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Human Rights Council
Working Group on Arbitrary Detention

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

Opinion No. 47/2020 concerning Kahraman Demirez, Mustafa Erdem, Hasan Hüseyin Günakan, Yusuf Karabina, Osman Karakaya and Cihan Özkan (Turkey and Kosovo)*

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 19 December 2019 the Working Group transmitted to the Government of Turkey and to the authorities in Kosovo, through the Special Representative of the Secretary-General and the Head of the United Nations Interim Administration in Kosovo (UNMIK), a communication concerning Kahraman Demirez, Mustafa Erdem, Hasan Hüseyin Günakan, Yusuf Karabina, Osman Karakaya and Cihan Özkan. The Government of Turkey replied on 21 February 2020; the authorities in Kosovo have not replied. Turkey is a party to the International Covenant on Civil and Political Rights; Kosovo is not.
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);

¹ All references to Kosovo in the present document should be understood to be in compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

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

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Kahraman Demirez is a citizen of Turkey residing in Kosovo born in 1981. He is a biology teacher and the Director of the Gjakovë/Đakovica branch of Mehmet Akif College.

5. Mustafa Erdem is a dual citizen of Albania and Turkey born in 1974. He is a teacher and the Director General of Mehmet Akif College, a school in Kosovo allegedly linked to the Hizmet movement, which is led by Fethullah Gülen and is referred to as the “Fethullah terrorist organization/Parallel State Structure” by the Government of Turkey.

6. Hasan Hüseyin Günakan is a chemistry teacher at Mehmet Akif College. He is a national of Turkey born in 1966.

7. Yusuf Karabina is a national of Turkey born in 1974. He usually resides in Kosovo. He is a teacher and the Deputy Director of Mehmet Akif College.

8. Osman Karakaya is a national of Turkey born in 1972 and a cardiologist at Kavaja Hospital, a private hospital in Kosovo.

9. Cihan Özkan is a citizen of Turkey born in 1989. He is a legal resident of Kosovo and a biology teacher at Mehmet Akif College.

a. Context

10. According to the source, in November 2018 the Turkish authorities publicly announced that extradition requests had been sent by Turkey to 83 countries regarding 452 individuals accused of being affiliated to the so-called Fethullah terrorist organization.

11. The source underlines that the six individuals in the present case have been illegally abducted and transferred to Turkey from Kosovo within the framework of operations conducted by the Government of Turkey against the Hizmet movement as part of its post-attempted coup crackdown on dissent abroad, and that hundreds of other Turkish nationals in the Balkans and elsewhere are at risk of similar treatment.

12. The source insists that the consequences of the arbitrary arrest and illegal transfer of the six Turkish nationals on 29 March 2018 has had a wide-ranging impact on the well-being and safety of thousands of Turkish nationals abroad who have real or perceived links with the Hizmet movement. Similar operations by the Turkish intelligence services have reportedly taken place in several other countries, causing fear and displacement in the Turkish community.

b. Arrest

13. The source reports that on 27 and 28 February 2018 the Chief Special Prosecutor of Kosovo received two requests from the Basic Court of Pristina, originating from the Ministry of Justice of Turkey, for the extradition of Mr. Demirez and Mr. Karabina, who were suspected of committing the criminal offence of terrorism. The Chief Special Prosecutor reviewed the requests and decided not to take any action in application of the law on international legal cooperation in criminal matters of Kosovo, which provides for the grounds to reject an extradition request, including when there is the possibility that human rights standards will not be met.

14. According to the source, although the extradition requests were denied, on 23 March 2018 the Division for Foreigners issued five decisions for the revocation of the residence permits of five Turkish nationals, including Mr. Demirez, Mr. Erdem, Mr. Karabina and Mr. Özkan. The decisions were based on a report of the Kosovo Intelligence Agency alleging that they presented a threat to national security. Mr. Karakaya's residence permit was not renewed, even though he had applied for its renewal on 27 March 2018. The decisions were not shared at the time with either the victims or their lawyers.

15. The source recalls that on 29 March 2018 the authorities issued orders for the forcible removal from Kosovo of Mr. Demirez, Mr. Erdem, Mr. Karabina, Mr. Karakaya and Mr. Özkan. Their legal counsels subsequently filed complaints with the appeals commission on foreigners against these decisions, which were all rejected on 4 May 2018. Separate administrative complaints were then filed regarding both the decisions to revoke the residence permits and to issue orders for the forcible removal of the above-mentioned individuals.

16. As stated by the source, during the hearings the plaintiffs argued that the decision to revoke their residence permits was illegal and contrary to procedural and substantive laws. The Ministry of Internal Affairs refused to share the report of the Kosovo Intelligence Agency. Furthermore, the Agency rejected all requests to give access to the report to the legal representatives of Mr. Demirez, Mr. Erdem, Mr. Karabina and Mr. Özkan. To date, the only reasons given to the individuals and their lawyers for the revocation of their permits and their forcible removal have been published by the press and concern allegations of corruption and spying through the infiltration of students in Kosovo public services and institutions.

17. The source notes that no decision has been taken by the authorities in Kosovo regarding Mr. Günakan. He was arrested following some confusion over his identity and has not yet been released.

18. The source submits that, at 7 a.m. on 29 March 2018, as part of a carefully elaborated plan involving several high-level officials of Kosovo, six police teams were sent to two different cities and Mr. Demirez, Mr. Erdem, Mr. Günakan, Mr. Karabina, Mr. Karakaya and Mr. Özkan were arrested within hours of each other.

19. The source recounts that Mr. Karabina was arrested at 8 a.m. on 29 March 2018 as he was driving to the school where he worked with some family members, along a very busy road. An officer opened the passenger's door, grabbed a member of Mr. Karabina's family and pulled him out of the car while another family member exited the car instinctively. As Mr. Karabina also exited the car, he was handcuffed and pushed forcibly into a police car, which immediately turned around to return to Pristina.

20. Regarding the arrest of Mr. Demirez, Mr. Günakan and Mr. Özkan, the source states that 10 police officers in two police cars and one unmarked vehicle arrived in Gjakovë/Đakovica at 8 a.m. and entered the premises of Mehmet Akif College. They asked to see the three teachers in relation to issues with their residence permits. After some confusion regarding their identities, the three teachers were handcuffed in the schoolyard and taken directly to the airport.

21. The source adds that Mr. Erdem was arrested by the Kosovo police in the parking lot of the central police station in Pristina, as he was rushing to inquire about the arrest of four teachers in his capacity as Director of the school. Mr. Erdem was pushed by several police officers into a car in which Mr. Karabina was already being kept. They were taken directly to the airport, without first being taken inside the police station.

22. As to Mr. Karakaya, the source reports that two police officers arrived at his residence in Pristina at 9.07 a.m. asking for "Osman the emigrant", and asked him to get ready and go with them to sign some documents regarding the renewal of his residence permit. Mr. Karakaya took his documents with him and organized for a friend to meet him at the residence permit office to assist with translations. He then accompanied the two police officers and was transferred directly to the airport.

c. Forcible transfer to Turkey

23. According to the source, the operation was entirely planned and carried out by the Kosovo Intelligence Agency, which had assumed police authority and taken control of police offices, which is contrary to domestic and international legal procedure standards. Agency agents also issued orders to border control officers at the airport and it was the Agency, not the Ministry of the Interior, that obtained the airplane tickets and handled all the logistics of the transfer.

24. The source recalls that Mr. Demirez, Mr. Erdem, Mr. Günakan, Mr. Karabina, Mr. Karakaya and Mr. Özkan were handed over to the Turkish police at Pristina International Airport. The six individuals arrived at the airport at 9.27 a.m., passed border control and boarded an airplane belonging to Birleşik İnşaat Turizm Ticaret Ve Sanayi, a company based in Turkey, which took off at 10.50 a.m.

25. The source reports that the confusion regarding the identity of Mr. Günakan continued at the airport, as he had been mistaken for another Turkish national whose name was on the order for forcible removal. Mr. Günakan's identity was eventually established, but the Kosovo Intelligence Agency officers decided to deport him anyway, even though there was no order for his removal.

26. The source argues that it was later established that an airplane company had secured a permit for business purposes in order to remain on the ground at Pristina airport from 7.15 a.m. to 5.30 p.m. on 29 March 2018, including a time extension, presumably to wait for other individuals whose deportation had been planned for but had not been carried out on that day. The company provided false information to the authorities and the routine check of flights undertaken by the Civil Aviation Authority of Kosovo before take-off was not carried out – which is punishable with a fine and constitutes a basis for criminal liability.

27. The source adds that family members, lawyers and others were not informed of the whereabouts of the six transferred individuals until a Turkish newspaper reported the incident at 2.17 p.m. Kosovo time.

28. The source then stresses that, given the magnitude of the human rights violations believed to have been perpetrated against the six individuals, the national preventive mechanism, the Ombudsperson Institution of Kosovo, was immediately notified and initiated an investigation. The creation of a parliamentary investigative commission was also announced, on 29 March 2018, but was formally established only on 28 June 2018, with a four-month mandate to draft a report on the incidents for submission to the Chief Special Prosecutor of Kosovo for eventual further investigation.

29. The source adds that several protests were staged at the airport and in front of the Embassy of Turkey in Pristina in response to the deportation of the six individuals, who had already been transferred to Turkey. On 30 March 2018, the Ombudsperson Institution of Kosovo team looking into the present case was denied access to the airport detention facility and to relevant documentation on the transfers. The European Union Rule of Law Mission in Kosovo (EULEX), at the request of relatives of the victims, carried out an unsuccessful search at the airport.

30. The source submits that on 11 April 2018, 13 days after their arrest and transfer, the six Turkish nationals were taken to court in Turkey and charged with terrorism and international espionage. An application was submitted to the European Court of Human Rights questioning the legality of their detention in Turkey.

d. Analysis of the violations

31. As explained by the source, Kosovo is not a party to the Covenant nor to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). A number of international instruments relevant to the protection of human rights are incorporated, however, in article 22 of the Constitution of Kosovo and, in cases of conflict, prevail over provisions of laws and other acts of public institutions in Kosovo.

32. The source reports that the investigation carried out by the Ombudsperson Institution of Kosovo revealed that, by expelling the Turkish citizens, the authorities in Kosovo had exposed them to a real risk of torture, physical ill-treatment and serious human rights violations, in violation of the Constitution and relevant international human rights instruments, which form part of the legal framework of Kosovo. When they expelled the six foreign nationals, the authorities did not carry out any assessment of the guarantees against torture in the receiving country nor did they take into consideration the situation of human rights there.

33. The source adds that, in its report, the Ombudsperson Institution of Kosovo concluded that, by expelling the six Turkish citizens, the authorities violated the following provisions of domestic and international law relevant to Kosovo:

- (a) Articles 29 (2)–(4) (right to liberty and security), 31 (right to a fair and impartial trial) and 32 (right to legal remedies) of the Constitution of Kosovo;
- (b) Articles 14 (1), 15, 16 (1)–(2) and 17 (2) and (6) of Law No. 04/L-213 on International Legal Cooperation on Criminal Matters;
- (c) Articles 8 and 10 of the Universal Declaration of Human Rights;
- (d) Articles 9 (1)–(2) and 13 of the Covenant;
- (e) Articles 3, 5 and 6 of the European Convention on Human Rights;
- (f) Article 1 (1) of Protocol No. 7 to the European Convention on Human Rights;
- (g) Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

34. The source also transmits the findings of the parliamentary investigative commission, whose members interviewed several key players in the case and whose mandate was extended from 15 April to 15 May 2019, thus enabling it to present the following findings:

- (a) By automatically implementing the request of the Kosovo Intelligence Agency to revoke the residence permits of the Turkish nationals concerned, without assessing whether the information provided by the Agency fulfilled the legal criteria for concluding that the individuals were “a threat to national security”, the Department for Citizenship, Asylum and Immigration of the Ministry of Internal Affairs has violated article 5 of Law No. 05/L-031 on General Administrative Procedure;
- (b) The expulsion of Mr. Günakan, in the absence of any lawful order, constitutes a violation of article 55 (1) of the Constitution of Kosovo, article 1 (1) of Protocol No. 7 to the European Convention on Human Rights and article 13 of the Covenant;
- (c) The fact that the authorities have not officially requested the return of Mr. Günakan to Kosovo following his mistaken expulsion constitutes a violation of article 25 (1)–(2) of the administrative instruction on the return of aliens residing illegally in Kosovo;
- (d) By taking part in the expulsion of the six Turkish nationals, Kosovo Intelligence Agency officers acted beyond the Agency’s legal scope as provided by article 2.1 of Law No. 03/L-063 on the Kosovo Intelligence Agency;
- (e) The Directorate for Migration and Foreigners of the Kosovo border police issued orders for the forcible removal of six Turkish nationals without fulfilling any of the conditions specified in article 97 (1) of Law No. 04/L-2019 on Foreigners;
- (f) The orders for forcible removal were issued based on article 6 and 99 (2) of the Law on Foreigners, even though neither of those provisions can serve as a basis for issuing that type of order;
- (g) The form relating to the orders for forcible removal violated the requirements of article 97 (8) of the Law on Foreigners, which provides: “To a foreigner shall be communicated in writing, in one of the official languages and in English ... explaining ... the date and place where [the order] will be executed [and the] mode of ... transportation to the place of destination”;

(h) Some police officers did not inform the Turkish nationals of their rights to legal counsel and to contact with a family member. This failure constitutes a violation of article 13 (1) of the Code of Criminal Procedure (Law No. 04/L-123) and article 29 (2)–(3) of the Constitution;

(i) Some of the police officers did not inform the Turkish nationals of their rights in Turkish, even though those officials had observed that some of the Turkish citizens did not understand Albanian. This constitutes a violation of article 13 (1) of the Code of Criminal Procedure and article 29 (2)–(3) of the Constitution;

(j) The six Turkish nationals were not offered legal counsel, in violation of article 12 (6) of the administrative instruction on the return of aliens residing illegally in Kosovo;

(k) The Department for Citizenship, Asylum and Immigration, by not being involved in the expulsion operation, did not fulfil its obligation to provide travel documents for those Turkish citizens who did not possess travel documents. This constitutes a violation of article 8 (1) and (3) of the Law on Foreigners;

(l) The Division for Readmission and Return of the Department for Citizenship, Asylum and Immigration, by not being involved in the expulsion operation, did not fulfil its obligation to verify the identity of those Turkish nationals who did not possess identifying documents and to organize their return. This constitutes a violation of articles 30 and 37 of the administrative instruction on the return of aliens residing illegally in Kosovo;

(m) The Division for Readmission and Return, by not being involved in the expulsion operation, failed in its obligation to organize the transport of the six Turkish nationals, in violation of article 32 of the administrative instruction on the return of aliens residing illegally in Kosovo;

(n) Due to the failure to involve the Division for Readmission and Return, the preference of Mr. Erdem, who is a dual citizen of Albania and Turkey, to be returned to the country of his choice, was not considered, in breach of article 17 (6) of the administrative instruction on the return of aliens residing illegally in Kosovo;

(o) By not entering the six Turkish nationals' personal data into the border management system on entry and exit, police officers violated the Standard Operating Procedures for the Border Management System of 25 June 2017;

(p) By not checking the travel documents of six Turkish nationals, police officers violated article 15 (2) of Law No. 04/L-072 on State Border Control and Surveillance;

(q) Police officials decided to proceed with a "facilitated border check" in the case of the six Turkish nationals, even though the legal conditions for such facilitation, stipulated by article 16 (1)–(2) of the Law on State Border Control and Surveillance, had not been fulfilled;

(r) By placing the square seal on the forcible removal orders, which did not include the details either of identifying documents or travel documents, police officers violated article 17 (1) of the Law on State Border Control and Surveillance;

(s) The expulsion of the six Turkish nationals to a country where there was a real danger that they would be subjected to torture or other inhuman or degrading treatment or punishment constitutes a violation of customary international law, article 3 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 3 of the European Convention on Human Rights;

(t) By not issuing a final decision on the application of Mr. Karakaya for the renewal of his residence permit, the Department for Citizenship, Asylum and Immigration has violated article 44 (1) of the Law on Foreigners;

(u) The failure to issue a final decision in Mr. Karakaya's case has also deprived him of the opportunity to exercise his right to appeal, which is guaranteed by article 6 (3) of the Law on Foreigners;

(v) By not taking the necessary steps, until the day of the expulsion, to notify the Turkish nationals of the revocation of their residence permits, the Department for Citizenship,

Asylum and Immigration made it impossible for them to legally defend themselves against that revocation. This constitutes a violation of article 108 (3) of the Law on General Administrative Procedure;

(w) By amalgamating elements from the forcible removal orders and the removal orders, the Department for Citizenship, Asylum and Immigration and Aliens maximally restricted the opportunity of the six Turkish nationals to exercise their right to appeal. Such amalgamation of two different orders is not provided for anywhere in the Law on Foreigners, or in any other normative act, and is therefore illegal;

(x) The six Turkish nationals were expelled before they could exercise their right to appeal, even though there were no compelling reasons of national security and there was no need for such a measure. This constitutes a violation of article 13 of the Covenant and article 55 (2) of the Constitution of Kosovo;

(y) The fact that the Turkish nationals were not informed about the factual grounds on which their residence permits had been revoked interfered with the exercise of their right to appeal in the months after their expulsion, which constitutes a violation of article 13 of the European Convention on Human Rights and article 1 (1) of Protocol No. 7 to that Convention;

(z) By not informing the State Prosecutor regarding the suspicion that six Turkish nationals were committing or had committed a criminal offence, the Kosovo Intelligence Agency violated article 25.2 of the Law on the Kosovo Intelligence Agency.

35. The source argues that the victims were considered a security risk for Kosovo because they were broadcasting propaganda. However, they did not at any point publish propaganda material, nor is the publication of propaganda an illegal activity creating a risk to national security under Kosovo laws. In addition, no proof was given that the six individuals had been violent at any point, that they had violated any local law or that they had the intent to commit a terrorist act of any kind.

36. The source also argues that Mr. Demirez, Mr. Erdem, Mr. Günakan, Mr. Karabina, Mr. Karakaya and Mr. Özkan have the right to leave Turkey and to seek international protection in a country of their choice.

37. The source therefore concludes that the arrest and expulsion of the six Turkish nationals as described above on 29 March 2018 was arbitrary.

Responses from the authorities in Kosovo and the Government of Turkey

38. On 19 December 2019, the Working Group transmitted the allegations from the source to the authorities in Kosovo through UNMIK and to the Government of Turkey under its regular communications procedure. The Working Group requested the provision, by 17 February 2020, of detailed information about the situation of Mr. Demirez, Mr. Erdem, Mr. Günakan, Mr. Karabina, Mr. Karakaya and Mr. Özkan and clarifying the legal provisions justifying their arrest and forcible removal from Kosovo and handover to Turkey, as well as their compatibility with the obligations of Kosovo under international human rights law.

39. The Working Group regrets that it did not receive a response from Kosovo. The authorities in Kosovo did not request an extension of the deadline for a reply, as provided for in the Working Group's methods of work.

40. On 10 February 2020, the Government of Turkey requested an extension to the deadline in accordance with paragraph 16 of Working Group's methods of work. The Government also sought allowance to submit a response longer than the 20 pages stipulated in paragraph 15 of Working Group's methods of work.

41. On 12 February 2020, the extension was granted with a new deadline of 16 March 2020. Given that paragraph 15 of Working Group's methods of work does not permit exceptions in respect of the length of the submission, that part of the Government's request was denied.

42. The Government of Turkey submitted its reply on 24 February 2020. The Government referred to its information note dated 17 August 2018 addressed to special procedure mandate

holders² and requested that it be taken into consideration in evaluating the information submitted by it.

43. Regarding Mr. Erdem, the Government submits that he was being prosecuted by the thirtieth Assize Court of Istanbul on the basis of evidence and findings indicating that the accused was working at a school affiliated to the Fethullah terrorist organization, using encrypted messaging applications such as ByLock and Falcon for communicating with members of said organization and depositing money into accounts of financial institutions affiliated to and upon instruction of the same organization. Moreover, witness statements identify him as a member of the Fethullah terrorist organization. During the first hearing, the “international espionage crime” charge attributed to him was dropped but it was decided that Mr. Erdem should remain in detention. A subsequent hearing was scheduled for 20 February 2020.

44. According to the Government, Mr. Erdem lodged an individual application to the Constitutional Court on 20 August 2019 that was currently under review by the Court.

45. Regarding Mr. Karabina, the Government explains that he too was being prosecuted by the thirtieth Assize Court of Istanbul, on the basis of evidence and findings indicating that the accused was working at a school affiliated to the Fethullah terrorist organization, using encrypted messaging applications such as ByLock and Kakaotalk for communicating with members of said organization and engaging in correspondence about the organization’s activities in Kosovo on the application Viber. Moreover, witness statements identify him as a member of the Fethullah terrorist organization. During the first hearing, the “international espionage crime” charge attributed to him was dropped but it was decided that Mr. Karabina should remain in detention. A subsequent hearing was scheduled for 20 February 2020.

46. According to the Government, Mr. Karabina lodged an individual application to the Constitutional Court on 14 May 2018 that was currently under review by the Court.

47. In relation to Mr. Demirez, the Government reports that he too was being prosecuted by the thirtieth Assize Court of Istanbul on the basis of evidence and findings indicating that the accused was working at a school affiliated to the Fethullah terrorist organization, using mobile telephone applications affiliated with the organization and transferring money to financial institutions affiliated to and upon instruction of the organization. Moreover, witness statements identify him as a member of the organization. In the final hearing, he was convicted for “being a member of a terrorist organization” and sentenced to eight years and nine months in prison. The “international espionage crime” charge attributed to him was dropped. The conviction was currently under review by a higher court.

48. According to the Government, Mr. Demirez lodged an individual application to the Constitutional Court on 3 October 2018 that was currently under review by the Court.

49. Regarding Mr. Özkan, the Government submits that he too was being prosecuted by the thirtieth Assize Court of Istanbul on the basis of evidence and findings indicating that the accused was working at a school affiliated to the Fethullah terrorist organization, depositing money into accounts of financial institutions affiliated to and upon instruction of the organization and using mobile telephone applications to communicate with members of the organization. In the final hearing, he was convicted for “being a member of a terrorist organization” and sentenced to seven years and six months in prison. The “international espionage crime” charge attributed to him was dropped. The conviction was currently under review by a higher court.

50. According to the Government, Mr. Özkan lodged three individual applications to the Constitutional Court on 14 May 2018, 14 December 2018 and 20 June 2019 that were all under review by the Court.

51. In relation to Mr. Günakan, the Government explains that he too was being prosecuted by the thirtieth Assize Court of Istanbul on the basis of evidence and findings indicating that the accused was working at a school affiliated to the Fethullah terrorist organization, using encrypted messaging applications such as ByLock and Eagle for communicating with

² Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=34299>.

members of said organization, engaging in correspondence with top-level managers of the organization and making notes in his mobile telephone regarding instructions from the leader of the organization. Moreover, witness statements identify him as a member of the Fethullah terrorist organization. During the first hearing, the “international espionage crime” charge attributed to him was dropped but it was decided that Mr. Günakan should remain in detention. The last hearing was held on 28 January 2020.

52. According to the Government, Mr. Günakan lodged two individual applications to the Constitutional Court on 14 May 2018 and 4 January 2019. The Court found the first application inadmissible due to non-exhaustion of domestic legal remedies. The second application was currently under review by the Court.

53. Finally, regarding Mr. Karakaya, the Government reports that he too was being prosecuted by the thirtieth Assize Court of Istanbul on the basis of evidence and findings indicating that the accused was drawing up false reports, upon instruction of the Fethullah terrorist organization, in the criminal case known as the “Ergenekon case”, while being a public servant, that he had been appointed unlawfully to a department outside of his field of expertise at the university he was working at, that he was engaging in correspondence with top managers of the Fethullah terrorist organization and that he was organizing activities in accordance with that organization’s agenda while working at public institutions. Moreover, witness statements identify him as a member of the Fethullah terrorist organization. In the final hearing, he was convicted for “being a member of a terrorist organization” and sentenced to seven years and six months in prison. The “international espionage crime” charge attributed to him was dropped. The conviction was currently under review by a higher court.

54. According to the Government, Mr. Karakaya lodged four individual applications to the Constitutional Court on 26 September 2016, 8 June 2018, 2 April 2019 and 13 November 2019. The Court found the first application inadmissible due to non-exhaustion of domestic legal remedies. The other three applications were currently under review by the Court.

55. The Government argues that the continued detention of all six defendants is lawful since the nature of the attributed offences requires detention in accordance with article 100 of the Code of Criminal Procedure, there is a genuine public interest in their continued detention and there exists a danger that they might abscond.

56. The Government points out that Mr. Demirez, Mr. Karakaya and Mr. Özkan were convicted and sentenced to prison by the thirtieth Assize Court of Istanbul. According to article 19 of the Constitution, the European Convention on Human Rights and the Covenant, the lawful detention of a person convicted by a competent court constitutes a legitimate limitation of the right to liberty and security.

57. The Government argues that, according to article 100 (3) (a) of the Code of Criminal Procedure, if there exists a strong suspicion that the crime of “forming an organization in order to commit crimes” has been committed, grounds for detention can be assumed to exist.

58. Regarding the existence of a genuine public interest in the men’s detention, the Government highlights that the defendants were charged with “forming an organization in order to commit crimes”, specifically the organization that orchestrated and carried out an attempted coup on 15 July 2016 with the aim of demolishing the constitutional order in Turkey and overthrow the elected President, the Parliament and the Government. The Fethullah terrorist organization killed 251 Turkish citizens during that attempted coup. Therefore, it is clearly in the public interest for the courts to impose detention measures against persons charged with being members of this terrorist organization, which has posed a threat to the public order and to security, as explained above.

59. Furthermore, the Government points to the case law of the European Court of Human Rights, according to which the danger of absconding is an acceptable reason for continued detention. In the initial detention decision and the following decisions regarding the continued detention of the defendants, the thirtieth Assize Court of Istanbul determined that judicial control provisions would be insufficient, considering the nature of attributed offences, the existence of reasonable suspicion given the weight of evidence, the fact that the defendants had been deported from another country and the risk of flight.

60. Turning to the criminal proceedings against the defendants, the Government argues that they were conducted in compliance with the law as all six defendants were granted access to a lawyer and all of their statements were taken in the presence of their lawyers. The Government submits three examples of the many reports documenting that the defendants met their lawyers.

61. The Government also argues that the defendants' continued detention was evaluated ex officio by the relevant courts each month and during their hearings in accordance with article 108 of the Code of Criminal Procedure and the anti-terrorism law (Law No. 3713). Every objection raised by the defendants regarding the continuation of their detention was reviewed thoroughly by the relevant courts and every decision regarding the continuation of their detention was based on legal provisions and concrete evidence.

62. The Government notes that, pursuant to article 141 (1) (a) of the Code of Criminal Procedure, individuals who have been unlawfully arrested may file for compensation. Yet, there is no information indicating that the defendants have filed for compensation because of any breach in the procedures for their arrest, custody and detention.

63. The Government submits that the use of the digital application ByLock, supported by other incriminating evidence, constitutes a reasonable and strong suspicion that justifies detention under article 100 of the Code of Criminal Procedure, as well as article 5 (1) (c) of the European Convention on Human Rights. It states that ByLock is an application exclusively used with the intention of establishing a strongly encrypted communication between members of the Fethullah terrorist organization. ByLock is designed to encrypt each message sent with a different encryption. It was made available to members of the Fethullah terrorist organization under the guise of a "global application". In fact, after being accessible online as a "global application" for a short while, ByLock could only then be downloaded through a virtual private network, Bluetooth or an external memory drive, in order to disguise the identities of the users.

64. According to the Government, signing up to the application is not sufficient for users to contact other users in the system: usernames or codes, provided mostly face-to-face or by an intermediary (courier, existing ByLock user etc.), need to be added by all users in order for them to communicate with each other. Messages can only be exchanged after all those involved in the communication have added their usernames or codes. Therefore, a person with no connection with the Fethullah terrorist organization is not able to download the application on his or her mobile telephone and communicate with other users.

65. The Government highlights the reasoned judgment dated 24 April 2017 of the sixteenth criminal chamber of the Court of Cassation, which examined the evidence on the nature of ByLock and concluded that there existed concrete evidence proving that the ByLock communication system was a network programmed for the use of members of the Fethullah terrorist organization and that it was used exclusively by the members of that terrorist organization. In addition, the Criminal Division of the Plenary Court of Cassation specifies, in its judgment dated 26 September 2017, that detection of the use of the application should be construed as evidence of a connection between its user and the Fethullah terrorist organization, as the ByLock communication system was a network made available exclusively for the use of members of the Fethullah terrorist organization and was used exclusively by the members of that criminal organization.

66. Furthermore, the Government submits that, in addition to the ByLock-related evidence, witness statements, suspicious bank account transactions, mobile telephone application records, work histories and other incriminating evidence were taken into consideration by the courts in determining the existence of reasonable suspicion justifying continued detention. The courts also evaluated the evidence regarding the use of other encrypted messaging applications affiliated to the Fethullah terrorist organization in respect of those defendants who were not suspected of using ByLock.

67. The Government rejects any allegation that the six defendants would be subjected to torture or to other inhuman or degrading treatment or punishment in Turkey. Turkey has adopted a zero-tolerance policy against torture since 2003 and introduced a comprehensive set of laws and other measures to prevent and investigate all acts of torture and ill-treatment and to prosecute and punish all those responsible for committing such acts. Thus, according

to article 9 (1) (b) of Law No. 7068, torture constitutes grounds for dismissal from public office, in addition to having criminal liabilities. All allegations of torture and ill-treatment are immediately brought to the attention of the authorities and duly investigated by judicial and administrative bodies.

68. The Government argues that the Chief Public Prosecutor's Office and other administrative institutions regularly inspect all detention centres, the conditions of detainees, the grounds for detention, the periods of detention and all the records and procedures related to arrests and detentions. The parliamentary Human Rights Inquiry Committee, the Human Rights and Equality Institution of Turkey and the Ombudsman Institution can also conduct investigations, research and inspections in the above-mentioned places. Turkey also maintains close cooperation with relevant international bodies, including the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

69. Moreover, in accordance with the Code of Criminal Procedure, medical reports of detainees are obtained after each detention, relocation and release. In this respect, the Government submits, by way of example, the medical reports of one of the defendants, clearly proving his physical and mental integrity.

70. Noting all the above, the Government considers that the continued detention of the defendants, three of whom have been convicted, is lawful. The Government reiterates that the criminal proceedings against the defendants were carried out in accordance with domestic law and with the obligations of Turkey under international human rights law, in particular regarding the conventions to which Turkey is a party. Therefore, the allegations communicated by the source are unfounded and should be dismissed.

Discussion

71. The Working Group thanks the source and the Government of Turkey for their submissions and appreciates their cooperation and engagement in this matter. Noting that allegations have been made both against the authorities in Kosovo and the Government of Turkey, the Working Group shall proceed to examine these separately.

72. In determining whether the six individuals' detention is arbitrary, the Working Group has regard for the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of the international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.³

a. Allegations in relation to Kosovo

73. In the absence of a response from the authorities in Kosovo, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

74. The source has made lengthy submissions concerning the revocations of the residence permits of the six individuals, arguing that such revocations violated numerous provisions of the domestic legislation of Kosovo and of international law. However, the Working Group recalls that it is mandated to examine allegations of arbitrary deprivation of liberty. Therefore, the question of whether the residence permits of the six individuals were revoked or not renewed following duly established procedures falls outside the Working Group's mandate.

75. The Working Group notes that the authorities in Kosovo have chosen not to contest the allegations made by the source that the six individuals were detained by Kosovo Intelligence Agency agents in Kosovo, allegedly on the basis of revoked residence permits. The six individuals were transported to Pristina airport, where they were handed over to the Turkish authorities, who forcibly removed them to Turkey. It is clear to the Working Group

³ A/HRC/19/57, para. 68.

that the Turkish authorities could not have operated in the territory of Kosovo without the consent of authorities in Kosovo.

76. The Working Group is very concerned about the actions taken by the Kosovo Intelligence Agency in effectively kidnapping Mr. Demirez, Mr. Erdem, Mr. Günakan, Mr. Karabina, Mr. Karakaya and Mr. Özkan. Even if these six individuals could indeed have been removed due to their lapsed residence status in Kosovo, it was the duty of the authorities in Kosovo to ensure that any such removal followed due process. The Working Group cannot consider that the procedure for removal has been followed in the present case.

77. The Working Group considers that, while lapsed residence status may indeed have served as a legal basis for the initial detention of Mr. Demirez, Mr. Erdem, Mr. Karabina, Mr. Karakaya and Mr. Özkan, such detention still had to follow appropriate procedures, including due respect for the right of all those detained to contest the legality of their detention before a judicial authority, in compliance with articles 3 and 9 of the Universal Declaration of Human Rights.

78. The Working Group wishes to recall that the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.⁴ This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty,⁵ applies to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention and detention under counter-terrorism measures.⁶ 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.⁷

79. Moreover, the Working Group notes the allegation made by the source that Mr. Günakan was detained due to his identity having been mistaken with that of someone else. Given these circumstances, the Working Group considers that no legal basis for Mr. Günakan's detention and subsequent forcible removal from Kosovo can be invoked.

80. The Working Group also considers that judicial oversight of detention is a fundamental safeguard of personal liberty⁸ and is essential in ensuring that detention has a legal basis. Given that the six individuals were not able to challenge their detention, their right to an effective remedy under article 8 of the Universal Declaration of Human Rights was also violated.

81. The Working Group therefore finds that the arrests of Mr. Demirez, Mr. Erdem, Mr. Günakan, Mr. Karabina, Mr. Karakaya and Mr. Özkan in Kosovo by Kosovo Intelligence Agency agents were arbitrary under category I.

82. Furthermore, the Working Group is convinced that these six individuals were not removed from Kosovo because of lapsed residence status, as evidenced by the subsequent proceedings in Turkey. The source has alleged, and the authorities in Kosovo have failed to refute, that the true reason for their removal from Kosovo was an extradition request by Turkey. The six individuals were then arrested and taken to Pristina airport by the authorities in Kosovo and handed over to the Turkish authorities for removal. The Working Group cannot consider that these events constitute a properly conducted extradition procedure. The authorities in Kosovo have therefore also violated their obligations under article 9 of the Universal Declaration of Human Rights to ensure that aliens lawfully in the territory of Kosovo are expelled only in pursuance of a decision reached in accordance with law and are allowed to submit reasons against the expulsion, to have their case reviewed by a competent authority and to have legal representation. Consequently, given that the six individuals were detained in disregard of the established extradition procedures, thus denying them the fair

⁴ A/HRC/30/37, paras. 2–3.

⁵ *Ibid.*, para. 11.

⁶ A/HRC/30/37, annex, para. 47 (a).

⁷ *Ibid.*, para. 47 (b).

⁸ A/HRC/30/37, para. 3.

trial rights enshrined in article 10 of the Universal Declaration of Human Rights, the Working Group also finds the detention of the six individuals arbitrary under category III.

83. Finally, the Working Group considers that the authorities in Kosovo are responsible for their actions in the arrest, detention and deportation of the six individuals, as well as for the subsequent violations of their rights in Turkey (see paras. 85–101 below) under categories II and V. The Working Group calls upon the authorities in Kosovo to take all steps necessary to secure the immediate and unconditional release of the six individuals. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

84. The Working Group reiterates that it is concerned about the manner in which the six individuals were removed from Kosovo and the failure to notify their families and lawyers of their removal to Turkey. The Working Group is also alarmed at the allegations that the investigation launched by the Ombudsperson Institution of Kosovo into the incident has met with obstacles and calls upon the authorities to fully respect the independent investigations into the matter.

b. Allegations in relation to Turkey

85. As a preliminary issue, the Working Group notes that the situation of the six individuals falls within the scope of the derogations to the Covenant made by Turkey. On 21 July 2016, the Government of Turkey informed the Secretary-General of the United Nations that it had declared a state of emergency for three months, in response to 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.⁹

86. While acknowledging the notification of these derogations, the Working Group emphasizes that, in the discharge of its mandate, it is also empowered under paragraph 7 of its methods of work to refer to the relevant international standards set forth in the Universal Declaration of Human Rights and to customary international law. Moreover, in the present case, articles 9 and 14 of the Covenant are most relevant to the alleged detention of the six individuals. 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.¹⁰

87. As a further 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.¹¹

88. Turning to the specific allegations made against the Government of Turkey, the Working Group observes that the source has made allegations against Turkey without invoking the categories of the Working Group. The Government denies these allegations.

i. Category I

89. 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 must therefore examine the circumstances of the arrest of Mr. Demirez, Mr. Erdem, Mr.

⁹ Depository notification C.N.580.2016.TREATIES-IV.4.

¹⁰ See Human Rights Committee, general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, para. 4. See also Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 6; general comment No. 34 (2011) on the freedoms of opinion and expression, para. 5; and general comment No. 35 (2014) on liberty and security of person, paras. 65–66.

¹¹ See, 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, para. 66; 20/2019, para. 81; and No. 53/2019, para. 59.

Günakan, Mr. Karabina, Mr. Karakaya and Mr. Özkan. The source has submitted that the six individuals were arrested in Kosovo on 29 March 2018 and forcibly transferred to Pristina airport, where they were handed over to the Turkish authorities, who forcibly removed them to Turkey on the same day.

90. The Working Group observes that the Government of Turkey has neither responded to these allegations nor presented its own account as to how these six individuals were taken into Turkish custody. The Working Group also notes the failure to acknowledge the forcible transfer of the six individuals and notes that Turkey could have followed the normal extradition procedures (a properly lodged extradition request followed by an extradition hearing) but chose not to do so. The Working Group therefore considers that the Turkish authorities are responsible for the arbitrary arrest and detention of the six individuals in Kosovo, which fall under category I.

ii. Category II

91. The source has argued that the detention of the six individuals was due to their alleged allegiance with the Hizmet movement but also that any such involvement in the movement would constitute mere exercise of their rights protected by the Covenant. The Working Group observes that the Government of Turkey confirms that the arrests were indeed due to the six individuals' membership in the movement, which in the view of the Government is a terrorist organization, and that the men were charged with "forming an organization in order to commit crimes". The Government lists working at a school affiliated with the Fethullah terrorist organization, using encrypted messaging applications such as ByLock and Falcon to communicate with members of that organization and depositing money into accounts of financial institutions affiliated to and upon instruction of the same organization as evidence of crimes committed and submits that all six individuals are either on trial or having their convictions reviewed.

92. In the present case, as in multiple other ones,¹² the Working Group observes that the essence of the allegations against the six individuals, as presented by the Government, is their alleged allegiance with the Hizmet movement/Fethullah terrorist organization, which is supposedly evidenced by such regular daily activities as working in a school, having a bank account and using a communication application. In respect of the latter, the Government has made detailed submissions on how ByLock and other applications have been used by the Hizmet movement/Fethullah terrorist organization in general. However, no explanation has been provided as to how the alleged use of the ByLock application by any of the six individuals could be equated with a criminal act. Nor has the Government presented any evidence that any of the six individuals was indeed a member of the Hizmet movement/Fethullah terrorist organization simply as a consequence of having a bank account with Bank Asya or having taught at a school affiliated with the Hizmet movement/Fethullah terrorist organization years before.

93. The Working Group is mindful of the state of emergency that was declared in Turkey. However, while the National Security Council of Turkey had already designated the Hizmet movement/Fethullah terrorist organization as a terrorist organization in 2015, the fact that the organization was ready to use violence had not become apparent to Turkish society at large until the attempted coup of July 2016. As noted by the Council of Europe Commissioner for Human Rights:

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

¹² Opinions No. 42/2018, No. 44/2018, No. 29/2020 and No. 30/2020.

general agreement that it would be rare for a Turkish citizen never to have had any contact or dealings with this movement in one way or another.¹³

94. Furthermore, the Council of Europe Commissioner for Human Rights pointed out that there was a need “when criminalising membership and support of this organisation, to distinguish between persons who engaged in illegal activities and those who were sympathisers or supporters of, or members of legally established entities affiliated with the movement, without being aware of its readiness to engage in violence”.¹⁴

95. The Working Group observes that the allegations against the six individuals as members of the Hizmet movement/Fethullah terrorist organization are based on them having engaged in regular activities without any specifics as to how such activities amount to criminal acts. However, noting the widespread reach of the Hizmet movement/Fethullah terrorist organization, as documented in the report of the Council of Europe High Commissioner for Human Rights, “it would be rare for a Turkish citizen never to have had any contact or dealings with this movement in one way or another”.¹⁵ This appears to be the case of the six individuals. The Working Group specifically notes the report of the Special Rapporteur on the promotion and protection of the right to freedom of expression, who visited Turkey in November 2016 and recorded numerous cases of arrests based solely on the presence of ByLock on the accused person’s computer and on ambiguous evidence.¹⁶ The Working Group also notes that the Human Rights Committee has dismissed the mere use of ByLock as sufficient basis for the arrest and detention of an individual.¹⁷

96. In the present case, it is clear to the Working Group that even if any of the six individuals had used the ByLock application, such use would constitute mere exercise of their freedom of expression, a right protected under article 19 of the Covenant. The Working Group recalls that this is not the first time it is examining a case involving the arrest and prosecution of Turkish nationals on the basis of their alleged use of ByLock, considered to be the key manifestation of an alleged criminal activity.¹⁸ The Working Group recalls that in those other instances it had concluded that, in the absence of a specific explanation of how the mere use of ByLock constituted a criminal act, the detention of those accused was arbitrary. The Working Group regrets that the views it has expressed in its opinions have not been respected by the Turkish authorities and that the present case follows the same pattern.

97. The Working Group concludes that the arrest and detention of Mr. Demirez, Mr. Erdem, Mr. Günakan, Mr. Karabina, Mr. Karakaya and Mr. Özkan resulted from the exercise of the rights guaranteed by article 19 of the Covenant and fall under category II.

iii. Category III

98. Given its finding that the deprivation of liberty of Mr. Demirez, Mr. Erdem, Mr. Günakan, Mr. Karabina, Mr. Karakaya and Mr. Özkan is arbitrary under category II, the Working Group emphasizes that none of the six individuals should have been tried. Nevertheless, three have been convicted and trials in respect of the other three are under way. The source has not, however, made any allegations concerning the denial of the fair trial rights of any of the six individuals in Turkey. The Working Group therefore is unable to make an assessment of those proceedings.

99. That notwithstanding, the Working Group has already established that the six individuals did not arrive in Turkey of their own free will and that they were not extradited following a properly conducted extradition process. The Government of Turkey had the opportunity to afford them due process rights by extraditing from Kosovo in accordance with proper procedures but it chose not to do so and is therefore responsible for their arbitrary

¹³ See Council of Europe Commissioner for Human Rights, “Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey” (7 October 2016), para. 20. Available from <https://rm.coe.int/16806db6f1>.

¹⁴ *Ibid.*, para. 21.

¹⁵ *Ibid.*, para. 20.

¹⁶ A/HRC/35/22/Add.3, para. 54.

¹⁷ *Özçelik et al. v. Turkey* (CCPR/C/125/D/2980/2017), para. 9.4.

¹⁸ See opinions No. 42/2018, No. 44/2018, No. 29/2020 and No. 30/2020.

detention in Kosovo. The Working Group finds the detention of the six individuals arbitrary, falling under category III, also in respect of Turkey.

iv. Category V

100. Finally, the present case is the latest concerning individuals with alleged links to the Hizmet movement/Fethullah terrorist organization to have come before the Working Group during the past three years.¹⁹ In all these cases, the Working Group has found that the detention of the concerned individuals was arbitrary. There is now a pattern of targeting those with alleged links to the Hizmet movement/Fethullah terrorist organization on the discriminatory basis of their political or other opinion. Accordingly, the Working Group finds that the Government of Turkey has detained the six individuals based on a prohibited ground for discrimination, and that the case falls within category V. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

101. During the past three years, the Working Group has noted a significant increase in the number of cases brought before it concerning arbitrary detention in Turkey.²⁰ The Working Group expresses grave concern about the pattern established by all these cases and recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.²¹

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

Disposition

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

Regarding Kosovo:

The deprivation of liberty of Kahraman Demirez, Mustafa Erdem, Hasan Hüseyin Günakan, Yusuf Karabina, Osman Karakaya and Cihan Özkan, being in contravention of articles 2, 3, 8, 9, 10 and 19 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

Regarding Turkey:

The deprivation of liberty of Kahraman Demirez, Mustafa Erdem, Hasan Hüseyin Günakan, Yusuf Karabina, Osman Karakaya and Cihan Özkan, being in contravention of articles 2, 3, 8, 9, 10 and 19 of the Universal Declaration of Human Rights and articles 2 (1) and (3), 9, 14, 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

104. The Working Group requests the Government of Turkey and the authorities in Kosovo to take the steps necessary to remedy the situation of the six individuals 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.

105. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be for the Government of Turkey to release the six individuals immediately and for the Government of Turkey and the authorities in Kosovo to

¹⁹ See opinions No. 1/2017, No. 38/2017, No. 41/2017, No. 11/2018, No. 42/2018, No. 43/2018, No. 44/2018, No. 78/2018, No. 10/2019, No. 53/2019, No. 79/2019, No. 2/2020, No. 29/2020, No. 30/2020 and No. 51/2020.

²⁰ Ibid.

²¹ See, e.g., opinion No. 47/2012, para. 22.

accord them 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 Turkey to take urgent action to ensure the immediate release of the six individuals.

106. The Working Group urges the Government of Turkey and the authorities in Kosovo to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of the six individuals and to take appropriate measures against those responsible for the violation of their rights.

107. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

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

Follow-up procedure

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

(a) Whether Mr. Demirez, Mr. Erdem, Mr. Günakan, Mr. Karabina, Mr. Karakaya and Mr. Özkan have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Demirez, Mr. Erdem, Mr. Günakan, Mr. Karabina, Mr. Karakaya and Mr. Özkan;

(c) Whether an investigation has been conducted into the violation of their 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 Kosovo and Turkey with their international obligations in line with the present opinion;

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

110. The Government of Turkey and the authorities in Kosovo 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.

111. The Working Group requests the source, the Government of Turkey and the authorities in Kosovo 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.

112. 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.²²

[Adopted on 26 August 2020]

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