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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-ninth session, 23–27 November 2020

Opinion No. 67/2020 concerning Ahmet Dinçer Sakaoğlu (Turkey)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work (A/HRC/38/36), on 13 July 2020 the Working Group transmitted to the Government of Turkey a communication concerning Ahmet Dinçer Sakaoğlu. The Government replied to the communication on 9 October 2020. 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).



Submissions

Communication from the source

4. Ahmet Dinçer Sakaoğlu is a national of Turkey born in 1994. He usually resides in Izmir, Turkey. Prior to his arrest, Mr. Sakaoğlu was a senior cadet at the Turkish Air Force Academy and was about to graduate.

5. The source explains that, during the evening of 15 July 2016, Mr. Sakaoğlu was taken away from the Academy by his commanders on account of “a terrorist attack”. The source specifies that Mr. Sakaoğlu acted only upon the orders of his commanders, without knowing where he was going. The commanders took Mr. Sakaoğlu and other military cadets to a street to provide security in Beşiktaş, a district of Istanbul. The commanders strictly forbade the use of mobile telephones by the cadets. The military cadets, including Mr. Sakaoğlu, did not take any action other than to obey simple military orders aimed at providing support against said terrorist attack, such as “get on the bus”, “get off the bus”, “stop” and “walk”. Such orders were given by the military commanders, who had been appointed by their superiors, who had in turn been appointed by the State.

a. Arrest and detention

6. On the morning of 16 July 2016, Mr. Sakaoğlu and his colleagues were put on a municipal bus by order of the commanders and told that they were being taken back to the Academy. Instead, they were brought to Gayrettepe police station and held there for four days. They were not told why they had been detained and were prevented from benefiting from any legal assistance.

7. The source reports that, during that period of custody, Mr. Sakaoğlu was subjected to unjustified unlawful treatment in Gayrettepe police station. He was allegedly insulted and beaten and his belongings were forcibly taken away. He was deprived of food and water for a certain period of time. Dozens of military cadets were crammed into a very small and unsanitary police cell. During his detention, Mr. Sakaoğlu could not contact his family or a lawyer. The source adds that this treatment, which traumatized Mr. Sakaoğlu, constitutes a violation of articles 5 and 9 of the Universal Declaration of Human Rights.

8. The source highlights that Mr. Sakaoğlu was taken for medical examinations but that the psychological, verbal and physical violence he endured were not taken into account. The doctor was reportedly afraid, as he examined Mr. Sakaoğlu under the surveillance of police officers.

9. The source reports that Mr. Sakaoğlu, who was not aware of the events leading to or the reasons for his arrest, was interviewed by the police and was directed to blame the crime on his commanders. He was allegedly told that he would face problems himself if he did not do so.

10. On 19 July 2016, at 4 p.m., Mr. Sakaoğlu was taken to a courthouse in Istanbul. The following day, he was taken to a criminal court of peace to give a statement. He did not have a lawyer, but a young and inexperienced lawyer was instead appointed by the Istanbul Bar Association at the last moment. The source adds that that lawyer was not able to defend Mr. Sakaoğlu, as he had not had the opportunity to see or talk to him before the questioning by the prosecutor.

11. The source submits that the detention of Mr. Sakaoğlu was decided on the basis of that questioning, without Mr. Sakaoğlu having been allowed to inform his relatives, to choose his lawyer or to prepare a defence. In that sense, Mr. Sakaoğlu was deprived of legal assistance. Mr. Sakaoğlu was reportedly not told why he was detained and a record of the hearing was not given to him. His detention was then extended on the same grounds as those given for his initial arrest, in other words without a new reason being given for his detention. The source claims that Mr. Sakaoğlu’s detention was not terminated even after all the evidence had been collected, all the witnesses had been heard and the expert reports had been prepared, and there was still no concrete or circumstantial evidence against him. The source submits that this constitutes a violation of article 9 of the Universal Declaration of Human Rights.

12. Seven months after Mr. Sakaoğlu's arrest, an indictment was issued. The first hearing in his trial took place after nine months. However, the source reports that none of the military cadets were provided with the technical and physical facilities to prepare for their defence and that the interviews with their lawyers were limited to once a week and were recorded. For these reasons, Mr. Sakaoğlu was not able to prepare an effective defence.

13. All the witnesses and other defendants allegedly testified in favour of the military cadets. The source explains that an evaluation of all the evidence should have resulted in a ruling in Mr. Sakaoğlu's favour. On 19 January 2018, however, the twenty-fourth Heavy Penal Court of Istanbul sentenced Mr. Sakaoğlu and other military cadets to life imprisonment. To the source, this demonstrates that the court had lost its independence and impartiality.

14. The source also contends that Mr. Sakaoğlu was not afforded a fair and public trial. The court did not consider any exculpatory evidence in the reasoning for its decision and did not examine the records of the investigations, witness statements or requests made by Mr. Sakaoğlu and his lawyer. Mr. Sakaoğlu's claims were rejected without any justification. The court carried out a detailed and lengthy examination of Mr. Sakaoğlu, but no single piece of evidence was found linking him to the attempted coup d'état of 15 July 2016. Nevertheless, the court reportedly accepted the unfair, unfounded and slanderous allegations of the prosecution and, from the very beginning, considered Mr. Sakaoğlu to be guilty.

15. The source explains that Mr. Sakaoğlu was sentenced to life imprisonment on the grounds of violating the Constitutional order. It argues, however, that responsibility for planning a coup d'état cannot be attributed to a young military cadet. Mr. Sakaoğlu did not act purposefully, to reach a specific conclusion or result.

16. The source adds that all the military cadets in the Turkish Air Force Academy were expelled with the claim that 95 per cent of all military cadets in all military schools were members of the Fethullah terrorist organization/Parallel State Structure, also known as the Hizmet movement by the followers of Fethullah Gülen. However, Mr. Sakaoğlu was tried and not convicted on charges of being a member of that organization. Therefore, he was unjustly expelled from the Academy.

17. Moreover, the source argues that, during the trial, Mr. Sakaoğlu was not given sufficient time and facilities to prepare his defence. From the very beginning of the trial, he was not given the opportunity to see or examine any of the files and the records of the proceedings. The source thus considers that the trial was unfair, that the military cadets were considered guilty from the beginning of the trial, that the Court held a hearing only to give the impression of a trial and that the guilt of the accused had already been decided before the trial had taken place.

18. The source compares the case of the military cadets with that of a group of private soldiers who have been acquitted because they were considered too young to realize that the incident was an attempted coup d'état and because they could not have interpreted the orders correctly due to their low position in the hierarchy. The source notes that some of the military cadets were younger than the private soldiers and others were of the same age. The cadets were also at the same level in the command hierarchy as the private soldiers. For those reasons, the source considers that sentencing all the military cadets to life imprisonment constitutes a violation of article 10 of the Universal Declaration of Human Rights.

19. While all the defendants had to be equal before the law until a final decision was made, the source considers that Mr. Sakaoğlu was discriminated against by the court. The principle of equality of arms was not respected in the proceedings. Moreover, the source argues that the court did not react to allegations that some of the complainants' lawyers and some witnesses were insulted and threatened. After the establishment of the state of emergency, most members of the courts were replaced. In this way, collusive (or prearranged) trials were conducted. The source reports that, if and when the conduct and decisions of the courts were not liked by the authorities in power, members of the courts were replaced or dismissed directly by the Council of Judges and Prosecutors, allegedly led by the Minister of Justice. In that sense, the source considers that there has been a violation of article 7 of the Universal Declaration of Human Rights.

20. The source adds that the rights of Mr. Sakaoğlu to correspond through letters was not implemented for two years. Only after the state of emergency was lifted was he allowed by the Council of Higher Education to enrol in an educational institution. The source argues that this is a violation of article 26 of the Universal Declaration of Human Rights. Moreover, Mr. Sakaoğlu was not able to explain the conditions of his detention to a research commission that was sent in 2017 to carry out an inspection, as he was accompanied by executive officers who had tortured and mistreated him.

b. Analysis of violations

i. Category I

21. The source submits that Mr. Sakaoğlu was not notified of the reasons for his arrest on 16 July 2016. From 16 to 27 July 2016, he was not able to contact his family or to receive assistance from a lawyer. In addition, he could not object to his detention because he was not reminded of that right. The source argues that this constitutes a violation of article 9 (4) of the Covenant and renders his detention arbitrary.

22. Moreover, Mr. Sakaoğlu reportedly first learned of the charges against him when he was brought before the criminal court of peace on 20 July 2016 and was charged with violating articles 309, 311 and 312 of the Penal Code. He was also charged with being a member of an armed organization, in violation of article 314 of the Penal Code, although that charge was not written into the record of his first detention examination. The decision to detain Mr. Sakaoğlu was made without any incriminating evidence or justification for the accusations. While the offence concerning the assassination of the President was not reflected in the reasons for his detention during the seven months of the preparation of his indictment, it was later added among the reasons for his continued detention. Yet, Mr. Sakaoğlu was allegedly detained for seven months on the grounds of this charge, in violation of article 9 (1) of the Covenant.

23. The source argues that Mr. Sakaoğlu was detained for an action not considered as a crime, contrary to article 15 (1) of the Covenant. Allegedly, he acted in accordance with the orders “on the scope of terrorist activities”. Moreover, he was arrested on the grounds of participating in the attempted coup d’état organized by the Fethullah terrorist organization/Parallel State Structure, without any proof. The orders received were to respond to “acts of terrorism” and the action taken in that respect were related to the service and could not be considered a criminal offence in any way.

ii. Category II

24. The source argues that there was a perception in the public that military cadets were part of the Fethullah terrorist organization/Parallel State Structure and that, for that reason, Mr. Sakaoğlu and other military cadets were considered guilty from the beginning and were thus treated differently from the private soldiers who had been acquitted (see para. 18 above). In that respect, the principle of equality before the law was not respected, in violation of article 26 of the Covenant.

iii. Category III

25. The source states that, in the aftermath of 15 July 2016, due to the state of emergency, fair trial rights were not applied.

26. The source reports that, following a ministerial instruction, the case of Mr. Sakaoğlu was terminated in the first months of 2018. Indeed, the case of Mr. Sakaoğlu (and 94 other defendants), which was complex in terms of the alleged offences, was concluded, despite deficiencies, within a very short period of time (nine months). The president of the court was then appointed to the Supreme Court and was thus promoted to a higher court. To the source, this shows that the president of the court received a reward. The source thus asserts that the sentence of life imprisonment handed to Mr. Sakaoğlu was the result of a biased trial. Moreover, new courts were established after 15 July 2016 and all cases related to terrorism and the attempted coup d’état were tried in front of those courts, violating the right to a fair trial and the natural justice principle.

27. Moreover, the source explains that, after 15 July 2016, all cases related to the attempted coup d'état were carried out following instructions from politicians. As a result of those instructions, public prosecutors refrained from collecting exculpatory evidence. In the case of Mr. Sakaoğlu, telephone messages proving that he was not aware of the coup, which are thus exculpatory, were not added to the case file, although the court had been repeatedly informed of such messages by Mr. Sakaoğlu's lawyer. Witness statements concerning the military cadets and their lack of knowledge of the attempted coup d'état were reportedly not mentioned in the court's decision either and some statements were removed from the transcript of the audio and video recordings of the trial. Furthermore, a piece of evidence (a WhatsApp message) key to the conviction of Mr. Sakaoğlu was not added to the case file. The source considers that all the above demonstrate that the court was not independent and impartial.

28. The source reiterates that there has been a violation of the rights set out in article 9 of Universal Declaration of Human Rights and article 9 (2) of the Covenant because the reasons for the arrest of or of the charges against Mr. Sakaoğlu were not given when he was taken to the police station, along with 40 other military cadets. Instead, all were told that they would be taken back to the Academy. Nor was Mr. Sakaoğlu's family informed.

29. The source claims that the military cadets were discriminated against by comparison with the private soldiers. Specifically, although there was no personal or conclusive evidence against him, Mr. Sakaoğlu was sentenced to life imprisonment while all the private soldiers were acquitted. The source alleges that the principle of presumption of innocence was not respected insofar as, from the beginning, Mr. Sakaoğlu was considered a traitor and the military cadets as members of the Fethullah terrorist organization/Parallel State Structure.

30. According to the source, on 4 August 2016, Mr. Sakaoğlu was taken to the prosecutor's office, where his statement was taken. He was not allowed to see his lawyer before questioning. When he entered the prosecutor's office, the assigned lawyer and the prosecutor were talking to each other, and his statement was taken without him being informed that the person in the office was a lawyer. At the beginning of giving his statement, military personnel stood next to him and Mr. Sakaoğlu was allegedly subjected to pressure by the prosecutor. The prosecutor reportedly called him a sympathizer of the Fethullah terrorist organization/Parallel State Structure. To the source, this shows that the principle of presumption of innocence was not respected. Moreover, the lawyer did not defend him and did not object to the prosecutor's use of such statements. After the statement was given, the transcript of the statement was read to him hastily. Although Mr. Sakaoğlu notified the prosecutor of inaccuracies in the transcript and asked him to correct them, the prosecutor did not allow this and forcibly made him sign that statement.

31. With regard to the right to prepare a defence, the source reiterates that, upon arrest and during custody, Mr. Sakaoğlu was not allowed to contact a lawyer, nor was he reminded of his right to do so. He was brought before the court without legal assistance. In addition, he was asked leading questions by police officers and was told to blame his commanders. In the view of the source, such conduct undermines the veracity of his statements and is a violation of article 148 of the Code of Criminal Procedure. In Silivri Prison, Mr. Sakaoğlu's meetings with his lawyer were restricted to one hour a week and they were recorded. In addition to recording the meetings, prison guards listened to the conversations while standing one metre away from Mr. Sakaoğlu and his lawyer, making confidential discussions between the lawyer and his client impossible.

32. The source also explains that, due to the press and social media, which qualified the military cadets as traitors and terrorists, Mr. Sakaoğlu had difficulty in finding a lawyer to defend him. His lawyer then faced difficulties when defending him due to threats by individuals because he defended a military cadet. On 20 July 2016, when Mr. Sakaoğlu was brought to a courthouse in Istanbul, a lawyer wanted to meet him but, because of police intervention, could not communicate with him. Then, on 4 August 2016, before Mr. Sakaoğlu was taken to give a statement to the public prosecutor, the lawyer appointed by the Istanbul Bar Association did not talk to him and did not disclose his rights. Mr. Sakaoğlu was also prevented from meeting with his lawyer in court. He could not even see his lawyer during the hearings because of the high number of defendants and of police officers in the courtroom.

Microphones were placed in the courtroom and used to record the conversations between the defendants and their lawyers, which could not be held in confidentiality.

33. The source reports that Mr. Sakaoğlu was unable to see the whole case file owing to a confidentiality decision and that the documents contained in the file were used to indict him. During one hearing, new documents were added to the case file. Although neither the lawyers nor the defendants could see the documents, the defendants were questioned about them. Mr. Sakaoğlu therefore did not have sufficient time to prepare a defence for himself in respect of the documents. Moreover, he did not have access to a computer for nine months and was thus unable to prepare his defence more generally.

34. The source claims that a witness for the defence, a former military cadet, who testified during the trial, was subsequently arrested and detained for allegedly being a member of the Fethullah terrorist organization/Parallel State Structure.

35. The source states that some of the cross-examinations of the witnesses could not be completed and that some witnesses mentioned in the indictment were not heard and therefore not cross-examined. Mr. Sakaoğlu and his lawyer were not notified of some of the trial hearings during which witnesses testified. In addition, Mr. Sakaoğlu was not taken to some hearings and what happened during those hearings was not disclosed to him.

36. The source refers to article 7 of the Covenant, pursuant to which no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. According to the information in Mr. Sakaoğlu's case file, all defendants except for the private soldiers were regarded in the same way and punished in the same way and the crimes alleged were not personalized. Although Mr. Sakaoğlu was in a subordinate position within the armed forces and could not have been the one to have planned and implemented the coup d'état, he received the same punishment as top-ranking officers. The source adds that this is the most concrete indication of disproportionate penalties.

37. The source reiterates that Mr. Sakaoğlu suffered inhuman treatment and poor conditions of detention while in custody at the police station and, subsequently, at Silivri Prison, where he is being held in an overcrowded cell and his right to see his family has been limited.

iv. Category V

38. After the attempted coup d'état on 15 July 2016, the Ministry of Defence qualified all military cadets as members of the Fethullah terrorist organization/Parallel State Structure. The source states that Mr. Sakaoğlu has been discriminated against while in custody and during his interrogation and trial. While in custody, moral and physical torture were applied by law enforcement officers while private soldiers were not subjected to such treatment. Mr. Sakaoğlu has been discriminated against because he has been perceived as being a terrorist and has been sentenced to lifetime imprisonment by the court. This situation is contrary to the provisions of article 26 of the Covenant and article 7 of the Universal Declaration of Human Rights.

Response from the Government

39. On 13 July 2020, 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 11 September 2020, detailed information about the current situation of Mr. Sakaoğlu 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 of Turkey to ensure Mr. Sakaoğlu's physical and mental integrity.

40. On 7 September 2020, the Government requested an extension in accordance with paragraph 16 of the Working Group's methods of work. The extension was granted and a new deadline of 11 October 2020 was set. In its response of 9 October 2020, the Government recalls that, on 15 July 2016, Turkey faced an unprecedentedly large-scale and brutal attempted coup d'état perpetrated by the Fethullah terrorist organization/Parallel State

Structure, a clandestine terrorist organization that had insidiously infiltrated critical government posts and had, on that day, attempted to destroy democracy and take over the democratically elected Government. Terrorist acts perpetrated by the Fethullah terrorist organization/Parallel State Structure on that night cost the lives of 251 Turkish citizens and injured over 2,000. Several key institutions representing the will of the Turkish people, first and foremost the parliament, were attacked.

41. The Government submits that, in order to restore Turkish democracy and protect the rights and freedoms of Turkish citizens, structures – all branches of government, the military and the judiciary – that had been infiltrated, over decades, by thousands of members of the Fethullah terrorist organization/Parallel State Structure needed to be completely rooted out. A state of emergency was declared shortly after the attempted coup d'état and endorsed by the parliament on 21 July 2016.

42. The Government underlines that, throughout the state of emergency, Turkey acted in line with its international human rights obligations while maintaining close cooperation and dialogue with international organizations, including the United Nations and the Council of Europe. The state of emergency ended on 19 July 2018.

43. According to the Government, effective domestic legal remedies, including the right to lodge an individual application before the Constitutional Court, which is recognized by the European Court of Human Rights as an effective domestic remedy, are available in Turkey. In addition to existing domestic remedies, the Inquiry Commission on the State of Emergency Measures was established to receive applications regarding administrative acts carried out pursuant to decree laws enacted during the state of emergency. Further remedies are available against the decisions of the Commission. The European Court of Human Rights recognized the Commission as a domestic remedy. Furthermore, an application could be lodged before the European Court of Human Rights after all domestic remedies had been exhausted.

44. The Government claims that, even before the attempted coup, the Fethullah terrorist organization/Parallel State Structure was known to employ complex strategies to advance its agenda. These reportedly included blackmailing politicians and bureaucrats, cheating on a massive scale in public exams in order to place its members in key government posts, practicing social engineering, manipulation and indoctrination, and presenting fabricated stories that would result in judicial proceedings against its opponents through its extensive network of media outlets, businesses, schools and non-governmental organizations.

45. The Government adds that the Fethullah terrorist organization/Parallel State Structure is now employing the strategy of presenting itself as the victim of human rights violations to hide its crimes. Its members deliberately try to deceive and manipulate international public opinion by spreading false allegations against Turkey. These include unfounded claims of arbitrary arrest and detention, torture and even enforced disappearances while its members go in hiding at the orders of their leader. In fact, it is the Fethullah terrorist organization/Parallel State Structure itself that has perpetrated grave human rights violations in Turkey, including the cold-blooded killing of innocent civilians, thus violating the fundamental right to life of hundreds of Turkish citizens.

46. In line with the explanations provided above, Turkey requests the special procedures of the Human Rights Council not to allow the Fethullah terrorist organization/Parallel State Structure and its members to abuse these mechanisms and to dismiss their allegations. Turkey will continue to expand human rights and freedoms and maintain its long-standing cooperation with international organizations.

47. Turning to the allegations concerning the judicial process regarding Mr. Sakaoğlu, the Government submits that he is a former military cadet. On the night of the attempted terrorist coup d'état of 15 July 2016, Mr. Sakaoğlu took part in an attempt to take over a satellite television provider (Digiturk) ordered by military commanders who were members of the Fethullah terrorist organization/Parallel State Structure and the purpose of which was to manipulate the Turkish public through the media. The Turkish military took control of the Digiturk building early in the morning of 16 July 2016 and Mr. Sakaoğlu was arrested on the same day.

48. The Government adds that Mr. Sakaoğlu was charged by the Istanbul Office of the Chief Public Prosecutor with attempting to overthrow the Constitutional order under article 309 of the Penal Code, among other crimes. He was brought before a judge on 19 July 2016 in the presence of his lawyer, who had been appointed by the Istanbul Bar Association. He was detained because of the severity of the crimes he had been charged with and because of the risk that he might flee. His family was notified of his detention.

49. The Government explains that Mr. Sakaoğlu was questioned again by the Chief Public Prosecutor on 4 August 2016 in the presence of his lawyer. He was notified of all his legal rights before the questioning. The Government refers to the statement provided by Mr. Sakaoğlu during the questioning. As part of the indictment issued against Mr. Sakaoğlu on 19 July 2017, the Chief Public Prosecutor brought forward the footage of him entering the Digiturk building with other cadets, fully armed and in camouflage.

50. During the hearing before the twenty-fourth Heavy Penal Court of Istanbul, Mr. Sakaoğlu and his lawyer reportedly gave the same account of the events, pleading not guilty, however, since Mr. Sakaoğlu was following the orders of his commanders.

51. In its decision of 19 January 2018, the Court reasoned that, during the night of the attempted terrorist coup d'état, Mr. Sakaoğlu repeatedly witnessed his commanders engaging in activities that clearly constituted crimes and followed their orders anyway, and thereby participated in the crime of attempting to overthrow the Constitutional order. The Court therefore sentenced Mr. Sakaoğlu to life imprisonment. His lawyer appealed against the decision and his case is currently before the Court of Cassation.

52. In relation to the source's allegations that Mr. Sakaoğlu's actions on the night of the attempted coup d'état should not be considered as crimes since he was following the orders of his superior officers, the Government refers to article 137 of the Constitution and article 24 of the Penal Code. The Government submits that it is a well-established legal principle that such a defence is not enough to escape punishment and that obeying a commander's orders does not protect the accused if the order in question is unlawful.

53. Furthermore, as explained by the twenty-fourth Heavy Penal Court of Istanbul in its reasoned decision, Mr. Sakaoğlu followed the orders of his commanders, which constituted criminal acts, and thus took part therein. His rights under article 14 of the Covenant were upheld during the judicial process. He enjoyed his right to counsel from the beginning of the investigation phase. All decisions to arrest and detain him were issued by competent courts. He and his lawyers had the chance to appeal those decisions before other courts and did so. The Government underlines that the legal process regarding Mr. Sakaoğlu has not been finalized and his case is currently before the Court of Cassation.

54. Regarding the source's allegations of ill-treatment, the Government submits that neither Mr. Sakaoğlu nor his lawyers brought forward such complaints before the courts during the judicial process.

55. In relation to the source's allegations of the impartiality of Turkish courts, the Government states that the Constitution and the relevant laws provide extensive guarantees for judges and prosecutors. Members of the judiciary are appointed by the Council of Judges and Prosecutors, a majority of its 13 members also being judges and prosecutors. Appointments are based on objective criteria. Judges and prosecutors can appeal against the decisions of the Council if they believe that their appointment is not in line with such criteria.

56. In line with the explanations provided above, the Government is of the view that the allegations in the present communication are unfounded and therefore should be dismissed.

Discussion

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

58. In determining whether the deprivation of liberty of Mr. Sakaoğlu is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon

the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.¹

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

60. While acknowledging the notification concerning the derogations, the Working Group emphasizes that, in the discharge of its mandate, it is empowered under paragraph 7 of its methods of work to refer to the relevant international standards set forth in the Universal Declaration of Human Rights and to customary international law. Moreover, in the present case, articles 9 and 14 of the Covenant are the provisions that are the most relevant to the alleged arbitrary detention of Mr. Sakaoğlu. As the Human Rights Committee has stated, States parties derogating from articles 9 and 14 must ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation.³ The Working Group welcomes the lifting of the state of emergency on 19 July 2018 and the subsequent revocation of the derogations by Turkey.

61. As a further preliminary issue, the Working Group wishes to clarify that the procedural rules governing its consideration of communications on alleged cases of arbitrary detention are contained in its methods of work. There is no provision in the methods of work preventing the Working Group from considering communications owing 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.⁴

62. As a final preliminary issue, the Working Group wishes to address the Government's request to the special procedures not to allow the Fethullah terrorist organization/Parallel State Structure and its members to abuse these mechanisms and to dismiss their allegations. The Working Group recalls that it has been mandated by the Human Rights Council to receive and consider allegations of arbitrary detention from anyone around the world. The Working Group thus makes no distinction as to who can or cannot bring allegations to its attention. Moreover, the Working Group is required to act impartially and independently. It therefore treats all submissions made to it equally and accepts them as allegations, inviting the Government concerned to respond. The onus therefore rests upon the Government to engage with the Working Group constructively by addressing the specific allegations made in order to assist the Working Group in reaching a conclusion on each communication brought to its attention.

63. Turning to the specific allegations made, the Working Group observes that the source alleges that the detention of Mr. Sakaoğlu was arbitrary under categories I, II, III and V while the Government denies these allegations.

64. The Working Group recalls that detention falls under category I when it lacks a legal basis. The source argues that Mr. Sakaoğlu's detention falls under category I as he was not notified of the reasons for his detention, was denied legal assistance from 16 to 27 July 2016 and was unable to contact his family during that time. The Government, on the other hand, submits that Mr. Sakaoğlu was arrested on 16 July 2016 in the context of the attempted coup d'état and was charged on an unspecified date. Moreover, according to the Government, Mr. Sakaoğlu appeared before a judge on 19 July 2016, in the presence of his lawyer, who had been appointed by the Istanbul Bar Association. The Government also explains that Mr. Sakaoğlu's family was notified of his arrest.

¹ A/HRC/19/57, para. 68.

² Depositary notification C.N.580.2016.TREATIES-IV.4.

³ General comment 29 (2001), para. 4. See also general comments No. 32 (2007), para. 6; No. 34 (2011), para. 5; and No. 35 (2014), paras. 65–66.

⁴ See, e.g., opinions No. 19/2013, No. 38/2017, No. 41/2017, No. 11/2018, No. 46/2019, No. 53/2019 and No. 30/2020.

65. The Working Group observes that Mr. Sakaoğlu was arrested on the morning following the attempted coup d'état, which had brought about loss of life and was an exceptionally serious event in Turkey. Mr. Sakaoğlu was arrested in the context of that attempted coup d'état and, although the source claims that he was not aware of the nature of the events and that he was merely following the orders given to him as a cadet by his superiors, the source does not deny that he was present at the location where the attempted coup d'état took place. The Working Group thus accepts that his detention could have taken place in flagrante delicto circumstances. However, the source claims that Mr. Sakaoğlu was not informed of the reasons for his arrest and the Government, while it had the opportunity to do so, has chosen not to respond to that allegation.

66. Article 9 (2) of the Covenant requires that anyone arrested on criminal charges must be notified of the reasons for their arrest. As the Human Rights Committee explains in paragraph 24 of its general comment No. 35 (2014), this requirement applies broadly to the reasons for any deprivation of liberty. Because "arrest" means the commencement of a deprivation of liberty, that requirement applies regardless of the formality or informality with which the arrest is conducted and regardless of the legitimate or improper reason on which it is based. This makes it clear that, notwithstanding the circumstances of his arrest, Mr. Sakaoğlu was still entitled to be informed of the reasons for his arrest. Since he was not informed of those reasons, the Working Group concludes that his rights under article 9 (2) of the Covenant were violated.⁵

67. The Working Group further 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 explains in paragraph 33 of 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.

68. In the present case, the Working Group observes that Mr. Sakaoğlu was arrested on 16 July 2016 and appeared before a judge on 19 July 2016, which falls outside the normal 48-hour period. Although the Working Group is mindful that the arrest took place immediately following a major incident in Turkey (specifically, an attempted coup d'état), the Government has not presented these exceptional circumstances as a justification for the delay in presenting Mr. Sakaoğlu before a judge. Moreover, the Working Group recalls that the state of emergency and associated derogations, including those to the Covenant, were enacted by Turkey on 21 July 2016, which was after the arrest and presentation before the judge of Mr. Sakaoğlu. Noting this, the Working Group finds a violation of article 9 (3) of the Covenant.

69. The Working Group also recalls that, in paragraph 25 of general comment No. 35 (2014), the Human Rights Committee explained the following:

One major purpose of requiring that all arrested persons be informed of the reasons for the arrest is to enable them to seek release if they believe that the reasons given are invalid or unfounded. The reasons must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim. The "reasons" concern the official basis for the arrest, not the subjective motivations of the arresting officer.

In the present case, Mr. Sakaoğlu was presented before a judge on 19 July 2016. Up until that time, he was entirely unaware of why he had been detained for three days.

70. As the Working Group has consistently argued,⁶ in order to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention

⁵ See, e.g., opinions No. 46/2019, para. 51; and No. 10/2015, para. 34.

⁶ See, e.g., opinions No. 1/2017, No. 6/2017, No. 8/2017, No. 2/2018, No. 4/2018, No. 42/2018, No. 43/2018, No. 79/2018 and No. 49/2019.

before a court, as envisaged by article 9 (4) of the Covenant. The Working Group recalls that the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.⁷ That right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty⁸ and to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention and detention under counter-terrorism measures.⁹

71. Moreover, in order to ensure the effective exercise of the right to challenge the lawfulness of detention before a court, detained persons should have access, from the moment of arrest, to legal assistance of their own choosing.¹⁰ The source alleges that Mr. Sakaoğlu was denied legal assistance until his appearance before the judge. As he first saw the lawyer at the hearing, he was unable to converse with him, prepare for the hearing or challenge the legality of his detention. The Government has merely stated that a lawyer was appointed to Mr. Sakaoğlu without providing further particulars or addressing the allegations made. Given the circumstances, the Working Group concludes that Mr. Sakaoğlu was denied legal assistance from the moment of his detention, which seriously adversely affected his ability to effectively exercise his right to challenge the legality of his detention, violating his right under article 9 (4) of the Covenant.¹¹ The Working Group is therefore of the view that Mr. Sakaoğlu was denied the possibility to contest the legality of his detention, in violation of his right under article 9 (4) of the Covenant.

72. The Working Group further considers that judicial remedy is a fundamental safeguard of personal liberty¹² and is essential in ensuring that detention has a legal basis. Given that Mr. Sakaoğlu was not able to effectively challenge his detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated.

73. Noting all the above, the Working Group concludes that the detention of Mr. Sakaoğlu was arbitrary under category I.

74. The source argues that the detention of Mr. Sakaoğlu falls under category II as he, along with all the other military cadets, was considered to be a member of the group referred to by the Government as the Fethullah terrorist organization/Parallel State Structure and therefore presumed guilty from the start. The Government argues that Mr. Sakaoğlu was arrested, charged and convicted for attempting to overthrow the Constitutional order.

75. The Working Group is mindful that the source does not deny that Mr. Sakaoğlu was present as the attempted coup d'état unfolded in Turkey on 15 July 2016. Although the source argues that he was present only because he had followed the orders of his superiors, the Working Group recalls that, as a general rule, a defence based on the following of superior orders has been rejected in international law.¹³ The events which led to the loss of life and major disruption in the country took place and Mr. Sakaoğlu was without a doubt present among those who perpetrated those events although the source categorically denies that he was aware of them. Be that as it may, it falls primarily on the national courts to evaluate his individual circumstances to establish his individual responsibility and culpability or

⁷ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, paras. 2–3.

⁸ Ibid., para. 11.

⁹ Ibid., annex, para. 47 (a).

¹⁰ Ibid., annex, paras. 12–15.

¹¹ A/HRC/45/16, para. 51. See also opinion No. 40/2020, para. 29.

¹² A/HRC/30/37, para. 3. See also A/HRC/45/16, para. 51.

¹³ See the Rome Statute of the International Criminal Court, art. 33; the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, art. 7 (4); the Statute of the International Criminal Tribunal for Rwanda, art. 6 (4); the Statute of the Special Court for Sierra Leone, art. 6 (4); and regulation No. 2000/15, sect. 21, of the United Nations Transitional Administration in East Timor. See also United States General Court Martial, *United States v. Kinder*, 1 February 1954.

otherwise in these events. The Working Group therefore cannot accept that his arrest and subsequent detention were due to the peaceful exercise of rights protected by the Covenant. The Working Group thus concludes that the detention of Mr. Sakaoğlu does not fall under category II.

76. Turning to the allegations made by the source under category III, the Working Group notes that the Government has merely stated that all safeguards contained in article 14 of the Covenant were observed during the trial proceedings against Mr. Sakaoğlu. The Working Group once again recalls that if the source has presented a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.¹⁴

77. The source argues, and the Government has not denied, that there were numerous interferences with the legal assistance granted to Mr. Sakaoğlu. According to the source, Mr. Sakaoğlu was prevented from appointing a lawyer of his own choosing. The Government has merely stated that a lawyer from the Istanbul Bar Association was appointed for him without explaining why and without responding to the claim that Mr. Sakaoğlu wished to appoint his own lawyer. The Working Group notes that article 14 (3) (d) of the Covenant entitles anyone being tried on a criminal charge to appoint a lawyer of his or her own choosing. In the absence of any explanation as to why this was denied to Mr. Sakaoğlu, the Working Group finds a violation of said provision.

78. Furthermore, the source has alleged that on some occasions the appointed lawyer did not act properly; that Mr. Sakaoğlu's access to his lawyer was restricted to one hour a week; that their meetings lacked privacy as the guards listened to the conversations, which were taped; that Mr. Sakaoğlu was prevented from communicating with his lawyer during the trial hearings; and that the lawyer was even reluctant to act at times due to threats received. The Government has chosen not to respond to any of these allegations although it has had the opportunity to do so. In light of this, the Working Group finds a further breach of article 14 (3) (d), as well as of article 14 (3) (b), of the Covenant.¹⁵

79. The Working Group is particularly concerned at the uncontested allegations that the lawyer of Mr. Sakaoğlu was threatened and intimidated for acting on behalf of his client. The Working Group recalls its comprehensive jurisprudence highlighting that such acts against lawyers are entirely unacceptable and violate articles 10 and 11 of the Universal Declaration of Human Rights and article 14 (3) (b) of the Covenant.¹⁶ It is the legal and positive duty of the State to protect everyone on its territory or under its jurisdiction against any human rights violation and to provide remedy whenever a violation still occurs.¹⁷ The Working Group recalls that legal counsel are to be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment.¹⁸ The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers for appropriate action.

80. The source also argues that Mr. Sakaoğlu and his lawyer were not given full access to the case file; that documents were added to the case file on the morning before the hearing and that neither Mr. Sakaoğlu nor his lawyer were able to examine them; that the public prosecutor refrained from collecting exculpatory evidence and that other existing exculpatory

¹⁴ A/HRC/19/57, para. 68.

¹⁵ See also the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 61 (1); the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 18; and the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, guideline 8.

¹⁶ Opinions No. 66/2019, No. 28/2018, No. 70/2017, No. 36/2017, No. 34/2017, No. 32/2017 and No. 29/2017. See also A/HRC/45/16, para. 54.

¹⁷ See deliberation No. 10 (A/HRC/45/16, annex I).

¹⁸ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, para. 15. See also the Basic Principles on the Role of Lawyers, paras. 16–22.

evidence was not added to the file; and that some witnesses mentioned in the indictment were not heard and therefore not cross-examined. While the Government had the opportunity to respond to those allegations, it has chosen not to do so. Recalling that, in principle, access to the case file must be provided from the outset,¹⁹ and in the absence of a rebuttal from the Government, the Working Group finds that Mr. Sakaoğlu's rights under articles 14 (1) and 14 (3) (b) and (e) of the Covenant have also been violated.

81. The Working Group notes the failure of the Government to address the allegation that Mr. Sakaoğlu was not taken to some of the trial hearings and therefore did not know what had happened at those hearings. As the Human Rights Committee has argued in paragraph 36 of its general comment No. 32 (2007), article 14 (3) (d) requires the following:

Accused persons are entitled to be present during their trial. Proceedings in the absence of the accused may in some circumstances be permissible in the interest of the proper administration of justice, i.e. when accused persons, although informed of the proceedings sufficiently in advance, decline to exercise their right to be present. Therefore, the Human Rights Committee concludes that trials are only compatible with article 14 (3) (d) if the necessary steps are taken to summon accused persons in a timely manner and to inform them beforehand about the date and place of their trial and to request their attendance.²⁰

82. In the present case, Mr. Sakaoğlu was remanded in custody during his trial and therefore the onus was upon the Turkish authorities to ensure that he was able to attend the trial hearings. In the absence of any explanation from the Government as to why this did not happen, the Working Group finds a violation of article 14 (3) (d) of the Covenant.

83. Furthermore, the source alleges, and the Government has not rebutted, that Mr. Sakaoğlu was subjected to intimidation during the interrogations and was forced to sign a statement that he had clearly stated was incorrect. The Working Group finds this to be a clear breach of article 14 (3) (g) of the Covenant. The Working Group also considers that the source has presented a credible *prima facie* case, which the Government has not rebutted, that Mr. Sakaoğlu was subjected to treatment that could amount to torture and ill-treatment during his detention. The alleged 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, to which Turkey is a State party. Accordingly, the Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

84. The Working Group will now turn to the uncontested submissions that Mr. Sakaoğlu stood trial with some 93 other military cadets; that he was sentenced to life imprisonment despite there being no personal or conclusive evidence against him; and that all defendants were regarded as the same, the crimes alleged were not personalized and they were all punished in the same way.

85. As the Working Group has emphasized, mass trials are incompatible with the interests of justice and do not meet the standards of a fair trial, given that it is impossible during such proceedings to conduct a specific assessment of individual responsibility.²¹ Indeed, the source has submitted, and the Government has not contested, that no individual assessment of Mr. Sakaoğlu's alleged culpability beyond reasonable doubt was undertaken during the trial proceedings and that Mr. Sakaoğlu, like all his co-defendants and all military cadets, was sentenced to life imprisonment without any individualization of the sentences imposed. That is a violation of article 14 (1) of the Covenant.

86. The source argues that Mr. Sakaoğlu was denied his right to the presumption of innocence as, from the start of the proceedings, he and other military cadets were branded as "traitors" and "terrorists" by the investigators, prosecutors and the press. The Working Group once again observes the failure of the Government to address these allegations. The Working

¹⁹ See opinions No. 29/2020, para. 94; and No. 78/2018, paras. 78–79.

²⁰ See also opinion No. 60/2020, para. 94.

²¹ Opinions No. 41/2020, No. 5/2020 and No. 65/2019.

Group has already established the failure of the court to assess the individual responsibility of each defendant, including Mr. Sakaoğlu, as well as to individualize the punishment imposed. The Working Group especially emphasizes that the presumption of innocence is one of the fundamental principles of a fair trial and thus non-derogable²² and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt.²³ Mr. Sakaoğlu was denied the presumption of innocence and the Working Group thus finds a violation of article 14 (2) of the Covenant.

87. Finally, the Working Group recalls the source's allegations concerning the lack of independence and impartiality of the courts in Turkey. In the case of Mr. Sakaoğlu, the source notes that the president of the court, following hastily conducted trial proceedings that took only nine months despite the complexity of the case and the involvement of 94 defendants, was subsequently appointed as a member of the Supreme Court. According to the source, this shows that the president of the court received a reward for delivering a guilty verdict. The Government denies these allegations and provides an explanation of the appointment procedures applicable to judges and prosecutors (see para. 55 above) but it does not address the specific allegations concerning the trial of Mr. Sakaoğlu.

88. The Working Group recalls that the Human Rights Committee, in paragraph 21 of its general comment No. 32 (2007), states the following:

The requirement of impartiality has two aspects. First, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial.

89. The Working Group is mindful of the numerous fair trial violations that it has already established above and notes the specific allegation made by the source concerning the timing of the promotion of the president of the court, which the Government has chosen not to contest. Given the circumstances, the Working Group is of the view that the court conducting Mr. Sakaoğlu's trial does not appear impartial to a reasonable observer. The Working Group therefore finds that Mr. Sakaoğlu was denied the right to be tried by an impartial tribunal, in violation of article 14 (1) of the Covenant. The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers for appropriate action.

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

91. Finally, the source also alleges that the arrest and detention of Mr. Sakaoğlu fall under category V, as all military cadets were qualified as members of the Fethullah terrorist organization/Parallel State Structure and that Mr. Sakaoğlu was thus discriminated against because he was perceived to be a terrorist. The Government has denied those allegations, arguing that Mr. Sakaoğlu's allegiance to that organization was proven during the numerous trial proceedings.

92. The Working Group recalls that the source does not deny that Mr. Sakaoğlu was present at the location of the events surrounding the attempted coup d'état in Turkey on 15 July 2016 (see paras. 65 and 75 above). However, it is also mindful of its findings under category III and especially of the fact that Mr. Sakaoğlu was tried together with some 93 other military cadets and that he, along with all those other military cadets, was sentenced to life imprisonment notwithstanding the failure to assess individual responsibility and culpability. The source has contrasted this with the treatment received by the private soldiers who, although also present at the events, were acquitted, a submission to which the Government has chosen not to respond.

93. It is clear to the Working Group that Mr. Sakaoğlu was sentenced to life imprisonment purely because he was one of the military cadets present at the location of the events of 15 July 2016. As already noted, he was given the exact same sentence as all the other military

²² Human Rights Committee, general comment No. 32 (2007), para. 6.

²³ Ibid., para. 30.

cadets. The Working Group therefore concludes that the detention of Mr. Sakaoğlu constitutes a violation of international law on the grounds of discrimination based on other status that aims towards or can result in ignoring the equality of human beings in breach of article 26 of the Covenant, falling under category V. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for appropriate action.

94. The Working Group is aware of the nature of the accusations levied against Mr. Sakaoğlu and of the rights of individuals which may have been violated by the alleged criminal acts. However, the freedom from arbitrary detention belongs to everyone, including those accused of, having been tried for and even convicted of the most heinous crimes. Therefore, the conclusions arrived at in the present opinion are without prejudice to the actual guilt or innocence of Mr. Sakaoğlu.

95. The Working Group notes the un rebutted allegations by the source concerning the conditions of detention of Mr. Sakaoğlu and the restrictions imposed during the visits he was able to receive. The Working Group takes the opportunity to remind the Government of its obligation under article 10 (1) of the Covenant to ensure that all persons deprived of their liberty are treated with humanity and respect for their inherent dignity.²⁴

96. During the past three years, the Working Group has noted a significant increase in the number of cases brought to it concerning arbitrary detention in Turkey.²⁵ The Working Group expresses grave concern over the pattern that all these cases follow and recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law may constitute crimes against humanity.²⁶

97. 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

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

The deprivation of liberty of Ahmet Dinçer Sakaoğlu, being in contravention of articles 1, 2, 3, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2 (3), 9, 14 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

99. The Working Group requests the Government of Turkey to take the steps necessary to remedy the situation of Mr. Sakaoğlu 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 Covenant.

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

101. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr.

²⁴ See opinion No. 46/2020, para. 64.

²⁵ See, e.g., opinions No. 1/2017, No. 38/2017, No. 41/2017, No. 11/2018, No. 42/2018, No. 43/2018, No. 44/2018, No. 78/2018, No. 84/2018, No. 10/2019, No. 53/2019, No. 79/2019, No. 2/2020, No. 29/2020, No. 30/2020, No. 47/2020, No. 48/2020 and No. 51/2020.

²⁶ See, e.g., opinion No. 47/2012, para. 22.

Sakaoğlu and to take appropriate measures against those responsible for the violation of his rights.

102. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

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

Follow-up procedure

104. 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. Sakaoğlu has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Sakaoğlu;
- (c) Whether an investigation has been conducted into the violation of Mr. Sakaoğlu'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.

105. 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.

106. 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.

107. 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.²⁷

[Adopted on 24 November 2020]

²⁷ Human Rights Council resolution 42/22, paras. 3 and 7.