, a student, was detained on November 16, 2017, and arrested on November 29, 2017. The applicant was accused of using the ByLock application.

b. Violations Found

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Detention arising from the exercise of rights and freedoms - Category II;

(c) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

The obligation to provide reasons for a person's detention also has a qualitative element, as the reasons must include not only the general legal basis for the detention but also sufficient factual details to address the substance of the allegation. The Working Group considers that the Government has failed to demonstrate how the conditions set out in Article 9 § 2 of the Convention are met (§ 70).

According to the Government, the evidence against Mr. Köse was his use of the ByLock application and his alleged membership in the FETÖ/PDY organization. In these circumstances, the Working Group considers that the Government has failed to establish that Mr. Köse was promptly informed of the charges against him or the reason for his detention at the time of his detention. The Government has also failed to demonstrate that Mr. Köse's detention met the criteria of reasonableness and necessity. The Working Group therefore concludes that Mr. Köse's arrest and detention constitute a violation of his rights under Article 9 §§ 1 and 2 of the Convention and Articles 3 and 9 of the Universal Declaration of Human Rights (§ 71).

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20 https://arrestedlawyers.org/wp-content/uploads/2019/10/a_hrc_wgad_2020_30_advance_edited_version.pdf

A detained person has the right to challenge the lawfulness of his detention before a court (§ 73). The Working Group considers that judicial review is a fundamental safeguard of personal liberty and is essential to ensuring that detention has a legal basis. The Working Group therefore finds that the absence of Mr. Köse's prompt appearance before a judicial authority violates Articles 9 §§ 3 and 4 of the Convention and that his detention cannot be considered lawful (§ 74). Furthermore, Mr. Köse was unable to challenge his continued detention during these 13 days, violating his right to an effective remedy under Article 2 § 3 of the Convention (§ 75).

Taking the above into account, the Working Group concludes that Mr. Köse's detention was arbitrary and falls within Category I (§ 76).

Even if Mr. Köse had used the ByLock application, this would have merely constituted an exercise of his freedom of expression. Freedoms of thought and expression, as defined in Article 19 of the Convention, are essential for the full development of the individual, are vital to a society, and, in fact, constitute the foundation of a free and democratic society (§ 85). The Working Group regrets that the Turkish authorities have not followed its observations in its case-law and that the present case follows the same pattern (§ 87). The Working Group concludes that Mr. Köse's arrest and detention resulted from the exercise of his rights protected by Article 19 of the Convention and falls within Category II (§ 88).

In the cases brought before the Working Group over the past two years concerning individuals alleged to be affiliated with the Hizmet Movement, their detention has been found to be arbitrary, and a pattern emerges in which those alleged to be affiliated with the Hizmet Movement are targeted on the basis of their political or other views. The Working Group therefore finds that the Government detained Mr. Köse on the prohibited ground of discrimination and that the case falls under Category V (§ 99).

Taking into account the violations identified, the Working Group ordered: (1) that measures be taken without delay to remediate the applicant's situation and bring it into line with international norms; (2) that the applicant be released immediately; (3) that compensation and other reparations be provided to the applicant; (4) that a full and independent investigation be conducted into the arbitrary deprivation of the applicant's liberty and that the necessary sanctions be imposed on those responsible.

4. ARİF KOMİŞ, ÜLKU KOMİŞ AND FOUR MINOR PEOPLE (MALAYSIA AND TURKEY) – (WORKING GROUP ON ARBITRARY DETENTIONS)[21]

a. Facts

Mr. Komiş, a teacher in Malaysia, and his wife and children were detained by Malaysian police on August 28, 2019. While in custody, they were unable to contact their relatives and were not brought before any judicial authority. Mr. Komiş was separated from his family and brought back to Türkiye on a different plane. Following his arrival, reports emerged that he had been apprehended in a MIT operation. His detention was extended by a criminal judge of peace on September 3, 2019, and Mr. Komiş was arrested on September 6, 2019. The charges against Mr. Komiş include years of residence in dormitories affiliated with the Hizmet Movement, having an account with Bank Asya, and being a ByLock user.

b. Violations Found

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Detention arising from the exercise of rights and freedoms - Category II;

(c) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(d) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

From Malaysian Perspective

The Working Group finds that the timing and manner of the detention of the Komiş family was neither proportionate nor in accordance with the prescribed procedures as required by Article 9 of the Universal Declaration of Human Rights (§ 64). The Komiş family's right to an effective remedy was also violated because they were unable to challenge their detention (§ 65). Furthermore, Malaysia's national legislation does not meet relevant

21 https://arrestedlawyers.org/wp-content/uploads/2020/06/a_hrc_wgad_2020_51_advance_edited_version.pdf

international standards (§ 66). For these reasons, the Working Group finds that the Komiş family's arrest and detention was arbitrary and falls within Category I. The Working Group also finds that the detention and deportation of Mrs. Komiş and the four children constituted a violation of Article 37(b) of the Convention on the Rights of the Child (§ 67).

Furthermore, due to the lack of due process for Mr. Komiș's deportation, the detention of the Komiș family was carried out without observing valid deportation procedures and depriving them of their right to a fair trial (§ 68). The relevant minister stated that Mr. Komiș had been involved in terrorism. The Working Group finds that Mr. Komiș was deprived of his right to the presumption of innocence, contrary to Article 14 § 2 of the Convention (§ 69). For these reasons, the Working Group finds that the detention of the Komiș family is arbitrary and falls within Category III (§ 70).

Finally, by returning the Komiş family to another State where it had substantial grounds to believe that they would be in danger of torture or other ill-treatment or arbitrary detention, the Malaysian Government violated Articles 5 and 9 of the Universal Declaration of Human Rights and Article 37 of the Convention on the Rights of the Child (§ 71).

The Working Group also considers the Malaysian Government responsible for human rights violations in Türkiye (§ 72).

From Türkiye's Perspective

Since no legal basis has been adduced to justify the brief detention of Ms. Komiş and the four minors upon their arrival in Türkiye, the Working Group considers this to be arbitrary (§ 79). The Turkish authorities are also responsible for the detention and detention of Ms. Komiş and the four minors in Malaysia. The Working Group therefore concludes that these detentions lacked a legal basis and were arbitrary, falling within Category I. The detention and detention of the four minors, who had endured the traumatic experience of forced removal, constitutes a manifest violation by Turkey of Articles 3 § 1, 22 and 40 of the Convention on the Rights of the Child (§ 80).

The Turkish authorities are responsible for the arbitrary detention of Mr. Komiş and his family in Malaysia (§ 81).

Mr. Komiș was detained upon arrival and brought before a judicial authority approximately four days later (§ 82). In the absence of Mr. Komiș's prompt transfer to a judicial authority, his detention could not be considered lawful (§ 84). Since he was unable to challenge his detention during this period, his right to an effective remedy was also violated (§ 85). Forty-eight hours is normally sufficient to transfer a person and ensure their attendance at a hearing. Any delay exceeding this should be strictly exceptional and justified by the circumstances. Since no such justification was provided, there was also a violation of Article 9 § 3 of the Convention (§ 86).

Taking into account the foregoing, the Working Group concludes that Mr. Komiș's detention was arbitrary and falls within Category I (§ 87).

The charges against Mr. Komiș are based on his ordinary activities, without any explanation of how such activities constitute criminal activity (§ 92). Even if Mr. Komiș had used the ByLock application, this would have been merely an exercise of his freedom of expression. The Working Group regrets that the Turkish authorities have not followed its case-law and that the present case follows the same pattern (§ 93). The Working Group concludes that Mr. Komiș's arrest and detention resulted from the exercise of his rights and falls within Category II (§ 94).

Mr. Komiș has been detained for approximately one year. The Working Group finds a violation of Article 14 § 3 of the Convention because he was detained solely for exercising his rights protected by the Convention (§ 97). The Working Group also finds that the statements made violate Mr. Komiș's right to the presumption of innocence (§ 98). The Working Group finds that Mr. Komiș's detention is arbitrary and falls within Category III (§ 99).

The Working Group finds that the Turkish Government detained Mr. Komiş on the basis of the prohibited ground of discrimination and that the case falls within Category V (§ 101).

Taking into account the violations identified, the Working Group ruled that: (1) measures be taken without delay to redress the applicants' situation and bring them into line with relevant international norms; (2) Mr. Komiş be released immediately; (3) compensation and other reparations be provided to the applicants, including those aimed at redressing the psychological trauma they have suffered; (4) a full and independent investigation be

conducted into the arbitrary deprivation of liberty resulting from the applicants' unlawful removal from abroad and the imposition of appropriate sanctions on those responsible.

On the other hand, the Working Group notified the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism and the Special Rapporteur on the Protection and Promotion of Freedom of Opinion and Expression regarding this application.

5 KAHRAMAN DEMİREZ, MUSTAFA ERDEM, HASAN HÜSEYİN GÜNAKAN, YUSUF KARABİNA, OSMAN KARAKAYA AND CIHAN ÖZKAN (TURKEY AND KOSOVO) – (WORKING GROUP ON ARBITRARY DETENTIONS)[22]

a. Facts

The applicants, who worked as teachers or doctors in Kosovo, were detained on March 29, 2019, forcibly taken to Pristina Airport, and handed over to Turkish authorities. They were subsequently brought to Türkiye and arrested on April 11, 2019, appearing before a judge. The allegations against the applicants included working as teachers in schools affiliated with the Hizmet Movement, having accounts at Bank Asya, and using the ByLock and Falcon apps. The Kosovo Ombudsman and the investigative committee established by the Kosovo Parliament, which reviewed the deportation proceedings, determined that the treatment the applicants were subjected to resulted in various violations of laws and rights.

b. Violations Found

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Detention arising from the exercise of rights and freedoms - Category II;

(c) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(d) Detention on discriminatory grounds - Category V.

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22 https://arrestedlawyers.org/wp-content/uploads/2020/06/a_hrc_wgad_2020_47_advance_edited_version.pdf

c. Matters Related to the Decision

Regarding Kosovo

It is clear to the Working Group that the Turkish authorities cannot operate on Kosovo territory without the consent of the Kosovo authorities (§ 75). It was the obligation of the Kosovo authorities to ensure that any deportation followed legal procedures. The Working Group cannot assess whether deportation procedures were followed in the present case (§ 76). It has been stated that Mr. Günakan was mistaken for another person. The Working Group considers that no legal basis can be advanced for Mr. Günakan's detention and subsequent forcible removal from Kosovo (§ 79). Because these six individuals were unable to challenge their detention, their right to an effective remedy was also violated (§ 80).

For these reasons, the Working Group finds that the applicants' detention in Kosovo by agents of the Kosovo Intelligence Service was arbitrary under Category I (§ 81).

It is alleged, not denied by the Kosovo authorities, that these six individuals were detained following a deportation request from the Turkish authorities, taken to Pristina Airport, and handed over to the Turkish authorities for deportation. These Facts cannot be said to constitute a properly conducted deportation procedure. The Kosovo authorities have therefore violated their obligations under Article 9 of the Universal Declaration of Human Rights. Since these six individuals were detained without observing established deportation procedures and were thus deprived of their right to a fair trial, the Working Group also finds that their detention was arbitrary under Category III (§ 82).

The Working Group considers that the Kosovo authorities are also responsible for subsequent human rights violations in Türkiye (§ 83). The Working Group reiterates its concern at the manner in which the six individuals were removed from Kosovo and the failure to notify their families and lawyers of their removal to Türkiye (§ 84).

From Türkiye's Perspective

The Working Group considers that these six individuals are responsible for Category I arbitrary arrest and detention in Kosovo (§ 90).

In the present case, it is clear to the Working Group that even if any of these six individuals had used the ByLock application, this would only constitute an exercise of

freedom of expression. The Working Group regrets that the Turkish authorities failed to implement the views expressed in its case-law and that the present case follows the same pattern (§ 96). The Working Group concludes that the applicants' detention and detention arose from the exercise of their rights and fall within Category II (§ 97).

Having found that the applicants' deprivation of liberty was arbitrary under Category II, the Working Group emphasises that none of these six individuals should have been prosecuted. However, three have been convicted and the trials of the other three are ongoing (§ 98). The Turkish Government had the opportunity to provide them with due process by extraditing them from Kosovo in accordance with normal procedures, but chose not to do so and is therefore responsible for their arbitrary detention in Kosovo. The Working Group finds that the detention of these eight individuals was also arbitrary from the perspective of Türkiye and falls under Category III (§ 99).

Finally, the Working Group finds that the Turkish Government detained these six individuals on the grounds of prohibited discrimination and that the case falls under Category V (§ 100).

The Working Group expresses its grave concern at the pattern revealed by the cases concerning arbitrary detention brought before it in Türkiye and recalls that widespread or systematic imprisonment or other severe deprivations of liberty in violation of rules of international law may, under certain circumstances, constitute crimes against humanity (§ 101).

Taking into account the violations identified, the Working Group ruled that: (1) measures should be taken without delay to redress the applicants' situation and bring it into line with international norms; (2) the applicants should be released immediately; (3) compensation and other redress should be provided to the applicants; (4) a full and independent investigation should be conducted into the arbitrary restriction of the applicants' freedom through their unlawful removal from abroad and the necessary sanctions should be imposed on those responsible.

On the other hand, the Working Group notified the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism regarding this application.

6. LEVENT KART – (WORKING GROUP ON ARBITRARY DETENTIONS)[23]

a. Facts

The applicant, the dean of Fatih University's Faculty of Medicine, was detained on December 27, 2017, and held in the Istanbul Courthouse until January 10, 2018, at which time his arrest warrant was issued. An indictment was issued against the applicant approximately nine months later, and he appeared before a judge for the first time approximately 11 months later. The applicant was subjected to inappropriate conditions during his detention and detention. He was released on September 17, 2020. The allegations against the applicant include his employment at Fatih University, his account with Bank Asya, and his use of the ByLock application.

b. Violations Found

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I; (b) Detention arising from the exercise of rights and freedoms - Category II;

(c) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(d) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

Mr. Kart was detained for approximately two weeks before being brought before a judicial authority for the first time. Since no justification was provided for this, the Working Group finds a violation of Article 9 § 3 of the Convention (§ 48). The right to bring proceedings before a court must also be granted without delay so that the Court can rule on the lawfulness of the detention. Mr. Kart was not given the opportunity to challenge the lawfulness of his detention until approximately 14 days after his detention, and no explanation was provided

23 https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session89/A_HRC_WGAD_2020_66.pdf

for this delay. The Working Group therefore finds a violation of Article 9 § 4 of the Convention (§ 50).

Having regard to the violation of Mr. Kart's rights under Article 9 §§ 3 and 4 of the Convention, the Working Group concludes that his arrest and subsequent detention were arbitrary and fall within Category I (§ 51).

The Working Group notes that the present case follows the pattern it has observed over the past three years regarding the detention and arrest of individuals alleged to have links to the Hizmet Movement, both in Türkiye and abroad. Mr. Kart was a university dean, a completely normal activity. No evidence has been presented to suggest that his service in this capacity could be equated with membership in the FETÖ/PDY movement (§ 56).

Even if Mr. Kart had used the ByLock app or any other communication app, this would have constituted merely an exercise of his right to freedom of thought and expression. These rights, protected by Article 19 of the Convention, form the foundation of any free and democratic society. The Government has presented no evidence that Mr. Kart was actually a member of a terrorist organization or participated in the alleged terrorist activities. The Working Group therefore finds a violation of Article 19 of the Convention (§ 58).

The Working Group therefore concludes that Mr. Kart's arrest and detention, arising from the peaceful exercise of his rights, is arbitrary and falls within Category II (§ 59).

Given that Mr. Kart's deprivation of liberty was found to be arbitrary under Category II, no trial of Mr. Kart should have taken place. However, the trial did take place (§ 60).

Noting that Mr. Kart was detained and detained solely for exercising his rights protected by the Convention, the Working Group finds that the 11-month delay between Mr. Kart's detention and trial constitutes a violation of Article 14 § 3 of the Convention (§ 61). The court repeatedly refused to consider the expert's opinion that Mr. Kart was not a ByLock user, as the Government did not dispute. This point is undoubtedly at the heart of the accusations against Mr. Kart. The Working Group therefore finds that the court acted in a manner that favoured the interests of the prosecution and failed to act impartially, contrary to the principle of equality of arms (§ 63).

The Working Group therefore finds that the violation of Mr. Kart's right to a fair trial was of such a severity as to render his detention arbitrary and falls within Category III (§ 64).

The Working Group finds that the Turkish Government detained Mr. Kart on prohibited grounds of discrimination and that his detention was arbitrary and fell within Category V (§ 65).

The Working Group also notes the unsubstantiated allegations concerning Mr. Kart's conditions of detention, his treatment while in custody, and his health. The Working Group takes this opportunity to recall the obligation to treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human being (§ 66). The Working Group expresses its grave concern at the pattern revealed by the cases concerning arbitrary detention brought before it in Turkey and reiterates that widespread or systematic imprisonment or other severe deprivations of liberty in violation of the rules of international law may, under certain circumstances, constitute crimes against humanity (§ 67).

Taking into account the violations identified, the Working Group ordered: (1) that measures be taken without delay to remediate the applicant's situation and bring it into line with international norms; (2) that the applicant be released immediately; (3) that compensation and other reparations be provided to the applicant; (4) that a full and independent investigation be conducted into the arbitrary deprivation of the applicant's liberty and that the necessary sanctions be imposed on those responsible.

On the other hand, the Working Group notified the Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression and the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism regarding this application.

7. AHMET DİNÇER SAKAOĞLU – (WORKING GROUP ON ARBITRARY DETENTIONS)[24]

a. Facts

The applicant, a final-year student at the Air Force Academy, was transferred to a street in Beşiktaş, Istanbul, with other students on the night of July 15, 2016, on the grounds that there had been a terrorist attack. On the morning of July 16, 2016, they were taken to a police station and held there for four days. They were not informed of the reasons for their detention, and throughout this period, they were subjected to ill-treatment and forced to sign a prepared statement. The applicant was brought before a judge on July 19, 2016, but was not allowed to see the assigned lawyer beforehand. An indictment was issued seven months after the detention, and the first hearing took place nine months later. The applicant was subjected to restrictions on access to lawyers and was unable to review the case file. The applicant was sentenced to life imprisonment; following the expedited conclusion of the case involving 94 defendants, the presiding judge was elected as a member of the Court of Cassation.

b. Violations Found

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(c) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

The Working Group concludes that there has been a violation of Article 9 § 2 of the Convention because Mr. Sakaoğlu was not informed of the reason for his detention (§ 66). The Working Group finds a violation of Article 9 § 3 of the Convention because Mr. Sakaoğlu was brought before a judge after the standard 48-hour period (§ 68). The Working Group concludes that Mr. Sakaoğlu was deprived of legal assistance from the moment of his detention, which

24 https://arrestedlawyers.org/wp-content/uploads/2020/11/a_hrc_wgad_2020_67.pdf

seriously impaired his ability to challenge the lawfulness of his detention. The Working Group is of the opinion that Mr. Sakaoğlu was therefore deprived of the opportunity to challenge the lawfulness of his detention, in violation of his right under Article 9 § 4 of the Convention (§ 71). Since Mr. Sakaoğlu was unable to effectively challenge his detention, his right to an effective remedy has also been violated (§ 72).

The Working Group concludes that Mr. Sakaoğlu's detention was arbitrary under Category I (§ 73).

As no explanation was provided as to why he was deprived of the right to appoint a lawyer of his own choosing, the Working Group finds a violation of Article 14 § 3 (d) of the Convention (§ 77). It further notes that the appointed lawyer failed to act appropriately, that legal meetings were limited to one hour per week, that meetings were listened to and recorded, that the applicant was prevented from communicating with his lawyer during hearings, and that the lawyer was reluctant to act due to threats. The Working Group finds a violation of Article 14 § 3 (d) as well as Article 14 § 3 (b) of the Convention (§ 78). The Working Group is particularly concerned about the uncontested allegations that Mr. Sakaoğlu's lawyer was threatened and intimidated (§ 79).

Recalling that access to the case file must be ensured from the outset, the Working Group also finds that his rights under Articles 14 § 1 and 14 § 3 (b) and (e) have been violated (§ 80). In the absence of any explanation as to why Mr. Sakaoğlu was not brought to certain hearings, the Working Group finds a violation of Article 14 § 3 (d) of the Convention (§ 82).

Moreover, it is not denied that Mr. Sakaoğlu was threatened and forced to sign a false statement. The Working Group finds that this constitutes a clear violation of Article 14 § 3 (g) of the Convention. Furthermore, a face-correct case has been made out that Mr. Sakaoğlu was subjected to treatment that would amount to torture and ill-treatment (§ 83).

The Working Group emphasizes that collective trials are not in the interests of justice and do not meet fair trial standards. It is not disputed that Mr. Sakaoğlu was not subject to any individual assessment of his responsibility during the trial, and he was sentenced to life imprisonment without individualization, like the other defendants. This is a violation of Article 14 § 1 of the Convention (§ 85).

The Government failed to address the applicant's allegation that he and other cadets were branded "traitors" and "terrorists" by the police, prosecutors and the press from the outset of the trial. Mr. Sakaoğlu was deprived of the presumption of innocence, and the Working Group found a violation of Article 14 § 2 of the Convention (§ 86).

It is stated that the presiding judge was appointed as a member of the Court of Cassation following the rush to conduct the trial (§ 87). Given the numerous violations of the right to a fair trial identified and the alleged timing of the presiding judge's promotion, the Working Group is of the opinion that the court conducting Mr. Sakaoğlu's trial could not, to a reasonable observer, be considered independent, contrary to Article 14 § 1 of the Convention (§ 89).

It is clear to the Working Group that Mr. Sakaoğlu was sentenced to life imprisonment simply because he was one of the cadets present at the scene. The Working Group therefore concludes that Mr. Sakaoğlu's detention constitutes a violation of international law falling within Category V, based on discrimination based on another circumstance that aims at or is likely to lead to the disregard of the equality of human beings (§ 93).

The Working Group expresses its grave concern at the pattern revealed by the cases concerning arbitrary detention brought before it in Türkiye and recalls that widespread or systematic imprisonment or other severe deprivations of liberty in violation of rules of international law may, under certain circumstances, constitute crimes against humanity (§ 96).

Taking into account the violations identified, the Working Group ordered: (1) that measures be taken without delay to redress the applicant's situation; (2) that the applicant be released immediately; (3) that compensation and other reparations be provided to the applicant; (4) that a full and independent investigation be conducted into the arbitrary deprivation of the applicant's liberty and that the necessary sanctions be imposed on those responsible.

On the other hand, the Working Group has notified the Special Rapporteur on the Independence of Judges and Lawyers, the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, and the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment regarding this application.

9. NERMİN YAŞAR – (WORKING GROUP ON ARBITRARY DETENTIONS)[25]

a. Facts

The applicant, a teacher, was detained on October 28, 2016, and brought before a criminal judge of peace on November 16, 2016, before being arrested. A lawsuit was filed against the applicant for alleged membership in the FETÖ/PDY organization, and a decision was made to punish him. While in custody and in prison, the applicant was held in poor conditions and faced restrictions on his right to a lawyer. The allegations against him included his membership in an association, his participation in activities organized by the Hizmet Movement, and his use of the ByLock application.

b. Violations Found

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Detention arising from the exercise of rights and freedoms - Category II;

(c) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(d) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

The Working Group has consistently established in its case-law that an arrest is considered red-handed if the defendant is apprehended either during or immediately after the commission of a crime, or in hot pursuit shortly after the commission of a crime (§ 54). Ms. Yaşar was not brought promptly before a judge within 48 hours of her arrest. The government therefore violated Article 9 of the Universal Declaration of Human Rights and Articles 9 §§ 1 and 3 of the Convention (§ 57). Ms. Yaşar was also denied the right to have the proceedings brought before an authority so that the lawfulness of her detention could be decided without

25 https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session89/A_HRC_WGAD_2020_74.pdf

delay, in accordance with Articles 3, 8 and 9 of the Universal Declaration of Human Rights, and Articles 2 §§ 3 and 9 §§ 1 and 4 of the Convention (§ 58).

The Government did not dispute the applicant's alleged violation of his right to legal assistance. The right to legal assistance is inherent in the procedural right to liberty and security and the prohibition of arbitrary detention (§ 59).

In the light of this, the Working Group concludes that Ms. Yaşar's deprivation of liberty lacked a legal basis and was therefore arbitrary and fell within Category I (§ 60).

As was not disputed, Ms. Yaşar was detained, tried, and sentenced to imprisonment for her membership in an association, her participation in social activities and trips organized by the Hizmet Movement, and her use of the ByLock application (§ 61). The Working Group finds no legitimate aim or purpose in a free and democratic society that would justify depriving the applicant of her liberty for exercising her rights to freedom of thought and expression, freedom of association, and freedom to participate in the conduct of public affairs. Her detention was therefore neither necessary nor proportionate (§ 65). The Working Group regrets that the Turkish authorities have not followed the ByLock observations in their case-law and that the present case follows the same pattern (§ 66).

The Working Group therefore finds that Ms. Yaşar's deprivation of liberty was arbitrary and fell within Category II, as it resulted from the exercise of her legitimate rights and freedoms (§ 67).

Having found that the deprivation of liberty was arbitrary under Category II, the Working Group wishes to emphasize that Ms. Yaşar should not have been tried. However, the trial did take place (§ 68). It notes that Mr. Yaşar's conversations with his lawyer were recorded before his initial interrogation, that subsequent meetings were similarly restricted, that his lawyer was subjected to a full-body search before the interview, and that he was unable to produce or take away any legal documents (§ 69). According to the Working Group, the Government failed to respect Ms. Yaşar's right to legal assistance (§ 70). The Working Group considers that this violation substantially impaired and prejudiced Ms. Yaşar's ability to defend herself in the subsequent judicial proceedings (§ 71). The Government did not dispute that Ms. Yaşar was denied access to the file. The Working Group considers that the principle

of equality of arms has been violated by Ms. Yaşar being denied access to the case file and evidence supporting her use of ByLock (§ 72).

The Working Group expresses its grave concern at the allegations of ill-treatment against Ms. Yaşar, which appear to have been true on their face, including overcrowding in detention, sleep deprivation, lack of clean drinking water, and lack of access to showers. The Government did not contest these allegations. The Working Group therefore considers that a violation of Articles 5 and 25 of the Universal Declaration of Human Rights and Articles 7 and 10 § 1 of the Convention has been established (§ 73). The Working Group also notes the denial of Ms. Yaşar's right to be visited by her family and to communicate with her family and the outside world (§ 75).

Taking the above into account, the Working Group concludes that the violation of Ms Yaşar's right to a fair trial and due process of law was of such a gravity as to render her detention arbitrary and falls within Category III (§ 77).

The Working Group considers that the Turkish Government detained Ms. Yaşar on the basis of her political or other opinion. Her deprivation of liberty therefore falls under Category V (§ 80).

Taking into account the violations identified, the Working Group ordered: (1) that measures be taken without delay to remediate the applicant's situation and bring it into line with international norms; (2) that the applicant be released immediately; (3) that compensation and other reparations be provided to the applicant; (4) that a full and independent investigation be conducted into the arbitrary deprivation of the applicant's liberty and that the necessary sanctions be imposed on those responsible.

On the other hand, the Working Group has notified the Special Rapporteur on the Protection and Promotion of Freedom of Opinion and Expression, the Special Rapporteur on the right to freedom of peaceful assembly and of association, 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.

10. OSMAN KARACA (CAMBODIA AND TURKEY) – (WORKING GROUP ON ARBITRARY DETENTIONS)[26]

a. Facts

The applicant, a dual citizen of Mexico and Turkey, was detained in Cambodia on October 14, 2019, while on a business trip. He was held in a secret location until October 18, 2019, and despite the involvement of the Mexican consulate, he was handed over to Turkish authorities on that date and brought back to Turkey on October 19, 2019. On October 25, 2019, the applicant was arrested by a criminal judge of peace for leading an armed terrorist organization.

b. Violations Found

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(c) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

Regarding Cambodia

The failure of the Cambodian authorities to promptly inform Mr. Karaca of the reasons for his detention and the charges against him violated Article 9 § 2 of the Convention (§ 39). By concealing his whereabouts and fate, the Cambodian authorities placed Mr. Karaca outside the protection of the law, contrary to Article 16 of the Convention (§ 40). Mr. Karaca's right to an effective remedy was also violated, as he was unable to challenge his detention in person or through a lawyer of his choosing (§ 41). The Working Group also observed that Mr. Karaca was denied the right to bring proceedings before a court (§ 42). The Working Group noted that Mr. Karaca was deprived of his right to legal counsel and representation, contrary to Article 9 § 1 of the Convention (§ 43).

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26 https://arrestedlawyers.org/wp-content/uploads/2020/11/a_hrc_wgad_2020_84.pdf

For these reasons, the Working Group finds that Mr. Karaca's arrest and detention were arbitrary and fall within Category I (§ 44).

As noted, Mr. Karaca's situation in Cambodia was further aggravated by the refusal of lawyers contacted to take on the case for fear of reprisals or damage to their careers (§ 45). The Working Group also notes that the Government failed to comply with Mr. Karaca's rights, including his right to be informed of his right to ambassadorial assistance (§ 46). Given the limited avenues available to individuals in the international arena, ambassadorial protection is invaluable to foreign citizens (§ 49).

Mr. Karaca's unlawful return to Turkey, circumventing ordinary expulsion procedures, violated the prohibition of refoulement. By returning Mr. Karaca to another State where it had substantial grounds to believe that he would be in danger of torture or other ill-treatment or arbitrary detention, the Cambodian Government violated Articles 9 and 13 of the Convention (§ 55).

In the Working Group's view, Cambodia cannot escape responsibility for assisting Türkiye in violating Mr. Karaca's right to a fair trial (§ 56). Taking the above into account, the Working Group concludes that the violations of the right to a fair trial and due process were of such a gravity as to render Mr. Karaca's deprivation of liberty arbitrary and fall within Category III (§ 57).

The Working Group finds that the Cambodian Government detained, detained and transferred Mr. Karaca on the prohibited ground of discrimination at the request of the Turkish Government and that the case falls under Category V (§ 58).

The Working Group also considers that the Cambodian Government is also responsible for human rights violations in Türkiye (§ 59).

From Türkiye's Perspective

The failure of the Turkish authorities to promptly inform Mr. Karaca of the reasons for his detention and the charges against him violates Article 9 § 2 of the Convention (§ 64). The Working Group reiterates that detention without communication with others also violates the right of individuals to be brought before a court and to challenge the lawfulness of their detention (§ 65). The Working Group observes that Mr. Karaca was not brought promptly

before a judge within 48 hours of his detention (§ 66). The Working Group also observes that Mr. Karaca was denied the right to have the proceedings brought before a court so that the lawfulness of his detention could be decided without delay (§ 67).

For these reasons, the Working Group considers that Mr. Karaca's deprivation of liberty had no legal basis and was arbitrary and fell within Category I (§ 68).

According to the Working Group, during and after Mr. Karaca's unlawful removal to Türkiye, the Turkish Government failed to respect his right to legal assistance as well as his right to a fair and public trial by a competent, independent and impartial tribunal established by law (§ 69).

The Working Group notes the denial of Mr. Karaca's rights to be visited by and communicate with his family and to be granted adequate communication with the outside world (§ 70). It is clear that the two governments deliberately evaded ordinary deportation procedures (§ 71).

Taking into account the responsibility established by the Cambodian Government and the disregard for deportation procedures, the Working Group finds that Mr. Karaca's detention was also arbitrary on the part of Turkey and falls within Category III (§ 72).

The Working Group finds that the Turkish Government detained Mr. Karaca on the basis of the prohibited ground of discrimination and that the case falls within Category V (§ 75).

The Working Group expresses its grave concern at the pattern revealed by the cases concerning arbitrary detention brought before it in Türkiye and recalls that widespread or systematic imprisonment or other severe deprivations of liberty in violation of rules of international law may, under certain circumstances, constitute crimes against humanity (§ 76).

Taking into account the violations identified, the Working Group ordered: (1) that measures be taken without delay to remediate the applicant's situation and bring it into line with international norms; (2) that the applicant be released immediately; (3) that compensation and other reparations be provided to the applicant; (4) that a full and independent investigation be conducted into the arbitrary deprivation of the applicant's liberty and that the necessary sanctions be imposed on those responsible.

On the other hand, the Working Group notified the Special Rapporteur on the Independence of Judges and Lawyers and the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism regarding this application.

V. DECISIONS IN 2022

1. ALETTİN DUMAN AND TAMER TİBİK (MALAYSIA AND TURKEY) – (WORKING GROUP ON ARBITRARY DETENTIONS)[27]

a. Facts

The applicant, Duman, is a teacher and principal at a school in Malaysia and also the director of an organization. On October 13, 2016, the applicant was abducted by force into a vehicle, held in a secret location, taken to the airport, and handed over to Turkish authorities. The applicant appeared before a criminal judge of peace on November 4, 2016. The applicant was sentenced to 18 years in prison. The allegations against the applicant include his alleged use of ByLock, his having an account with Bank Asya, his work in schools and volunteer organizations in Uzbekistan and Malaysia, and his meeting with the Deputy Prime Minister of Malaysia. The applicant, Tibik, is a businessman and the general secretary of an organization affiliated with the Hizmet Movement. He was abducted on October 13, 2016, held in a secret location, and forcibly returned to Türkiye on October 14, 2016. Following his arrival in Türkiye on October 15, 2016, he was detained for 18 days. The applicant, Tibik, was sentenced to 12.5 years in prison. The allegations against him included his alleged use of ByLock, his employment with companies affiliated with the Hizmet Movement, his support for a party and candidate in elections, his attempts to increase newspaper subscriptions, and his vacation at a hotel affiliated with the Hizmet Movement. The applicants faced ill-treatment in Malaysia and Türkiye. Mr. Duman's family faced difficulties finding a lawyer; the lawyer hired for Mr. Duman was rejected by the authorities, and a lawyer was appointed in his place, but this lawyer failed to provide effective legal assistance.

27 https://www.ohchr.org/sites/default/files/2022-06/A-HRC-WGAD-2022-8-MYS-TUR-AEV.pdf

b. Violations Found

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Detention arising from the exercise of rights and freedoms - Category II;

(c) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(d) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

From Malaysian Perspective

The Working Group considers that the applicants were subjected to enforced disappearance between 13 and 14 October 2016 (§ 75). Their abduction took place entirely outside established legal processes (§ 76). The authorities did not rely on a legal basis for their detention (§ 77). The applicants were placed outside the protection of the law, contrary to Article 6 of the Universal Declaration of Human Rights. Their right to an effective remedy was also violated because they were unable to challenge their detention. Their deprivation of liberty in Malaysia falls under Category I (§ 78).

It appears that Mr. Duman and Mr. Tibik were detained and forcibly transferred to Malaysia at the request of the Turkish Government for exercising their freedom of expression through their alleged use of ByLock. Their deprivation of liberty falls under Category II (§ 80).

Mr. Duman and Mr. Tibik were detained by the Malaysian authorities and extradited to Türkiye without a fair and public extradition hearing by an independent and impartial tribunal in Malaysia (§ 83). Persons should not be deported to another country where there are substantial grounds to believe that their lives would be in danger or that they would be at risk of torture or ill-treatment. The Working Group considers that a violation of the principle of non-refoulement has been established. The deprivation of liberty of Mr. Duman and Mr. Tibik in Malaysia falls under Category III (§ 84).

In the present case, the Malaysian Government detained the applicants on the basis of prohibited discrimination at the request of the Turkish Government. Their deprivation of liberty falls within Category V (§ 86).

The Working Group expresses its grave concern about allegations of treatment amounting to torture and ill-treatment inflicted on the applicants following their abduction (§ 87). The Working Group also considers that the Malaysian Government is responsible for human rights violations in Turkey (§ 88).

From Türkiye's Perspective

Reasonable information was presented that the applicants, brought to Türkiye, were detained without an arrest warrant. The authorities failed to establish the legal basis for their detention in Türkiye (§ 94). Mr. Duman did not appear before a court until 04.11.2016. His right to be brought promptly before a judge to challenge the lawfulness of his detention was violated. Since he was unable to challenge his detention during this period, his right to an effective remedy was also violated. Their detention in Türkiye falls under Category I (§ 95).

Even if the applicants had used ByLock, this would only reflect the peaceful exercise of their freedom of thought and expression. Their detention falls under Category II (§ 100).

Given that their detention fell under Category II, no trial should have taken place (§ 101). The Working Group is concerned about the reported reluctance of lawyers to provide legal services due to fear of imprisonment. Mr. Duman and Mr. Tibik were denied a lawyer of their own choosing. Furthermore, the lawyer assigned to Mr. Tibik failed to provide effective legal assistance. The applicants were deprived of their right to communicate with a lawyer of their own choosing and to defend themselves (§ 103).

Both men were reportedly subjected to physical and psychological torture and ill-treatment (§ 104). Mr. Duman testified during a hearing that he had been tortured. It is reported that he was unable to walk as a result of the torture during the interrogation. However, the court did not stay the proceedings or order an independent investigation (§ 105).

Mr. Tibik's name and photograph were reportedly published in a newspaper. A copy of his file was not provided to his family. Mr. Tibik was reportedly coerced into signing a prepared statement and admitting the accusations. The Working Group finds that Mr. Tibik's

right to a fair trial, the presumption of innocence, and the right not to be compelled to admit guilt were violated. The detention of Mr. Duman and Mr. Tibik in Türkiye falls under Category III (§ 106).

Mr. Duman and Mr. Tibik were detained on the basis of discrimination based on their alleged political or other opinions. Their detention in Türkiye falls under Category V (§ 107).

The Working Group considers that the Turkish Government is responsible for the applicants' abduction and detention in Malaysia and their forcible return to Türkiye (§ 108).

Mr. Duman is reported to have been held in solitary confinement (§ 109). Solitary confinement should be used as a last resort in exceptional circumstances, for the shortest possible period, under strict supervision, and with the permission of the competent authority. It appears that these conditions were not met (§ 110).

Taking into account the violations identified, the Working Group ruled that: (1) measures be taken without delay to remediate the applicant's situation and bring it into line with international norms; (2) the applicants be released immediately; (3) compensation and other reparations be provided, including for the impact of their abduction and forced return to Turkey on their psychological integrity; (3) a full and independent investigation be conducted into the arbitrary deprivation of the applicants' liberty and that the necessary sanctions be imposed on those responsible.

On the other hand, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression, the Special Rapporteur on the Independence of Judges and Lawyers, and the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism have been notified of this application by the Working Group.

2. MUKADDER ALAKUŞ – (HUMAN RIGHTS COMMITTEE)[28]

a. Facts

The applicant, a teacher suffering from various health conditions, was detained on September 4, 2018, and arrested the following day. He was detained and imprisoned under inappropriate conditions. Following hearings conducted via SEGBİS, the applicant was sentenced to 6.5 years in prison on December 28, 2018, for membership in an armed terrorist organization. The allegations against him included having an account at Bank Asya, using the ByLock application, and participating in a demonstration.

b. Violations Found

(1) Arbitrary detention;

(2) Violation of the principle that there is no crime or punishment without law;

(3) Violation of the principle of treating detainees with human dignity;

(4) Violation of the principle of having sufficient time and facilities for defence;

(5) Violation of the principle of attendance at trial;

(6) Violation of the right to question witnesses.

c. Matters Related to the Decision

The Committee notes that the ECtHR has expressed concern about the effectiveness of the individual application remedy in cases concerning detention, given that the Constitutional Court's findings in two cases in which it found a violation were not implemented by the lower courts (*Mehmet Hasan Altan v. Turkey, § 142; Şahin Alpay v. Turkey , § 121)* . The Committee notes that the State party has not demonstrated that, in the applicant's case, an application to challenge his detention before the Constitutional Court would be effective in practice (§ 9.5).

The Committee considers that it has not been demonstrated that the applicant's detention met the criteria of reasonableness and necessity and finds that his detention constitutes a violation of his rights under Article 9 § 1 of the Convention (§ 10.3).

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28 https://arrestedlawyers.org/wp-content/uploads/2022/11/UN-HRC-Mukadder-Alakus.pdf

The principle of legality in criminal law, a fundamental principle of the rule of law, requires that both criminal liability and punishment be limited to clear and unambiguous provisions existing in the law at the time the act or omission occurred. Considering the broad definition in Article 314/2 of the Criminal Code and the absence of any national legal provisions clarifying the acts constituting the criminal offence, the Committee cannot conclude that the applicant's alleged use of ByLock and the fact that he had an account with Bank Asya constituted sufficiently clear and foreseeable criminal offences at the time the acts occurred . The Committee finds that the applicant's rights under Article 15/1 were violated (§ 10.6).

The State party has not submitted any information to contradict the author's allegations regarding his detention and detention conditions. Due consideration must be given to the author's allegations, particularly given the general nature of the information provided by the State party. The Committee reiterates that persons deprived of their liberty must not be subjected to hardships and restrictions beyond those resulting from the deprivation of liberty. The Committee concludes that several minimum criteria were not met and that the State party violated the author's rights under Article 10 § 1 (§ 10.8).

The Committee notes that the State party rejected the allegations that access to the case file was denied and that the judge was not independent and impartial, but did not provide sufficient explanations and documentary evidence to support its rejection of the applicant's claims regarding the right to a fair trial (§ 10.9).

Pursuant to Article 14 § 3 (d) of the Convention, defendants have the right to be present at the hearing, and a trial in their absence may only be permitted if it is in the interest of the proper administration of justice. Apart from practical considerations, the Committee finds a violation of Article 14 § 3 (b), d) and (e) of the Convention in the absence of information and explanations justifying the refusal of the applicant's request to be present and the remote trial (§ 10.10).

Taking into account the violations found, the Human Rights Committee ruled that: (1) the applicant be released; (2) compensation be paid to the applicant; (3) measures be taken to prevent similar violations from occurring.

3. ON BEHALF OF GÖKHAN AÇIKKOLLU AND HIS WIFE MÜMINE AÇIKKOLLU - (HUMAN RIGHTS COMMITTEE)[29]

a. Facts

The applicant's wife was a teacher who worked in both private and public schools affiliated with the Hizmet Movement. She suffered from diabetes and panic attacks. Following the coup attempt, the applicant's wife was dismissed from her profession and detained at home on July 23, 2016. She was subjected to violence both during and after her arrest. Medical reports issued on various dates document the abuse the applicant suffered. Following severe panic attacks, the applicant's wife was taken to the emergency room on July 28 and 31, 2016. She suffered a heart attack in custody and died on August 5, 2016. According to emergency room records, the applicant's wife died while in custody and was not alive when brought to the hospital. The Ministry of National Education subsequently ruled that the applicant's wife was not guilty of any crime and should be reinstated.

b. Violations Found

(1) Violation of the prohibition of ill-treatment (in terms of the treatment to which Gökhan Açıkkollu was subjected);

(2) Violation of the right to life;

(3) Violation of the prohibition of ill-treatment (in respect of his wife and children due to the lack of an effective investigation into his death);

(4) Arbitrary detention;

(5) Violation of the right to be promptly informed of the charges.

c. Matters Related to the Decision

The Committee notes that the ECtHR expressed concern about the effectiveness of the individual complaint to the Constitutional Court in cases concerning detention, given the failure of the lower courts to implement the Constitutional Court's findings in two cases where it found a violation of rights. In the applicant's case and in light of the influence attributed by

29 https://ccprcentre.org/files/decisions/G2301281_(1).pdf

the lower courts to Constitutional Court decisions in previous cases, the Committee notes that the State party has not demonstrated that an individual complaint to the Constitutional Court would be effective in practice in challenging the detention of the applicant's husband and his subsequent death in custody (§ 7.4).

The loss of life in detention under unnatural circumstances gives rise to a presumption of deprivation of life by the State authorities, a presumption that can only be rebutted on the basis of a thorough, prompt and impartial investigation to demonstrate the State's compliance with its obligations under Article 6. It is the responsibility of the State party to ensure to everyone such protection as may be necessary against acts prohibited by Article 7, such as torture and ill-treatment, which may seriously affect the physical and mental health of the person abused and may even entail the risk of deprivation of life (§ 8.4).

Based on the information available to the Committee in the case file, it is not clear that the authorities were aware of the allegations of torture, but that an investigation was conducted ex officio based on these allegations, the visible marks on the applicant's wife's body, and the psychological symptoms reported by medical experts. The Committee considers that, in the circumstances of the present case, and particularly in light of the State party's failure to actually disclose the visible signs of ill-treatment witnessed on numerous occasions or the conduct of serious investigations, the Committee considers that the applicant's allegations must be given due weight. Taking into account her known underlying health problems, the Committee concludes that the State party failed to exercise due diligence in protecting the applicant's wife from torture and ill-treatment and, ultimately, in preserving her life while in custody, in violation of Articles 6 and 7 of the Convention (§ 8.5).

The Committee considers that the State party has failed to demonstrate that a thorough and impartial investigation into the torture and death of the author's wife took place. The Committee considers that the State party's authorities' failure to promptly and thoroughly investigate the circumstances of the author's wife's death effectively deprived the author and her husband of a remedy and amounted to moral suffering in violation of their rights under Article 7 (§ 8.6).

In its initial observations, the State party stated that the accusations against the applicant were based on his use of the ByLock application and his holding of an account at Bank Asya.

In its second observations, it explained that he was detained based on witness testimony. The Committee considers that the applicant has failed to demonstrate that his wife was promptly informed of the allegations against him and the grounds for his detention, nor has he demonstrated that his detention met the criteria of reasonableness and necessity. For these reasons, the Committee finds that the detention of the applicant's wife constitutes a violation of her rights under Article 9 §§ 1 and 2 of the Convention (§ 8.8).

Taking into account the violations identified, the Human Rights Committee ordered the following: (1) that an immediate, independent and thorough investigation be conducted into the arbitrary detention, ill-treatment and death of Gökhan Açıkkollu ; (2) that those responsible be prosecuted; (3) that compensation be paid to Gökhan Açıkkollu's wife and children; and (4) that measures be taken to prevent similar violations from occurring.

VI. DECISIONS IN 2023

1. ALI UNAL – (WORKING GROUP ON ARBITRARY DETENTIONS)[30]

a. Facts

The applicant, a columnist for Zaman Newspaper, was detained at his home on August 10, 2016, without an arrest warrant; the camera image of his confiscated phone was not taken. The applicant was arrested on August 16, 2016. He was sentenced to 19.5 years in prison. The allegations against him included writing for Zaman Newspaper, appearing on a program on Samanyolu Television, giving interviews on television, and authoring two books on the Gülen Movement.

b. Violations Found

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Detention arising from the exercise of rights and freedoms - Category II;

30 https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session96/A-HRC-WGAD-2023-3-AEV.pdf

(c) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(d) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

For a deprivation of liberty to have a legal basis, it is not sufficient for a law authorizing arrest to exist. The authorities must assert the legal basis and apply it to the circumstances of the case. The grounds for arrest must be presented promptly upon arrest and must cover not only the general legal basis for the arrest but also sufficient factual facts to address the substance of the charge, such as the wrongful act and the identity of the alleged victim (§ 66). The authorities' failure to issue an arrest warrant and to state the grounds for arrest and the charges constitutes a violation and renders his detention without legal basis (§ 68). The Working Group notes that Mr. Ünal was not brought promptly before a judge within 48 hours of his detention. The authorities therefore committed a violation (§ 70).

The Working Group concludes that Mr. Ünal's detention was arbitrary under Category I. Ünal's deprivation of liberty was disproportionate to the absolute requirements of the state of emergency and the Government failed to provide any evidence to the contrary (§ 71).

The Government have failed to explain what activities Mr. Ünal engaged in and how any of these alleged acts amounted to criminal acts. None of the information and documents before it permits the Working Group to conclude that these acts could be regarded as capable of creating reasonable suspicion that he committed the alleged crimes (§ 72).

In particular, the Working Group found nothing to suggest that Mr. Ünal's actions, insofar as they could not be construed as a call to violence, fell outside the bounds of freedom of expression and freedom of association. Mr. Ünal's columns, television appearances, and two books on the Gülen Movement cannot justify his detention (§ 73). No evidence whatsoever was presented to the Working Group to suggest that Mr. Ünal's journalistic activities could be equated with any form of violence or terrorist-related activity (§ 75).

The Working Group considers that the basis for Mr. Ünal's arrest and detention was his exercise of his rights to freedom of expression and freedom of association (§ 76). The Working

Group finds that Mr. Ünal's deprivation of liberty was arbitrary under Category II, as it arose from the exercise of his rights and freedoms (§ 77).

Given that the deprivation of liberty was found to be arbitrary under Category II, no trial should have taken place for Mr. Ünal. However, trial did take place and he was convicted (§ 79).

In particular, it was alleged that Mr. Ünal had been unable to refute the allegations against him because the image of his mobile phone had not been captured, that he had been deprived of access to the case file and had been unable to adequately prepare his defence, and that the indictment had been prepared shortly after the court's decision (§ 80). The government chose not to respond to these allegations. The Working Group therefore concludes that there have been violations of Articles 10 and 11(1) of the Universal Declaration of Human Rights and Article 14(1) and 3(b) of the Covenant on Civil and Political Rights (§ 81).

The Working Group therefore finds that the violations of Mr. Ünal's right to a fair trial were of such a severity as to render his detention arbitrary and that his deprivation of liberty fell within Category III (§ 82).

A pattern is emerging whereby individuals alleged to have links to the Hizmet Movement are targeted on the basis of their political or other views. The Working Group finds that the Government detained Mr. Ünal on prohibited grounds of discrimination and that his detention was therefore arbitrary and falls under Category V (§ 83).

The Working Group wishes to register its concern at the unconfirmed allegation that Mr. Ünal was held in solitary confinement for two months in the absence of any court order. The imposition of solitary confinement must be accompanied by certain safeguards. It should be used as a last resort in exceptional circumstances, for the shortest possible period and subject to independent review, and should be authorized by a competent authority. Prolonged solitary confinement beyond 15 consecutive days is prohibited under Articles 43(1)(b) and 44 of the Mandela Rules. The Working Group feels obliged to remind the Government of its obligation to treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person (§ 84).

The Working Group recalls that, in certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law may constitute crimes against humanity (§ 85).

Taking into account the violations identified, the Working Group ruled that: (1) measures be taken to redress the applicant's situation and bring it into line with international norms; (2) the applicant's immediate release; (3) compensation and other reparations be granted to the applicant; (4) a full and independent investigation be conducted into the arbitrary deprivation of the applicant's liberty and that the necessary sanctions be imposed on those responsible.

On the other hand, the Working Group notified the Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression, the Special Rapporteur on the Right to Freedom of Peaceful Assembly and of Association, and the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism regarding this application.

2. MUHAMMET ŞENTÜRK – (WORKING GROUP ON ARBITRARY DETENTIONS)[31]

a. Facts

The applicant was detained on November 11, 2016, and arrested on November 17, 2016, for using ByLock, participating in university organizations, participating in Zaman Newspaper protests, possessing books written by Fethullah Gülen, having an account at Bank Asya, and being a member of an association that was shut down by statutory decree. He was also sentenced to 6 years and 8 months in prison for membership in a terrorist organization, for allegedly chatting with military students and using a code name. Witnesses alleging these conversations were not heard at a hearing attended by the defence.

31 https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session96/A-HRC-WGAD-2023-29-Turkiye-Advance-Edited-Version.pdf

b. Violations Found

Deprivation of liberty is arbitrary:

(a) Detention without legal basis - Category I;

(b) Detention arising from the exercise of rights and freedoms - Category II;

(c) Failure to comply with international guarantees regarding the right to a fair trial – Category III;

(d) Detention on discriminatory grounds - Category V.

c. Matters Related to the Decision

According to the Human Rights Committee, 48 hours is normally sufficient to transfer a person and prepare them for trial. Any delay exceeding 48 hours must be strictly exceptional and justified in the circumstances (§ 61). Mr. Şentürk was detained for six days before being brought before a judicial authority (§ 62).

The Working Group therefore concludes that Mr. Şentürk's arrest and subsequent detention were arbitrary under Category I. If it is accepted that individuals can be detained without respect for the procedures prescribed by law, the guarantees of the right to liberty and security are meaningless. The Working Group considers that Mr. Şentürk's deprivation of liberty was disproportionate to the strict requirements of the state of emergency (§ 63).

The government has failed to explain how the alleged activities ByLock use, participation in university organizations, Bank Asya account, chatting, participation in demonstrations, and association membership] constitute criminal activity. There is no information to support the view that these activities constitute reasonable suspicion of a crime. In some previous cases, detention based solely on ByLock use has been held to be arbitrary in the absence of specific justification for causing a crime. The Working Group regrets that the Turkish authorities failed to implement its assessments in these opinions and that the present case follows the same pattern (§ 65).

The Working Group finds that the detentions and arrests made over the past six years on the grounds of affiliation with the Gülen Movement have followed a specific pattern. In all of these cases, the Government has alleged criminal activity based on the individuals'

participation in regular activities, without any justification for their criminal nature. In the present case, no evidence has been presented to equate the applicant's actions with any terrorist-related activity (§ 67).

The Working Group finds that Mr. Şentürk's deprivation of liberty was arbitrary under Category II, as it arose from the exercise of his rights and freedoms (§ 69).

Because his deprivation of liberty was arbitrary under Category II, Mr. Şentürk should not have been tried at all. Yet, he was tried and sentenced (§ 71). Mr. Şentürk reportedly failed to question the witnesses against him. The Government chose not to respond to this allegation (§ 73).

The Working Group finds that the violations of Mr. Şentürk's right to a fair trial were of such a severity as to render his detention arbitrary. His deprivation of liberty therefore falls within Category III (§ 74).

In cases concerning individuals alleged to be associated with the Gülen Movement, the Working Group has found that their detention was arbitrary. A pattern emerges in which those alleged to be associated with the Movement are targeted on the basis of their political or other views. The Working Group finds that the Turkish Government detained Mr. Şentürk on prohibited grounds of discrimination and that his detention was arbitrary under Category V (§ 75).

In six years, there has been a significant increase in the number of cases brought in Türkiye concerning arbitrary detention. The Working Group reiterates that widespread or systematic imprisonment or other serious deprivations of liberty contrary to fundamental principles of international law may constitute crimes against humanity (§ 76).

Taking into account the violations identified, the Working Group ruled that: (1) measures be taken to redress the applicant’s situation and bring it into line with international norms; (2) the applicant be granted compensation and other reparations; (3) a full and independent investigation be opened into the arbitrary deprivation of the applicant’s liberty and the necessary sanctions be imposed on those responsible.

On the other hand, the Working Group notified the Special Rapporteur on the Protection and Promotion of Freedom of Opinion and Expression, the Special Rapporteur on the right to

freedom of peaceful assembly and of association, and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism regarding this application.

3. CİHANGIR ÇENTELİ – (WORKING GROUP ON ARBITRARY DETENTIONS)[32]

a. Facts

The applicant, Cihangir ÇENTELİ, was a pilot in the Turkish Air Force before his arrest and was serving as a staff officer at the War Academy at the time of the incident. He was detained on September 30, 2016. The applicant was referred to arrest by the prosecutor without giving his statement. He was interrogated at the Criminal Court of Peace on October 11, 2016, and arrested the same day. The Istanbul 26th High Criminal Court concluded the trial under these circumstances on August 17, 2018, and sentenced the applicant **to life imprisonment** for *"attempting to overthrow the order prescribed by the Constitution of the Republic of Turkey"* under Article 309/1 of the Turkish Penal Code. The 16th Criminal Chamber of the Court of Cassation upheld the conviction, based on stereotyped statements, on June 30, 2021.

b. Violations Found

a) Arbitrariness of detention

b) The authority that will make and/or supervise the detention decision must have judicial powers:

c) The detained person's right to be informed about the charges:

d) Prolonged detention and lack of periodic review

to) The right of those arrested or detained to be brought immediately before a judge

f) The right to challenge the legality of the arrest and/or detention in court

g) The right of those arrested and/or detained to benefit from legal assistance from a lawyer of their choice.

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32 https://arrestedlawyers.org/wp-content/uploads/2020/11/a-hrc-wgad-66-2023-turkiye-aev.pdf

i) The right to access and examine evidence within the scope of the principle of equality of arms

i) Violation of attorney-client privilege

j) The prisoner's right to be visited by family members in prison

k) The prisoner's right to access the materials used to justify his or her detention, within the scope of the right to a fair trial

l) Prolonged trial/detention

c. Matters Related to the Decision

The applicant alleged that his detention was arbitrary and unlawful. He was not provided with the right to appeal against his detention. He was detained without a detention order. He was not brought before a judge for 12 days. The charges against him were not disclosed. He was deprived of the opportunity to meet with his lawyer. The Working Group held that this situation violated Articles 3 and 9 of the Universal Declaration of Human Rights and Article 9 (1) of the International Covenant on Civil and Political Rights (§ 44-45).

The applicant alleged that he had not been informed of the charges against him, which had hindered his right to prepare a defence. The charges were reported approximately one year after his arrest and in an extremely superficial manner. The Working Group concluded that this violation was contrary to international norms and constituted a violation of Article 9(2) of the Convention (§§ 46-47).

The applicant was detained for approximately two years, but his detention was not reviewed periodically and alternative measures were not considered. The Working Group found that the length of his detention and the lack of reviews constituted a clear violation of Article 9(3) of the Convention (§ 48).

The Human Rights Committee has noted that bringing a person before a judge within 48 hours is the international norm. The applicant was brought before a judge only 12 days after his detention. The Working Group considered that, even under the state of emergency, no justification for this delay had been provided and that this constituted a violation of Article 9 (3) of the Convention (§ 49).

The Working Group found that the applicant had failed to effectively exercise his right to challenge his detention, in violation of Article 9(4) of the Convention (§ 50).

The applicant was only able to meet with his lawyer after five days, and this meeting lasted only 30 seconds. Moreover, it was conducted under the supervision of a police officer. This failure to respect lawyer-client confidentiality seriously impaired the right to a defence. The Working Group held that this situation violated Article 14 (3) (b) of the Convention (§ 51).

The applicant was unable to access the audio and video recordings used against him. He was unable to learn the full extent of the evidence against him, preventing him from preparing his defence. His requests to question witnesses were refused, and his ability to communicate effectively with his lawyer was restricted. The Working Group considered that this situation violated the fairness of the trial, the principle of equality of arms, and Article 14 (1) and (3) (e) of the Convention (§ 57).

The applicant was not allowed to meet with his family. The Working Group found that this situation was contrary to detainee rights (§ 58).

The applicant's detention lasted approximately two years, but no justification was provided for this period. The Working Group held that this constituted a violation of his right to a fair trial (§ 60).

The Working Group found that the applicant was deprived of access to the materials necessary to understand the charges against him and to mount an effective defence before the court. This raises serious doubts as to the impartiality and fairness of the trial (§ 61).

The applicant was held in a smoking ward, which adversely affected his health. The failure to meet his requests for medical assistance was also considered a human rights violation (§ 62).

In conclusion, the Working Group stated that Articles 3, 9, 10 and 11 of the Universal Declaration of Human Rights and Articles 9 and 14 of the International Covenant on Civil and Political Rights had been violated during the applicant's arrest and trial, that his detention was arbitrary and that these violations could not be justified by the state of emergency (§ 65-66).

VII. DECISIONS IN 2024

1. MERYEM TEKİN – (WORKING GROUP ON ARBITRARY DETENTIONS)[33]

a. Facts

The applicant, Meryem Tekin, is a teacher residing in Bursa. On September 20, 2018, she was detained by the police at her home without an arrest/search warrant and was not informed of the reasons for her detention. The police stated that the investigation was "secret" and only stated that the file concerned the Gülenist organization (§ 5, 45-47). The applicant was immediately taken to the police station, questioned without a lawyer, and was not allowed to contact her family (§ 6). She was held in a small and unhygienic basement cell and subjected to severe sleep deprivation before the official interrogation. Her first meeting with her lawyer lasted only one minute and was recorded and monitored (§ 7). When she was brought before the judge, she was not allowed to present a defence and was prevented from using her chosen lawyer; her mandatory defence counsel pressured her to plead guilty to the charges, and her chosen private lawyer was unable to access basic file information (§ 8-9). Various allegations were made at the hearing without concrete evidence: He was made to sign a document stating that he had sufficiently met with his lawyer and given his statement of his own free will; he was not given sufficient time to read the document (§ 10). The accusations were based on matters such as having an account at Bank Asya, sharing/retweeting content on social media, subscribing to publications affiliated with this organization, and working/supporting activities at these institutions (§ 11, 19-23, 49-55). The Çanakkale Criminal Court issued an arrest warrant on the charge of "membership of an armed organization" under Article 314 of the Turkish Penal Code; the applicant was detained in Bursa prison for a long time (approximately five years). Meetings with lawyers in prison were monitored and recorded, and lawyers were not allowed to bring documents into the prison or leave materials with the client (§ 12-13).

33 https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session99/a-hrc-wgad-2024-6-turkiye-aev.pdf

b. Violations Found

a) Arbitrariness of detention (Category I)

b) Failure to provide a judicial decision or concrete legal basis for the arrest/search

c) The right of the detained person to be informed immediately about the reasons for arrest and the charges.

d) Detention for a long and indefinite period without an indictment; failure to hold a trial within a reasonable time.

e) Violation of the principle of "equality of arms" in objecting to detention and accessing the file

f) Denial of the individual's right to access a lawyer of his or her choice and effective legal assistance

g) Violation of attorney-client privilege; monitoring and recording of conversations

h) Restricting access to evidence and the ability to examine/refute it

i) Making legal activities within the scope of freedom of expression and association the subject of accusations (Bank Asya, publication/subscription, social media, affiliated institutions)

i) Conditions of detention and violation of the obligation to respect human dignity (sleep deprivation, unhygienic conditions)

j) Violation of the prohibition of discrimination (Category V; treatment based on political/intellectual affiliation)

c. Matters Related to the Decision

The applicant's allegations that no arrest/search warrant was issued during the arrest and that no concrete grounds were immediately provided were not refuted by the government. The Working Group emphasized that the arrest, which took place approximately two months after the lifting of the state of emergency on 19 July 2018 (20 September 2018), was not explained by any justification "mandated by the state of emergency" and concluded that the detention was arbitrary within the scope of Category I (§ 45-48).

It was stated that the facts presented to the applicant (Bank Asya account, relationship with affiliated publications/institutions, social media posts, donations/activities) did not in themselves give rise to criminal liability; these activities were legally legitimate before 2016 and fell within the scope of freedom of expression and association. The Government did not specifically state how these acts constituted crimes; the Working Group concluded that personal liberty was restricted due to the exercise of these freedoms under Category II (§ 49-55).

In terms of judicial safeguards, it has been determined that the applicant has been detained indefinitely since 2018 without an indictment; that the trial was not held within a reasonable time; and that this delay was not justified by the State. This is a violation of Article 14(3)(c) of the International Covenant on Civil and Political Rights (§ 57-58).

It was stated that the defense's access to the file was restricted in terms of "equality of arms" and access to the file; that the restriction, imposed on the grounds of the integrity of the investigation, was not demonstrated to be necessary and proportionate in the specific case. This restriction violates the right to a fair and public trial and the obligation to provide the necessary time and facilities for the defence (UDHB Art. 10; ICCPR Art. 14(1) and 14(3)(b)) (§ 59-60).

Regarding the right to access a lawyer, it was found that the applicant was left without a lawyer at critical stages, and that meetings with the lawyer were monitored and recorded, thus violating the lawyer-client privilege. This effectively voided the right to prepare a defence and violated Article 14(3)(b) of the Convention (§§ 61-63). The fact that the applicant was granted only a one-minute, recorded meeting at the initial stage, and that the interviews were systematically monitored thereafter, rendered effective legal aid meaningless (§ 7, 13, 63).

Due to the limitations on access to and rebuttal of evidence, the applicant was unable to effectively counter the allegations, and his opportunities to present witnesses and evidence were practically undermined. The Working Group described this as a procedural violation that seriously undermined the fairness of the trial (§ 59-60).

As regards the conditions of detention and detention, allegations of sleep deprivation and unhygienic cells were not refuted by the government. The Working Group reiterated the

obligation to treat with respect for human dignity under Article 10(1) of the ICCPR and noted allegations concerning his state of health (§ 66; also § 7).

In terms of discrimination, the Working Group found a pattern in a number of similar cases in recent years of targeting individuals based on alleged affiliation with a particular movement; it found a violation under Category V, stating that the applicant had been deprived of his liberty as a result of discriminatory treatment based on political/intellectual affiliation (§ 65, 67).

In conclusion, the Working Group concluded that the applicant's detention was arbitrary due to the multiple violations of his guarantees of liberty and security of person and of a fair trial; that there had been a violation of Articles 2, 7, 9, 10, 19 and 20 of the UDHB and Articles 2, 9, 10, 14, 19, 21 and 26 of the ICCPR; and recommended his immediate release and the provision of effective redress, including compensation (§§ 69-72). The file was also forwarded to the relevant UN Special Rapporteurs, who requested that the opinion be widely disseminated and a six-month follow-up procedure be initiated (§§ 56, 73-75).

1. AKIN ÖZTÜRK – (WORKING GROUP ON ARBITRARY DETENTIONS)[34]

a. Facts

The applicant, Akın Öztürk, was born on 21 February 1952, is a Turkish citizen, and generally resides in Ankara. He served as Commander of the Turkish Air Force between 2013 and 2015, became a member of the Supreme Military Council in 2015, and became the Air Force's most senior military personnel on 15 July 2016. However, after handing over his command duties, he held a semi-active position, responsible only for attending Council meetings. Öztürk, who was on annual leave between 1 and 20 July 2016, returned to Ankara on 15 July. He went to Akıncı Air Base during the coup attempt and participated in the suppression of the coup attempt. However, he was detained on 17 July 2016. He was arrested on 18 July 2016 and sentenced to aggravated life imprisonment by the Ankara Seventeenth High Criminal Court on 20 June 2019 for 141 crimes. His objections are ongoing and he is still in custody.

34 https://nordicmonitor.com/wp-content/uploads/2025/02/Akin-Ozturk-BM.pdf

b. Violations Found

a) Arbitrariness of detention

b) The authority that will make and/or supervise the detention decision does not have judicial powers.

c) Violation of the detainee's right to be informed about the charges

d) Prolonged detention and lack of periodic review

e) Violation of the right of those arrested or detained to be brought immediately before a judge

f) Violation of the right to challenge the legality of the arrest and/or detention before a court

g) Violation of the right of arrested and/or detained persons to benefit from legal assistance of a lawyer of their choice.

i) Violation of the right to access and examine evidence within the scope of the principle of equality of arms

i) Violation of attorney-client privilege

j) Violation of the prisoner's right to be visited by family members in prison

k) Violation of the prisoner's right to access the materials used to justify his detention, within the scope of the right to a fair trial.

l) Prolonged trial/detention

m) Torture and ill-treatment

n) Unjust detention based on discrimination

c. Matters Related to the Decision

The applicant, Akın Öztürk, alleged that his detention had no legal basis and that his efforts to suppress the coup attempt had been ignored. During his detention, no search warrant was issued, he was subjected to torture, and his right to see a lawyer was denied. An arrest warrant was issued on 18 July 2016, but no evidence was provided. The Working Group considered this to be a violation of Article 9 of the Universal Declaration of Human Rights and

Article 9(1) of the Covenant on Civil and Political Rights (§ 53-54). The charges were not clarified, and the right to prepare a defence was restricted; this violation was considered to violate Article 9(2) of the Covenant (§ 54). His detention lasted more than two years and there was no periodic review, which violated Article 9(3) of the Covenant (§ 55). His appearance before a judge two days after his detention without justification violated Article 9(3) of the Covenant (§ 55). The right to challenge his detention was not exercised effectively, in violation of Article 9(4) of the Convention (§ 55). Access to a lawyer was limited during police custody, undermining the right to a defence; this violated Article 14(3)(b) of the Convention (§ 18-20). Access to evidence was denied, and requests to question witnesses were refused, violating the right to a fair trial and violating Articles 14(1) and (3)(e) of the Convention (§ 42-44). Family visits were restricted, which was also deemed to violate detainee rights (§ 25). Detention exceeded seven years, with no justification provided, in violation of the right to a fair trial (§ 60). Allegations of torture and discrimination were ignored, and the impartiality of the court was questioned (§ 37-39, 61-62).

The Working Group noted that it had identified a significant increase in the number of cases referred to it concerning arbitrary detention in Türkiye over the past seven years. It expressed deep concern about the pattern followed by all these cases, reiterating that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty that violates fundamental rules of international law may constitute crimes against humanity (§ 87). This demonstrates that Öztürk's case is being treated not only as an individual injustice but also as an example of a broader systemic violation. In particular, the fact that Öztürk was held responsible for the deaths of 140 individuals, but that no autopsies or ballistic examinations were conducted in relation to these deaths (§ 50), and the lack of information about who was killed, with which weapons, and by whom, further exacerbated the violation of the right to a fair trial. This situation weakened the legal basis for attributing Öztürk to crimes against humanity and exposed the court's bias in its assessment of evidence.

The court's impartiality was seriously questioned during the decision-making process. The applicant's defence was not heard, evidence was not examined, and allegations of torture were not taken into account (§ 37-39). The judges' repetition of the prosecution's arguments and their disregard for the defense's submissions undermined the court's independence (§ 33-36). Furthermore, the presiding judge, promoted to the Court of Cassation shortly after

Öztürk's case, adopted a stance rejecting the need for concrete evidence in the fight against the Gülen movement (§ 48-49). This suggests that the judicial process was shaped by political pressure.

The torture (drip-acid, sleep deprivation, beatings) and ill-treatment Öztürk was subjected to during his detention and trial aggravated his human rights violations (§ 18-19). His health deteriorated, and the isolation conditions were supported by medical reports, which stated that these conditions constituted inhumane treatment (§ 26). The media campaign targeted Öztürk as a coup leader, and this was considered a discriminatory detention (§ 61-62).

In conclusion, the Working Group emphasized the potential nature of systematic violations in Türkiye as crimes against humanity, considering the arbitrariness of Öztürk's detention in categories I, III, and V, and the lack of evidence for the accusations of crimes against humanity (§ 52, 87). It stated that these violations could not be justified by a state of emergency and recommended Öztürk's immediate release.