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

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

### **Opinion No. 51/2020 concerning Arif Komiş, Ülkü Komiş and four minors whose names are known to the Working Group (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 (A/HRC/36/38), on 12 December 2019 the Working Group transmitted to the Government of Malaysia and the Government of Turkey a communication concerning Arif Komiş, Ülkü Komiş and four minors whose names are known to the Working Group. The Government of Turkey replied on 10 February 2020 and the Government of Malaysia replied on 25 February 2020. 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);

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

(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. Arif Komiş, born in 1976, Ülkü Komiş, born in 1982, are Turkish citizens and a married couple. They have four minor children whose names are known to the Working Group. The children are Turkish nationals, except for one whose birth the Turkish authorities in Kuala Lumpur have repeatedly refused to register, and who is therefore stateless. Prior to their arrest, the Komiş family resided in Kuala Lumpur, Malaysia.

5. According to the source, Mr. Komiş is a chemistry teacher at Hibiscus International School (the former Time International School) in Kuala Lumpur, which he joined in 2014. He is well respected, loved and valued by colleagues, students and parents. He held a valid residence permit and an employment contract with the school. Prior to this, he contributed to the rebuilding of the education sector in Kazakhstan and worked as a chemistry teacher in Tajikistan; he successfully carried out many international science projects in these countries. Mr. Komiş holds an asylum-seeker certificate from the Office of the United Nations High Commissioner for Refugees (UNHCR) valid until 9 June 2020, indicating that he should be protected from forcible return to a country where he claims to face threats to his life or freedom, pending a final decision on his refugee status.

6. The source alleges that six members of the Komiş family are among the latest victims illegally transferred to Turkey from abroad, in the long transnational campaign of the Government of Turkey against Turkish dissidents in exile. Turkey continues to seek the cooperation of other States to arrest, often in undercover operations, alleged supporters of the Hizmet/Gülen movement living outside the country.

7. According to the source, since October 2016, Turkish nationals in Malaysia have come under unprecedented attack from the Malaysian authorities, at the request and on behalf of the Government of Turkey. The abductions and transfers of law-abiding Turkish citizens in Malaysia sent shockwaves through the Turkish community and prompted most Turkish families to seek asylum in third countries. However, Mr. Komiş and his family were unable to leave Malaysia. The Embassy of Turkey had repeatedly refused to register and issue a passport to their newborn baby, which has left the family stranded in Malaysia.

8. The source submits that there is clear pattern of denial of consular services and related deprivations for individuals living abroad who are critical of the policies of the Government of Turkey, including the cancellation and confiscation of passports, refusal to extend the validity of passports, and refusal to provide identity cards or passports to children born to Turkish citizens.

### *Arrest and detention in Malaysia*

9. The source reports that on the evening of 28 August 2019, at approximately 11.30 p.m., some thirty police officers broke into the Komiş family residence in Kuala Lumpur. They arrested Mr. Komiş, his wife and their four minor children. Four police officers told the Komiş family that their passports had been cancelled by the Government of Turkey and that they should prepare in five minutes for imminent deportation to Turkey. While they were being given these instructions, around 26 masked police officers entered the apartment and began searching it. The Komiş family were only able to take some children's clothes, and left. Mr. Komiş was handcuffed and put into a police car. After being driven around for about two or three hours, the other Komiş family members were detained in what appeared to be an immigration facility (Putrajaya Immigration Office), separately from the other detainees. It is alleged that a few days prior to these events, Mr. Komiş had informed UNHCR that a member of the Special Branch police had taken photos of Hibiscus International School and his vehicle, in what are believed to have been active preparations

to carry out the operation leading to his arrest and transfer. Mr. Komiş expressed his fear and asked for resettlement of his family to a safer country.

10. According to the source, friends and family of the victims did not immediately realize that they were missing, since they were detained at a late hour on 28 August 2019. On 29 August 2019, a friend of the Komiş family received an alert through WhatsApp from one of the family members, indicating that the family had been arbitrarily detained by approximately 30 immigration officers and that they were being held in Putrajaya Immigration Office. On 29 August 2019, friends enquiring about the arrest were told by the authorities that all members of the Komiş family had been arrested on the basis of section 35 (power to arrest person liable to removal) of the Malaysian Immigration Act 1959/63 (Act No. 155).

11. Reportedly, the treatment of the members of the Komiş family seems to have changed once the Malaysian police became aware of the WhatsApp message. The police searched their luggage again but could not find the phone in the suitcase. Later, the police provided them with temporary papers and forced them onto an aeroplane.

12. The source submits that the members of the Komiş family did not have any opportunity to defend their rights before a court. They were never brought before a judicial authority, nor was there any intention of bringing them before any court to stand whatever charges the authorities might have had against them. Immediately following their detention, the Komiş family were forcibly taken and held in Putrajaya Immigration Office, without any possibility of challenging the lawfulness of their detention before a court under the relevant provisions in articles 7–12 of the Universal Declaration of Human Rights. Mr. Komiş was held in Malaysian custody until the following day, when he was transferred directly to the airport, from where he was forcibly and illegally removed to Turkey, by a special plane. Ms. Komiş and their four minor children were also held in Malaysian custody until the following day, when they were forcibly and illegally removed to Turkey.

13. The source reports that following the detention of the members of the Komiş family, UNHCR and other United Nations agencies, as well as civil society, were mobilized to stop their transfer. Malaysian authorities provided neither UNHCR nor other agencies with any access. Civil society unsuccessfully urged the Government of Malaysia not to transfer the Komiş family to Turkey.

14. The source notes that on 30 August 2019, the Prime Minister of Malaysia confirmed that Malaysia had deported Mr. Komiş and his family, stating in a press conference that “they had proof that led to their view that he should not be in the country”, without elaborating on any evidence from the police or other law enforcement agencies. Later that day, the Minister of Federal Territories told the press that police had evidence to show that Mr. Komiş “was involved” in terrorism, without elaborating on which actions by Mr. Komiş were classified as acts of terrorism. During the press conference, the Prime Minister defended his Government’s actions, without knowledge of the risks facing the victims in Turkey.

#### Transfer to Turkey

15. The source submits that the Komiş family was scheduled for transfer to Turkey on the evening of 29 August 2019. The evidence and the speed of the events indicated that the detention of the Komiş family had been planned a long time in advance and that their detention on 28 August 2019 was only the finalization of the operation by the Malaysian and Turkish law enforcement agencies. Mr. Komiş was separated from his family and forcibly taken aboard a private unmarked Turkish plane, which flew him back to Turkey. A photo of him taken immediately after being taken into custody in Turkey shows visible marks on his face, suggesting that his face was covered during the flight, either by a helmet or with some other covering. He was allegedly subjected to torture in police custody. Although the court reported that there was no torture or ill-treatment, the health report drafted as he was admitted to prison confirmed the use of torture. Reportedly, there is an investigation against the police officers who held him in custody.

16. According to the source, Ms. Komiş and the four children were put on the commercial Turkish Airlines flight departing Kuala Lumpur at around 11.05 p.m. on 29

August 2019, headed for Istanbul, Turkey. The plane landed there at around 5.05 a.m. on 30 August 2019.

17. According to the information received, in Turkey, the Anadolu Agency described the detention and transfer of Mr. Komiş as an operation by the Turkish intelligence organization, noting that “intelligence forces arrested the so-called Malaysia chief of the Fetullah Terrorist Organization (FETÖ) in an operation and brought him back to Turkey, security sources said on Friday (30 August 2019). Amid continued efforts against FETÖ, the Turkish National Intelligence Organization caught Arif Komiş, who had allegedly held senior positions in the terror group in different countries in the past. Arif Komiş was wanted by Turkey on charges of being a member of an armed terrorist organization.”

#### Detention in Turkey

18. According to the source, Mr. Komiş was taken into custody upon arrival, with the Turkish authorities considering this a “successful operation by the Turkish National Intelligence Organization”. Ms. Komiş and the four children were released, after the police confiscated their passports. They then travelled to the city of Manisa, Kirkgac in western Turkey, to Mr. Komiş’s family.

19. Reportedly, Mr. Komiş was interrogated and his statement was taken by the prosecution, but there is no information about which specific charges he is facing. He was sent to Sincan Prison, near Ankara, until his indictment has been prepared, because it seems that no charges were pending for him and the whole file against him needed to be newly fabricated by the prosecution. No court hearing has been scheduled so far in respect of his case.

#### Analysis of violations

20. The source argues that the deprivation of liberty of the Komiş family is arbitrary under categories I, II, III and V of the Working Group.

21. The deprivation of liberty of the Komiş family is arbitrary under category I, because it is clearly impossible to invoke any legal basis justifying it.

22. The deprivation of liberty of the Komiş family is arbitrary under category II, because they were not afforded the right to seek and to enjoy in Malaysia asylum from persecution. In addition, removing a person to a 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 the obligations under article 14 of the Universal Declaration of Human Rights. While it appears that Malaysia has deliberately delayed ratification of the Convention relating to the Status of Refugees, of 1951, it should nevertheless ensure adherence to the principle of non-refoulement. Section 8 of the Extradition Act 1992 specifically prohibits extradition in certain circumstances, including when return of individuals has been requested with the purpose of prosecuting or punishing the person on account of his or her race, religion, nationality or political opinion.

23. The detention of the Komiş family is arbitrary under category III, because it failed to meet any minimum international standard of due process. They were held incommunicado, denied access to a lawyer, to UNHCR and to friends. They had no possibility of challenging the lawfulness of their detention before a court of law under the relevant provisions in articles 7–12 of the Universal Declaration of Human Rights.

24. The deprivation of liberty of the Komiş family is arbitrary under category V, because it constitutes a violation of international law for reasons of discrimination based on political or other opinion.

25. The source expresses concern at the treatment of Ms. Komiş and the four minor children. Although the four minors were not under investigation, they were forcibly removed from their home, detained and deported. As a State party to the Convention on the Rights of the Child since 1995, the Government of Malaysia is obliged under article 3 (1) of the Convention to ensure that the best interests of the child are a primary consideration. The Government of Malaysia has violated its obligations, under article 37 of the Convention to ensure that the four minors were not subjected to ill-treatment, that their arrest and

detention was not unlawful or arbitrary, that they were treated with humanity and respect for their inherent dignity, and that they had prompt access to legal assistance and the right to challenge the legality of their detention.

*Response from the Government of Malaysia*

26. On 12 December 2019, the Working Group transmitted the allegations from the source to the Government of Malaysia under its regular communications procedure. The Working Group requested the Government to provide, by 10 February 2020, detailed information about the circumstances of the Komiş family's detention and to clarify the legal provisions justifying their detention, as well as the compatibility of such provisions with the Government's obligations under international human rights law, and in particular with regard to the treaties ratified by the State.

27. On 4 February 2020, the Government of Malaysia requested an extension in accordance with paragraph 15 of Working Group's methods of work, which was granted. The Government submitted its reply on 25 February 2020. In it, the Government notes with regret that the information outlined in the summary of the communication is inaccurate, and submits that on 6 February 2019, the Government of Turkey sent a formal request to the Royal Malaysia Police to arrest Mr. Komiş and repatriate him to Turkey to enable legal action to be taken against him in accordance with Turkish domestic laws for his involvement in FETÖ.

28. Therefore, the passports of Mr. Komiş and his wife were revoked by the Government of Turkey on 20 March 2019. The Government of Malaysia notes that as soon as their passports were revoked, they became liable to be removed under subsection 56 (2) of the Immigration Act 1959/63.

29. Consequently, on 28 August 2019, Mr. Komiş and his family members were arrested by Malaysian authorities under section 35 of the Immigration Act 1959/63. This provision permits the arrest without a warrant of any person liable to removal from Malaysia under the Immigration Act 1959/63; it also permits their detention of up to 30 days pending the decision on removal. At the time of the arrest, no other documents were produced by Mr. Komiş and his family members except their Turkish passports.

30. The Government further explains that on 29 August 2019, Mr. Komiş and his family were repatriated to Turkey following the issuance of a removal order pursuant to the Immigration Act 1959/63. The arrest and detention of Mr. Komiş and his family were not arbitrary, rather, all actions taken by the Malaysian authorities against the Komiş family were carried out in conformity with the existing Malaysian laws. Thus, the Government strongly refutes the allegation that Turkish nationals in Malaysia have come under unprecedented attack from the Malaysian authorities, at the request and on behalf of the Government of Turkey, since October 2016.

31. Turning to the question of whether the repatriation of the Komiş family conforms to the obligations of Malaysia under international human rights law, the Government submits that Malaysia is fully cognizant of the principle under article 14 of the Universal Declaration of Human Rights. The Government is also fully cognizant of the principle of non-refoulement.

32. The Government submits that despite not being a State party to the Convention relating to the Status of Refugees, Malaysia is bound by the principle of non-refoulement, by virtue of its status as customary international law. In this regard, it is mindful of that principle in any decision to repatriate an individual to his or her country of origin. The Government acknowledges that the burden of proof lies on the person who asserts that his or her expulsion, return, surrender or extradition to another State would put him or her in danger of being subjected to enforced disappearance. Likewise, a State has the responsibility to gather and analyse all relevant and available facts as well as supporting evidence, including that adduced by the person concerned, in order to determine whether there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance should a State decide to expel, return, surrender or extradite him or her to another State.

33. In this regard, the Government emphasizes that it has received neither information nor evidence to show that there are substantial grounds for believing that the Komiş family would be in danger of being subjected to persecution if repatriated to Turkey. Prior to his arrest, Mr. Komiş, who was the holder of an employment pass under the Immigration Act 1959/63, at all times, had never communicated any information to the Government or any of its agencies about being threatened with persecution upon returning to his country.

34. Furthermore, the Government contends it is universally accepted that any person cannot enter or remain in any sovereign country apart from his or her country of origin without any valid travel documents. The revocation of Mr. Komiş and his wife's passports by the Government of Turkey had rendered their presence in Malaysia illegal. Therefore, the repatriation of Mr. Komiş and his family members was carried out in accordance with Malaysian laws and in line with international norms and standards.

35. In respect of the four children of Mr. Komiş, the Government reaffirms its commitment to comply with its obligations under the Convention on the Rights of the Child, including to guarantee and uphold the rights of every child not to be subjected to torture or other cruel, inhuman or degrading treatment, nor to unlawful or arbitrary detention as is stipulated in article 37 of the Convention. The Government emphasizes that the best interests of Mr. Komiş's children were the paramount consideration of the Government and are evidenced by the fact that they were not separated from their parents at any time, including during their repatriation to Turkey.

36. The Government emphasizes that the actions taken by the Malaysian authorities against Mr. Komiş and his family members were conducted pursuant to domestic laws. The Government reiterates that as a responsible State actor in the field of human rights, it has maintained a good working relationship with the United Nations working groups and is fully committed to continuing its efforts to ensure, promote and protect human rights in the country.

#### *Response from the Government of Turkey*

37. On 12 December 2019, the Working Group transmitted the allegations from the source to the Government of Turkey under its regular communications procedure. The Working Group requested the Government to provide, by 10 February 2020, detailed information about the circumstances of the Komiş family's detention and to clarify the legal provisions justifying Mr. Komiş's continued detention, as well as their compatibility with the Government's obligations 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 the physical and mental integrity of the Komiş family.

38. The Government of Turkey submitted its reply on 10 February 2020, in which it initially reaffirmed that Turkey, as a democratic State governed by the rule of law, and a founding member of the Council of Europe, upheld human rights, the rule of law and democracy. Turkey continued to fight against several terrorist organizations within the framework of its Constitution and legislation and in compliance with its international obligations and the fundamental principles of a democratic State. The Government then recalled its national legal provisions on human rights.

39. The Government proceeded to provide an overview of the terrorism threats faced by Turkey and the measures taken in response to the security challenges posed by terrorist organizations. The Government submitted background information, especially with regard to the alleged armed terrorist organization. The Government also referred to the attempted coup of 15 July 2016, noting that there were ongoing investigations into and trials pending against the organization's members in relation to the alleged attempt to overthrow the Government.

40. The Government argues that Mr. Komiş is deprived of his liberty in accordance with the decisions of competent courts. All proceedings that led to his custody and detention were carried out in accordance with the relevant legislation, as well as with the international obligations of Turkey. Thus, pursuant to the arrest warrant regarding Mr. Komiş issued by the Ankara 8th Magistrates' Office on 26 July 2019, Mr. Komiş was taken into custody at Istanbul Atatürk Airport on 30 August 2019 following his deportation by Malaysia.

41. Upon the instruction of the Ankara Chief Public Prosecutor's Office, Mr. Komiş was transferred to Ankara on 31 August 2019. The same day, he went through a medical examination in line with the legal requirements of the Code of Criminal Procedure. On 6 September 2019, he was brought before a judge and the Ankara 5th Magistrates' Office ruled for pretrial detention.

42. The Government submits that the indictment was issued on 15 October 2019. Currently, the case is before the Ankara 14th Assize Court. The first hearing took place on 22 November 2019, and the next hearing was to be held on 13 February 2020. During the whole period of custody and detention, Mr. Komiş was regularly given medical examinations and was granted access to a lawyer.

43. The Government submits that the arrest warrant issued for him by the Ankara 8th Magistrates' Office is based on the existence of a strong suspicion that a crime listed under article 100/3-a of the Criminal Code of Turkey has been committed. Mr. Komiş was suspected of being a member of the Fetullahist Terrorist Organization (FETÖ), and the Government once again submits a description of FETÖ activities and its role in the events of 15 July 2016. The Government specifically points out that the Turkish Constitutional Court also stated in its various judgments rendered on individual applications that FETÖ was an armed terrorist organization.

44. Turning to the allegations against Mr. Komiş, the Government argues that he was taken into custody upon arrival in Istanbul Atatürk Airport on the basis of the arrest warrant. He was transferred from Istanbul to Ankara on the instruction of Ankara Chief Public Prosecutor's Office. He was then in custody for four days, which was extended once on 3 September 2019 by the Ankara 2nd Magistrates' Office in accordance with article 19 of the Anti-Terror Law (Act No. 3713), which stipulates that the duration of custody shall not exceed 48 hours, and in case of offences committed collectively shall not exceed four days, from the moment of the arrest. The duration of custody, subject to the periods prescribed in the first sentence of article 19, may be extended up to two times due to difficulties in collecting the evidence or to the complexity of the case.

45. During the period that Mr. Komiş remained in custody, he was granted access to a lawyer assigned by the Ankara Bar Association, in accordance with article 150 of the Criminal Procedure Code. He did not make any written statement to request his own lawyer. The lawyer appointed by the Bar Association was present when Mr. Komiş gave his testimony at the Police Department as well as before the Public Prosecutor and the Ankara 5th Magistrates' Office. At every stage of the investigation process, he was informed of his legal rights, as well as of the charges against him, and was given the opportunity to inform a member of his family. Also, he was regularly provided with medical examinations. Medical reports indicate that Mr. Komiş was not subjected to any ill-treatment or torture.

46. The Government therefore concludes that the custody of Mr. Komiş is compliant with the legal requirements of relevant laws, namely the Criminal Procedure Code and the Anti-Terror Law.

47. Turning to the legal basis for Mr. Komiş's detention, the Government submits that on 6 September 2019, the Ankara 5th Magistrates' Office ruled for pretrial detention on the basis of concrete and strong evidence which was also supported by his testimony indicating that he was affiliated with FETÖ. Regarding the gravity of the charges against Mr. Komiş, the Magistrates' Office considered that there was a risk of flight, noting that Mr. Komiş was not able to provide an address in relation to his residence in Turkey. Therefore, the Court considered that judicial control measures would be inadequate in his case and remanded Mr. Komiş in custody pending trial.

48. The Government submits that the indictment of 15 October 2019, accepted by the Ankara 14th Assize Court on 22 November 2019, also provides concrete elements demonstrating that Mr. Komiş is suspected of being a member of FETÖ. Considering these elements, the Court ruled for the continuation of detention.

49. The Government explains that the testimonies given by Mr. Komiş indicate that he started to attend dormitories of FETÖ when he was in high school. Ever since then, he had

always resided in homes and dormitories affiliated to FETÖ. Afterwards, he had worked as a teacher in FETÖ-affiliated schools in Kazakhstan. It has also been established that Mr. Komiş held a deposit account at Bank Asya, a key institution that provided financial resources for FETÖ. It has been proven by several court decisions that on 25 December 2013 the leader of the terrorist organization instructed the members of FETÖ to invest money at Bank Asya in order to improve the financial situation of the bank and increase the volume of transactions.

50. The Government submits that the examination by the Financial Crimes Investigation Board of Mr. Komiş's account activity demonstrates that his investments rose significantly and his financial activity intensified after 25 December 2013. Therefore, Mr. Komiş acted upon the instruction of the leader of FETÖ in order to increase the volume of transactions of Bank Asya and to contribute to the financial resources of the terrorist organization.

51. Additionally, the indictment establishes that Mr. Komiş accessed the ByLock application on his personal computer through his email account via an Android virtual device. The installation and usage of the ByLock application is crucial evidence to prove his membership of the organization, since it was developed for confidential intra-organizational communication among the terrorist organization's members, and access to this system was not allowed to the public.

52. According to the Government, ByLock is an application exclusively meant to establish strongly encrypted communications between FETÖ members. The ByLock application has a design that encrypts each message, and each message is sent with a different encryption. It was made available to FETÖ members in the guise of an application available for all. In fact, after being accessible on the Internet as an application available for all for a short while, those wishing to download the application were obliged to access it via a VPN, Bluetooth or external memory, in order to disguise the identities of the users. Signing up to the application was not sufficient to contact users in the system; user names and codes, provided mostly face-to-face or by an intermediary (a courier, an existing ByLock user etc.), needed to be added by both sides in order to communicate with each other. Messaging could be started after both users had added each other. Therefore, a person who had no connection with FETÖ was not able to download the application on his or her mobile phone and communicate with other users.

53. The Government points to the reasoned judgment of 24 April 2017 by the 16th Criminal Chamber of the Court of Cassation, which examined the nature of ByLock and concluded that concrete evidence existed proving that the ByLock communication system was a network programmed for the use of the members of FETÖ and was used exclusively by the members of this terrorist organization.

54. Additionally, the judgment of the Criminal Division of the Plenary Court of Cassation (file No. 2017/956, judgment No. 2017/370, of 26 September 2017) specifies that where use of this application has been detected, it shall be evidence of the user's connection with FETÖ, as the ByLock communication system is a network made available exclusively for the use of FETÖ members and exclusively used by the members of this criminal organization. Moreover, the judgment of the Criminal Division of the Plenary Court of Cassation (file No. 2018/16-419, judgment No. 2018/661) explicitly sets forth the connection between FETÖ and the use of ByLock.

55. The Government therefore concludes that the detention of Mr. Komiş is based on concrete elements indicating the presence of strong suspicion pointing to his implication in a crime listed in article 100/3-a of the Criminal Code of Turkey.

56. The Government emphasizes that the judicial process regarding Mr. Komiş is under way. The case is currently before the Assize Court. When the judgment is issued, Mr. Komiş will have the possibility of appealing the decision to the Regional Court of Appeal, and then to the Court of Cassation. He will also have the right to lodge an individual application before the Constitutional Court.

57. Furthermore, Turkish law provides the right to seek remedies. Mr. Komiş has the possibility of claiming compensation under article 141 and the subsequent articles of the Criminal Procedure Code. According to Turkish law, there must be a request in order for a

person to be awarded compensation. It should also be emphasized that the compensation mechanism introduced in article 141 of the Criminal Procedure Code is recognized by the European Court of Human Rights as an effective domestic remedy.

58. The Government emphasizes that the requirement of exhaustion of domestic remedies is generally a recognized rule in international law. The obligation to exhaust domestic remedies is part of customary international law, as it is accepted in the case law of the International Court of Justice; see *Interhandel (Switzerland v. United States of America)*, judgment of 21 March 1959. In the present case, domestic remedies have not been exhausted.

59. In the light of the explanations provided, the Government argues that the allegations communicated to the Working Group by the source regarding the situation of Mr. Komiş are unfounded and therefore should be dismissed.

### **Discussion**

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

61. In determining whether the deprivation of liberty of Mr. Komiş and his family is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international requirements 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 (A/HRC/19/57, para. 68).

62. Noting that allegations have been made against the Government of Malaysia and the Government of Turkey, the Working Group shall proceed to examine these separately.

#### *Allegations against the Government of Malaysia*

63. The Working Group observes that it is not disputed that the Komiş family was detained by the Malaysian authorities on 28 August 2019. The reasons for the detention are not disputed either, as both the source and the Government of Malaysia argue that the Government of Turkey requested the extradition of Mr. Komiş and revoked his and his family's passports which required the Malaysian authorities to remove them from Malaysia in accordance with subsection 56 (2) of the Immigration Act 1959/63. The Government of Malaysia denies any knowledge of Mr. Komiş having expressed fears over being returned to Turkey.

64. However, the Working Group observes that the Government of Malaysia has chosen not to respond to the allegations made by the source that the arrest of the Komiş family, including of the four minors, took place during the night and was executed by a large number of masked officers. The Working Group is unable to find such timing and manner of the arrest as proportionate and in line with the prescribed procedure as required by article 9 of the Universal Declaration of Human Rights.

65. Additionally, the Government has not replied to the allegations that the Komiş family were held incommunicado until their forcible removal to Turkey. Although it appears that the family were able to send a message informing friends of their whereabouts, they were not permitted to have contact with a lawyer, and the Malaysian authorities did not acknowledge their detention, thus placing them outside the protection of the law, in breach of article 6 of the Universal Declaration of Human Rights. As the Working Group has consistently found, holding persons incommunicado violates their right to be brought before a court and to challenge the lawfulness of their detention.<sup>1</sup> Judicial oversight of

<sup>1</sup> Opinions Nos. 11/2018, 79/2017, 46/2017 and 45/2017.

detention is a fundamental safeguard of personal liberty<sup>2</sup> and is essential in ensuring that detention has a legal basis. Given that the Komiş family 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.

66. Moreover, as the Working Group has consistently maintained, any form of detention, including detention in the course of migration proceedings, must be ordered and approved by a judge or other judicial authority, and anyone so detained must be brought promptly before a judicial authority.<sup>3</sup> While the Working Group accepts that the Malaysian authorities followed the prescription of domestic legislation when arresting the Komiş family, the role of the Working Group is also to assess such laws to determine whether the relevant international standards have been met,<sup>4</sup> and in the present case, they have not.

67. The Working Group therefore finds that the arrest and detention of the Komiş family was arbitrary, falling under category I, as their detention was not authorized by a judicial authority, they were held incommunicado, and they were prevented from challenging the legality of their detention, in breach of article 9 of the Universal Declaration of Human Rights. The Working Group is particularly concerned by the detention and expulsion of Ms. Komiş and the four minors, one of whom was not even a Turkish citizen, and finds that a breach of article 37 (b) of the Convention on the Rights of the Child also occurred.

68. Furthermore, the Working Group notes that while the Government of Malaysia admits having received a request from the Turkish authorities for the extradition of Mr. Komiş, it chose, for that request, not to avail itself of the accepted judicial process affording Mr. Komiş the requisite due process guarantees and enabling him to challenge it in a court of law. Therefore, the detention of the Komiş family took place with disregard for the established extradition procedures thus denying them the fair trial rights.

69. Moreover, the Working Group recalls the unchallenged allegation that a statement was made to the press by the Minister of Federal Territories that police had evidence to show that Mr. Komiş “was involved” in terrorism, without elaborating on which actions by Mr. Komiş were classified as acts of terrorism. Noting that Mr. Komiş was denied the possibility of challenging allegations against him prior to his removal from Malaysia as the Malaysian authorities had chosen to sidestep the accepted extradition procedures, the Working Group is of the view that the Malaysian authorities had formed a prejudgment and were not simply responding to an extradition request. The Working Group finds that Mr. Komiş was denied the right to be presumed innocent, in breach of article 14 (2) of the Covenant.

70. Noting all of the above, the Working Group also finds the detention of the Komiş family arbitrary and falling under category III.

71. Finally, the Government of Malaysia violated its obligation under articles 5 and 9 of the Universal Declaration of Human Rights and article 37 of the Convention on the Rights of the Child by returning the Komiş family to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture or other ill-treatment and arbitrary detention. The Working Group is unable to accept the argument presented by the Government that it was not made aware of Mr. Komiş’s fears over being returned to Turkey, since the whole Komiş family were holders of UNHCR-issued documents. If the appropriate extradition procedures had been followed in the present case, the Malaysian authorities would have engaged in a proper assessment of whether removal of the Komiş family would breach the prohibition of non-refoulement. The Working Group wishes to emphasize that the responsibility for ensuring that breach of the prohibition of

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<sup>2</sup> United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, para. 3.

<sup>3</sup> Working Group revised deliberation No. 5 (A/HRC/39/45, annex), para. 13. See also A/HRC/13/30, para. 61; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 4; E/CN.4/1999/63/Add.4, para. 51; and E/CN.4/2003/8/Add.2, para. 64 (a); as well as A/HRC/13/30/Add.2, para. 79 (e).

<sup>4</sup> Opinions Nos. 33/2015, 15/2017, 16/2017 and 30/2017.

non-refoulement does not occur rests with the State that is contemplating the removal of the person in question. In the present case, the Malaysian authorities failed in their duty of non-refoulement. In making this finding, the Working Group notes particularly that the Government has not replied to the allegation that UNHCR was denied access to the Komiş family while they were detained, and the Working Group recalls that organizations such as UNHCR should have free access to all those in immigration detention.<sup>5</sup>

72. Consequently, the Working Group considers that the Government of Malaysia is responsible for its own actions in the arrest, detention and deportation of the Komiş family as well as the subsequent violations of their rights in Turkey. The Working Group calls upon the Government of Malaysia to take all the necessary steps to secure the immediate and unconditional release of Mr. Komiş. 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.

#### *Allegations against the Government of Turkey*

73. As a preliminary issue, the Working Group notes that the situation of Mr. Komiş and his family falls within the scope of the derogations that Turkey has made under the Covenant. On 21 July 2016, the Government of Turkey informed the Secretary-General of the United Nations that it had declared a state of emergency for three months, in response to severe dangers to public security and order, amounting to a threat to the life of the nation within the meaning of article 4 of the Covenant.<sup>6</sup>

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

75. As a further preliminary issue, the Working Group wishes to clarify that the procedural rules governing its consideration of communications on alleged cases of arbitrary detention are contained in its methods of work. There is no provision in the methods of work that prevents the Working Group from considering communications due to 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 in order for a communication to be considered admissible.<sup>8</sup>

76. As a final preliminary issue, the Working Group notes that Ms. Komiş and the four minors whose names are known to the Working Group have been released. However, the Working Group notes that in accordance with paragraph 17 (a) of its methods of work, it “reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned”. In the present case, the Working Group considers that the allegations made by the source are serious, and therefore will proceed to deliver the opinion.

77. Turning to the specific allegations made against the Government of Turkey, the Working Group observes that the source has argued that the detention of Mr. Komiş and his

<sup>5</sup> Revised deliberation No. 5 (A/HRC/39/45, annex), para. 47.

<sup>6</sup> Depository notification C.N.580.2016.TREATIES-IV.4.

<sup>7</sup> See the Committee’s general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, para. 4. See also the Committee’s general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 6; its general comment No. 34 (2011) on the freedoms of opinion and expression, para. 5; and its general comment No. 35 (2014) on liberty and security of person, paras. 65–66.

<sup>8</sup> Opinions No. 19/2013 and No. 11/2000. See also opinions No. 41/2017, para. 73; No. 38/2017, para. 67; No. 11/2018, para. 66; No. 20/2019, para. 81; and No. 53/2019, para. 59.

family falls under categories I, II, III and V of the Working Group. The Government has denied these allegations.

i Category I

78. The Working Group recalls that it considers a detention to be arbitrary and to fall under category I if such detention lacks legal basis. In the present case, the Working Group must therefore examine the circumstances of the arrest of Mr. Komiş and his family, and notes that they were arrested in Malaysia on 28 August 2019, and forcibly transferred to Turkey, arriving there on 30 August 2019 when they were arrested by the Turkish authorities. The Working Group notes that this is not disputed by the Government of Turkey, which has explained that the arrest of Mr. Komiş took place following his deportation from Malaysia.

79. However, the Government has provided no explanation for the detention of Ms. Komiş and the four children upon their forcible removal to Turkey. Although it appears that their detention upon arrival in Turkey was short, this was nevertheless a detention<sup>9</sup> and the Working Group considers that it was arbitrary since the Turkish authorities failed to invoke any legal basis to justify it, in breach of article 9 of the Covenant.

80. Moreover, the Turkish authorities are also responsible for the arrest and detention of Ms. Komiş and the four minors in Malaysia. The Working Group therefore concludes that this detention had no legal basis and was thus arbitrary, falling under category I. The Working Group is particularly concerned by the arrest and detention of the four minors, who were subjected to the traumatizing experience of being forcibly removed from Malaysia at the request of the Turkish authorities. The Working Group considers that this treatment reveals a prima facie breach by Turkey of articles 3 (1), 22 and 40 of the Convention on the Rights of the Child.

81. Turning to the allegations concerning Mr. Komiş, the Working Group observes the failure of the Government to acknowledge the forcible transfer of Mr. Komiş and his family from Malaysia. Neither Mr. Komiş nor his wife and children arrived in Turkey on 30 August 2019 of their own free will. The Government of Turkey had the opportunity to afford them the due process rights through a properly conducted extradition process from Malaysia, but it chose not to do so by sidestepping the extradition procedures. It is therefore responsible for their arbitrary detention in Malaysia.

82. Moreover, the Working Group observes that Mr. Komiş was arrested by the Turkish authorities upon arrival and was not presented before a judicial authority until 3 September 2019, that is, some four days after his arrest in Turkey. As the Working Group has consistently argued,<sup>10</sup> in order to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged by article 9 (4) of the Covenant.

83. The Working Group recalls that according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.<sup>11</sup> This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty.<sup>12</sup> It is applicable to “all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures”.<sup>13</sup>

<sup>9</sup> Opinion No. 67/2017 and deliberation No. 9 (A/HRC/22/44, sect. III).

<sup>10</sup> Opinions Nos. 1/2017, 6/2017, 8/2017, 30/2017, 2/2018, 4/2018, 42/2018, 43/2018, 79/2018 and 49/2019.

<sup>11</sup> A/HRC/30/37, paras. 2–3.

<sup>12</sup> *Ibid.*, para. 11.

<sup>13</sup> A/HRC/30/37, annex, para. 47 (a).

84. The Working Group further considers that judicial oversight of detention is a fundamental safeguard of personal liberty<sup>14</sup> and is essential in ensuring that detention has a legal basis. In the present case, Mr. Komiş was not presented before a judge until some four days after his arrest, and the Government has simply cited compliance with its national law as an explanation for this delay. The Working Group once again recalls that a derogation under article 4 of the Covenant cannot justify a deprivation of liberty that is unreasonable or unnecessary,<sup>15</sup> and without prompt presentation of Mr. Komiş before the judicial authority it cannot be said that his detention was lawful as it violated article 9 (4) of the Covenant.

85. Furthermore, since during these four days of detention Mr. Komiş was not able to 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.

86. Finally, as explained by the Human Rights 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”.<sup>16</sup> The Working Group observes that the Government has not presented any such justifications, and therefore a breach of article 9 (3) of the Covenant also occurred.

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

ii. Category II

88. The source has further argued that the detention of Mr. Komiş and his family falls under category II, since they were not afforded the right to seek and to enjoy in Malaysia asylum from persecution. However, the Working Group observes that the Government of Turkey has submitted that the arrest and subsequent detention of Mr. Komiş was due to his allegiance to the Gülen movement, manifested by him having attended and lived in the FETÖ dormitories, having held an account at Bank Asya and having used the ByLock application on his computer and phone.

89. In the present case, as in many others before,<sup>17</sup> the Working Group observes that the essence of the allegations against Mr. Komiş, as presented by the Government, is his alleged alliance with the Gülen group, which is allegedly evidenced by such regular daily activities as having a bank account and using a communication application. In relation to the latter, the Government has made detailed submissions on how the ByLock application was used by the FETÖ terrorist organization in general. However, no explanation has been provided as to how the alleged use of this application by Mr. Komiş could be equated with a criminal act. Nor has the Government presented any evidence that Mr. Komiş was indeed a member of FETÖ by dint of having held a bank account at Bank Asya or merely having lived in a dormitory affiliated with the Gülen movement, many years ago.

90. The Working Group is mindful of the state of emergency that was declared in Turkey. However, while the National Security Council of Turkey had already designated FETÖ, the Gülen group, as a terrorist organization in 2015, this organization’s readiness to use violence had not become apparent to Turkish society at large until the coup attempt in July 2016. As noted by the Commissioner for Human Rights of the Council of Europe:

“Despite deep suspicions about its motivations and modus operandi from various segments of the Turkish society, the Fethullah Gülen movement appears to have developed over decades and enjoyed, until fairly recently, considerable freedom to establish a pervasive and respectable presence in all sectors of Turkish society, including religious institutions, education, civil society and trade unions, media, finance and business. It is also beyond doubt that many organizations affiliated to

<sup>14</sup> United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, para. 3.

<sup>15</sup> See Human Rights Committee, general comment No. 35, para. 66. See also the Committee’s general comment No. 29, para. 3.

<sup>16</sup> See the Committee’s general comment No. 35, para. 33.

<sup>17</sup> Opinions Nos. 42/2018, 44/2018, 29/2020 and 30/2020.

this movement, which were closed after 15 July, were open and legally operating until that date. There seems to be general agreement that it would be rare for a Turkish citizen never to have had any contact or dealings with this movement in one way or another.”<sup>18</sup>

91. In the light of this, the Commissioner for Human Rights of the Council of Europe pointed out that there was a need “when criminalizing membership and support of this organization, to distinguish between persons who engaged in illegal activities and those who were sympathizers or supporters of, or members of legally established entities affiliated with the movement, without being aware of its readiness to engage in violence”.<sup>19</sup>

92. The Working Group observes that the allegations against Mr. Komiş as a member of the Gülen group are based on him having engaged in regular activities, without any specification of how such activities amounted to a criminal act. However, in view of the widespread reach of the Fethullah Gülen movement, as documented in the report of the Commissioner for Human Rights of the Council of Europe cited above, “it would be rare for a Turkish citizen never to have had any contact or dealings with this movement in one way or another”.<sup>20</sup> This appears to be the case of Mr. Komiş. The Working Group specifically notes the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression who visited Turkey in November 2016 and recorded numerous cases of arrests based purely on the presence of ByLock on the accused’s computer and ambiguous evidence.<sup>21</sup> The Working Group also notes the findings of the Human Rights Committee in communication 2980/2017, in which it dismissed the mere use of the ByLock application as sufficient basis for the arrest and detention of an individual.<sup>22</sup>

93. In the present case, it is clear to the Working Group that even if Mr. Komiş had used the ByLock application, it would have been mere exercise of his freedom of expression, a right protected under article 19 of the Covenant. The Working Group recalls that this is not the first time that it has examined the arrest and prosecution of Turkish nationals on the basis of alleged use of the ByLock application as the key manifestation of an alleged criminal activity.<sup>23</sup> The Working Group recalls that in those other instances, it concluded that in the absence of a specific explanation as to how the alleged mere use of the ByLock communication application constituted a criminal activity by the individual concerned, the detention was arbitrary. The Working Group regrets that its views in these opinions have not been respected by the Turkish authorities and that the present case follows the same pattern.

94. The Working Group concludes that the arrest and detention of Mr. Komiş resulted from his exercise of the rights guaranteed by article 19 of the Covenant, and falls within category II. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, for further consideration.

### iii. Category III

95. Given its finding that the deprivation of liberty of Mr. Komiş is arbitrary under category II, the Working Group wishes to emphasize that no trial of Mr. Komiş should take place. However, the trial is ongoing, and the source has submitted that there were violations of his fair trial rights that render his detention arbitrary under category III of the Working Group. The Government denies these allegations.

96. The source has alleged that Mr. Komiş has been denied legal assistance since his detention in Turkey, and has also stated that Mr. Komiş is being held in detention without

<sup>18</sup> Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, CommDH(2016)35 of 7 October 2016, para. 20.

<sup>19</sup> Ibid., para. 21.

<sup>20</sup> Ibid., para. 20.

<sup>21</sup> A/HRC/35/22/Add.3, para. 54.

<sup>22</sup> CCPR/C/125/D/2980/2017.

<sup>23</sup> Opinions Nos. 42/2018, 44/2018, 29/2020 and 30/2020.

any charge. However, the Working Group observes that the Government has submitted that Mr. Komiş was assigned a lawyer from the Ankara Bar Association and that he was informed of the charges against him. Moreover, the Government has provided a detailed explanation of the ongoing court proceedings against Mr. Komiş. Noting this, the Working Group is unable to make any findings on the matter.

97. However, the Working Group observes that Mr. Komiş has been in pretrial detention now for about a year, which, in principle, is not automatically a breach of article 14 (3) (c) of the Covenant as there can be legitimate reasons justifying such a delay. In the present case, however, the Working Group notes that Mr. Komiş was detained and placed in pretrial detention purely for exercising his rights protected by the Covenant. The Working Group therefore finds that his placing in pretrial detention constituted a breach of article 14 (3) of the Covenant.<sup>24</sup>

98. Furthermore, the Working Group notes the unchallenged allegations concerning a statement by the security forces via the Anadolu Agency about the detention and transfer of Mr. Komiş being an operation by the Turkish intelligence organization, noting that “intelligence forces arrested the so-called Malaysia chief of the Fetullah Terrorist Organization (FETÖ) in an operation and brought him back to Turkey”. The Working Group therefore finds that Mr. Komiş was denied the right to be presumed innocent, in breach of article 14 (2) of the Covenant.

99. Finally, the Working Group has already established the responsibility of the Government of Turkey over the extradition of the Komiş family from Malaysia. Therefore, noting the disregard for the accepted procedures for the extradition process, which would have afforded Mr. Komiş his due process rights, as well as breaches of article 14 (2) and (3) of the Covenant, the Working Group finds his detention arbitrary, falling under category III also as regards Turkey.

#### iv. Category V

100. Finally, the source has alleged that the detention of Mr. Komiş falls under category V, since it constitutes discrimination based on political or other opinion. The Government rejects this allegation, explaining that his detention was due to his alleged membership in a terrorist organization.

101. The present case is the latest case concerning individuals with alleged links to the Gülen movement that has come before the Working Group in the past three years.<sup>25</sup> In all these cases, the Working Group has found that the detention of the individuals concerned was arbitrary. It notes a pattern of targeting those with alleged links to the Gülen movement on the discriminatory basis of their political or other opinion. Accordingly, the Working Group finds that the Government of Turkey detained Mr. Komiş on the basis of a prohibited ground for discrimination, and that the case falls within category V. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

102. In 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.<sup>26</sup> The Working Group expresses its 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 the rules of international law may constitute crimes against humanity.<sup>27</sup>

<sup>24</sup> See also Human Rights Committee, general comment No. 35, para. 37; and the same Committee’s general comment No. 32, para. 35.

<sup>25</sup> Opinions Nos. 1/2017, 38/2017, 41/2017, 11/2018, 42/2018, 43/2018, 78/2018, 10/2019, 53/2019, 79/2019, 2/2020, 29/2020, 30/2020 and 47/2020.

<sup>26</sup> Ibid.

<sup>27</sup> See, for example, opinion No. 47/2012, para. 22.

103. 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 that Turkey has issued a standing invitation to the 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**

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

#### *Regarding Malaysia*

The deprivation of liberty in Malaysia of Arif Komiş, Ülkü Komiş and four minor children whose names are known to the Working Group, being in contravention of articles 3, 6, 8, 9 and 10 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 Arif Komiş, Ülkü Komiş and four minor children whose names are known to the Working Group, being in contravention of articles 3, 6, 8, 9, 10 and 19 of the Universal Declaration of Human Rights and articles 2 (1) and (3), 9, 14, 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

105. The Working Group requests the Government of Malaysia and the Government of Turkey to take the steps necessary to remedy the situation of Mr. Komiş, Ms. Komiş and four minor children whose names are known to the Working Group without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

106. 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 release Mr. Komiş immediately; and (b) for the Government of Turkey and the Government of Malaysia to accord Mr. Komiş, Ms. Komiş and the four minor children whose names are known to the Working Group an enforceable right to compensation and other reparations, including for the impact on their psychological integrity from having been arrested, secretly detained and deported. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government of Turkey to take urgent action to ensure the immediate release of Mr. Komiş.

107. The Working Group urges the two Governments to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of the Komiş family and to take appropriate measures against those responsible for the violation of their rights.

108. 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 and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

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

### **Follow-up procedure**

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

- (a) Whether Mr. Arif Komiş has been released and, if so, on what date;

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- (b) Whether compensation or other reparations have been made to the Komiş family;
  - (c) Whether an investigation has been conducted into the violation of the Komiş family'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 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.

111. 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.

112. 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.

113. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>28</sup>

*[Adopted on 26 August 2020]*

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<sup>28</sup> Human Rights Council resolution 42/22, paras. 3 and 7.