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Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its 101st session, 11–15 November 2024****Opinion No. 46/2024 concerning Ruben Vardanyan (Azerbaijan)***

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 51/8.

2. In accordance with its methods of work,¹ on 15 May 2024, the Working Group transmitted to the Government of Azerbaijan a communication concerning Ruben Vardanyan. The Government replied to the communication on 15 August 2024. 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).

* Mumba Malila did not participate in the discussion of the case.

¹ [A/HRC/36/38](#).

1. Submissions

(a) Communication from the source

4. Ruben Vardanyan is a national of Armenia, born on 25 May 1968.

(i) Background

5. According to the source, Mr. Vardanyan is a business leader, social entrepreneur, philanthropist and human rights defender who has been an outspoken advocate for the rights of the ethnic Armenian population living in Nagorno-Karabakh, including their right to self-determination. For many years, he has been critical of actions of the authorities of Azerbaijan in relation to that population. Between 4 November 2022 and 23 February 2023, Mr. Vardanyan also served as the Minister of State (Prime Minister) in the Government of Nagorno-Karabakh.

6. Mr. Vardanyan was living in Stepanakert (Khankendi), capital of Nagorno-Karabakh, where he relocated to in 2022, in order to manage his humanitarian projects. He was then invited by the President of Nagorno-Karabakh to take a political role, which he agreed to do and served as the Minister of State until February 2023. He was then removed from office as a result of pressure from the authorities of Azerbaijan. After his dismissal, Mr. Vardanyan focused on managing social projects and supporting cultural initiatives in Nagorno-Karabakh. Those included projects focused on safeguarding cultural heritage and the Our Mountains Initiative, which helped individuals whose lives had been disrupted by the conflict in Nagorno-Karabakh.

7. The source adds that Nagorno-Karabakh has a long history of contested claims. The latest escalation in Nagorno-Karabakh began on 19 September 2023. Nearly 120,000 ethnic Armenians in Nagorno-Karabakh fled at that time to Armenia.

(ii) Arrest and pretrial detention

8. Mr. Vardanyan was arrested by officials of the State Border Service of Azerbaijan during the latest escalation in Nagorno-Karabakh, on 27 September 2023, as he tried to cross the border into Armenia. On the same day, the Sabail District Court in Baku remanded Mr. Vardanyan and placed him in pretrial detention on charges under articles 214-1 (financing of terrorism), 279 (3) (participation in the creation and operation of armed groups not sanctioned by law) and 318 (1) (illegal crossing of the State border) of the Criminal Code.

9. According to the source, Mr. Vardanyan's detention was part of a larger campaign against the former leaders of Nagorno-Karabakh, given the fact that, in late September and early October 2023, several other leaders of the Government of Nagorno-Karabakh were also arrested. The Prosecutor General of Azerbaijan indicated that criminal investigations had been opened against a total of 300 former officials from Nagorno-Karabakh.

10. Mr. Vardanyan appealed the detention order of 27 September 2023, but his appeal was rejected by the Baku Appeal Court on 9 October 2023. On 16 January 2024, the same Court extended his detention for an additional four months. Mr. Vardanyan's appeal of that detention order was rejected in late January 2024. Mr. Vardanyan also filed motions to dismiss the case on 30 October, 27 November and 14 December 2023, and 12 January 2024. All of those motions were denied.

11. Mr. Vardanyan remains deprived of liberty at the pretrial detention facility of the State Security Service.

(iii) Legal analysis

12. The source submits that Mr. Vardanyan's detention constitutes an arbitrary deprivation of his liberty under categories II, III and V of the Working Group.

a. Category II

13. The source argues that Mr. Vardanyan's detention is arbitrary because it resulted from the exercise of his rights to freedom of opinion, expression and association.

14. It claims that Mr. Vardanyan is being detained in retaliation for his outspoken advocacy for Nagorno-Karabakh and his criticism of the President of Azerbaijan and that this violates article 19 (2) of the Covenant. It highlights that the Working Group has previously noted “a pattern of unlawful deprivation of liberty” of “individuals expressing opinions not in line with those of the ruling political establishment” in Azerbaijan.²

15. The source argues that Mr. Vardanyan has long used his platform as a successful businessman, entrepreneur and philanthropist to call for self-determination for the people of Nagorno-Karabakh, speak out against the policies of Azerbaijan towards them, alleging that these were contrary to international law, and promote accountability for these violations. He has been the principal representative of Nagorno-Karabakh in relation to the outside world, appearing on Western television programmes to articulate the claims for independence of Armenians in Nagorno-Karabakh.³ In January 2023, after the start of the blockade of the Lachin corridor by Azerbaijan, Mr. Vardanyan appeared on a television programme on the British Broadcasting Corporation to discuss the situation and to advocate for the rights of the ethnic Armenians of Nagorno-Karabakh.⁴ That same month, in an interview with France 24, he called for European countries to consider imposing sanctions to pressure the authorities of Azerbaijan into ending the blockade of the Lachin corridor.⁵ His posts on X, each of which received tens of thousands of views, highlighted the same issues.

16. The source recalls that the Foreign Minister of Azerbaijan has publicly responded to Mr. Vardanyan’s calls for self-determination by saying that Mr. Vardanyan’s activity is criminally adventurous and should be ended immediately.

17. The source recalls the fact that, while all the former leaders of Nagorno-Karabakh, including Mr. Vardanyan, were originally charged in the same criminal case, Mr. Vardanyan’s case has been separated out into a stand-alone case (he was informed of this on 13 November 2023), even though they are charged with very similar crimes.

18. As part of the investigation in Mr. Vardanyan’s case, the prosecution has ordered a linguistic analysis of at least three of his statements and writings, all of which are focused on Nagorno-Karabakh: (a) a video he uploaded to YouTube on 20 December 2022; (b) a video he uploaded to his Telegram channel on 16 December 2022; and (c) a 42-page statement entitled “15 principles of Armenia’s future”, which he published in 2023. According to the source, that demonstrates unequivocally that Mr. Vardanyan is being targeted for speaking out on behalf of Nagorno-Karabakh.

19. The source argues that the charges against Mr. Vardanyan for illegally crossing the border between Nagorno-Karabakh and Armenia appear to be politically motivated and have no basis in law for several reasons: prior to the blockade, there were no border controls between Nagorno-Karabakh and Armenia; Nagorno-Karabakh residents held Armenian passports, not Azerbaijani ones, and moved freely between the regions; the charges violate the 2020 ceasefire agreement, which allowed unobstructed movement, and the principle of *nullum crimen sine lege*, as there are no internationally recognized boundaries. The source asserts that those factors suggest that the illegal border crossing charge lacks a legal foundation.

20. The source recalls that, in a previous opinion, the Working Group found a violation of the rights to freedom of expression and association (articles 19 (1) and 22 of the Covenant) because the purpose of the criminal charges brought against the activists was to intimidate them because of their political views regarding independence and to prevent them from pursuing that cause in the political sphere.⁶ It argues that, similarly, the criminal charges against Mr. Vardanyan are intended to silence him and to prevent him from pursuing his cause in the political sphere. It asserts that the Working Group has repeatedly found violations of the rights to freedom of opinion, expression and association in situations in

² A/HRC/36/37/Add.1, para. 82.

³ See, for example, <https://www.reuters.com/world/karabakhs-wardanyan-close-100-killed-hundreds-injured-by-azerbajians-war-2023-09-20>.

⁴ See <https://jam-news.net/bbc-interview-with-ruben-wardanyan>.

⁵ See <https://mediamax.am/en/news/karabakh/50049>.

⁶ Opinion No. 6/2019.

which Governments have detained members or leaders of the political opposition due to their political activities.⁷

21. The source asserts that Mr. Vardanyan originally moved to Nagorno-Karabakh for humanitarian reasons, hoping to help its civilian population. However, after the President personally invited him to take a political role, he agreed and served as the Minister of State of Nagorno-Karabakh for several months. The Government of Azerbaijan opposed his appointment – the authorities of Azerbaijan publicly declined to engage on issues of mutual concern with Mr. Vardanyan. Moreover, Mr. Vardanyan was removed from his post after the authorities of Azerbaijan demanded his dismissal. The connection between Mr. Vardanyan's detention and his political service is further evident from the fact that he is detained along with five other former civilian leaders of Nagorno-Karabakh – who were all arrested within a week of each other (between 27 September and 4 October 2023) – and from the statement of the Prosecutor General that criminal investigations have been opened against a total of 300 former officials of Nagorno-Karabakh.

b. Category III

22. The source asserts that the authorities of Azerbaijan have violated Mr. Vardanyan's right to the presumption of bail and his right to the presumption of innocence.

23. In relation to the right to the presumption of bail, the source recalls that article 9 (3) of the Covenant contains a presumption against pretrial detention. The Working Group has affirmed the explanation of the Human Rights Committee to the effect that detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.⁸ Pretrial detention cannot be ordered based on the potential sentence for the crime charged, rather than on a determination of necessity.⁹ Moreover, in imposing pretrial detention, courts must examine whether alternatives to pretrial detention, such as bail, electronic bracelets or other conditions, would render detention unnecessary in the particular case.¹⁰

24. The source submits that the two orders of the Sabail District Court in Baku ordering Mr. Vardanyan to be held in pretrial detention are not valid under international law. The first order, issued on 27 September 2023, stated that pretrial detention was appropriate because: (a) Mr. Vardanyan was likely to hide from the authorities; (b) he was likely to obstruct or interfere with the investigation; and (c) the nature, severity and circumstances of his alleged crimes warranted detention. The prosecutor had also argued (and it appears the Court may have agreed) that Mr. Vardanyan was likely to commit additional crimes and that he posed a danger to society. However, the source claims that the Court provided no actual evidence for those findings and its order therefore does not constitute a reasoned, individualized judgment on the application of pretrial detention.

25. The source specifies that, regarding the claims that he was likely to obstruct or interfere with the investigation, that he was likely to commit additional crimes and that he posed a danger to society, the Sabail District Court provided no evidence to support those claims. Without having analysed specific factual evidence related to Mr. Vardanyan, the Court cannot be said to have made an individualized determination of those factors. It notes that the Human Rights Committee has stated that vague and expansive standards, such as public security, should not be used to impose pretrial detention,¹¹ and the Court's reliance on the claim that he was a danger to society violated that injunction.

26. Regarding the risk that Mr. Vardanyan would flee or hide, the Sabail District Court noted that, between 25 and 27 September 2023 (the time between his indictment and arrest), Mr. Vardanyan's whereabouts were unknown and he was considered to be hiding from

⁷ Decisions No. 5/1994 and No. 30/1996.

⁸ Human Rights committee, general comment No. 35 (2014), para. 38. See, for example, opinion No. 62/2017, para. 45.

⁹ Human Rights committee, general comment No. 35 (2014), para. 38.

¹⁰ Ibid.

¹¹ Human Rights Committee, general comment No. 35 (2014), para. 38.

investigators. The source argues that the fact that Azerbaijani authorities were not aware of Mr. Vardanyan's precise location hardly proves that he was hiding from investigators – especially given that, in the week prior, almost 120,000 people, including Mr. Vardanyan, had fled Nagorno-Karabakh. The Court argued that Mr. Vardanyan did not have a permanent place of residence in Azerbaijan, but this ignores the fact that he had a home in Stepanakert and that he had been living there for a year until he had been forcibly displaced by the military offensive. Between September 2022 and September 2023, there were consistent public reports that Mr. Vardanyan was in Stepanakert. The Court also asserted that he had repeatedly crossed the border illegally, but it did not cite a single specific instance of this beyond the one alleged incident for which he had been criminally charged. The Court also cited Mr. Vardanyan's wealth, but wealth alone does not make a person a flight risk.

27. Regarding the Court's assertion that the nature, severity and circumstances of Mr. Vardanyan's alleged crimes warranted detention, the source recalls that the Human Rights Committee has made it clear that the severity of the charges and the potential sentence the accused is facing cannot serve as the sole basis for imposing pretrial detention.¹²

28. The source recalls that, in its detention order of 27 September 2023, the Sabail District Court did not consider whether there were alternatives to detention, such as mandating that Mr. Vardanyan wore an ankle monitor, which would render pretrial detention unnecessary. The Court's order acknowledged that Mr. Vardanyan's attorney had proposed specific alternatives to detention, but it failed to consider them or explain why they would not suffice.

29. The second detention order was issued on 16 January 2024, when the Sabail District Court extended Mr. Vardanyan's pretrial detention by four months. On that occasion, the Court found that detention was necessary due to: (a) the nature and danger of the alleged crimes; (b) the need to perform investigative and other procedural actions; and (c) the volume of materials obtained in the course of the pretrial proceedings. The prosecutor had also argued (and it appears the Court may have agreed) that detention was warranted due to the complexity of the case and the likelihood that Mr. Vardanyan would obstruct the investigation or conceal or falsify materials.

30. Regarding the need to perform investigative and other procedural actions, the volume of materials obtained and the complexity of the case, the source submits that none of those were valid reasons to impose pretrial detention under international law. As regards the claim that Vardanyan would obstruct the investigation or conceal or falsify materials, the source points out that the Court's order contained no evidence to support such a claim. Regarding the nature and danger of the alleged crimes, the source claims that the severity of the charges and the potential sentence an accused is facing cannot serve as the sole basis for imposing pretrial detention. Moreover, the Court once again failed to consider any alternatives to pretrial detention.

31. The source submits that the authorities have violated Mr. Vardanyan's right to the presumption of innocence under article 14 (2) of the Covenant. Interpreting that right, the Human Rights Committee has explained that all public officials must refrain from prejudging the outcome of a trial, for example, by abstaining from making public statements affirming the guilt of the accused and that media should avoid news coverage undermining the presumption of innocence.¹³

32. Multiple government officials and agencies have made statements implying that Mr. Vardanyan is guilty, thereby violating his right to the presumption of innocence. The week before Mr. Vardanyan was arrested, the authorities referred to the leadership of Nagorno-Karabakh as, inter alia, a "criminal regime". On 28 September 2023, the day after Mr. Vardanyan's arrest, the Press Service of the State Security Service announced that he had been detained for the "illegal acts committed by him",¹⁴ which goes beyond merely reporting that it was alleged that he had committed specific crimes to conclude that he was actually guilty of having committed those crimes.

¹² Ibid.

¹³ Human Rights Committee, general comment No. 32 (2007), para. 30.

¹⁴ See <https://www.dtx.gov.az/en/news/1788.html>.

33. In January 2024, when responding to a question about Mr. Vardanyan and other detained leaders of Nagorno-Karabakh, the President referred to him as a criminal who had been arrested and detained and would be brought to justice soon.¹⁵ The source further notes that the President and others in positions of authority had repeatedly called Mr. Vardanyan a “criminal”, even before he was criminally charged.¹⁶ In January 2024, the Prosecutor General of Azerbaijan commented that Mr. Vardanyan and other detainees “were engaged in separatism, operating illegally on the territory of Azerbaijan”.¹⁷

34. Major media sources controlled by the authorities have also commented on Mr. Vardanyan’s guilt. The day after Mr. Vardanyan was arrested, Aze.Media reported that “Vardanyan participated in financing terrorism, allocating funds for the organization of terrorist activities of the mentioned illegal armed formations. For the committed illegal actions, Ruben Vardanyan was detained”.¹⁸ That same day, the *Baku Tribune* reported that “Ruben Vardanyan was detained on September 27, 2023, for the illegal acts he committed”.¹⁹ Reporting on Mr. Vardanyan’s arrest, Minval Politika called the Government of Nagorno-Karabakh an “illegal junta” and stated that Mr. Vardanyan was far from being an ordinary militant and his responsibility was different.²⁰

35. The source argues that the authorities violated Mr. Vardanyan’s right to be informed of the nature and cause of the charges against him and his right to have adequate time and facilities for the preparation of his defence in violation of article 14 (3) (a) and (b) of the Covenant.

36. The source claims that, neither Mr. Vardanyan nor his counsel has been told anything about the charges against him, other than that he is being investigated under articles 214-1, 279 (3) and 318 (1) of the Criminal Code. They have not been informed of the specific factual basis for each of the charges, nor have they been given evidence to support the charges. Without such information, they cannot prepare their defence.

37. The source submits that the authorities violated Mr. Vardanyan’s right to be tried by an independent and impartial tribunal under article 14 (1) of the Covenant.

38. The source submits that the judiciary lacks independence and is subordinate to the executive branch. In Mr. Vardanyan’s case, the Judge of the Sabail District Court demonstrates a lack of impartiality and independence through: prolonged investigation since September 2023 with no substantive hearings, only extensions of the period of detention; summary dismissal of bail requests without detailed, individualized determinations; and a failure to provide evidence supporting the accusations against Mr. Vardanyan.

c. Category V

39. The source submits that Mr. Vardanyan’s detention is a direct result of his Armenian ethnicity and is therefore discriminatory. His detention is part of a campaign to remove the ethnic Armenian presence and influence in Nagorno-Karabakh. The source quotes various official sources stating that ethnic Armenians do not have a historical presence in Nagorno-Karabakh.²¹ The source recalls the order of the International Court of Justice of 7 December 2021 requiring Azerbaijan “to prevent ... acts of vandalism and desecration

¹⁵ See https://azertag.az/en/xeber/president_of_azerbaijan_ilham_aliyev_was_interviewed_by_local_tv_channels_video-2878477.

¹⁶ See <https://www.azatutyun.am/a/32279597.html> (Mr. Vardanyan was called a “criminal oligarch”) and <https://web.archive.org/web/20221222104107/https://mfa.gov.az/en/news/no58122> (an assistant of the President called Mr. Vardanyan “a criminal businessman”).

¹⁷ See <https://en.azvision.az/news/176133/azerbaijan-continues-investigation%C2%A0against-armenian-separatists-in-line-with-int%E2%80%991-conventions-prosecutor-general.html>.

¹⁸ See <https://aze.media/state-security-service-ruben-varpanyan-charged-with-financing-terrorism>.

¹⁹ See <https://bakutribune.com/en/news/1219/azerbaijan%E2%80%99s-state-security-service-armenian-citizen-ruben-varpanyan-taken-into-custody-as-suspect>.

²⁰ See <https://minval.az/news/124347004> (in Russian).

²¹ See <https://jam-news.net/aliyev-on-armenian-azerbaijan-border-nagorno-karabakh-status-we-are-in-our-territory>; and <https://president.az/en/pages/view/azerbaijan/karabakh>.

affecting Armenian cultural heritage”.²² The Minister of Culture of Azerbaijan created a working group in early 2022 to eliminate the so-called traces written by Armenians on Albanian religious temples.²³ Mr. Vardanyan is detained alongside several other former leaders of Nagorno-Karabakh. The Prosecutor General has announced that criminal investigations have been opened against 300 former Nagorno-Karabakh officials.

40. According to the source, Mr. Vardanyan’s detention is discriminatory based on his political views favouring the self-governance of Nagorno-Karabakh. That is said to align with the Working Group’s previous finding that detaining activists for their opinions on self-determination constitutes arbitrary detention under category V. The Working Group has also determined that imprisoning members of political groups to silence their advocacy of self-determination is arbitrary.²⁴

41. The source claims that Mr. Vardanyan’s detention is intended to punish members of the leadership of Nagorno-Karabakh as a means of silencing their calls for self-determination. Mr. Vardanyan’s detention is the result of an effort against the leaders of the Nagorno-Karabakh independence movement, which enjoys the public political backing of high-ranking officials. His detention is discriminatory as it targets his work and efforts as a human rights defender, which qualifies his detention under category V.²⁵

(b) Response from the Government

42. On 15 May 2024, the Working Group transmitted the allegations from the source to the Government of Azerbaijan under its regular communications procedure, requesting a reply by 15 July 2024. On 12 July 2024, the Government of Azerbaijan requested an extension, which the Working Group granted. The Working Group received the Government’s response on 15 August 2024, within the established deadline.

43. The Government states that a criminal association (organization) was created in the formerly occupied territories of Azerbaijan by the Armenian armed forces, as well as by persons leading military formations in Armenia for the purpose of committing serious crimes against Azerbaijan and its citizens.

44. The Government submits that persons belonging to the criminal association have committed the acts of intentionally killing people and destroying a large amount of property with various types of rockets in an indiscriminate manner. The members of the Armenian armed group, which is not provided for by the legislation of Azerbaijan, operating in the area in which the Russian peacekeepers were temporarily stationed in the Garabagh economic region of Azerbaijan, conducted mass mining of territories (mining operations continued until September 2023) in order to carry out actions (terrorist acts) that threatened to kill people, harm their health, cause significant property damage and other socially dangerous consequences with the intention of national enmity and hostility.

45. The Government notes that criminal proceedings have been initiated against individuals involved in those attacks and mining operations. Some perpetrators have been convicted, while others are under investigation or subject to international search warrants. The criminal cases were initiated on the basis of specific facts and are not political in nature. Along with other persons who have been prosecuted in ongoing criminal cases, Mr. Vardanyan, detained on 27 September 2023, previously a citizen of the Russian Federation (until December 2022) and currently a citizen of Armenia, is accused of committing criminal acts under articles 214-1, 279 (3) and 318 (1) of the Criminal Code and was declared wanted as a suspect for the aforementioned crimes.

46. The Government states that Mr. Vardanyan is suspected of: illegally crossing the border of Azerbaijan to commit terrorist acts; entering areas under the control of Russian

²² *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 361, at para. 98 (c).

²³ See <https://report.az/medeniyyet-siyaseti/alban-dini-mebedlerinin-berpasi-ucun-isci-grup-yaradilib> (in Azeri).

²⁴ Opinion No. 6/2019.

²⁵ Opinion No. 45/2016, paras. 44 and 45.

peacekeepers to form and organize illegal armed groups; supplying these groups with weapons and equipment, leading to deadly raids; financing terrorism by providing funds and property for terrorist activities; supporting acts aimed at disrupting public safety; causing panic and inflicting harm through explosions, arson or other terrorist acts; and attempting to influence the decisions of Governments and international organizations through such actions.

47. The Government notes that, until 27 September 2023, Mr. Vardanyan was hiding from investigators in the territories of Azerbaijan that, at that time, were not under the full sovereign control of Azerbaijan. He was detained by the State Border Service of Azerbaijan on 27 September 2023 while trying to leave the country secretly through the Lachin corridor in a vehicle driven by a Major General of the Armed Forces of Armenia, who was also the first deputy commander of the illegal armed group called the “Defence Army of the Nagorno-Karabakh Republic” in 2020–2022, and is suspected of numerous terrorist acts, armed attacks and other criminal acts. Mr. Vardanyan was handed over to the main investigation department of the State Security Service and, on the same day, he was informed that he was being charged under articles 214-1, 279 (3) and 318 (1) of the Criminal Code.

48. The Government claims that Mr. Vardanyan was, upon his request, appointed an Russian-speaking interpreter; he was immediately provided with a defence lawyer; a lawyer chosen by his family was allowed to participate from 29 September 2023; he had unlimited confidential communication with his lawyer; adequate time and opportunity were given to him to prepare his defence; and he appealed the pretrial detention decision of 27 September 2023 through his lawyer. Those measures were taken to ensure Mr. Vardanyan’s defence rights during the investigation.

49. According to the Government, Mr. Vardanyan was informed clearly of his rights provided for in article 91 of the Code of Criminal Procedure, namely to know the nature of the charges brought against him. Mr. Vardanyan’s rights, provided for in article 6 (3) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), were clearly explained to him in Russian, as requested, in the presence of an interpreter and a lawyer, and the relevant protocol (official record) was drawn up.

50. The charges against Mr. Vardanyan were communicated to him with an interpreter and lawyer present. Mr. Vardanyan’s understanding of the charges is evident from the petitions that he and his lawyer submitted during the investigation. He was thoroughly interrogated about the facts surrounding the criminal acts, associated acts and evidence in the presence of an interpreter and a lawyer.

51. Mr. Vardanyan was promptly brought before the Sabail District Court, which decided to order pretrial detention as a preventive measure on 27 September 2023. Prior to that court appearance, the preliminary evidence supporting the accusations was presented to Mr. Vardanyan with a lawyer and interpreter present, and a protocol (official record) was prepared. The preliminary evidence was also presented and examined during the pretrial detention hearing.

52. The Government asserts that Mr. Vardanyan’s right to the presumption of innocence was not violated by the prosecuting authorities and other State authorities. An informative statement was made to the press about the detention of the accused person by the investigating body.

53. Mr. Vardanyan was detained on the basis of reasonable suspicion of having committed crimes, promptly interrogated and arrested in accordance with article 5 (1) (c) of the European Convention on Human Rights. “Reasonable suspicion” is defined as information that would lead an objective observer to believe that a crime has been committed, assessed on the basis of the circumstances of the case. Terrorist crimes, being a special category due to the risk to human life, allow authorities to consider all information, including confidential sources, when determining reasonable suspicion.²⁶

²⁶ European Court of Human Rights, *Fox, Campbell and Hartley v. the United Kingdom*, Applications Nos. 12244/86, 12245/86, 122383/86, Judgment, 30 August 1990.

54. According to the Code of Criminal Procedure, alternative measures, such as house arrest and bail, can be requested by the defence instead of detention. In addition, bail as a preventive measure can be chosen for a person who does not represent a great public danger, as well as a person whose public danger is only related to material damage or who is accused of committing serious crimes due to carelessness. In the present case, since the crimes with which Mr. Vardanyan has been charged belong to the category of particularly serious crimes, it is not envisaged to release him from prison by posting bail. The preventive measure of house arrest can be chosen for persons who have a permanent residence in the territory of Azerbaijan. Mr. Vardanyan has never had a permanent address in Azerbaijan; he came to the country later in life, living in different temporary addresses in Khankendi, Kalbajar Region and other areas during his stay. The Government notes that the domestic courts did not receive a motion by Mr. Vardanyan himself or his defence counsel to choose house arrest as a preventive measure, and no justification was presented in this regard. In the decisions of the respective courts, detailed justifications were given regarding the necessity of issuing an arrest warrant against Mr. Vardanyan.

55. The Sabail District Court justified Mr. Vardanyan's pretrial detention on the basis of his repeatedly crossing the State border illegally, the possibility of doing so again, his financial means, his influence on other participants in the criminal process, including the witnesses to be interrogated in the case, as well as the reasonable probability that he would try to leave the country illegally, the fact that he is accused of committing especially serious crimes, the danger that he represents to society, the nature of the crime and circumstances of its commission, the risk of interference in the preliminary investigation and the possibility of hiding from the investigation. The court emphasized that pretrial detention was warranted when the interests of society outweighed the right to individual freedom. Mr. Vardanyan was deemed a threat to society, which was a key reason for his detention, wanted status and extended custody.

56. The investigation into Mr. Vardanyan's suspected activities in relation to the financing of terrorism in Azerbaijan, as defined in article 214-1 of the Criminal Code, involves multiple jurisdictions due to the complex nature of the financial transfers and destinations. That suggests an extensive network of connections and potential accomplices. Based on the evidence gathered, requests for legal assistance were sent to several countries. The extension of Mr. Vardanyan's detention was deemed necessary to prevent potential tampering with evidence and to ensure thorough collection of documents and crime traces.

57. On 16 January 2024, the court of first instance extended Mr. Vardanyan's detention. That decision was based on ongoing investigative actions, pending court materials and expert opinions, the impending end of the current period of detention (19 January 2024), the severity of the alleged crime, the volume of case materials and the extension of the preliminary investigation until 28 June 2024. The court deemed those factors sufficient to justify prolonging the accused's detention.

58. The Government notes that the reasonableness of the arrest and the existence of "reasonable suspicion" were evaluated by the courts on an individual basis by examining the materials of the criminal case before making a decision. In the decision of the Baku Appeal Court dated 24 January 2024, on the appeal filed by Mr. Vardanyan's defence counsel, it was noted that ammunition, armoured helmets and other military items had been discovered in Mr. Vardanyan's office located in Khankendi and that he had communicated with a company through his assistant about the construction of a factory that would produce an anti-aircraft missile complex for use by illegal armed groups that operated in the formerly occupied territories of Azerbaijan and that he was negotiating the provision of uncrewed aerial vehicles for use by Armenian armed groups.

59. The Criminal Board of the Baku Appeal Court also indicated, in its decision dated 23 May 2024, that legal arrest or detention to prevent criminal activities was not a breach of any right to personal freedom when sufficient grounds existed.

60. According to the Government, the Court's decision to extend detention was based on, not formal considerations, but the case's exceptional complexity. That complexity stems from the need to: identify all the parties involved, strengthen evidence, obtain expert opinions and conduct related investigations, process the requests for international legal assistance,

interrogate the accused regarding new evidence and perform additional investigations as needed.

61. State power in Azerbaijan is divided into independent legislative, executive and judicial branches. Judges operate independently and impartially. The Government asserts that the evidence collected, including witness statements, documents, expert opinions and material evidence, raised reasonable suspicions about Mr. Vardanyan's involvement in the criminal acts. Consequently, requests by Mr. Vardanyan and his lawyer to terminate the case were rejected during the investigation.

62. The Government notes that, despite Mr. Vardanyan's public image as a successful businessman, philanthropist and advocate for ethnic Armenian rights, he has been implicated in major money-laundering scandals and faced criminal charges in multiple jurisdictions. Evidence suggests that he was involved in financing terrorism, organizing illegal armed groups, and supplying weapons and equipment to these groups. Those illegal activities resulted in raids, casualties and other serious consequences. Substantial material evidence and documents supporting those allegations were obtained during investigations and will be the subject of a court review upon the conclusion of those investigations.

63. Protection of the State border between Azerbaijan and Armenia is carried out by the State Border Service of Azerbaijan, in accordance with the general legal rule arising from the sovereign rights of States. Protection of the State border of Azerbaijan by Russian troops or other subjects, and the right to create conditions to exclude citizens of other countries from official border registration on the territory of Azerbaijan by various methods and on a permanent basis, are not provided for in the joint statement signed by the Presidents of Azerbaijan and the Russian Federation and the Prime Minister of Armenia on 10 November 2020.

64. Azerbaijan has created conditions for the unimpeded movement of the people living in Garabagh from Azerbaijan to Armenia and in the opposite direction, based on the norms of domestic and international legislation. Since the State borders of Azerbaijan are defined by the norms of international law and are internationally recognized borders, Mr. Vardanyan's illegal crossing of the State border of Azerbaijan outside of official checkpoints is one of the criminal acts that he is currently charged with.

65. The Government recalls that, according to article 19 of the Covenant, the exercise of the right to freedom of expression carries with it special duties and responsibilities. Therefore, it is subject to certain restrictions, but these shall only be such as are provided by law and are necessary: for respect of the rights and reputations of others; and for the protection of national security or of public order, or of public health or morals.

66. According to article 47 of the Constitution of Azerbaijan: "Everyone has the right to freedom of thought and speech. No one shall be forced to repudiate his/her thoughts and beliefs. Agitation and propaganda inciting racial, national, religious, social discord and animosity or relying on any other criteria is inadmissible."

67. The Government asserts that the involvement of Mr. Vardanyan in criminal proceedings did not happen due to any of his thoughts or beliefs. He has not been charged or prosecuted for his national or ethnic affiliation, political views, comments about Garabagh or calls that he made.

68. The Government affirms that, when Mr. Vardanyan was identified as a suspect in the investigation, he did not have any political status or position, he did not represent any State or so-called institution at the political level. His arrest was not aimed at preventing any of his legal activities and he was not discriminated against on any basis. The crimes with which he is charged have nothing to do with freedom of thought and speech, as stipulated in article 19 of the Covenant.

69. The Government submits that Mr. Vardanyan's right to the presumption of innocence was not violated by the prosecuting authorities and other State authorities. An informative statement was made to the press about the detention of the accused by the investigating body. In the statement made on 28 September 2023 by the Press Service of the State Security Service about the detention of Mr. Vardanyan, special attention was paid to emphasizing the

words “establishment of reasonable suspicion” in relation to the acts that he is suspected of having committed and “according to the charges announced against him”.

70. According to national legislation on media, the media is free in Azerbaijan and State censorship in the field of media, as well as the creation and financing of state bodies (institutions) or positions for this purpose, are prohibited. The information reported by the media sources cited in the communication of the Working Group concerned the specific charges brought against Mr. Vardanyan and the preventive measure (pretrial detention) that was imposed on him. Dissemination of that type of information by news websites in a manner not coordinated with the press services of State bodies cannot be viewed as a violation of the right to the presumption of innocence.

71. The Government submits that Mr. Vardanyan’s regular meetings with the representatives of the International Committee of the Red Cross, as well as his meetings with the Commissioner for Human Rights (Ombudsman) of Azerbaijan, and his constant communication with his family members are additional guarantees of the unquestionable protection of all procedural rights arising from his imprisonment.

72. According to the Government, Mr. Vardanyan has been received by the Ombudsman since the first day of his detention in order to ensure his rights, address issues related to his treatment and interview him confidentially. The Ombudsman has visited Mr. Vardanyan regularly since his detention began to ensure his rights and address issues related to his treatment. The Ombudsman’s National Preventive Group inspected his cell, investigated his conditions of detention and provided legislative information in Armenian, Russian and English. Issues related to maintaining phone contact with his family members, meeting with his lawyer, treatment by staff, and access to and use of medical services fell within the mandate of the national preventive mechanism. Mr. Vardanyan was voluntarily medically examined and his health condition was assessed as satisfactory. Mr. Vardanyan has regular access to phone calls, parcels, a library and information.

(c) Further comments from the source

73. The source responded to the Government’s comments by arguing that some points had not been addressed, providing additional context and reiterating the claims of arbitrary detention under categories II, III and V.

74. The source challenges the Government’s characterization of events as “local anti-terrorist measures”, asserting that international bodies have recognized such actions as ethnic cleansing.

75. The source contends that the Government’s response includes irrelevant information not raised in the original petition (that an interpreter was provided to Mr. Vardanyan, that he was also provided with a lawyer upon his arrest etc.). It requests that such information either be excluded from the present opinion or clearly labelled as unrelated to the initial petition to avoid misinterpretation.

76. According to the source, the Government claims that Mr. Vardanyan’s detention is supervised by the Ombudsman and that he has had visits from human rights bodies, implying that his rights are respected. However, the response ignores a recent urgent appeal filed by Mr. Vardanyan’s council to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment alleging numerous acts of torture against him. Furthermore, the institution of the Ombudsman is not fully compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The Government provided no specific evidence of Mr. Vardanyan’s meetings with family or counsel. The response of the Government fails to address Mr. Vardanyan’s alleged 15-day incommunicado detention from 5 to 20 April 2024.

77. The source argues that the Government alleges that Mr. Vardanyan is a criminal but provides no evidence. Mr. Vardanyan has not been charged, tried or convicted of any crime outside of Azerbaijan. In addition, the Government claims the right to protect its borders by charging Mr. Vardanyan under article 318 (1) (illegal border crossing). However, the source asserts that that law is invalid under international law and notes that the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families has

recommended that Azerbaijan repeal article 318, stating that irregular entry or exit should be an administrative offence at most, not a criminal one.²⁷

78. The source argues that Mr. Vardanyan is being detained for his advocacy in relation to the issue of Nagorno-Karabakh and his criticism of the President of Azerbaijan, despite the Government's claims. The charges against Mr. Vardanyan are pretextual and are aimed at silencing his outspoken views. The Government's response cites article 47 of the Constitution of Azerbaijan, which exempts certain forms of propaganda from free speech protections. According to the source, that article is overly broad and may allow restrictions on freedom of expression that violate international law.²⁸

79. The Government's claim that Mr. Vardanyan did not request house arrest is refuted on two grounds: first, Mr. Vardanyan's counsel did ask for alternatives to detention, as acknowledged in the detention order of 27 September 2023; and, second, it is irrelevant whether a defendant requests alternatives. The Human Rights Committee states that courts must examine alternatives to pretrial detention, such as bail or electronic monitoring, regardless of the defendant's request.²⁹

80. Regarding Mr. Vardanyan's presumption of innocence the source states that the Government only addressed one statement – namely, that of the Press Service of the State Security Service dated 28 September 2023, which contains both qualified and unqualified language implying guilt. The source claims that the Government, in its response, misquoted the press release, adding qualifying language that was not present in the original. Lastly, the source argues that the Government asserts judicial independence but provides no credible sources to support this claim.

2. Discussion

81. The Working Group thanks the source and the Government for their submissions. In determining whether Mr. Vardanyan's detention 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.³⁰

82. At the outset, the Working Group notes that many arguments in the submissions concern the backdrop of the armed conflict that has embroiled Azerbaijan over recent decades, particularly in Nagorno Karabakh, with the involvement of Armenia and armed groups reportedly supported by Armenia. The Working Group recalls that its mandate is focused on arbitrary detention and so will only address matters relating to the broader context insofar as they are relevant to the allegation that Mr. Vardanyan has been arbitrarily deprived of liberty.

(a) Category II

83. According to the source, Mr. Vardanyan's detention is arbitrary because it resulted from the exercise of his rights to freedom of expression, opinion and association linked to his outspoken advocacy for Nagorno-Karabakh. The Government argues that his detention is instead based on his suspected responsibility for serious criminal actions, with which he is charged.

84. The Working Group recalls that that freedom of opinion and freedom of expression are protected under article 19 of the Covenant. Limitations on the right to freedom of expression are permissible under article 19 (3) of the Covenant, including for reasons relating, in particular, to national security, public safety and public order, but it is incompatible with that provision to invoke such laws to suppress or to withhold from the

²⁷ CMW/C/AZE/CO/3, para. 30 (b).

²⁸ Opinion No. 1/1998, para. 13; and opinion No. 25/2012, para. 55.

²⁹ Human Rights Committee, general comment No. 35 (2014), para. 38.

³⁰ A/HRC/19/57, para. 68.

public information of legitimate public interest that does not harm national security or to prosecute persons for having disseminated such information.³¹

85. The Working Group has considered the conflicting arguments of the source and the Government in relation to the reason for Mr. Vardanyan's arrest. It notes that Mr. Vardanyan was reportedly arrested while trying clandestinely to leave the territory of Azerbaijan in a vehicle with a Major General of the Armed Forces of Armenia and the first deputy commander of the "Defence Army of the Nagorno-Karabakh Republic", which, according to the Government, is suspected of numerous terrorist acts, armed attacks and other criminal acts. The source does not dispute that he was caught with the aforementioned Major General, while seeking to leave Azerbaijan on 27 September 2023. The Working Group notes that a search of Mr. Vardanyan's office revealed armoured helmets and other military equipment, as well as indications that he was communicating with a company about the construction of a factory to produce an anti-aircraft missile complex for use by armed groups operating in the formerly occupied territories of Azerbaijan and that he was negotiating the provision of uncrewed aerial vehicles for use by Armenian armed groups.

86. Noting that each case must be decided on its own specific circumstances, the Working Group considers that the allegations against Mr. Vardanyan are particularly serious, involving the death of numerous individuals and large-scale property destruction in the context of the armed conflict in Azerbaijan. The charges against Mr. Vardanyan include financing terrorism, which the Security Council has required States to prevent and criminalize under, inter alia, resolutions 1373 (2001) and 2462 (2019), as well as participation in the creation and operation of illegal armed groups and illegal crossing of the State border. Through his actions, he is alleged to have contributed to violent raids by armed groups that resulted in numerous deaths, hundreds of injuries and the destruction of vast amounts of property, including through rocket attacks and the laying of thousands of mines. On that basis, the Working Group concludes that, notwithstanding the source's claims to the contrary, Mr. Vardanyan was detained on the basis of criminal charges alleging serious threats to national security, public safety and public order.

87. The source argues that the prosecution has ordered linguistic analysis of at least three examples of Mr. Vardanyan's statements and that, while all the former leaders of Nagorno-Karabakh, including Mr. Vardanyan, were originally charged in the same criminal case, Mr. Vardanyan's case has been separated out into a stand-alone case. However, those are matters concerning the sufficiency of the evidence and administrative details of trial procedures. The Working Group does not operate as a supranational tribunal designed to re-examine every aspect of domestic procedure or to reassess the sufficiency of the evidence or to deal with errors of law allegedly committed by the domestic court.³² Given the seriousness of the charges, which link to grave violent actions, the investigation of statements by high-level detainees does not indicate any human rights violation per se. The source also notes that the Government response includes a reference to article 47 of the Constitution of Azerbaijan on freedom of expression and argues that this does not align with international law. However, the reference to that provision in the response does not displace the other criminal provisions on which the allegations are based. Moreover, the source's argument that Mr. Vardanyan's case has been separated out into a stand-alone case does not show that he was detained for exercising his rights. In that light, none of those arguments addresses the nature of the charges against Mr. Vardanyan nor the alleged factual basis for those charges, which squarely relate to national security and public order, as detailed above.

88. Given the foregoing considerations, it has not been shown that Mr. Vardanyan was detained merely for protected statements and expressions falling under article 19 (2) of the Covenant. Instead, the allegations raise matters of national security, public safety and public order which, even to the extent that they may involve statements by Mr. Vardanyan, would nonetheless fall under the exceptions covered by article 19 (3). Indeed, as the Working Group has previously noted, the freedoms of expression and association are not absolute rights; they

³¹ Human Rights Committee, general comment No. 34 (2011), para. 30.

³² Opinions No. 40/2017, paras. 46, 53 and 56; and No. 63/2023 para. 79.

can be subject to restrictions for reasons relating, in particular, to national security and public order.³³

89. In relation to the source's argument that Mr. Vardanyan's detention arose from his exercise of freedom of association, the Working Group notes that this right can also be subjected to necessary restrictions, including in relation to national security, public safety or public order. In the light of the considerations set out above, the Working Group considers that it has not been demonstrated that Mr. Vardanyan was detained merely due to his exercise of protected association falling under article 22 of the Covenant and that, instead, his detention and the serious charges and factual allegations against him fall under the exceptions permitted under article 22 (2). Similarly, to the extent that the source argues that Mr. Vardanyan was detained due to his participation in political affairs, it does not demonstrate a violation of his rights in the light of the serious nature of the charges for which he is being investigated, as set out above.

90. Noting the backdrop of armed conflict and noting the nature of the legal and factual allegations against Mr. Vardanyan, which link to that context and involve serious violence, including deaths, the Working Group does not consider that his detention amounts to a violation under category II. However, the Working Group's conclusion in relation to category II should not indicate any assessment of Mr. Vardanyan's actual guilt for the crimes with which he has been charged. Instead of determining guilt, the category II assessment concerns whether the materials indicate that the person has been detained on the basis of criminal charges, and that the basis has not been used in a pretextual way to target detained individuals as a result of the exercise of their rights.

91. In the light of all the considerations above concerning Mr. Vardanyan's rights, the Working Group concludes that his deprivation of liberty was not arbitrary under category II.

(b) Category III

92. As regards category III, the source argues that Azerbaijan has violated Mr. Vardanyan's right to the presumption of bail and his right to the presumption of innocence. The Government submits that his due process rights have been respected throughout proceedings.

93. At the outset, the Working Group notes that, in its further comments, the source attempts to preclude the Government from commenting on matters related to the proceedings against Mr. Vardanyan that it says were not raised in the petition. Those include the provision of an interpreter to Mr. Vardanyan, his appointment of his own lawyer, his regular contact with the Ombudsman and other related matters. However, those matters are potentially relevant to the arguments the source has raised alleging the arbitrariness of M. Vardanyan's detention. The Working Group has the discretion to consider such matters, particularly as they directly relate to his ability to exercise his fair trial rights and his detention more broadly, and will take them into consideration where relevant.

94. In relation to pretrial detention and the non-provision of bail, the Working Group notes that article 9 (3) of the Covenant provides that "it shall not be the general rule that persons awaiting trial shall be detained in custody". The Working Group recalls the view of the Human Rights Committee that pretrial detention should be an exception and be as short as possible, and must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Courts must examine whether alternatives to pretrial detention, such as bail or other conditions, would render detention unnecessary in the particular case.³⁴

95. The Working Group notes that the Azerbaijani courts provided an individualized assessment of Mr. Vardanyan and set out a number of bases for his pretrial detention. That assessment was upheld on appeal and extended. The basis for his pretrial detention included that Mr. Vardanyan was a flight risk; that he was likely to obstruct or interfere with the

³³ Opinion No. 67/2023, para. 96. See also, for example, opinion No. 23/2023, para. 111.

³⁴ Human Rights Committee, general comment No. 35 (2014), para. 38.

investigation; and that the nature, severity and circumstances of his alleged crimes warranted detention. The Working Group recalls that it has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the application of domestic law by the judiciary.³⁵ Whereas the source argues that the assessment was not individualized because the Court did not provide an analysis of specific evidence against Mr. Vardanyan, that argument conflates two different matters – namely, the sufficiency of the evidence, which the Working Group will not typically reassess,³⁶ and carrying out an individualized assessment. Given that the courts gave an individualized assessment in the case and given the facts, which include Mr. Vardanyan's being detained while attempting to escape from the territory of Azerbaijan and the extremely serious nature of the violent crimes with which he is charged,³⁷ the source has not shown that there was a violation of international human rights law on that basis.

96. The source argues that alternatives to detention were not considered in ordering pretrial detention. However, the source acknowledges that the detention order dated 27 September 2023 expressly refers to the requests by the defence for alternatives to detention. The Working Group considers that that demonstrates that alternatives to detention were considered by the Court. Whereas the source seeks to revisit the granular details of the Court's determination, the Working Group has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal to review the application of domestic law by the judiciary.³⁸ Bearing in mind the serious nature of the violent crimes with which Mr. Vardanyan is charged and the circumstances of the case, including the flight risk, the Working Group does not consider that any violation has been demonstrated in relation to the denial of bail.

97. In relation to the presumption of innocence, the Working Group recalls article 14 (2) of the Covenant and the view of the Human Rights Committee that public officials should refrain from prejudging the outcome of a trial, for example, by abstaining from making public statements affirming the guilt of the accused.³⁹ The application of that right must be assessed in the specific circumstances of each case.

98. The source refers to a statement by the Press Service of the State Security Service that announced that "Ruben Vardanyan was detained on September 27, 2023, for the illegal acts committed by him". However, the Working Group has examined that statement and notes that it commences by stating "based on the collected evidence, reasonable suspicions have arisen that [Mr. Vardanyan]" and then specifies the three charges against Mr. Vardanyan. The statement also frames its contents with the heading indicating that he was "detained as an accused person" and prefaces the details with "according to the charges brought against him". That cannot be seen as invalidating his presumption of innocence and instead signals the opposite – that his arrest is based on "reasonable suspicions".⁴⁰

99. The source also argues that, in January 2024, the Prosecutor General of Azerbaijan commented that Mr. Vardanyan and other detainees "were engaged in separatism, operating illegally on the territory of Azerbaijan". However, that does not specifically refer to the charges against him, which were brought eight months later. The source points to statements, including one the week before Mr. Vardanyan's detention, in which the authorities referred to the leadership of Nagorno-Karabakh as, inter alia, a "criminal regime", and others such as that in which the President referred to those "who waged a bloody war against [Azerbaijan]", including Mr. Vardanyan, as criminals who would be brought to justice soon, and to other similar statements that the source submits were prejudicial to Mr. Vardanyan's situation. The source refers to statements made by the media, which it argues is controlled by the State. It argues that those statements included reference to Mr. Vardanyan having "participated in

³⁵ Opinion No. 5/2021, para. 38.

³⁶ See, for example, opinion No. 63/2023, para. 79.

³⁷ See, by comparison, opinion No. 8/2020, para. 62; and decision No. 8/1992 (noting there were no indications of violence or incitement to violence or a threat to national security or public order that would justify detention).

³⁸ See, for example, opinion No. 15/2017, para. 66.

³⁹ Human Rights Committee, general comment No. 32 (2007), para. 30.

⁴⁰ The Working Group has reviewed all versions of the statement.

financing terrorism, allocating funds for the organization of terrorist activities” and other similar assertions.

100. The Working Group has reviewed all the source’s arguments in that respect. It notes that the statements highlighted by the source were made by persons not forming part of the judiciary, let alone assigned to the judge in Mr. Vardanyan’s case. Having considered the circumstances in their entirety in the present case, the Working Group considers that none of those statements demonstrates that Mr. Vardanyan’s presumption of innocence for the charges laid against him after his arrest in September 2023 has been undermined, particularly in the light of the specific statement issued by the State Security Service on 28 September 2023, which explicitly referred to the legal charges against Mr. Vardanyan as an “accused person” and highlighted that they were based on “reasonable suspicions”. That notwithstanding, the Working Group emphasizes that public officials, including those of the executive, should refrain from making statements prejudging the outcomes of cases by asserting the guilt of the accused,⁴¹ even if such statements do not automatically undermine the presumption of innocence, which must always be assessed in the light of the facts of the specific case.

101. The source argues that Mr. Vardanyan has been deprived of his right to have adequate time and facilities for the preparation of his defence and other fair trial rights, as neither he nor his counsel has been told anything about the charges against him. The Government directly refutes this argument pointing out in detail the extensive provision made for him to be notified of the charges and to have time to prepare his defence and the multiple petitions that he has been able to file with the courts.

102. The Working Group notes, inter alia, article 14 (3) of the Covenant: “in the determination of any criminal charge against him, everyone shall be entitled ... (a) [t]o be informed promptly and in detail ... of the nature and cause of the charge against him” and article 14 (3) (b), which provides that a criminal defendant must be given “adequate time and facilities for the preparation of his defence”.

103. In that respect, the Working Group notes the Government’s detailed and substantiated response conveying the occasions on which Mr. Vardanyan was notified of the charges against him and related information, after he was arrested on 27 September 2023 while caught effectively in flagrant delicto seeking to flee from Azerbaijan. It notes also that the statement by the Press Service of the State Security Service on the day after his arrest contained details of the basis for his arrest, which further supports the Government’s submissions in this respect. Further information has been provided to his defence as the proceedings have progressed. Taking into account the entire circumstances of the case, the Working Group does not consider any violation has been demonstrated in those respects.

104. On a related note, the source argues, in its further comments, that article 318 (1) of the Criminal Code, which criminalizes illegal border crossing, is “invalid under international law”. However, the Working Group notes that many countries criminalize illegal border crossing. Whereas the source refers to a comment by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, which was made in the context of the rights of migrant workers and on the basis that the actions addressed by the law did not concern national security. In that light, it is not a persuasive reference for the present case. To the extent that the source argues that article 318 (1) was not being consistently enforced and purportedly violates the tripartite agreement, the Working Group notes that incomplete enforcement of border controls, including in the light of the tripartite agreement, does not render underlying border control laws invalid. Moreover, Mr. Vardanyan was detained on multiple charges, including those involving serious violent offending, which distinguishes him from persons merely fleeing hostilities.

105. The source adds that the judiciary in Azerbaijan is not independent, but rather is subordinate to the executive, and that this is shown because, although the investigation has been going on since September 2023, there have been no court hearings except to impose and extend the pretrial detention, the Court has dismissed his requests for bail in a summary manner and without making a detailed, individualized determination, and the Court has failed

⁴¹ Human Rights Committee, general comment No. 32 (2007), para. 30.

to provide any evidence to support the accusations against Mr. Vardanyan. The Government refutes those allegations, pointing to the extensive provision made for Mr. Vardanyan's due process rights and highlighting the constitutionally protected independence of the judiciary. In its further comments, the source reiterates its claims, arguing that the judiciary is generally subordinate to the executive.

106. The Working Group notes that the specific arguments raised by the source in that respect have largely been addressed in the preceding discussion and do not raise new matters demonstrating a lack of independence. Namely, the duration of the investigation for such complex and serious crimes has not been shown to be excessive, let alone is there anything to demonstrate a lack of independence of the judiciary; the courts have provided individualized assessments and the Government has referred to various factual and evidentiary matters in support of the allegations, including the military equipment and materials found in Mr. Vardanyan's office. In those circumstances, and having taken account of all the submissions that have been made to it, the Working Group does not consider that it has been shown that the judiciary lacks independence in the present case. More broadly, it does not consider any of the other claims set out in the source's submissions concerning alleged mistreatment of Mr. Vardanyan, including an alleged period of incommunicado detention, have demonstrated that his detention is arbitrary.

107. For the reasons enumerated above, the Working Group concludes that the source has not demonstrated violations of Mr. Vardanyan's right to a fair trial and due process. His detention is not arbitrary under category III.

(c) Category V

108. The source submits that Mr. Vardanyan's detention is a direct result of his Armenian ethnicity, his political opinions and his claimed status as a human rights defender, and it is therefore discriminatory. The Government submits that he was not detained due to discriminatory reasons, but rather for his alleged involvement in the serious crimes discussed above.

109. However, as set out above under category II, the detention of Mr. Vardanyan is based on serious charges relating to his contribution to violent acts, including those involving the deaths of persons and large-scale property destruction. There is no information demonstrating that it was Mr. Vardanyan's ethnicity that led to his detention instead of those serious allegations. To the extent that the source argues that other individuals of Armenian ethnicity have had their rights violated, this does not mean that it is discriminatory to detain Mr. Vardanyan given the serious violent nature of the charges against him and the bases provided for his detention, as detailed under the preceding categories. Similarly, the reference to his political opinions and the claim that he is a human rights defender, made by the source, do not displace the substantiated reasons provided for his detention, as set out above.

110. Consequently, the Working Group finds that Mr. Vardanyan's deprivation of liberty does not constitute a violation of international law on the grounds of discrimination and is not arbitrary under category V.

3. Disposition

111. In the light of the foregoing, the Working Group considers, pursuant to paragraph 17 (b) of its methods of work, that the case is not one of arbitrary detention.

(Adopted on 11 November 2024)