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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-third session, 30 March–8 April 2022

Opinion No. 8/2022 concerning Alettin Duman and Tamer Tibik (Malaysia and Turkey)*

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work,¹ on 16 December 2021 the Working Group transmitted to the Governments of Malaysia and Turkey a communication concerning Alettin Duman and Tamer Tibik. The Government of Malaysia did not reply to the communication. The Government of Turkey responded on 15 February 2022. Turkey is a party to the International Covenant on Civil and Political Rights, while Malaysia 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);
 - (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,

* In accordance with paragraph 5 of the Working Group's methods of work, Priya Gopalan did not participate in the discussion of the present case.

¹ [A/HRC/36/38](#).

or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

a. Allegations in relation to Alettin Duman

4. Alettin Duman, born in 1968, is a Turkish national. His usual residence is in Kuala Lumpur. Mr. Duman holds a PhD in Physics and Mathematics. He is a teacher and Principal of the Time International School (Kuala Lumpur) and Director of the Malaysian-Turkish Dialogue Institute, an organization focused on higher education, business relations and cultural exchanges. He is married with three children.

b. Arrest in Malaysia

5. According to the source, Mr. Duman was arrested on 13 October 2016 near his house in Kuala Lumpur by law enforcement agents acting on behalf of the Government of Malaysia. They did not identify themselves or present an arrest warrant. The source indicates that Mr. Duman was the first Turkish national to be abducted abroad and transferred to Turkey during an alleged campaign by the Government of Turkey against Turkish dissenters in exile.

6. On 13 October 2016, Mr. Duman left his house at around 4 p.m. to attend afternoon prayer in a mosque located approximately 500 metres from his residence. At around 8:30 p.m., when he did not return, his family tried to reach him by telephone and by calling friends from the mosque, without success. They decided to report the matter to the police who, by law, are barred from taking any action within 24 hours of the disappearance of an individual.

7. Mr. Duman's family waited in the police station until 3 a.m. on 14 October 2016 to find out what they might do to locate him. However, the Malaysian police insisted that they could not do anything for 24 hours. At about 6 a.m., Mr. Duman's family went to the mosque to enquire whether those present had witnessed anything relating to Mr. Duman. One person stated that he had seen Mr. Duman in the mosque, but that he left after the prayer.

8. After the 24-hour waiting period, Malaysian detectives went to the mosque to ask about the disappearance of Mr. Duman. More eyewitnesses stated that Mr. Duman had attended the prayer and left the mosque safely. Mr. Duman's family suspected what might have happened to him when a State-run news agency reported that the Minister for Foreign Affairs of Turkey had announced that three persons had been transferred from Malaysia and were being detained for their alleged membership of a terrorist organization.

9. According to the source, it emerged later that Mr. Duman left the mosque during the afternoon of 13 October 2016 and started to return home. As he was passing through the intersection between his home and the mosque, a minibus stopped in front of him and Malaysian men dressed in civilian clothes jumped out. They pulled Mr. Duman by his arm and tried to push him inside the minibus. Although Mr. Duman resisted, he was forced into the vehicle. The individuals did not show identification or provide any information.

10. The source reports that the perpetrators appeared to be human traffickers. To subdue Mr. Duman, one of them pointed a gun at him. As Mr. Duman tried to break free, they administered an anaesthetic, causing him to lose consciousness. When Mr. Duman woke up, he was in an abandoned building in a forest. His hands and feet were bound with thick chains. He was gagged and had tape over his eyes. It is not clear how long he was unconscious, but it is believed that he was held in this secret location for approximately 30 hours before being handed over to Turkish officials at Kuala Lumpur airport.

11. The source alleges that four people tortured Mr. Duman throughout the day. They threatened him with a gun and threatened to throw him from the second floor of the building. Other than two biscuits, they did not give him any food or water while he was tied up with thick chains. The persons holding Mr. Duman did not tell him why he had been abducted and did not make any demands of either him or his family. Mr. Duman was given permission for a last prayer. A number of unidentified individuals asked Mr. Duman many times whether he

was Uighur Turkish or Wahhabi. Mr. Duman replied that he did not belong to either of those groups.

12. Hours later, another person arrived and removed the tape from Mr. Duman's eyes. That individual showed Mr. Duman a photograph of a man and asked whether he knew him. It was the first time that Mr. Duman had seen that person and he responded that he did not know him. Mr. Duman was shown the same photograph and asked the same question while in custody later in Ankara, again replying that he did not know the man.

c. Transfer to and detention in Turkey

13. On 14 October 2016, the day of Mr. Duman's transfer to Turkey, there was another individual present in the room where he was being held. That individual is believed to have been a Turkish national. According to the source, the leader of the group of individuals who were detaining Mr. Duman told the Turkish national in English that they were mistaken and that Mr. Duman was not the person they were seeking.

14. According to the source, the only information Mr. Duman's family could obtain about the abduction was a statement on Twitter by the Minister for Foreign Affairs of Turkey and news published on the website of a news agency of the Government of Turkey. On 14 October 2016, the Minister reportedly posted on Twitter that the Malaysian authorities had surrendered three people following mutual dialogue between both Governments. The source stresses that the Minister referred to the handover of three Turkish nationals, including Mr. Duman, on the evening of 13 October 2016, while Mr. Duman was still being held in a secret location in a Malaysian forest. The Malaysian authorities had not disclosed Mr. Duman's whereabouts to his family, friends and colleagues or acknowledged his detention when the Minister stated that three persons had been handed over to Turkey. The source claims that that is an indication that the abduction of Mr. Duman was carried out by the Government of Malaysia, through agents acting on its behalf and with its support, at the request of the Turkish authorities.

15. The source reports that the Minister for Foreign Affairs of Turkey subsequently provided further details, including that he had met with the Prime Minister of Malaysia the week before in Thailand. On that occasion, the Prime Minister had affirmed that his Government would hand over three individuals. Although the Minister for Foreign Affairs referred to the agreement to transfer three individuals, the identity of the third individual was never made public.

16. The source alleges that Mr. Duman was transferred to Kuala Lumpur airport approximately 30 hours after being abducted. Once at the airport, the Malaysian individuals who had abducted Mr. Duman handed him over to Turkish officials. Mr. Duman was not carrying any travel documents, which remain with his family. The source argues that the circumstances demonstrate a high level of coordination between both Governments. Approximately one hour later, Mr. Duman was taken on board Turkish Airlines flight TK61.

17. The flight landed in Istanbul at around 5:05 a.m. on 15 October 2016. Mr. Duman was taken to the police station at the airport. Before he said anything, the police officers started yelling at him and he could not understand what was going on, as he was still in a state of shock. The source states that when a police officer recorded Mr. Duman's name, he questioned another officer about Mr. Duman's presence since there was no warrant for his arrest. The police officer telephoned his counterparts in Ankara to request that an arrest warrant be issued for Mr. Duman. Mr. Duman was then transferred to Ankara for investigation.

18. During a hearing on 7 August 2017, Mr. Duman described the events surrounding his abduction, torture and ill-treatment in Malaysia and Turkey.

19. Following his abduction in Malaysia, Mr. Duman's eyes were taped, and his hands and feet were cuffed and connected at his neck with large locks. Owing to the large and heavy locks, as well as the short chain, it was difficult for Mr. Duman to move, and he ran into the wall many times. He was constantly beaten and threatened with death because he did not recognize the person shown to him in the photograph.

20. Following his arrival in Turkey, Mr. Duman was transferred from Istanbul to Ankara. He was held in the Milli Piyango (National Lottery Gym) custody centre where he was allegedly subjected to constant physical and psychological torture by an interrogation team of six to seven individuals between 15 October and 7 November 2016. As soon as Mr. Duman arrived at the police station in Ankara, the police asked him for his telephone number. As he tried to remember, one police officer began to punch him in the face and chest.

21. According to the source, the Turkish officers assured Mr. Duman that even if they could not find anything incriminating against him, they would nevertheless punish him. The interrogation sessions started immediately after his medical examination and lasted for hours. The perpetrators reportedly used a variety of techniques so that no trace was left on Mr. Duman's body. They beat him by hitting his kidneys, forehead and fingers. The traces of torture had mostly disappeared before the next medical examination. After the first interrogation, Mr. Duman's eyes were covered with tape. He was handcuffed with his hands behind his back the entire time. He was constantly beaten during interrogation sessions and deprived of food and water. On many occasions, the police officers allegedly tried to choke Mr. Duman by not letting him breathe. In addition, he was subjected to harassment and threats at gunpoint. The source claims that Mr. Duman was told to confess, but as the officers could not find anything incriminating and there was nothing to confess, the torture continued and became increasingly severe.

22. The source reports that police officers beat Mr. Duman in the head, face and chest, near his heart. He was forced to stand while officers hit his knees, hands, shoulders and head with different objects. Every time Mr. Duman was interrogated, police officers beat him until he was unable to walk. When the torture was over, they waited for a while before sending him back to his cell to avoid letting other detainees become aware of the torture. During the interrogations, Mr. Duman was reportedly stripped naked and sexually assaulted. A bag was placed over Mr. Duman's head, making it difficult for him to breathe, especially since he has his asthma.

23. The source also reports that Mr. Duman was repeatedly threatened that the authorities would transfer his family members to Turkey and sexually assault them. According to the source, the officers burned Mr. Duman's ears using a lighter, and also used cigarettes to threaten to burn his eyes, which eventually left him blind. They also squeezed Mr. Duman's fingers with a bench vice. He was taken to a lime pit and threatened at gunpoint with death if he did not reveal "everything". Mr. Duman was also taken to a stairwell and told that he would be pushed down the stairs, making it look like an escape attempt. The police officers used mock executions to force him to admit guilt. During the interrogations, Mr. Duman pleaded for water, but the officers denied his requests. Every time that Mr. Duman saw a doctor, police officers sat next to him to deny his requests for medication, such as painkillers, and discourage communication with medical staff.

24. In addition, the source claims that Mr. Duman was denied the right to communicate with his family members. After Mr. Duman was sent to prison on 7 November 2016, he asked the prison director to allow him to call his family members. However, that request was denied.

25. Since his transfer to Turkey, Mr. Duman has been placed under extreme stress and traumatized. After Mr. Duman was transferred to the Sincan Prison in Ankara, he was placed with another 30 detainees in a cell with a capacity for 15 people, where some detainees were sleeping on the ground. He stayed in that cell until December 2017.

26. From December 2017, Mr. Duman was kept in solitary confinement for more than 18 months. During that time, he was allowed to walk for only 30 minutes a day in the prison garden with another person. The source recalls that prolonged solitary confinement for 22 hours a day or more without meaningful human contact over a period exceeding 15 days violates rule 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). It also constitutes cruel, inhuman or degrading punishment, and may amount to torture, certainly if applied for months or years. According to rule 43 of the Nelson Mandela Rules, in no circumstances may restrictions or disciplinary sanctions amount to torture or other ill-treatment. According to the source, it is unclear why

Mr. Duman poses a security risk of such magnitude to require isolation for more than 18 months.

27. The source reports that the prison cells are dirty and the air quality is poor. Mr. Duman had health issues, particularly asthma, in Malaysia and could only breathe at 35 per cent of normal capacity. Since his transfer to Turkey, Mr. Duman has experienced shock and his physical and mental health have deteriorated significantly.

d. Legal proceedings in Malaysia

28. According to the source, Mr. Duman, his family and his lawyer did not have any opportunity to defend his rights. Mr. Duman was never brought before a court, nor did the individuals who held him have any intention of bringing him before a court. Immediately after his abduction, Mr. Duman was held incommunicado at a secret location without any possibility of challenging the lawfulness of his detention. He was transferred to the airport the following day and forcibly removed to Turkey.

29. The source emphasizes that even if Mr. Duman had been able to challenge the lawfulness of his detention, and even if a court had rendered a favourable decision, it is highly unlikely that he could have avoided another abduction and subsequent transfer to Turkey.

e. Legal proceedings in Turkey

30. On 15 October 2016, Mr. Duman's family received a telephone call from a relative in Istanbul. The relative had been informed by the Turkish police that Mr. Duman was being held on charges of membership of a terrorist group. His family asked another relative who lives in Ankara to visit the police station. However, the police did not allow Mr. Duman's family member to see him. The family member returned every day to the police station, where Mr. Duman was held for 21 days, but was never given an opportunity to speak with him.

31. On 3 November 2016, a State-appointed lawyer informed Mr. Duman's family that he would appear in court the following day for an arraignment hearing. Mr. Duman was first seen by his family on 4 November 2016, 22 days after his abduction. Mr. Duman was unable to walk, or take even a few steps, owing to the pain in his legs resulting from the torture.

32. According to the source, the judge adjourned the hearing to 7 November 2016 on the grounds that some documents were missing. On 7 November 2016, Mr. Duman appeared again before the judge. After giving his testimony, he waited for a few hours to receive a decision, handcuffed in a hallway outside the courtroom.

33. The police accused Mr. Duman of using ByLock, a messaging application. However, Mr. Duman stated that he had never used this application, that ByLock could not be uploaded on iPhones, and that he was an iPhone user. Nevertheless, the court decided to place him in detention until it was clear whether he had used the application. The prosecutor also alleged that Mr. Duman's Turkish telephone number was signed up to ByLock and had been used several times. His lawyer reiterated that this application could not be installed on iPhones and that Mr. Duman had been using iPhone models for some years.

34. Mr. Duman's case was considered at five subsequent hearings on 6 June, 26 September and 21 December 2017, and on 7 February and 17 April 2018. At those hearings, the charges consisted of using ByLock messenger and holding a Bank Asya account.

35. In its decision of 17 April 2018, the court found that Mr. Duman was guilty, noting that in 1993, after Mr. Duman graduated from university, he went to Uzbekistan and worked at certain schools. In 2011, he moved to Malaysia, where he worked until 2016. On 20 December 2014, Mr. Duman's telephone number was used on the ByLock application and the messages demonstrated that he was an administrator of the Fethullah organization, considered a terrorist movement by Turkey. The court considered that Mr. Duman coordinated the organization's activities through ByLock. The court also found that Mr. Duman had worked for terrorist organizations in Malaysia, as well as in non-profit organizations and schools, and had held meetings with the Malaysian Deputy Prime Minister.

36. The source reports that Mr. Duman and his lawyer rejected the court decision, noting that during his 24 years living outside Turkey, whether in Uzbekistan or Malaysia, Mr.

Duman never had any relationship with a terrorist organization. The school where he worked in Uzbekistan belonged to the Government of Uzbekistan. Moreover, Mr. Duman denied meeting with the Deputy Prime Minister of Malaysia, and using the ByLock application. Mr. Duman reportedly asked to see evidence of his alleged criminal behaviour.

37. In regard to the accusation concerning his former bank account, Mr. Duman reiterated during the hearing on 6 June 2017 that he had an account, but that it had been blocked for a long time due to security reasons and that he had not used it.

38. The court sentenced Mr. Duman to 12 years' imprisonment. However, the judge increased his sentence to 18 years' imprisonment, having concluded that Mr. Duman was a member of a terrorist organization in which he was alleged to have held an administrative role. The sentence was based on Mr. Duman's alleged use of the ByLock application. Mr. Duman filed an appeal, but the Court of Appeal upheld the sentence of 18 years' imprisonment. Mr. Duman again brought an appeal to the Supreme Court, without any expectation that it would provide relief.

39. According to the source, Mr. Duman was tried by a judicial system that is entirely dependent on the executive. Mr. Duman was not in Turkey at the time the authorities claim that he used a Turkish number to download and use ByLock. Even if he had used a freely downloadable application, which is not in itself a crime, his sentence is highly unfair.

40. In Turkey, Mr. Duman's family experienced significant difficulty in hiring a lawyer. According to the source, when lawyers learned that Mr. Duman was transferred from Malaysia, they refused to even consider taking on his case, because that would be sufficient to imprison them. After months of searching, Mr. Duman's family finally found a lawyer who would take the case, but he could not assist because of the immense pressure in the present case. Mr. Duman was in effect abandoned by his lawyer, owing to the lawyer's reasonable fear that he could be associated with an alleged terrorist movement if he continued to provide legal representation.

41. Mr. Duman is currently serving his sentence in Keskin Prison in Kirikkale, southeast of Ankara, in solitary confinement. There are food shortages in the prison and Mr. Duman is suffering from malnutrition. His final appeal was rejected by Turkey's Constitutional Court. The source emphasizes that Mr. Duman's psychological health is deteriorating and he is currently taking heavy antidepressant medication.

f. Allegations in relation to Tamer Tibik

42. Tamer Tibik, born in 1974, is a Turkish national. His usual residence is in Kuala Lumpur. Mr. Tibik is a businessman and Secretary-General of the Hizmet-affiliated Malaysian Turkish Chamber of Commerce and Industry. He is married with two children.

43. The source reports that Mr. Tibik was abducted in Kuala Lumpur on 13 October 2016 by law enforcement agents acting on behalf of the Government of Malaysia. The agents did not present a warrant or other decision by a public authority ordering his detention.

g. Background

44. According to the source, the present case demonstrates a pattern of discrimination and persecution against persons whose family members are accused of links to certain movements in Turkey. The discrimination intensified in the aftermath of a corruption scandal in December 2013 and the attempted coup d'état in Turkey on 15 July 2016.

45. The source reports that a close relative of Mr. Tibik, who worked as a government employee, was subjected to harassment, threats, insults and mocking at work in 2015. That year, the human resources department requested information about the schools attended by the children of employees and the places of employment of their spouses. Employees were required to submit medical reports, medication expenses and similar documents, which were reportedly transmitted to Turkey's intelligence agency. In addition, the children of the families associated with the Hizmet/Gülen movement were bullied at school.

46. By mid-2015, the situation was unbearable, and Mr. Tibik and his family decided to move to Malaysia to escape persecution. Mr. Tibik left first, arriving in Kuala Lumpur in

mid-September 2015. After Mr. Tibik left Turkey, the police visited the family residence twice, and summoned his relatives to the police station to ask about his whereabouts.

47. Following the attempted coup d'état on 15 July 2016, which was blamed on the Hizmet/Gülen movement, Mr. Tibik received news about the closure and seizure of thousands of charitable associations, companies and media outlets, including the school attended by his children, hospitals and his former company. On 7 August 2016, Mr. Tibik's name and photograph appeared in a newspaper article in which he was accused of being part of the Fethullah terrorist organization and one of its most important financial officers.

h. Arrest in Malaysias

48. Less information is available in Mr. Tibik's case than in the case of Mr. Duman. The source notes that both individuals were abducted on the same day in very similar circumstances, and it is also likely that they were held by the same group of individuals. They were also likely held in the same facility. However, Mr. Tibik's account does not include all the events relating to his abduction, detention and transfer. While Mr. Duman's account was included in the official report, Mr. Tibik's account was not.

49. The source reports that Mr. Tibik was abducted on 13 October 2016 at approximately 12:30 pm from the parking lot of the building where he was taking an English course. As Mr. Tibik was leaving his class, four individuals suddenly grabbed him by the arms and forced him into a van. Mr. Tibik requested their identification, which he could not see properly. The individuals handcuffed Mr. Tibik and forced him to wear black glasses, impeding his vision. After driving for a while, they arrived at a two-storey, detached and deserted building in the woods. There were other people in the building. When one of the men asked Mr. Tibik if he knew why he was there, and he responded that he did not, he was informed that he would be sent back to Turkey the following day and that they would inform his family.

50. After some time, Mr. Tibik was restrained with a dog chain around his neck, between his hands and ankles, and locked onto the wall. A band and glasses were put on his eyes. When Mr. Tibik requested permission to pray, he was allowed to do so, but was kept in chains most of the time. In the evening, he was given some water and food, but was not allowed to eat by himself, as he was chained. The individuals put water and food in his mouth. At night, some other individuals came and interrogated Mr. Tibik. He was forced to sleep on the cold ground with two other people. The next day, they were taken to the airport handcuffed with their eyes and mouths covered with bands. After waiting at the airport for some time, they boarded a flight in the evening of 14 October 2016.

51. Over the next two days, Mr. Tibik's family had no information about his whereabouts. His family, neighbours and friends searched for him in hospitals and police stations, fearing that he had been involved in a traffic accident or was the victim of a crime. Following the disappearance of Mr. Tibik and Mr. Duman, their colleagues filed missing persons' reports with the Malaysian police. They had not foreseen the possibility of both men being abducted and transferred to Turkey.

i. Transfer to and detention in Turkey

52. The only information about Mr. Tibik's transfer to Turkey was a statement posted on Twitter by the Minister for Foreign Affairs of Turkey on 14 October 2016 (see para. 14). Mr. Tibik was placed on Turkish Airlines flight TK61, departing Kuala Lumpur at 11:05 pm on 14 October 2016. Mr. Duman and Mr. Tibik appear to have been on the same flight, but were held separately without any contact. The flight landed in Istanbul at around 5:05 am on 15 October 2016.

53. The source reports that Mr. Tibik was taken to Ankara TEM sports gym on 15 October 2016 where he remained for 18 days, having to sleep on the floor and being given little food or water. A decision on his arrest was issued two weeks later. Officers took him for interrogation every day after his medical examination at 4 p.m., and subjected him to psychological torture.

54. During this period, the officers did not let Mr. Tibik change his clothes or brush his teeth. The police officers who visited the gym continuously abused him. The lights were kept

on until 3 a.m. to prevent him from sleeping. During the interrogations, the officers insulted and humiliated Mr. Tibik. They threatened to bring one of Mr. Tibik's family members to the location and to subject Mr. Tibik to beatings.

j. Legal proceedings in Malaysia

55. According to the source, Mr. Tibik, his family and his lawyer did not have any opportunity to defend his rights. Mr. Tibik was never brought before a court, nor did the individuals who held him have any intention of bringing him before a court. Immediately after his abduction, Mr. Tibik was held incommunicado at a secret location without any possibility of challenging the lawfulness of his detention. He was transferred to the airport the following day and forcibly removed to Turkey.

56. The source emphasizes that even if Mr. Tibik could have challenged the lawfulness of his detention, and even if a court had rendered a favourable decision, it is highly unlikely that he could have avoided another abduction and subsequent transfer to Turkey.

k. Legal proceedings in Turkey

57. Following his transfer to Turkey, Mr. Tibik was sent to the Sincan T Type Prison in Ankara. According to the source, an arrest warrant for Mr. Tibik was issued approximately two weeks after he was transferred to Turkey.

58. Prior to leaving Turkey in 2015, Mr. Tibik had hired a lawyer. However, his lawyer was imprisoned following the attempted coup d'état and was unable to represent Mr. Tibik. Following many rejections, Mr. Tibik's family hired a lawyer to prepare his defence. Ten days after Mr. Tibik was remanded in custody, the lawyer had not yet been allowed to see him. The authorities decided not to accept Mr. Tibik's lawyer, and a lawyer was assigned to him. The lawyer did not protect Mr. Tibik's interests, only those of the prosecution. When Mr. Tibik's family requested copies of the file and court documents, the lawyer would not share them. The source claims that, in the absence of a lawyer of his own choice and without documents to mount a meaningful defence, Mr. Tibik's right to a fair trial was violated.

59. According to the source, Mr. Tibik's family was advised by the prosecutor to return to Turkey to convince Mr. Tibik to confess his involvement in the attempted coup d'état. They were told that if Mr. Tibik confessed, he would be sentenced to only 2 years' imprisonment, but risked a 15-year sentence if he did not confess. When Mr. Tibik's family stated that he was innocent and asked for relevant documents, the prosecutor refused and stated that if Mr. Tibik's family returned to Turkey, they would be immediately detained.

60. Mr. Tibik was accused of being a member of the Hizmet/Gülen movement; of supporting the organization financially; of working at companies affiliated with the organization; of encouraging people to vote for the Republican People's Party in local elections; of encouraging people to vote for independent candidates in general elections; of attempting to increase subscriptions to the newspaper, *Zaman*; of vacationing at a hotel affiliated with the organization; and of using the ByLock application.

61. On 29 May 2018, Mr. Tibik was sentenced, along with another person, to 12.5 years in prison for membership in a terrorist organization. Seven other people were sentenced to 6 years and 3 months in prison for "being a member of an armed terrorist organization". The court separated the files of four other defendants accused of the same charges whose whereabouts were unknown. All of the defendants demanded their acquittal.

62. The prosecution concluded that Mr. Tibik was one of the founders and leaders of the Fethullah terrorist organization. The source alleges that all of the accused persons in the proceedings, who are former employees of the same company, stated that they were forced to sign statements that had been written in advance. During his custody, Mr. Tibik was threatened and forced to accept the charges against him.

63. Mr. Tibik was held in solitary confinement at Keskin T Type Closed Prison, E-47 Ward, in Kirikkale. The meals were insufficient and if prisoners did not buy food from the canteen, or if their families did not bring food, they would certainly starve. Prisoners could not mention such issues as torture or ill-treatment, as the prison telephones were tapped and their right to communicate with the outside world would be revoked. Since the prison guards

always accompanied prisoners, even during visits by lawyers, prisoners were not able to discuss their circumstances due to fear of retaliation from the prison administration.

1. Legal analysis

64. The source submits that the detention of Mr. Duman and Mr. Tibik is arbitrary under categories I, II, III and V. The source argues that it is clearly impossible to invoke any legal basis justifying their abduction and detention. Mr. Duman and Mr. Tibik were not afforded the right to seek and to enjoy asylum in Malaysia. Removing a person to another State when there is a genuine risk that the person will be detained without legal basis or denied the right to a fair trial is not compatible with article 14 of the Universal Declaration of Human Rights. Moreover, the detention of Mr. Duman and Mr. Tibik failed to meet any minimum international standards of due process, and it constitutes a violation of international law for reasons of discrimination based on political or other opinion.

Responses from the Governments

65. On 16 December 2021, the Working Group transmitted the source's allegations to the Governments of Malaysia and Turkey under its regular communication procedure, requesting both Governments to provide detailed information by 14 February 2022 about the situation of Mr. Duman and Mr. Tibik. In particular, the Working Group requested the Government of Malaysia to provide information about the circumstances in which Mr. Duman and Mr. Tibik were deprived of their liberty, and clarification regarding the legal provisions justifying their apprehension, transfer and detention.

66. On 11 February 2022, the Government of Turkey submitted its reply, which focused on the alleged activities of the Fethullah terrorist organization in Turkey, in general, without discussing the cases of Mr. Duman and Mr. Tibik or addressing the allegations made by the source about the arbitrariness of their detention. The Government of Turkey requested that the special procedures not allow the Fethullah terrorist organization and its members to abuse those mechanisms and asked that the organization's allegations be dismissed. The response from the Government indicates that Mr. Tibik was released on 14 January 2022, while criminal proceedings against him are still ongoing.

67. On 16 February 2022, the Government of Malaysia requested an extension of the deadline for its response for an additional two months.² Given that the request was made after the deadline for response, the Working Group did not grant the extension.³ The Government of Malaysia did not submit any further response to the communication.

68. In accordance with paragraph 16 of its methods of work, the Working Group will render the present opinion on the basis of all the information it has obtained. ***

Further comments from the source

69. On 18 February 2022, the Working Group transmitted the response from the Government of Turkey to the source. The source argues that the response of the Government does not address the allegations made and confirms that Mr. Duman continues to be detained in difficult conditions, while Mr. Tibik was conditionally released pending consideration of his appeal.

Discussion

70. In the absence of a response from the Government of Malaysia and in view of the timely response from the Government of Turkey, the Working Group has decided to render the present opinion in accordance with paragraph 15 of its methods of work.

71. In determining whether the deprivation of liberty of Mr. Duman and Mr. Tibik was arbitrary, the Working Group has regard to the principles established in its jurisprudence to

² The Working Group's methods of work allow an extension to be granted for a maximum of one month (A/HRC/36/38, para. 16).

³ Opinions Nos. 1/2017, para. 36, No. 9/2019, para. 24, No. 85/2020, para. 60, and No. 10/2021, para. 45.

deal with evidentiary issues. If the source has presented a prima facie case of breach of the international law constituting arbitrary deprivation of liberty, the burden of proof should be understood to rest upon each Government to refute the allegations.⁴

72. Given the similarity of the allegations in relation to Mr. Duman and Mr. Tibik, the Working Group will consider their cases together under each relevant category of its methods of work, noting any findings particular to either individual. The Working Group will consider the allegations against the Governments of Malaysia and Turkey separately.

a. Allegations against Malaysia

Category I

73. The source alleges that Mr. Duman and Mr. Tibik were abducted on 13 October 2016 by law enforcement agents acting on behalf of the Government of Malaysia who did not identify themselves or present an arrest warrant. Both were allegedly held in a secret location in the forest in Malaysia, possibly together, and forcibly removed to Turkey on 14 October. Although it had an opportunity to do so, the Government of Malaysia did not submit any information to challenge these allegations.

74. The Working Group considers that the source's account of the abduction of Mr. Duman and Mr. Tibik is credible and notes that it was not rebutted by the Government of Malaysia. While the agents who abducted Mr. Duman and Mr. Tibik were unidentified, the circumstances of the abduction strongly suggest that they were acting on behalf of the Malaysian authorities. The Working Group notes the source's uncontested allegation that the Minister for Foreign Affairs of Turkey posted on Twitter that Malaysia had surrendered three Turkish nationals on 13 October 2016 following mutual dialogue between both Governments. However, the handover had not been publicly disclosed by the Malaysian authorities at that point. Moreover, the handing over of both men at the airport to board a flight without travel documents suggests the involvement of, and a high degree of coordination among, State agents from both Governments, rather than a random abduction. The whereabouts of Mr. Duman and Mr. Tibik were not disclosed to their families, friends and colleagues, who reportedly went to great lengths to locate them.

75. The source's account demonstrates that Mr. Duman and Mr. Tibik were deprived of their liberty against their will, with the involvement of agents acting on behalf of the Government of Malaysia, who refused to disclose their fate and whereabouts.⁵ As a result, the Working Group considers that Mr. Duman and Mr. Tibik were subjected to enforced disappearance between 13 and 14 October 2016, and refers this case to the Working Group on Enforced or Involuntary Disappearances.

76. Enforced disappearance constitutes an aggravated form of arbitrary detention.⁶ The abduction of Mr. Duman and Mr. Tibik took place completely outside established legal processes, in violation of article 9 of the Universal Declaration of Human Rights. Indeed, the manner in which both men were abducted suggests a complete disregard for legal procedures. They were reportedly forced into vehicles by several agents, and incapacitated through the administration of an anaesthetic in Mr. Duman's case and by plastic handcuffs and dark glasses in Mr. Tibik's case. Moreover, both men were held at a secret location at which chains and permanent wall fixtures were reportedly used, suggesting that this location is not temporary. The Working Group urges the Government of Malaysia to close this abandoned building immediately and put an end to its use as a secret detention facility.

77. The source further alleges that neither Mr. Duman nor Mr. Tibik was served with an arrest warrant. The Government of Malaysia did not respond to this allegation. The right to be served with an arrest warrant is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary detention under articles 3 and 9 of the Universal Declaration of Human Rights, as well as under principles 2, 4 and 9 of the Body of Principles

⁴ A/HRC/19/57, para. 68.

⁵ A/HRC/16/48/Add.3 and Corr.1, para. 21.

⁶ Opinions No. 11/2020, para. 41, 41/2020, para. 61, and 37/2021, para. 65.

for the Protection of All Persons under Any Form of Detention or Imprisonment.⁷ By failing to present a warrant and failing to inform Mr. Duman and Mr. Tibik of the reasons why they were detained, the authorities did not invoke a legal basis for their detention.⁸

78. In addition, the Government of Malaysia has not replied to the allegation that Mr. Duman and Mr. Tibik were held incommunicado until their forcible removal to Turkey. They were not permitted to contact their families or lawyers, and the Malaysian authorities did not acknowledge their detention, thus placing them outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights. Holding persons incommunicado violates their right to challenge the lawfulness of their detention before a court.⁹ Judicial oversight of detention is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.¹⁰ Given that Mr. Duman and Mr. Tibik were unable to personally challenge their detention, or to do so through a lawyer of their choice, their right to an effective remedy under article 8 of the Universal Declaration of Human Rights was also violated. Their deprivation of liberty in Malaysia falls within category I.

Category II

79. The source submits that the detention of Mr. Duman and Mr. Tibik falls under category II because they were not afforded the right to seek and to enjoy asylum in Malaysia. According to the source, removing a person to another State when there is a genuine risk that the person will be detained without legal basis or denied the right to a fair trial is not compatible with article 14 of the Universal Declaration of Human Rights.

80. While Mr. Duman and Mr. Tibik had moved to Malaysia for employment and to escape persecution in Turkey, they do not appear to have been detained for seeking asylum. Rather, it appears that Mr. Duman and Mr. Tibik were detained in Malaysia and forcibly transferred at the request of the Government of Turkey for having exercised freedom of expression through their alleged use of the ByLock application.¹¹ The allegations are explored further in paragraphs 96 to 100 below in relation to Turkey. The deprivation of liberty of Mr. Duman and Mr. Tibik in Malaysia falls within category II.

Category III

81. The source alleges that the abduction and detention of Mr. Duman and Mr. Tibik failed to meet any minimum international standards of due process. The Government of Malaysia did not address this allegation.

82. As the Working Group has stated, involuntary expulsion to a foreign State without a hearing by judicial authorities cannot be in conformity with due process.¹² International law regarding extradition provides procedures that must be observed in returning individuals to face criminal proceedings in another country and in ensuring that their right to a fair trial is protected.¹³

83. The source has established a credible case, which was not rebutted by the Government of Malaysia, that those procedures were not observed in this case. Mr. Duman and Mr. Tibik were seized by the Malaysian authorities and handed over to Turkey without a fair and public extradition hearing by an independent and impartial tribunal in Malaysia. The Government of Malaysia could have transferred Mr. Duman and Mr. Tibik through normal extradition channels, but chose to circumvent this process by forcibly transferring them to Turkey. In doing so, the Government of Malaysia allegedly allowed Turkish agents to operate on Malaysian territory through their presence during the interrogation of Mr. Duman and his

⁷ Opinions No. 37/2020, para. 52, and No. 65/2020, para. 75.

⁸ Opinion No. 37/2021, para. 65.

⁹ Opinions No. 10/2019, para. 65, and No. 36/2020, para. 53.

¹⁰ [A/HRC/30/37](#), para. 3.

¹¹ Opinion No. 42/2020, paras. 62 and 83.

¹² Opinions No. 42/2020, para. 64, and No. 84/2020, para. 53; and [A/HRC/48/55](#), para. 54. See also [A/HRC/48/57](#) and [A/HRC/49/45](#) (reiterating that transnational transfers must comply with international human rights law).

¹³ Opinions No. 33/2020, para. 63, No. 42/2020, para. 60, and No. 84/2020, para. 54; and [A/HRC/48/55](#), para. 54.

handover to Turkish officials at the airport in Kuala Lumpur. Given the similarity between the abductions of Mr. Duman and Mr. Tibik, it is likely that Turkish officials were also involved in Mr. Tibik's transfer to Turkey. By facilitating the transfer of Mr. Duman and Mr. Tibik, the Government of Malaysia denied their fair trial rights.¹⁴

84. The Working Group recalls that individuals should not be expelled to another country when there are substantial grounds for believing that their lives would be at risk, or that they would be in danger of being subjected to torture or ill-treatment.¹⁵ The risk of arbitrary detention in the receiving State must be among the elements taken into consideration.¹⁶ According to the source's uncontested allegations, the Malaysian authorities facilitated Mr. Duman's and Mr. Tibik's forcible transfer to Turkey without any apparent regard for the risks, relying only on the agreement between both Governments to surrender three Turkish nationals following "mutual dialogue". Moreover, the Government of Malaysia has not provided any information to suggest that it assessed the charges and evidence against Mr. Duman and Mr. Tibik, and whether they would receive a fair trial. The Working Group considers that the above-mentioned elements represent a violation of the principle of non-refoulement.¹⁷ The deprivation of liberty of Mr. Duman and Mr. Tibik in Malaysia falls within category III.

Category V

85. The source alleges that the detention of Mr. Duman and Mr. Tibik was based on their political or other opinions. The Government of Malaysia did not contest this allegation.

86. In its jurisprudence, the Working Group has noted a pattern of targeting persons with alleged links to the Hizmet/Gülen movement on the discriminatory basis of their political or other opinions.¹⁸ In the present case, the Government of Malaysia has, at the request of the Government of Turkey, detained Mr. Duman and Mr. Tibik based on a prohibited ground of discrimination. Their deprivation of liberty in Malaysia falls within category V.¹⁹

87. The Working Group expresses its grave concern at the alleged treatment of Mr. Duman and Mr. Tibik following their abduction, which may amount to torture and ill-treatment, in violation of the absolute prohibition of torture as a peremptory norm of international law,²⁰ and the prohibition of torture and ill-treatment under article 5 of the Universal Declaration of Human Rights. The Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

88. The Working Group considers that the Government of Malaysia is responsible for its own actions in the abduction, detention and forcible transfer of Mr. Duman and Mr. Tibik, as well as the subsequent violations of their rights in Turkey.²¹ The Working Group calls upon the Government of Malaysia to take all the necessary steps to secure the immediate and unconditional release of Mr. Duman and Mr. Tibik.

b. Allegations against Turkey

89. As a preliminary issue, the Working Group wishes to clarify that the procedural rules governing its consideration of communications are contained in its methods of work. There is no provision preventing the Working Group from considering cases owing to the lack of exhaustion of domestic remedies. The Working Group has also confirmed this in its jurisprudence.²²

¹⁴ Opinion No. 42/2020, paras. 64–67.

¹⁵ A/HRC/4/40, paras. 44–45.

¹⁶ Opinions No. 11/2018, para. 54, and No. 15/2021, para. 94; and A/HRC/48/55, para. 59.

¹⁷ Opinion No. 48/2020, para. 83.

¹⁸ Opinions No. 11/2018, No. 42/2018, No. 43/2018, No. 10/2019, No. 53/2019, No. 79/2019, No. 2/2020, No. 29/2020, No. 30/2020, No. 47/2020, No. 51/2020 and No. 84/2020.

¹⁹ Opinion No. 11/2018, para. 61.

²⁰ Opinions No. 46/2017, para. 25, and No. 70/2019, para. 72.

²¹ Opinions No. 11/2018, para. 58, No. 42/2020, para. 69, No. 51/2020, para. 72, and No. 84/2020, para. 59.

²² Opinions No. 10/2019, para. 81, and No. 84/2020, para. 61.

90. Second, the state of emergency – declared after the attempted coup d'état, endorsed by the Turkish parliament on 21 July 2016 and lifted on 19 July 2018 – and derogations from the Covenant were in place during the detention of Mr. Duman and Mr. Tibik.²³ However, the Working Group is empowered under its methods of work to refer to the Universal Declaration of Human Rights and customary international law.²⁴ Moreover, articles 9 and 14 of the Covenant are most relevant to the present case. 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.²⁵

91. Third, the Government of Turkey requested that the special procedures not allow the Fethullah terrorist organization and its members to abuse those mechanisms and asked that the organization's allegations be dismissed. The Human Rights Council has mandated the Working Group to consider situations of arbitrary detention worldwide, making no distinction as to who can bring allegations to its attention. The Working Group is required to act impartially and independently, and treats all submissions equally and accepts them as allegations, inviting the Government concerned to respond.²⁶ The Government of Turkey did not address the situation of Mr. Duman and Mr. Tibik, focusing instead on alleged actions of the Fethullah terrorist organization in Turkey. The Working Group regrets that the Government of Turkey did not avail itself of the opportunity to address the serious allegations in the present case.

92. The Government of Turkey states that Mr. Tibik was released by the Fourth Assize Court of Ankara on 14 January 2022. According to paragraph 17 (a) of its methods of work, the Working Group reserves the right to render an opinion, notwithstanding the release of the person concerned. Mr. Duman and Mr. Tibik were allegedly detained without a legal basis, in proceedings that did not afford due process and were based on discriminatory grounds. The source confirms that Mr. Duman remains in detention, while Mr. Tibik was conditionally released pending consideration of his appeal. Accordingly, the Working Group has decided to render an opinion in this case.

Category I

93. The source alleges that, following their arrival in Turkey on 15 October 2016, Mr. Duman and Mr. Tibik were arrested without a warrant. According to the source, a police officer at Istanbul airport questioned Mr. Duman's presence because no warrant had been issued for his apprehension. The officer reportedly called his counterparts in Ankara to request a warrant. An arrest warrant for Mr. Tibik was issued approximately two weeks after he was transferred to Turkey. The Government of Turkey did not address these allegations.

94. According to article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. The source provided credible information, which was not rebutted by the Government of Turkey, that Mr. Duman and Mr. Tibik were arrested without an arrest warrant, in violation of article 9 (1).²⁷ As a result, the authorities did not establish a legal basis for the detention of Mr. Duman and Mr. Tibik in Turkey.

95. The Working Group notes that Mr. Duman was abducted on 13 October 2016, but does not appear to have been brought before a Turkish court until 4 November 2016. The Government of Turkey did not indicate that Mr. Duman was presented in court at an earlier point. His right under article 9 (3) of the Covenant to be brought promptly before a judge to challenge the legality of his detention was violated.²⁸ Derogation under article 4 of the Covenant cannot justify detention that is unreasonable or unnecessary,²⁹ as in this case where

²³ C.N.580.2016.TREATIES-IV.4 (Depositary Notification).

²⁴ A/HRC/36/38, para. 7.

²⁵ Human Rights Committee, general comment No. 29 (2001), para. 4; and *Özçelik et al. v. Turkey* (CCPR/C/125/D/2980/2017), para. 9.2.

²⁶ Opinion No. 84/2020, para. 62.

²⁷ Opinions No. 44/2019, para. 52, and No. 45/2019, para. 51.

²⁸ Human Rights Committee, general comment No. 35 (2014), para. 33; CCPR/C/125/D/2980/2017, para. 9.7; and CAT/C/TUR/CO/4, paras. 19–20.

²⁹ General comment No. 35 (2014), paras. 66–67; and *Özçelik et al. v. Turkey*, para. 9.2.

it has not been subject to prompt judicial review. Given that Mr. Duman was unable to challenge his detention for 22 days, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated. The detention of Mr. Duman and Mr. Tibik in Turkey falls within category I.

Category II

96. The source alleges that in April 2018, Mr. Duman was convicted of membership in a terrorist organization and sentenced to 18 years' imprisonment. Mr. Duman's conviction was based on alleged links with the Hizmet/Gülen movement, manifested primarily through his alleged use of the ByLock application and a bank account previously held at Bank Asya. He was found to have worked in certain schools and non-profit organizations in Uzbekistan and Malaysia, and to have met with the Malaysian Deputy Prime Minister. In May 2018, Mr. Tibik was convicted of membership in a terrorist organization and sentenced to 12.5 years' imprisonment on the basis of his alleged use of ByLock. He was accused of having worked at Hizmet-affiliated companies, encouraging votes for a certain party or candidate in elections, attempting to increase newspaper subscriptions and vacationing at a Hizmet-affiliated hotel. The Government of Turkey did not address those allegations.

97. As the Working Group has noted,³⁰ while the National Security Council of Turkey had already designated the Fethullah organization and the Hizmet/Gülen movement as terrorist organizations in 2015, until recently the movement enjoyed a presence in many sectors of Turkish society. It would be rare for a Turkish citizen never to have had any contact with this movement.³¹

98. In this case, as in many others before,³² the detention of Mr. Duman and Mr. Tibik was based on their alleged links with the Hizmet/Gülen movement, as well as ordinary activities undertaken years before their detention, such as holding a bank account, using a messaging application, and conduct relating to their employment and personal life. The Government of Turkey offered no explanation as to how any of those activities, most notably the alleged use of the ByLock application, amounted to a criminal act, nor has it presented any information to suggest that Mr. Duman and Mr. Tibik were members of a terrorist organization.

99. The Working Group recalls the findings of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression during his visit to Turkey in November 2016, referring to arrests based on the existence of ByLock on a person's computer and ambiguous evidence.³³ The Human Rights Committee has also indicated that the use of ByLock and holding a Bank Asya account are insufficient to justify detention.³⁴

100. The Working Group considers that, even if Mr. Duman and Mr. Tibik had used ByLock, that activity would merely represent the peaceful exercise of their rights to freedom of expression and of opinion under article 19 of the Covenant.³⁵ The detention of Mr. Duman and Mr. Tibik in Turkey falls within category II. The Working Group refers this case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

Category III

101. Given its finding that the detention of Mr. Duman and Mr. Tibik falls within category II, the Working Group emphasizes that no trial should have taken place. Both men were, however, convicted and sentenced in April and May 2018, respectively. The source submits

³⁰ Opinion No. 51/2020, para. 90.

³¹ Commissioner for Human Rights, "Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey (CommDH(2016)35) (Council of Europe, 7 October 2016), para. 20; available at <https://rm.coe.int/16806db6f1>.

³² Opinions No. 11/2018, No. 42/2018, No. 43/2018, No. 10/2019, No. 53/2019, No. 79/2019, No. 2/2020, No. 29/2020, No. 30/2020, No. 47/2020, No. 51/2020 and No. 84/2020.

³³ A/HRC/35/22/Add.3, para. 54.

³⁴ *Özçelik et al. v. Turkey*, para. 9.4.

³⁵ Opinions No. 42/2018, No. 44/2018, No. 29/2020, No. 30/2020 and No. 51/2020.

that the proceedings failed to meet any minimum international standards of due process. The Government of Turkey did not address this allegation.

102. According to the source, Mr. Duman's family found a lawyer after months of searching, but the lawyer could not provide representation owing to a reasonable fear of being associated with an alleged terrorist movement. Similarly, Mr. Tibik's lawyer was not permitted to see him in the 10 days following his remand. The authorities assigned a lawyer to represent Mr. Tibik. The lawyer did not protect Mr. Tibik's interests, but only those of the prosecution.

103. The Working Group is concerned at the reported reluctance of lawyers to provide legal services owing to fear of imprisonment. Lawyers must be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment.³⁶ Mr. Duman and Mr. Tibik were not afforded the right to a lawyer of their choice. Moreover, Mr. Tibik's appointed lawyer failed to provide effective legal assistance.³⁷ Mr. Duman and Mr. Tibik were denied their rights, under article 14 (3) (b) and (d) of the Covenant, to communicate with, and defend themselves through, counsel of their own choosing.

104. In addition, the source alleges that both men were subjected to physical and psychological torture and ill-treatment, including prolonged solitary confinement,³⁸ in Turkey. Their treatment appears to violate article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant, and articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Working Group considers that the ability of both men to participate in their own defence prior to and during their proceedings would have been severely affected by the alleged treatment, violating the principle of the equality of arms under article 14 (1) of the Covenant.³⁹

105. It appears that Mr. Duman reported his torture at a hearing on 7 August 2017, while his proceedings were ongoing. His account was produced in an official report. Moreover, he was allegedly unable to walk at his arraignment hearing as a result of the torture.⁴⁰ There is nothing to suggest, however, that the court stayed the proceedings or ordered an independent investigation, in violation of Mr. Duman's right to be tried by an independent and impartial tribunal under article 14 (1) of the Covenant, and articles 12, 13 and 14 of the Convention against Torture.⁴¹ The Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the independence of judges and lawyers.

106. The source further alleges that on 7 August 2016, Mr. Tibik's name and photograph appeared in a newspaper article in Turkey, accusing him of being part of the Fethullah terrorist organization and one of its most important financial officers. In addition, Mr. Tibik's family requested copies of his file, but his State-appointed lawyer and the prosecutor refused to produce the requested documents. Mr. Tibik was reportedly forced to sign pre-written statements and accept the charges. In the absence of a rebuttal from the Government of Turkey, the Working Group finds violations of Mr. Tibik's right to a fair hearing, of his right to the presumption of innocence and of his right not to be compelled to confess guilt under article 14 (1), (2) and (3) (g) of the Covenant.⁴² The detention of Mr. Duman and Mr. Tibik in Turkey falls within category III.

Category V

107. The Working Group has found a pattern in Turkey of targeting those with alleged links to the Hizmet/Gülen movement. The present case is part of that pattern. Mr. Duman and

³⁶ A/HRC/30/37, annex, paras. 12–15; Basic Principles on the Role of Lawyers, principles 16–21; opinion No. 84/2020, para. 45; and A/HRC/45/16, para. 54.

³⁷ Opinion No. 6/2021, para. 64.

³⁸ Opinion No. 93/2017, para. 55.

³⁹ Opinion No. 61/2020, para. 84; and CCPR/C/TUR/CO/1, para. 14.

⁴⁰ Opinion No. 29/2017, paras. 63–65.

⁴¹ Opinion No. 4/2021, para. 106.

⁴² Human Rights Committee, general comment No. 32 (2007), para. 6.

Mr. Tibik were detained on the discriminatory basis of their alleged political or other opinion, contrary to articles 2 (1) and 26 of the Covenant. Their detention in Turkey falls within category V. The Working Group refers this case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

108. The Working Group considers that the Government of Turkey is responsible for the abduction and detention of Mr. Duman and Mr. Tibik in Malaysia, and for their forcible transfer from Malaysia to Turkey, which resulted from an agreement by the Malaysian authorities to surrender them to Turkey.⁴³

c. Concluding remarks

109. The source alleges that Mr. Duman is being held in solitary confinement. Mr. Duman suffers from malnutrition and his psychological health has deteriorated significantly.

110. Solitary confinement must only be used in exceptional cases as a last resort, for as short a time as possible, subject to independent review and authorized by a competent authority.⁴⁴ Prisoners are entitled to appropriate health care and food of nutritional value adequate for health and strength.⁴⁵ It appears that those requirements are not being met. The Working Group urges the Government of Turkey to immediately and unconditionally release Mr. Duman and Mr. Tibik and ensure that they receive the necessary medical care.

Disposition

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

Regarding Malaysia

The deprivation of liberty of Alettin Duman and Tamer Tibik, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11 (1) 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 Alettin Duman and Tamer Tibik, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11 (1) and 19 of the Universal Declaration of Human Rights and articles 2 (1), 2 (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.

112. The Working Group requests the Governments to remedy the situation of Mr. Duman and Mr. Tibik without delay and bring it into conformity with the relevant international norms, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Working Group urges Malaysia to accede to the Covenant.

113. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be:

(a) For the Government of Turkey to immediately and unconditionally release Mr. Duman and Mr. Tibik;

(b) For the Governments of Malaysia and Turkey to accord Mr. Duman and Mr. Tibik an enforceable right to compensation and other reparations in accordance with international law,⁴⁶ including for the impact on their psychological integrity of being abducted and forcibly transferred to Turkey.

114. The Working Group urges both Governments to ensure a full and independent investigation of the circumstances surrounding the arbitrary detention of Mr. Duman and Mr. Tibik, and to take appropriate measures against those responsible for the violation of their rights.

⁴³ Opinion No. 84/2020, para. 72.

⁴⁴ The Nelson Mandela Rules, rule 45 (1); and Opinion No. 52/2018, para. 79 (d).

⁴⁵ The Nelson Mandela Rules, rules 22, 24–35.

⁴⁶ [A/HRC/45/16](#), annex I.

115. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to: (a) the Working Group on Enforced or Involuntary Disappearances; (b) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; (c) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; (d) the Special Rapporteur on the independence of judges and lawyers; and (e) the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

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

Follow-up procedure

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

- (a) Whether Mr. Duman and Mr. Tibik have been unconditionally released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Duman and Mr. Tibik;
- (c) Whether an investigation has been conducted into the violation of the rights of Mr. Duman and Mr. Tibik 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 Malaysia 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.

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

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

120. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁴⁷

[Adopted on 30 March 2022]

⁴⁷ Human Rights Council resolution 42/22, paras. 3 and 7.