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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-first session, 6–10 September 2021

Opinion No. 38/2021 concerning Cihan Erdal (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,¹ on 21 January 2021 the Working Group transmitted to the Government of Turkey a communication concerning Cihan Erdal. The Government replied to the communication on 12 April 2021. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

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

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

¹ A/HRC/36/38.



Submissions

Communication from the source

4. Cihan Erdal is a national of Turkey born in 1988. He is also a permanent resident of Canada and normally resides in Ottawa, where he is a PhD candidate at Carleton University.

a. Context

5. The source notes that, in September 2014, Da'esh had commenced an assault on the city of Kobane, in north-eastern Syrian Arab Republic, close to the border with Turkey. There was widespread fear that Da'esh would slaughter thousands of innocent people. Turkish citizens from across the country advocated for Turkey to intervene to protect civilian lives and prevent atrocities. On 6 October 2014, Mr. Erdal, who was in Istanbul at the time, tweeted the message “#KobaneDireniyor/KobaneResists”.

6. On 6 and 7 October 2014, in Ankara, several messages were reportedly tweeted from the Twitter account of the Central Executive Committee of the Peoples' Democratic Party (HDP). The messages were about the extremely critical situation in Kobane and urged people to take to the streets and support those protesting the attacks by Da'esh and the Government's embargo on Kobane. The source adds that there were many protests in cities throughout Turkey from 6 to 8 October 2014, during which 37 people tragically lost their lives.

b. Arrest, detention and indictment

7. The source reports that, at around 9 a.m. on 25 September 2020, Mr. Erdal was arrested in Beşiktaş, a district of Istanbul, by officers of the anti-terrorism branch of the Ankara police department on the basis of a warrant issued by the Office of the Ankara Chief Public Prosecutor. The source adds that Mr. Erdal was staying at a friend's place. He was performing his doctoral research and waiting for the border with neighbouring countries in the Schengen Area to open so he could continue his research in France and Greece. According to the source, the police officers only had a warrant for his detention, not a search warrant, so they waited for him at the door and only allowed him to take his identification documents with him.

8. The source reports that the arresting officers did not at the time provide any reasons for Mr. Erdal's arrest. They only said that they were detaining members of the HDP Central Executive Committee in connection with events that had occurred in 2014. When Mr. Erdal was subsequently interrogated and charged, it was learned that the detention related to a meeting of the Central Executive Committee which Mr. Erdal did not attend and to social media posts linked to the protests that had been held throughout Turkey from 6 to 8 October 2014 known as the Kobane protests.

9. Following his arrest, Mr. Erdal was transferred from Istanbul to Ankara. The source reports that, although Mr. Erdal's lawyers had requested to speak to their client, the prosecutor did not permit them to see him. The source adds that the lawyers and family members were also not informed of Mr. Erdal's place of detention until 36 hours after his arrest, when they learned through the media and HDP officials that Mr. Erdal and other detainees had been transferred to Ankara. Mr. Erdal was finally able to see his lawyers at the detention centre in Ankara 48 hours after his arrest. The source submits that this was an extremely arbitrary and unlawful act by the police. When Mr. Erdal's lawyers were able to meet with their client, the room was not conducive to confidentiality. It was not soundproof and police officers could hear what Mr. Erdal and his lawyers were speaking about. The source notes that Mr. Erdal was subsequently able to meet his lawyers during weekdays until 9 p.m. However, they spoke through a monitored telephone and the meetings took place under video surveillance.

10. According to the source, Mr. Erdal was initially held in police custody by the anti-terrorism branch of the Ankara police department from 25 September to 1 October 2020. He was taken to court for the first time on 1 October 2020 at around 5 p.m., six days after his arrest. He was reportedly held in the hall of the court with no food or drink for 10 hours until he appeared before the Criminal Court of Peace on 2 October 2020, at 3 a.m. The court ordered that he be kept in pretrial detention in accordance with article 100 of the Code of

Criminal Procedure. The court noted that Mr. Erdal remained in pretrial detention because of the risk that his release might otherwise affect the evidence or that he might flee. The source adds that the decision was announced directly to Mr. Erdal. The lawyers were reportedly physically blocked by the police in the court from speaking to their client, who was taken, with other detainees, to prison after the decision had been announced. The source notes that Mr. Erdal was transferred to Sincan prison, a high-security penal institution in Ankara, where he remained in pretrial detention at the time of the source's submission.

11. The source reports that, for the first couple of months, Mr. Erdal's lawyers were unable to see any formal indictment or other documents. However, Mr. Erdal was informed that he had been charged with undermining the integrity or unity of the State (art. 302 of the Criminal Code) and inciting murder (art. 82 of the Criminal Code).

12. The source adds that the prosecutor accused Mr. Erdal of: attempting to destroy the unity of the State and the unity of the country; murder in order to hide a crime or to hide evidence of another crime or in order not to be caught; attempting to kill in order to hide a crime or to hide evidence of another crime or in order not to be caught; taking advantage of the frightening power of existing or presumed criminal organizations (Kurdistan Workers' Party (PKK)); looting, with guns and with more than one person, at night by hijacking, in order to create benefits for the criminal organization (PKK); and inciting a person to deprive others of liberty by using force or threats or by cheating. It is alleged that Mr. Erdal perpetrated those crimes by personally tweeting messages in support of protests against the three attacks on Kobane and that he participated in a meeting of the HDP Central Executive Committee, as a member of that Committee, which had made calls on social media in support of protests against the Kobane attacks.

13. According to the source, Mr. Erdal and his lawyers finally received a formal indictment on 6 January 2021, four months after Mr. Erdal's arrest. According to the indictment, he was charged with various crimes, including with violating the unity and the integrity of the State and with killing people. The indictment reportedly called for "38 counts of life sentences without parole". The source adds that the only evidence provided against Mr. Erdal were, literally, two retweets of statements made by the HDP co-chair Selahattin Demirtaş in October 2014.

c. Conditions of detention

14. The source reports that, during the first days of detention, Mr. Erdal could not get personal hygiene products like a toothbrush or proper clothes to keep him warm. Nor was he provided with proper meals. Moreover, he and some of the other detainees had diarrhoea due to the poor-quality food.

15. After he was sent to prison, Mr. Erdal was reportedly placed in solitary confinement. He had to stay in a cell on his own without access to the outdoors, to books or other reading materials, to television or to visitors. He was reportedly held in solitary confinement for 21 days in a cell that was not clean or hygienic and had no natural light. He was then sent to another high-security prison. He was placed in a cell that he shares with two other detainees.

16. The source notes that, at the time of submitting the communication to the Committee, Mr. Erdal had access to reading materials and could speak by telephone with his parents for 20 minutes on Thursdays. However, he was not allowed to speak to his spouse. The source adds that, in Canada, where they resided together, they were considered lawful spouses. Turkish law, however, does not recognize relationships between lesbian, gay, bisexual, transgender and intersex persons and the Turkish authorities therefore refused to recognize Mr. Erdal's spouse as a family member. The source adds that this is an additional act of discrimination. Mr. Erdal was not allowed any visitors other than his lawyers.

d. Analysis of the violations

17. The source submits that Mr. Erdal has been subject to arbitrary detention by Turkey for the legitimate exercise of rights and freedoms guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

18. According to the source, Mr. Erdal has advocated for peace throughout his life. He has never suggested, encouraged or incited violence in any way. He tweeted a message supporting peaceful protests. The tweets by the HDP Central Executive Committee were also peaceful. In any event, the source notes that Mr. Erdal was working in Istanbul at his university when the Central Executive Committee was meeting in Ankara on 6 and 7 October 2014 and sending tweets. The source adds that social media posts calling on people to exercise their right to peaceful assembly are protected forms of expression and cannot be considered evidence to support criminal charges.

19. The source refers to general comment No. 35 (2014), in which the Human Rights Committee stated that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary. The source also notes that the Working Group on Arbitrary Detention has stated that “unlawful detention” includes both detention that violates domestic law and detention that is incompatible with the requirements of article 9 (1) or with any other relevant provision of the Covenant.²

20. The source submits that Mr. Erdal is being punished for exercising his right to freedom of expression and for supporting those exercising their right to freedom of peaceful assembly, and that this constitutes a violation of articles 19 (on freedom of opinion and expression), 21 (on freedom of assembly) and 22 (on freedom of association) of the Covenant, as well as articles 19 (on freedom of expression) and 20 (on freedom of assembly and association) of the Universal Declaration of Human Rights. The source adds that it is unlawful to hold Mr. Erdal responsible for the actions of others. The source refers to the European Court of Human Rights judgment in the case *Ezeli v. France*, according to which the freedom to take part in a peaceful assembly is of such importance that it cannot be restricted in any way so long as the person concerned does not himself or herself commit a reprehensible act on such an occasion.

21. According to the source, there is no suggestion of such evidence in the case at hand; therefore, Mr. Erdal’s detention is arbitrary. The source adds that the arrest and detention of Mr. Erdal by Turkey for events that took place six years before have little to do with the Kobane protests and much more to do with the State’s targeting of a political opposition party, HDP. The source notes that the ruling party has arrested many HDP members who have been democratically elected and lawfully hold political office in Turkey. The source thus submits that Mr. Erdal’s arrest and detention were politically motivated and were designed to stifle dissent and deter others from supporting or becoming politically involved with HDP.

22. The source argues that Mr. Erdal’s detention is also arbitrary because it violates articles 25 (on the right to take part in the conduct of public affairs) and 26 (on the prohibition of discrimination on the ground of political opinion) of the Covenant and article 21 (on the right to take part in government) of the Universal Declaration of Human Rights. The source notes that, in considering similar allegations concerning the arrest of HDP co-chair Selahattin Demirtaş, the European Court of Human Rights found that Turkey had detained Mr. Demirtaş with the predominant ulterior purpose of stifling pluralism and limiting freedom of political debate, which is at the very core of the concept of a democratic society.³ The source also notes that the Court called for the release of persons detained in Turkey, including Mr. Demirtaş, for acts related to this matter, stating that the detention of such persons was a cover for limiting pluralism and debate and that the evidence did not back up the terrorism-related charges directed at them. The source specifically refers to paragraph 327 of the Court’s judgment, which deals with the same tweets at issue in Mr. Erdal’s case.

23. According to the source, Mr. Erdal’s pretrial detention was ordered by a court pursuant to article 100 of the Code of Criminal Procedure. However, the source submits that the prosecution relied on a secret file that it would not disclose to the defence, thereby depriving Mr. Erdal of the right to properly challenge his detention. Mr. Erdal’s defence lawyers reportedly argued that reliance on confidential information to justify detention

² A/HRC/27/47, para. 14.

³ European Court of Human Rights, *Selahattin Demirtaş v. Turkey*, application No. 14305/17, judgment, 22 December 2020, para. 273.

violated the equality of arms principle and was contrary to articles 19 and 90 (4) of the Constitution of Turkey. The presiding magistrate dismissed those arguments. The source thus submits that the reliance on secret evidence to justify Mr. Erdal's pretrial detention violates articles 9 (on the right to liberty) and 14 (on the right to a fair trial) of the Covenant, as well as article 3 of the Universal Declaration of Human Rights.

Response from the Government

24. On 21 January 2021, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 22 March 2021, detailed information about the current situation of Mr. Erdal and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Turkey under international human rights law and, in particular, with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure Mr. Erdal's physical and mental integrity.

25. On 15 March 2021, the Government requested an extension in accordance with paragraph 16 of the Working Group's methods of work. The extension was granted on 16 March 2021; the new deadline was 21 April 2021. In its reply of 12 April 2021, the Government explains that the Constitution of Turkey imposes a positive obligation upon the State to ensure the welfare, peace and happiness of people and society, to protect the republic and democracy and to remove the obstacles to the enjoyment of human rights and fundamental freedoms. In order to fulfil its positive obligations, the State takes the measures necessary to protect its people from terrorism.

26. In this context, the national authorities are actively and resolutely combating, in accordance with the rule of law and with due regard to the criteria of necessity and proportionality, the terrorist organizations that threaten national security and the public order by targeting the security forces and civilians.

27. The Government adds that criminal investigations and prosecutions related to terrorism charges are conducted by independent and impartial judicial authorities with respect to international instruments and the jurisprudence of the European Court of Human Rights. Taking into consideration the specific circumstances of each case, a distinction is made between actions falling under the right to express one's opinion freely, which include speech that offends or disturbs the State or any segment of society, and actions that absolutely and seriously constitute incitement to violence and hatred.

28. While everyone has the right to express and disseminate his or her thoughts and opinions orally, in writing, in pictures or through other media, the exercise of this right may be restricted for the purpose of protecting national security and the public order pursuant to article 26 of the Constitution, article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and article 19 of the Covenant.

29. In this vein, the Government submits that publishing a terrorist organization's declarations and statements that praise, legitimize or encourage the use or threat of force or violence and disseminating the propaganda of a terrorist organization are listed as crimes in Turkish legislation.

30. The Government notes that from 6 to 8 October 2014 large-scale incidents of armed violence were occurred in 35 Turkish provinces under the pretext of protesting the Da'esh attack on Kobane. Those subversive riots in cities resulted in the death of 50 people and injuries to an additional 772 individuals, including 331 members of the security forces. No fewer than 1,881 vehicles and 2,558 buildings, including hospitals and schools, were damaged. Those events reportedly broke out as a consequence of calls made by the terrorist organization PKK, calls that were supported and reiterated by HDP. According to the Government, a former HDP member, who is a suspect in the investigation on the aforementioned events, has, in his testimony, stated: "I can say that the demonstrations known as the Kobane incidents, in which deaths occurred, were not an exercise of democratic rights. On the contrary, they were acts of violence. ... I can say that the incidents and deaths

that occurred during the Kobane events were organized by PKK in the name of a declaration of autonomy in Turkish territory. The statements, instructions and calls show this.”

31. The Government reports that PKK, which is directly linked with the aforementioned events, is a terrorist organization whose members commit murders and injuries targeting civilians, soldiers, police, women and children and are involved in robberies, acts of extortion, theft, raids on villages and police stations and arson, as well as in many other illegal activities, including money-laundering and trafficking in arms, drugs and persons. The Government adds that since 2002, in many countries, including of the European Union, PKK is listed as a terrorist organization.

32. Turning to the circumstances of the case at hand, the Government explains that Mr. Erdal is a former member of the HDP Central Executive Committee. Within the scope of an investigation conducted by the Ankara Chief Public Prosecutor’s Office regarding the PKK terrorist organization (No. 2014/146757), evidence indicated that Mr. Erdal and 107 other suspects, acting in line with the instructions issued by the Central Executive Committee of HDP, knowingly and wilfully colluded in committing the unlawful acts that occurred between 6 and 8 October 2014.

33. In accordance with the investigation conducted and the evidence collected, Mr. Erdal was reportedly apprehended and taken into custody on 25 September 2020, upon the written instruction of the public prosecutor, on suspicion of carrying out terrorism-related activities on behalf of the PKK terrorist organization. When apprehended, Mr. Erdal was informed of his rights and he acknowledged that he understood his rights and the reasons for detention.

34. According to the Government, Mr. Erdal met with six lawyers during his detention. His statement was taken on 30 September 2020 in the presence of his lawyers. After testifying, he was brought before a judge on 2 October 2020. The Fourth Magistrates’ Office in Ankara subsequently ruled in favour of Mr. Erdal’s arrest on terrorism-related charges.

35. Mr. Erdal appealed against his arrest on 8 October 2020. The Fifth Magistrates’ Office in Ankara rejected the appeal on 16 October 2020 pursuant to article 100 (3) of the Code of Criminal Procedure as there existed a reasonable suspicion. The Government notes that Mr. Erdal’s continued detention has been reviewed at regular intervals pursuant to article 108 of the Code of Criminal Procedure and confirmed on the basis of the evidence against Mr. Erdal, the nature of the crimes attributed to him and the existence of reasonable suspicion.

36. On 30 December 2020, an indictment was prepared against Mr. Erdal and 107 other defendants for crimes alleged to have been committed during the incidents that took place from 6 to 8 October 2014. The evidence against Mr. Erdal includes witness, complainant and suspect statements, video recordings and pictures, field reports, judicial reports, physical and digital documents, expert reports and open source information.

37. The Government notes that, in the indictment, it is stated that the HDP Central Executive Committee, also referred to as the PKK/KCK terrorist organization, and its affiliated organs had called for an organized revolt under the pretext of protesting the Da’esh attack on Kobane. That call then spread to reach the masses through social media accounts and websites affiliated with HDP and the PKK/KCK terrorist organization. Mr. Erdal, who at the time was a member of the HDP Central Executive Committee, which had published the call, and taking into consideration the messages posted on his social media accounts, is accused of inciting the public – using his position in a political party in an organized way – to create unrest and become involved in large-scale violent incidents, murders and terrorist attacks.

38. The Government adds that, in the light of the evidence that was collected during the investigation, the fact that Mr. Erdal was a member of the HDP Central Executive Committee and the fact that the Committee’s call led to public unrest, murder and terrorism, it was concluded that causality was present between Mr. Erdal’s actions and the acts of violence carried out by others. As such, criminal proceedings were initiated against Mr. Erdal within the scope of the anti-terrorism law and the relevant articles of the Criminal Code. The Government notes that Mr. Erdal’s criminal proceedings on terrorism-related charges are ongoing.

39. The Government submits that, in order for it to uphold its positive obligation to combat terrorism, the judicial authorities have initiated investigations into the events that took place between 6 and 8 October 2014 and that led to a disturbance of the public order and safety. In that regard, Mr. Erdal is being investigated for terrorism-related activities carried out under instruction of the PKK/KCK terrorist organization.

40. Regarding the exhaustion of domestic remedies, the Government submits that the principle of subsidiarity means that the obligation to protect the rights and freedoms enshrined in human rights documents falls primarily on the national authorities. As such, allegations regarding violation of human rights should concern primarily the domestic legal system.

41. The Government refers to article 141 of the Code of Criminal Procedure, which stipulates that individuals who claim to have been subjected to unlawful arrest can file for compensation. The European Court of Human Rights has held that the complainant's failure to apply to the domestic courts for compensation under article 141 of the Code of Criminal Procedure constitutes non-exhaustion of domestic remedies.⁴ In the present case, Mr. Erdal did not apply for such remedy challenging the legality of his detention.

42. According to article 148 of the Constitution and Law No. 6216, the Constitutional Court can examine individual applications concerning the human rights and fundamental freedoms enshrined in the Constitution that fall within the scope of the European Convention on Human Rights and its Protocols, after the exhaustion of all administrative and judicial remedies. The European Court of Human Rights, in its established jurisprudence, is of the view that making an individual application to the Constitutional Court constitutes an effective remedy that should be exhausted. Nevertheless, Mr. Erdal did not lodge an individual application before the Constitutional Court.

43. Considering the available domestic remedies that are yet to be exhausted and the fact that Mr. Erdal's criminal proceedings on terrorism charges are in the early stages before the competent courts, the Government is of the view that it would be inappropriate for the Working Group to reach conclusions on the case at hand.

44. Regarding the grounds for Mr. Erdal's detention, the Government argues that the rights to freedom of expression and freedom of association and peaceful assembly are not without limits. They are subject to limitations, including to protect the public order and ensure safety, as stipulated in the Constitution, the European Convention on Human Rights and the Covenant. The Government adds that, in order to protect the public order, ensure safety and combat terrorism, it is necessary to investigate all forms of expression that absolutely and seriously incite violence and hatred.

45. According to article 5 (1) (c) of the European Convention on Human Rights and the case law of the European Court of Human Rights, the existence of reasonable suspicion of having committed an offence is initially sufficient to deprive a person of liberty. Continued detention, on the other hand, can be justified only if there are specific indications of a genuine need to safeguard the public interest which, notwithstanding the presumption of innocence, outweighs the rule on respecting individual liberty.

46. The Government notes that, considering the particular circumstances of the abovementioned terrorism-related incidents, which resulted in serious material and immaterial damages and in public unrest, and having regard for the complexity of the case, the large number of suspects involved, the PKK/KCK terrorist organization's motives and activities, Mr. Erdal's role in those incidents and the evidence against Mr. Erdal, the judicial authorities concluded that there existed a risk of absconding, reasonable suspicion and a genuine need to safeguard the public interest justifying the pretrial detention of Mr. Erdal. As such, the measures applied against Mr. Erdal in accordance with the Code of Criminal Procedure are legitimate to protect the public order.

⁴ *A.Ş. v. Turkey*, application No. 58271/10, judgment, 13 September 2016 (in French only).

47. Considering the explanations above, the Government is of the view that the judicial proceedings concerning Mr. Erdal have been conducted in line with articles 9, 19 and 21–22 of the Covenant and cannot be considered arbitrary.

48. Regarding Mr. Erdal's rights while in detention and the conditions of the penal institution in which he is being held, the Government argues that Mr. Erdal has access to legal assistance. Due process guarantees were respected when Mr. Erdal was taken into custody. Mr. Erdal was informed of his legal rights and of the reasons for his detention. His statement was taken in the presence of his lawyers. His father and roommate were immediately informed of his apprehension. He was able to appeal to the court and demand his release. In accordance with article 108 of the Code of Criminal Procedure, his detention has been evaluated periodically (every 30 days at the most) in the investigation phase by the court upon appeal or ex officio.

49. According to article 154 (2) of the Code of Criminal Procedure, for certain offences, including terrorism-related charges, a detainee's right to meet with his or her lawyer may be subject to restrictions for 24 hours upon the request of the Public Prosecutor. Pursuant to that provision, and in order to preserve the evidence and to safeguard due process guarantees, the decision to restrict Mr. Erdal's access to his lawyers for 24 hours was assessed to be a proportionate measure by the judicial authorities.

50. The Government adds that, during those 24 hours, Mr. Erdal's statement was not taken and no evidence was added to his file. Mr. Erdal first met with his lawyer on 26 October, one day after his detention. He then met with his other lawyers on 27, 29 and 30 October, while in custody.

51. According to the Government, Mr. Erdal's apprehension, detention and arrest, as well as all related legal procedures, were conducted in accordance with the law. Moreover, Mr. Erdal is able to be represented by his lawyers, put forth issues in his favour and defend himself. He was brought before a judge promptly, considering the large number of suspects involved and the complexity of the case. The Government is thus of the view that Mr. Erdal was able to exercise his rights set forth in domestic law and in articles 9 and 14 of the Covenant during his detention.

52. Contrary to the allegations made in the communication, Mr. Erdal was not put in solitary confinement. He was subjected to the same treatment as other detainees in the penal institution in which he was held. The Government adds that Sincan prison, which is a high-security facility, consists of 350 single-person and 45 three-person cells. The single-person cell where Mr. Erdal was being held has 15.8 square metres of living space, which is above the standards specified in the European Prison Rules of the Council of Europe. Mr. Erdal is granted one hour of outdoor activity and exercise, which is in line with the abovementioned Rules. He is also able to listen to the radio. Moreover, although the psychosocial health unit of the institution requested to have a meeting with him, Mr. Erdal refused such aid.

53. According to the Government, decisions on the placement of detainees (pretrial and convicted) in penal institutions are taken by the administration and observation board of the institution concerned in accordance with certain criteria, such as criminal groups and types, risk situation, age and the institution's level of security. These decisions can be appealed to the courts by the individual concerned. Mr. Erdal did not apply for such a remedy either.

54. Contrary to the allegations made in the communication, Mr. Erdal was immediately (at 6.12 p.m. of the day of his detention) provided with sanitary and stationery supplies upon his request. He also bought personal care and sanitary products from the institution canteen.

55. Pursuant to article 72 of the Law on the Execution of Penalties and Security Measures (Law No. 5275), pretrial detainees and convicts are provided with nutritious food sufficient in quality and quantity for them to stay healthy and strong and with drinking water, taking into account their age, health, work and religious and cultural preferences. Dietary choices such as veganism and vegetarianism are therefore respected. Kitchens in penal institutions are inspected regularly in terms of quality and hygiene. In line with the law, convicts and pretrial detainees are provided with the same food and water given to the penal institution's personnel.

56. As for the allegations that Mr. Erdal was not allowed to talk to his spouse, Mr. Erdal reportedly did not make any request to do so. He did, however, make several telephone calls to his mother and brother.

57. In line with the recommendations of the scientific advisory board of the Ministry of Health, convicts and pretrial detainees can benefit from closed visits with a maximum of two people twice a month; this is a time-bound measure related to the public health situation resulting from the coronavirus disease (COVID-19) pandemic. Therefore, during his stay in Sincan prison, Mr. Erdal met with his lawyers on 3, 4, 8, 13, 15, 17 and 22 October 2020; with his brother on 7 October 2020; with his parents on 21 October 2020; and with a Turkish member of Parliament on 23 October 2020.

58. Considering that Mr. Erdal benefited from closed visits, legal aid and communication rights, and taking into account the conditions of the penal institution in terms of hygiene, food and accommodation, which are in line with the relevant standards, the Government is of the view that Mr. Erdal's rights while in detention have been respected.

59. Regarding other alleged violations of the Covenant, the Government submits that both the Constitution and the Covenant enshrine the principle of equality of all persons before the law. While the State is obligated to protect and promote the human rights and fundamental freedoms of everyone at both the national and international levels, in accordance with the requirements of democratic society, this obligation does not give absolute immunity from being subjected to the law. In this respect, Mr. Erdal, as anybody else suspected of the same crime would be, was investigated and is being prosecuted and tried by independent and impartial judicial authorities. Mr. Erdal was charged with terrorism-related offences and all the evidence collected against him was evaluated under this lens. The judicial proceedings have not been conducted for any other reason.

60. In conclusion, the Government wishes to remind the Working Group that 108 suspects are included in the present investigation and that the particular circumstances of each defendant differ. Thus, each suspect has been investigated in respect of his or her particular involvement in the terrorist incidents. Therefore, particular acts, speech, political status or court evaluation concerning a certain individual should not affect the assessment of other defendants' involvement in the terrorist attacks.

61. According to the Government, terrorism poses the most severe threat to democracies. Spreading messages and glorifying the violent acts of a terrorist organization do not fall within the scope of freedom of expression in a democratic society. Mr. Erdal, as a member of the HDP Central Executive Committee who was responsible for the call to revolt and who reiterated the PKK/KCK terrorist organization's agenda at the time of the terrorism-related events, was rightfully and lawfully subjected to an investigation that included the collection of evidence against him. By investigating him, the State was fulfilling its positive obligation to protect its citizens from terrorism.

62. The Government is of the view that Mr. Erdal's rights under national and international law while in detention are being respected. Considering the particular circumstances of the case, the legal rights that Mr. Erdal is able to exercise and the conditions of the penal institution, which are in line with the relevant standards, the allegations of violations of the human rights set out in the relevant articles of the Covenant should be dismissed. As the prosecution phase is still under way and will be reviewed by higher domestic courts, it would be inappropriate to reach conclusions on the situation at hand.

Further comments from the source

63. The response of the Government was sent to the source for further comments on 14 April 2021. In its response of 23 April 2021, the source notes that the Government argues that the principle of subsidiarity should preclude any inquiry by the Working Group into this matter. However, the source recalls that the obligation of applicants to exhaust domestic remedies does not apply with respect to the Working Group.⁵ Therefore, the objection made by the Government has no merit and the communication is admissible.

⁵ The source refers to the Working Group's opinions No. 41/2017, No. 19/2013 and No. 11/2000.

64. The source notes that the Government contends that Mr. Erdal's access to legal counsel was not impeded and that his conditions of confinement have been appropriate at all times. According to the source, this is inconsistent with the facts. When the Government says that Mr. Erdal was able to meet his lawyer a day after his detention, this answer is technically accurate, but obscures the reality of what occurred. Mr. Erdal was arrested in Istanbul at 9.15 a.m. on 25 September 2020. He was reportedly unable to speak to a lawyer until 7 or 8 p.m. on 26 September 2020, over 440 km away at his place of detention in Ankara. For over 34 hours, he allegedly had no access to counsel and, more significantly, he was held incommunicado at an unknown location.

65. In relation to the Government's contention that Mr. Erdal has not been held in solitary confinement, that he is permitted to spend time outside his cell and that he was provided with sanitary and stationary supplies upon his request, the source notes that this does not describe his treatment during the first 21 days of his detention. Initially, from 26 September to 2 October 2020, Mr. Erdal was held in a basement cell at a facility of the anti-terrorism bureau. During that period, he was not permitted to shower, was not given a towel of any kind, could not change his clothes and was fed very poor-quality food that made him sick.⁶

66. In relation to the information provided by the Government that Mr. Erdal was able to see legal counsel on 27, 29 and 30 September 2020, while in custody, the source reports that those visits were primarily focused on addressing these poor conditions of confinement. After the magistrate's order of 2 October 2020 remanding Mr. Erdal to further custody, he was transferred to Sincan prison in Ankara. He was finally given access to bathing facilities, but was kept isolated from other prisoners until 23 October 2020. Moreover, his cell – which was windowless, had no natural light and faced a corridor only – is where he spent his days, alone. The source adds that Mr. Erdal acknowledges that his conditions of confinement have improved since October 2020.

67. The source notes the assertion by the Government that Mr. Erdal has been charged with publishing a terrorist organization's declarations/statements that praise, legitimize or encourage methods involving the use or the threat of force or violence by the terrorist organization. The Government also asserted that, through the HDP Central Executive Committee, Mr. Erdal knowingly and wilfully contributed to committing the unlawful acts that occurred between 6 and 8 October 2014 and that the evidence against Mr. Erdal includes witness and suspect statements, video recordings, field reports, physical and digital documents, expert reports and open source information. However, according to the source, the indictment prepared against Mr. Erdal does not refer to any such evidence. According to the source, Mr. Erdal has always been a proponent of peace and environmentalism. These issues were why he became involved in politics as a young man. He abhors violence and has always spoken out against it.

68. With respect to the tweets posted by the HDP Central Executive Committee on or about 6 October 2014, Mr. Erdal does not believe they call for violence in any way. The tweets call for protests, in accordance with the rights of freedom of assembly. In any event, according to the source, Mr. Erdal was in no way involved in the decisions taken by the HDP Central Executive Committee at that time. As the indictment discloses, the HDP Central Executive Committee held an emergency meeting in Ankara on 6 October 2014, and decided to issue the tweets. Mr. Erdal did not participate in that meeting and in fact was in Istanbul at the time. As confirmed by the Turkish authorities, he was working with a professor at Mimar Sinan Fine Arts University in Istanbul, not in Ankara.

69. The source maintains that Mr. Erdal's detention is arbitrary as it is based on the exercise of his fundamental rights of freedom of expression and association.⁷ The sad fact is that he is being charged because he was once associated with HDP, a legitimate and lawful political party that the current government in Turkey would allegedly like to suppress. The

⁶ The source notes that the conditions were allegedly so poor that other detainees in that location went on a hunger strike.

⁷ The source notes that the Government maintains that its prosecutions are conducted in accordance with the jurisprudence of the European Court of Human Rights. Yet, the source highlights that the Court has already addressed the tweets in this matter and found that the criminal charges violated human rights (see *Selahattin Demirtaş v. Turkey*).

criminal charges are manifestly baseless and are politically motivated to stifle pluralism and limit free political debate within the country.

70. On 15 June 2021, the Working Group was informed that Mr. Erdal was conditionally released by the presiding judge pending the conclusion of the criminal trial. The release is conditional and Mr. Erdal must remain in Turkey and report to the local police station twice per week.

Discussion

71. The Working Group thanks the source and the Government for their prompt submissions.

72. In determining whether the deprivation of liberty of Mr. Erdal was 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 Government if it wishes to refute the allegations.⁸ Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.

73. As a preliminary issue, the Working Group wishes to address the submission that Mr. Erdal has been provisionally released. In this regard, the Working Group notes that, in accordance with paragraph 17 (a) of its methods of work, it reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. In the present case, the Working Group is of the view that the allegations made by the source are extremely serious. Moreover, Mr. Erdal's release is only conditional and Mr. Erdal is still subject to restrictions, including the obligation to report to a police station and the prohibition to travel. Noting this, the Working Group shall proceed to deliver the opinion.

74. As an additional preliminary issue, the Working Group wishes to address the submission of the Government that Mr. Erdal has not exhausted all available domestic remedies. According to the Government, the Working Group should therefore not be seized of the matter. 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.⁹

75. Turning to the specific allegations made against the Government, the Working Group observes that the source alleges that Mr. Erdal was arrested by officers of the Anti-Terror Branch of the Ankara Police Department on 25 September 2020 and that the officers presented a warrant at the time of the arrest although they did not explain the reasons for the arrest. The Government confirms that Mr. Erdal was arrested on the basis of a warrant, on that date, but adds that the reasons for the arrest were also explained at the time.

76. Furthermore, according to the source Mr. Erdal was transferred from Istanbul to Ankara without his family being informed; in fact, for some 36 hours his family was entirely unaware of his whereabouts. Mr. Erdal was held in a police station from 25 September to 2 October 2020, when he was first brought before a judge.

77. The Government does not address the allegations concerning the transfer of Mr. Erdal from Istanbul to Ankara and his whereabouts being unknown for some 36 hours. It confirms, however, that Mr. Erdal was first brought before a judge on 2 October 2020.

⁸ A/HRC/19/57, para. 68.

⁹ 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; No. 20/2019, para. 81; No. 53/2019, para. 59; and No. 51/2020, para. 75.

78. The Working Group recalls that article 9 (3) of the Covenant requires anyone arrested or charged with a criminal offence to be brought promptly before a judicial authority. As the Human Rights Committee has explained in its general comment No. 35 (2014), while the exact meaning of “promptly” may vary depending on objective circumstances, delays should not exceed a few days from the time of arrest. In the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.

79. In the present case, the Working Group observes that Mr. Erdal was arrested on 25 September but did not appear before a judge until 2 October. Thus, seven days passed from the moment of his arrest until he was first brought before a judicial authority and the Government has presented no reasons to justify such delay despite having had the opportunity to do so. The Working Group therefore finds a violation of article 9 (3) of the Covenant.

80. Moreover, 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 recalls that according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, 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.¹⁰ This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty,¹¹ and 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, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrests, house arrest, solitary confinement, detention for vagrancy or drug addiction, and detention of children for educational purposes.¹² 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.¹³

81. The right to take proceedings before a court in order for that court to decide upon the lawfulness of detention must also be afforded without delay, as specified in article 9 (4) of the Covenant. As the Human Rights Committee has specified in its general comment No. 35 (2014), the adjudication of the case should take place as expeditiously as possible. In the present case, Mr. Erdal was not provided with the opportunity to exercise his right to challenge the legality of his detention until after some six or seven days following his arrest and the Government has presented no explanation for this delay. The Working Group therefore finds a breach of article 9 (4) of the Covenant.

82. Furthermore, the source has alleged that Mr. Erdal was prevented from seeing his lawyer until some 48 hours after his arrest. The Government contests this and argues that Mr. Erdal was able to see his lawyer the day after his arrest and that his access to a lawyer was delayed on the basis of an exception provided for in national law in exceptional circumstances to preserve the evidence. In its additional comments, the source argues that the delay was actually 34 hours and underlines that, as it argued before, during those 34 hours Mr. Erdal was in fact held incommunicado at an unknown location. The Working Group notes that the Government has not addressed the allegations that the whereabouts of Mr. Erdal were unknown for over 30 hours after he was first detained.

83. Noting that the whereabouts of Mr. Erdal were entirely unknown following his arrest and that the authorities failed to acknowledge his whereabouts, leading Mr. Erdal’s family to search for him for over 30 hours, the Working Group considers that Mr. Erdal was in fact subjected to enforced disappearance during that period. Recalling that enforced disappearances are prohibited under international law and constitute a particularly aggravated

¹⁰ A/HRC/30/37, paras. 2–3.

¹¹ *Ibid.*, para. 11.

¹² *Ibid.*, annex, para. 47 (a).

¹³ *Ibid.*, annex, para. 47 (b).

form of arbitrary detention,¹⁴ the Working Group finds a breach of article 9 (1) of the Covenant.

84. Moreover, given that Mr. Erdal was unable to contact anyone during that time, especially his lawyer, and given that access to counsel is an essential safeguard to ensure the ability of all detainees to personally challenge their detention, the Working Group finds that Mr. Erdal's right to an effective remedy enshrined in article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated. Moreover, Mr. Erdal was also placed outside the protection of the law, in violation of his right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.

85. Noting all the above, the Working Group concludes that the arrest and subsequent detention of Mr. Erdal were arbitrary and fall under category I as lacking any legal basis.

86. The source has argued that Mr. Erdal was arrested and prosecuted for the peaceful exercise of his rights to freedom of expression and assembly. The Government denies these submissions and argues that Mr. Erdal was arrested and prosecuted because of reasonable suspicion that he had committed a crime. The Government explains that, in the light of the concrete evidence that was collected during the investigation and the fact that Mr. Erdal was a member of the HDP Central Executive Committee and that the Committee's calls led to public unrest, murder and terrorism, it was concluded that causality was present between his actions and the acts of violence that had taken place in 2014. In its additional comments, the source, while not denying that Mr. Erdal had indeed been part of the HDP Central Executive Committee, argues that Mr. Erdal did not take part in the emergency meeting of the HDP Central Executive Committee on 6 October 2014 at which it was allegedly decided to issue the calls at the heart of the allegations against Mr. Erdal. The source also argues that the statements issued did not call for violence in any way.

87. The Working Group notes that it is not disputed that Mr. Erdal was part of the HDP Central Executive Committee at the time when this body issued statements that, according to the Turkish authorities, incited violence and indeed caused considerable loss of life. The Working Group is mindful that the statements, however, had allegedly been made in 2014 and that Mr. Erdal was not arrested until 2020 and the Government has presented no explanation for the delay in detaining Mr. Erdal and bringing charges against him. Nevertheless, Mr. Erdal's association with HDP is not contested. In these circumstances, the Working Group is unable to conclude that the Government arrested Mr. Erdal solely for the peaceful exercise of his rights.

88. The Working Group recalls that it has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the application of domestic law by the judiciary.¹⁵ It is outside of the mandate of the Working Group to reassess the sufficiency of the evidence or to deal with errors of law allegedly committed by the domestic court.¹⁶ In the present case, it is not the role of the Working Group to investigate whether Mr. Erdal took part in the decision to issue the statements or indeed to analyse these statement to ascertain whether they incited violence. This is the sovereign domain of the national authorities and the Working Group is satisfied that the circumstances, as presented by both parties, clearly reveal that a reasonable suspicion could have been formed by the Turkish authorities regarding the involvement of Mr. Erdal.

89. Notwithstanding this, the proceedings against Mr. Erdal must still comply with the requirements of international human rights law concerning due process rights and especially articles 9 and 14 of the Covenant. In this regard, the Working Group notes the submissions of the source that Mr. Erdal was prevented from meeting his lawyers for over 30 hours after his arrest; that these meetings, once possible, did not preserve the confidentiality of their communication; that the lawyers were physically blocked by the police from speaking to their

¹⁴ See opinions No. 5/2020, No. 6/2020, No. 11/2020 and No. 13/2020. See also Human Rights Committee, general comment No. 35 (2014), para. 17.

¹⁵ Opinion No. 40/2005, para. 22.

¹⁶ See, for example, opinions No. 5/2021, No. 60/2019, No. 58/2019, No. 49/2019, No. 16/2017 and No. 15/2017.

client during the pretrial detention hearing; and that during the pretrial detention hearings secret evidence was presented to which the defence counsel had no access. The Working Group notes that the Government has not contested these allegations other than stating that Mr. Erdal's right to meet with his lawyer was restricted for 24 hours pursuant to article 154 (2) of the Code of Criminal Procedure in order to preserve the evidence and to safeguard due process guarantees.

90. In these circumstances, the Working Group finds that Mr. Erdal was denied access to legal assistance following his arrest, in violation of his right to have adequate time and facilities for the preparation of his defence and to communicate with counsel pursuant to article 14 (3) (b) of the Covenant. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and that such access shall be provided without delay.¹⁷

91. The Working Group further notes that the right to communicate with counsel enshrined in article 14 (3) (b) of the Covenant requires ensuring that counsel are able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.¹⁸ As this right was not observed in the present case, the Working Group finds a violation of article 14 (3) (b) of the Covenant.

92. The source has also argued that Mr. Erdal's pretrial hearings were based on secret evidence to which neither he nor his counsel were given access. While the Government had the opportunity to respond to this allegation, it has chosen not to do so. The Working Group recalls that, in principle, access to the case file must be provided from the outset.¹⁹ In the absence of a rebuttal from the Government, the Working Group finds that Mr. Erdal's rights under article 14 (1) and (3) (b) and (e) were also violated.

93. Noting all the above, the Working Group concludes that the violations of Mr. Erdal's right to a fair trial are of such gravity as to give his detention an arbitrary character, falling under category III.

Final remarks

94. The Working Group notes the allegations that Mr. Erdal was unable to notify his family of his whereabouts following his arrest and that these allegations have not been contested by the Government. Although the Government states that Mr. Erdal has been able to contact his family on numerous occasions, the Working Group notes that all those occasions occurred after Mr. Erdal had been presented before the judicial authorities and, specifically, that the Government has not addressed the time period immediately after his arrest. In this regard, the Working Group recalls that the authorities' failure to inform Mr. Erdal's family about his whereabouts is a violation of principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

95. Moreover, while the Government refutes that Mr. Erdal has been denied contact with his spouse, the Working Group notes the allegations by the source to that effect and recalls that such denial would be inconsistent with principle 19 of the Body of Principles. The Working Group also notes that the source has argued that such denial is anchored in the failure on behalf of the Turkish authorities to recognize same-sex relationships. While the issue at hand falls outside the mandate of the Working Group, it has decided to refer the matter to the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity for appropriate action.

96. The source has also alleged that Mr. Erdal was held in solitary confinement. This allegation is denied by the Government, which claims that Mr. Erdal was held in a single-occupancy cell rather than in solitary confinement once he was moved to the penitentiary

¹⁷ A/HRC/45/16, paras. 51–53. See also A/HRC/30/37, annex, paras. 12–15 and 67–71.

¹⁸ Human Rights Committee, general comment No. 32 (2007), para. 34. See also *Khomidova v. Tajikistan* (CCPR/C/81/D/1117/2002), para. 6.4; *Sirageva v. Uzbekistan* (CCPR/C/85/D/907/2000), para. 6.3; and *Gridin v. Russian Federation* (CCPR/C/69/D/770/1997 and Corr.1), para. 8.5. See also, for example, opinions No. 67/2020, No. 83/2018 and No. 42/2018.

¹⁹ See opinions No. 77/2020, No. 67/2020, No. 29/2020 and No. 78/2019.

institution. In its additional comments, the source clarifies that Mr. Erdal was held in solitary confinement, in a basement cell of a police station, immediately after his arrest and that, once transferred to a penitentiary institution, he was isolated from other prisoners.

97. The Working Group recalls that, according to rule 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), solitary confinement should be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. Prolonged solitary confinement, in other words solitary confinement for a time period in excess of 15 consecutive days, is prohibited under rules 43 (1) (b) and 44 of the Nelson Mandela Rules.

98. 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 the Working Group's methods of work.

Disposition

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

The deprivation of liberty of Cihan Erdal, being in contravention of articles 6, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2 (3), 9, 14 and 16 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

100. The Working Group requests the Government of Turkey to take the steps necessary to remedy the situation of Mr. Erdal 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.

101. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to unconditionally release Mr. Erdal immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate and unconditional release of Mr. Erdal.

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

103. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity for appropriate action.

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

Follow-up procedure

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

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

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

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

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

108. 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.²⁰

[Adopted on 9 September 2021]

²⁰ Human Rights Council resolution 42/22, paras. 3 and 7.