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# Advance Unedited Version

Distr.: General  
8 September 2020

Original: English

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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its 88<sup>th</sup> session, 24-28 August 2020**

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

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

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

## Submissions

### *Communication from the source*

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

### *Arrest and detention*

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

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

7. The source describes that Mr. Abdullayev's arrest was first ordered by Yasamal District Court on 26 June 2013, after he was convicted *in absentia* of tax evasion. The authorities justified the detention order as a precautionary measure owing to his alleged concealment from the investigation.

8. The source states that Mr. Abdullayev was charged under Azerbaijan Penal Code articles 178.2.1, 178.2.2, and 178.2.4 (fraud); 182.2.1, 182.2.2, and 182.2.4 (repeated and premeditated extortion though the use of threats by an organized group to obtain significant property); 192.2.2 and 192.2.3 (illegal entrepreneurial activities with high profits committed by an organized group); 193-1.3.1 and 193-1.3.2 (money laundering); 213.2.1 and 213.2.2 (tax evasion); 308.2 (abuse of power); 312-1.2 (illegal influence over the decision of an official); 313 (service forgery); and 318 (illegal border crossing).

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

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

11. The source then contends that after Turkish and Azerbaijani officials rendered Mr. Abdullayev to Azerbaijan, he was first brought before the Nasimi District Court in Baku on 25 April 2018, more than 48 hours after his arrest and rendition from Turkey. The Court ordered his pre-trial detention without referring to any specific fact or circumstances

justifying it. His detention was prolonged on 31 May 2018, 9 June 2018, 12 September 2018 and 25 February 2019.

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

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

14. The source underlines that Mr. Abdullayev was co-indicted with a family member and four Azerbaijani border guards, who were allegedly implicated in the border crossing. Because of the presence of the border guards on the indictment, M. Abdullayev is being tried before the Military Court of Baku under Article 68.2 of the Criminal Procedure Code. The trial began on 2 April 2019. During the court proceedings, Mr. Abdullayev and two of the border guards who were refused bail were held in a cage with metal bars. The cage was approximately 3 feet by 3 feet, barely large enough to place a chair. If Mr. Abdullayev’s attorneys wished to speak to him, they had to get permission from the judge to approach the cage, which allegedly greatly limited such communications and ability to participate in the court proceedings.

15. According to the source, Mr. Abdullayev was sentenced on 1 October 2019 to 6 years in prison by the Baku Military Court.

## **Legal Analysis**

### *Category I*

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

17. Firstly, the source alleges that neither the Turkish nor the Azerbaijani authorities acted in conformity with article 9(2) of the Covenant and the similar requirements enshrined in article 19 of the Turkish Constitution and article 967 of the Azerbaijani Constitution. Mr. Abdullayev was not shown a warrant and was not given access to counsel by Azerbaijani authorities. He was in possession of a valid visa for Turkey and there was no active Interpol Red Notice for his arrest. No administrative extradition proceedings were apparently initiated in Turkey. The fact that a Baku Court ordered his arrest in October 2016 does not justify his arrest in Turkey except if a formal request for extradition was issued and processed by a Turkish Court.

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

19. Moreover, the source submits that Protocol No. 7 to the European Convention on Human Rights, to which both Turkey and Azerbaijan are States Parties, requires procedural safeguards for an alien in expulsion proceeding. Both countries are also parties to the European Convention on Extradition, which establishes that “the procedure with regard to extradition and provisional arrest shall be governed solely by the law of the requested Party”. It is argued that Turkey, as the party from which extradition was apparently requested, was bound by article 18(4) of the Penal Code of Turkey, which provides that an extradition cannot be executed until the Serious Criminal Court has ruled that it may proceed; it also explicitly permits an individual to appeal the court’s decision.

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

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

*Deprivation of liberty under category II*

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

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

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

*Deprivation of liberty under category III*

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

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

27. Secondly, the source recalls article 9(3) of the Covenant which, as emphasized by the Human Rights Committee, normally means the obligation to produce the arrested person before a judge within 48 hours unless there are exceptional circumstances. This provision is reflected in both the Turkish Constitution and the Criminal Procedure Code of Azerbaijan. Moreover, article 9(4) of the Covenant also upholds the right to challenge the legality of detention before a court. The source notes that Mr. Abdullayev was not presented to any court before being extraordinarily rendered to Azerbaijan and was then only produced before the court five days after his arrest.

28. Thirdly, the source notes article 9(3) of the Covenant and the explanation by the Human Rights Committee that pre-trial detention "must be based on an individualized determination that it is reasonable and necessary [...] for such purposes as to prevent flight, interference with evidence or the recurrence of crime". Similarly, article 155 of the Azerbaijan's Criminal Procedure Code provides that, in order to impose pre-trial detention on an accused, there must be "sufficient grounds" to suspect that the accused will, for instance, flee, obstruct the investigation, or commit additional crimes. The source submits that the Government of Azerbaijan provided no evidence to justify Mr. Abdullayev's pre-trial detention, and the court did not make an individualized determination that it was reasonable and necessary.

29. Furthermore, the source affirms that Mr. Abdullayev was denied the presumption of innocence as set by article 14(2) of the Covenant. According to the Human Rights Committee, defendants should normally not be shackled or kept in cages during trial or

otherwise presented to the court in a manner indicating that they may be dangerous criminals. Mr. Abdullayev was, however, held in a cage with metal bars during his trial, in direct violation of the presumption of innocence.

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

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

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

#### *Deprivation of liberty under category IV*

33. According to the source, Mr. Abdullayev’s arrest and extraordinary rendition to Azerbaijan despite his refugee status in Germany constitutes a refoulement by Turkey in violation of international and domestic law and thus his ongoing detention is arbitrary under category IV.

34. The source mentions the Convention Relating to the Status of Refugees, of which both Azerbaijan and Turkey are States Parties, establishes that “no contracting state shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” Guidance from UNHCR indicates that an asylum determination by one country must be respected and honoured by other countries.

35. In the case of Mr. Abdullayev, the source recalls that Germany granted him asylum on 26 November 2013. Mr. Abdullayev communicated this fact to the Turkish authorities throughout his arrest and detention in Turkey prior to being handed over to Azerbaijani officials. The Government of Turkey was obliged under the European Convention on Extradition and broader international legal standards to ensure that Azerbaijan’s extradition

request was not politically motivated. It was also obliged to respect Mr. Abdullayev's refugee status and not to return him to the country from which he sought refuge.

*Deprivation of liberty under category V*

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

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

*Response from the Government of Turkey*

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

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

40. The Government refers to the case-law of the European Court of Human Rights, which states that, as a rule, a State has the authority not to accept an alien, to deport an alien who has unlawfully entered the country or who unlawfully tries to stay in the country, to return an individual who committed a crime in the country where he is located or to return an alien to another country where he committed a crime. Furthermore, Protocol No. 7 to the European Convention on Human Rights, which Turkey ratified on 2 May 2016, clearly sets out that an alien may be expelled before the exercise of his rights (the right to submit reasons against his expulsion, the right to have his case reviewed, and the right to be represented for these purposes before the competent authority) when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

41. According to the Government, Mr. Abdullayev was arrested in İstanbul on 21 April 2019 and the İstanbul Governorate's Directorate of Migration Management made an assessment based on the information gathered regarding him. Noting the active restriction orders on his passport for fraud and that the Interpol notice against him for crimes of tax evasion and illegal business administration, decision of deportation was made pursuant to article 54.1/d of the Law No. 6458, which clearly sets "being threat to public order or security" among the grounds for deportation.

42. Mr. Abdullayev received medical examination after he was arrested, and his lawyer was informed of his arrest upon his request. Therefore, on 22 April 2019, Mr. Abdullayev was not extradited to Azerbaijan but rather deported in accordance with the decision of the

competent Turkish authorities in line with the relevant legislation and international law. As a sovereign state, Turkey has the right to deport persons it deems a threat to public security.

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

*Response from the Government of Azerbaijan*

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

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

46. The Government states that there was substantial evidence that Mr. Abdullayev violated the national Tax Code and evaded to pay the State budget the equivalent of approximately USD 1,840,882. Subsequently, on 25 June 2013, the investigator issued a warrant to search for an accused as provided by articles 150.1 and 278 of the Code of Criminal Procedure. The Yamasal District Court, upon the application from the Prosecutor General Office, and given that Mr. Abdullayev was charged with an offence punishable by the deprivation of liberty for more than two years, chose two months' pre-trial detention as a restrictive measure against him.

47. On 2 July 2013, the investigator issued another decision to charge Mr. Abdullayev under articles 192.2.2. (illegal business with extraction of income in the large scale) and 213.1.2 of the Criminal Code, given that the company controlled by Mr. Abdullayev submitted distorted tax declarations and was operating without permits gaining significant profits.

48. On 22 November 2013, the criminal prosecution was suspended given that the whereabouts of Mr. Abdullayev were unknown. On 12 December 2013, the legal counsel of Mr. Abdullayev requested to drop charges against his client given that he paid all taxes. On 16 December 2013, this application was rejected as being baseless.

49. On 11 April 2014, the extradition request was sent to the German authorities, which was declined on 8 May 2015. On 6 May 2014, the case was reopened. On 7 May 2014, the General Prosecutor's motion asking for Mr. Abdullayev's arrest was satisfied by the court, taking into account the fact that he absconded from the authorities.

50. On 31 May 2016, a new criminal case was instigated against Mr. Abdullayev given further facts of tax evasion. On 27 September 2016, two criminal cases were joined together. On 11 October 2016, the court chose to apply against Mr. Abdullayev 1 months and 14 days of arrest as a restrictive measure, in accordance with articles 154-158 and 452 of the Criminal Procedure Code.

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

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

53. On 23 April 2018, Mr. Abdullayev was handed to investigation authorities and on the same date charges under articles 192.2.2 and 213.2.2. of the Criminal Code were announced against him by the investigator from the Ministry of Taxes with the presence of Mr. Abdullayev's two advocates. Mr. Abdullayev was arrested in accordance with the decision of Yamasal District Court on 11 October 2016 which chose 1 month 14 days of arrest as a restriction measure.

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

55. Among the criminal activities of Mr. Abdullayev, according to investigation materials, was illegal delivery of ferrous metallurgy, construction without license, tax evasion, extortion through the use of threats and organization of illegal border crossing of his family member by bribing border officials.

56. On 4 March 2019, the criminal case on abovementioned facts was concluded and on 19 March 2019 sent to Baku Military Court. On 1 October 2019, Baku Military Court found Mr. Abdullayev guilty of legalization of money or property obtained by crime, illegal influence over decision-making of an official, official forgery and accomplice and sentenced him to 6 years of imprisonment. Upon appeal of Mr. Abdullayev, the proceedings are pending before the Baku Court of Appeal. Mr. Abdullayev is currently held in Baku Detention Facility no. 1.

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

58. Furthermore, in regard to the statute of limitation, the charge for tax evasion was brought during 2009-2013. According to article 75 of the Criminal Code, the statute of limitation for the above crime is 7 years.

59. Further, according to article 75.3 of the Criminal Code, statute of limitation stops if an accused absconds from investigation. The statute of limitation therefore stopped from running on 25 June 2013, when the search warrant for an accused was issued by the investigator of the Ministry of Taxes. Moreover, no statute of limitation could apply in this case as criminal actions have been regarded as continuing.

60. The Government further challenges the source's allegations that Mr. Abdullayev was brought before the Nasimi District Court on 25 April 2018, more than 48 hours after his arrest. It observes that there is no information in the case file about Mr. Abdullayev's appearance before this court on 25 April 2018. There have been several court decisions ordering Mr. Abdullayev's arrest, the last such decision being of 11 October 2016. Given that Mr. Abdullayev was wanted for arrest since June 2013 and only brought back to Azerbaijan on 22 April 2018, charges against him were announced on 23 and 25 April 2018 in the presence of his two lawyers. Therefore, it was not necessary to bring him to court to arrest him. Mr. Abdullayev has not appealed decision of 11 October 2016 and neither him nor his lawyers complained that his arrest was in excess of 48-hour period.

61. The Government observes that Mr. Abdullayev's living conditions, right to make calls and receive parcels have been ensured. He received several parcels and have had confidential meetings with lawyers. On 21 November 2019, he met with officials of the Embassy of the Federal Republic of Germany.

62. Further, according to article 26 of the law "On lawyers and legal practise", rendering legal assistance by lawyers-foreigners in Azerbaijan shall be restricted to provision of advice on application of law of the state of birth of the foreigner or on international law.

63. The Government reiterates that Mr. Abdullayev's two lawyers were present right from the day he was handed to investigation on 23 April 2018, when charges against him were announced.

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

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

*Additional comments from the source*

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

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

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

69. The source notes that the Government’s response does not deny that Mr. Abdullayev was convicted in May 2007 on politically-motivated charges after he criticized the President during a parliamentary session, nor that the European Court of Human Rights ruled in March 2019 that his 2007 conviction violated his right to a fair trial.<sup>1</sup>

70. The Government further does not deny that on 5 June 2013, Mr. Abdullayev released a video on YouTube depicting scenes of Baku police forces dispersing protestors and calling for protests against the Government of Azerbaijan, and the next day Azerbaijan’s Ministry of Taxes opened a criminal investigation for tax evasion against the company Araz Inc. The Government’s response does not deny that Mr. Abdullayev was arrested in Turkey without an arrest warrant, that he was not informed of the reason for his arrest at the time of his arrest, or that the 11 October 2016 court decision in Azerbaijan cannot authorize or justify Abdullayev’s arrest in Turkey.

71. Further, according to the source, the Government’s response does not deny a number of due process violations such as that Mr. Abdullayev was forcibly transferred from Turkey to Azerbaijan without being brought before a court for proceedings relating to either an extradition or deportation, that he was rendered to Azerbaijan despite having obtained asylum in Germany due to persecution he faced in Azerbaijan, or that at least two Azerbaijani officials with the Ministry of Internal Affairs accompanied Abdullayev on the commercial

<sup>1</sup> See *Abdullayev v. Azerbaijan*, App. No. 6005/08, EUR. CT. H.R., Mar. 7, 2019, at ¶ 66, available at <http://hudoc.echr.coe.int/eng?i=001-191357>

flight back to Baku. Further, the Government has not claimed or asserted that, when Abdullayev was forcibly transferred, he had an Azerbaijani passport or an Azerbaijani visa with him that would have allowed him to legally travel to Azerbaijan.

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

### Discussion

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

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

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

#### *Allegations in relation to Turkey*

76. As a preliminary issue, the Working Group notes that the situation of Mr. Abdullayev falls within the scope of the derogations that it had made under the Covenant. On 21 July 2016, the Government of Turkey informed the UN Secretary-General that it had declared a state of emergency for three months, in response to the severe dangers to public security and order, amounting to a threat to the life of the nation within the meaning of article 4 of the Covenant.<sup>2</sup>

77. While acknowledging the notification of these derogations, the Working Group emphasizes that, in the discharge of its mandate, it is also empowered under paragraph 7 of its methods of work to refer to the relevant international standards set forth in the Universal Declaration of Human Rights, and to customary international law. Moreover, in the present case, articles 9 and 14 of the Covenant are most relevant to the alleged detention of Mr. Abdullayev. As the Human Rights Committee has stated, States parties derogating from articles 9 and 14 must ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation.<sup>3</sup> The Working Group welcomes the lifting of the state of emergency in Turkey in July 2018 and the revocation of derogations made from its obligations under the Covenant.

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

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

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<sup>2</sup> Depository notification C.N.580.2016.TREATIES-IV.4.

<sup>3</sup> CCPR/C/21/Rev.1/Add.11 at para 4; see also CCPR/C/GC/32 at para 6; CCPR/C/GC/34 at para 5 and CCPR/C/GC/35 at paras 65-66.

80. While the Working Group does not dispute the right of each State to deport aliens who pose threat to its national security,<sup>4</sup> this does not place such aliens outside the protection of law. In particular, the right to challenge the legality of his or her detention before a court, as envisaged by article 9 (4) of the Covenant, belongs to everyone without exception. The Working Group wishes to recall that according to the UN Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of their Liberty to Bring Proceedings before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.<sup>5</sup> This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty,<sup>6</sup> applies to ‘all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures (...)’.<sup>7</sup> Moreover, it also applies ‘irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary’.<sup>8</sup> Therefore, the right to challenge the legality of his detention also belonged to Mr. Abdullayev when he was arrested on 21 April 2018. The Working Group notes that the Government has not provided an explanation as to why this right was not afforded and the Working Group therefore finds a breach of article 9 (4) of the Covenant.

81. The Working Group further recalls that in order to ensure an effective exercise of the right to challenge the legality of detention, the detained persons should have access, from the moment of arrest, to legal assistance of their own choosing as stipulated in the UN Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of their Liberty to Bring Proceedings before a Court.<sup>9</sup> This too was denied to Mr. Abdullayev which adversely impacted his ability to effectively exercise his right to challenge the legality of his detention, denying further him his rights under article 9(4) of the Covenant.

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

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

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

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

86. Further, the Government has not responded to the allegations made by the source that the Interpol notice regarding Mr. Abdullayev had been cancelled at the time of his arrest. Finally, if indeed he was deported from Turkey, the Working Group notes that he was not

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<sup>4</sup> See *Alzery v Sweden*, Communication No. 1416/05; *VMRB v Canada*, Communication No. 236/87; *JRC v Costa Rica*, Communication No. 296/88.

<sup>5</sup> A/HRC/30/37 at paras 2 and 3.

<sup>6</sup> A/HRC/30/37 at para 11.

<sup>7</sup> A/HRC/30/37 at para 47 (a).

<sup>8</sup> A/HRC/30/37 at para 47 (b).

<sup>9</sup> A/HRC/30/37, Principle 9, paras 12-15.

returned to the country of his residence, the country that had granted him a refugee status, Germany. Finally, the Working Group finds it implausible that the agents from Azerbaijan simply happened to be in Turkey and offered to escort Mr. Abdullayev out of Turkey to Azerbaijan. Rather, it appears to the Working Group that the removal of Mr. Abdullayev was coordinated between the Turkish and Azeri authorities to avoid legal extradition procedures.

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

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

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

#### *Allegations in relation to Azerbaijan*

90. As a preliminary issue, the Working Group wishes to clarify that the procedural rules governing its consideration of communications on alleged cases of arbitrary detention are contained in its methods of work. There is no provision in the methods of work that prevents the Working Group from considering communications due to the lack of exhaustion of domestic remedies in the country concerned. The Working Group has also confirmed in its jurisprudence that there is no requirement for petitioners to exhaust domestic remedies for a communication to be considered admissible.<sup>10</sup>

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

#### Category I

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

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<sup>10</sup> ee, e.g., Opinions No. 19/2013 and No. 11/2000. See also opinions No. 41/2017, para. 73; No. 38/2017, para. 67; No. 11/2018 at para 66; 20/2019 at para 81 and 53/2019 at para 59.

submissions by the Government, was not responded to. According to the Government of Azerbaijan, Mr. Abdullayev was simply deported from Turkey on 22 April 2018.

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

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

95. Moreover, the Working Group observes that Mr. Abdullayev was arrested by the Azerbaijan's authorities upon arrival and was not presented before a judicial authority. The Government has argued that this was unnecessary as a valid arrest warrant was in place since 2016. The Working Group cannot accept this as compatible with the safeguards of article 9 of the Covenant. In particular, as the Working Group has consistently argued,<sup>11</sup> in order to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged by article 9 (4) of the Covenant. The Working Group wishes to recall that according to the UN Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of their Liberty to Bring Proceedings before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.<sup>12</sup> This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty,<sup>13</sup> applies to 'all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures'.<sup>14</sup>

96. The Working Group further considers that judicial oversight of detention is a fundamental safeguard of personal liberty<sup>15</sup> and is essential in ensuring that detention has a legal basis. In the present case, Mr. Abdullayev was not presented before a judge and the Government has simply cited compliance with its national law as an explanation for this and argued that Mr. Abdullayev could have challenged the 2016 arrest warrant. The Working Group once again recalls that its role is not to assess the compliance of the national authorities with the provisions of domestic law. It is, however, for the Working Group to assess the overall proceedings of the court and the law itself to determine whether they meet international standards.<sup>16</sup> In the present case, the international standard on the right to challenge the legality of detention was clearly violated as this right can only be exercised if the detained person is promptly presented before a judge. Consequently, without such prompt presentation of Mr. Abdullayev before the judicial authority to allow challenging the legality of detention it cannot be said that his detention was lawful as it violated article 9(4) of the

<sup>11</sup> Opinions Nos. 1/2017, 6/2017, 8/2017, 30/2017, 2/2018, 4/2018, 42/2018, 43/2018, 79/2018 and 49/2019.

<sup>12</sup> A/HRC/30/37 at paras 2 and 3.

<sup>13</sup> A/HRC/30/37 at para 11.

<sup>14</sup> A/HRC/30/37 at para 47 (a).

<sup>15</sup> See United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (the 'United Nations Basic Principles and Guidelines', A/HRC/30/37), para. 3.

<sup>16</sup> Opinion 33/2015 at para 80; Opinion 15/2017; 49/2019; 58/2019 and 60/2019.

Covenant. It also violated article 9 (3) as Mr. Abdullayev was not promptly presented before a judge.

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

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

#### Category II

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

#### Category III

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

101. The Working Group, however, notes that the Government has chosen not to respond to the very specific allegations made by the source that during the trial Mr. Abdullayev was held in a cage, approx. 3 feet by 3 feet, with metal bars and that if his lawyers wished to converse with him, they had to get permission from the judge to approach the cage, greatly limiting such communications and ability to participate in the court proceedings.

102. The Working Group recalls that presumption of innocence is the cornerstone of the fair trial rights as encapsulated in article 14 of the Covenant. It is fundamental to the protection of human rights and ensures that the accused has the benefit of doubt and requires that persons accused of a criminal act must be treated in accordance with this principle.<sup>17</sup> The presumption of innocence therefore imposes a duty for all public authorities to refrain from prejudging the outcome of a trial and, as noted by the Human Rights Committee, 'defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.'<sup>18</sup> This clearly was violated in the case of Mr. Abdullayev and the Working Group therefore finds a breach of article 14(2) of the Covenant.

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

104. The source has also submitted that the trial of Mr. Abdullayev by a military court violated his fair trial rights. Although the Government asserts in its response that its procedures are in accordance with domestic legislation, the Working Group is still entitled to assess whether these procedures meet to assess the overall proceedings of the court and the law itself to determine whether they meet international standards.<sup>19</sup>

105. In relation to the jurisdiction of the military court, the Working Group in its practice has consistently argued that the trial of civilians by military courts is in violation of the

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<sup>17</sup> CCPR/C/GC/32 at para 30.

<sup>18</sup> Ibid.

<sup>19</sup> Opinion 33/2015 at para 80; Opinion 15/2017; 49/2019; 58/2019 and 60/2019

Covenant and customary international law and that under international law, military tribunals can only be competent to try military personnel for military offences.<sup>20</sup> Moreover, in the present case, all the cases against Mr. Abdullayev, including those of his alleged tax evasion and other financial crimes, appear to have been transferred under the jurisdiction of the military court and the Government had the possibility to explain these transfers, but has failed to do so. The Working Group therefore concludes that there has been a breach of article 14 (1) of the Covenant.

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

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

#### Category IV

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

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

#### Category V

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

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

#### *Disposition*

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

#### Regarding Turkey:

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

#### Regarding Azerbaijan:

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

<sup>20</sup> See A/HRC/27/48, paras. 67-70, See also Opinions Nos. 44/2016, 30/2017, 28/2018, 32/2018 and 66/2019.

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

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

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

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

*Follow-up procedure*

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

- (a) Whether Huseyn Abdullayev has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Huseyn Abdullayev;
- (c) Whether an investigation has been conducted into the violation of Huseyn Abdullayev's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Turkey and Azerbaijan with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

118. Governments are invited to inform the Working Group of any difficulties they may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

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

120. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>21</sup>

[Adopted on 26 August 2020]

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<sup>21</sup> See Human Rights Council resolution 42/22, paras. 3 and 7.