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Human Rights Council Working Group on Arbitrary Detention

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Opinion No. 49/2016 concerning Mukhtar Ablyazov (France)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed that mandate and most recently extended it for a three-year period in its resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/30/69), on 20 May 2016 the Working Group transmitted to the Government of France a communication concerning Mukhtar Ablyazov. The Government replied to the communication in a note verbale dated 20 July 2016. However, the registrar of the Office of the United Nations High Commissioner for Human Rights only received the letter on 25 July 2016. The State has been a party to the International Covenant on Civil and Political Rights since 4 November 1980.

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

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

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

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

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

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation,



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

Submissions

Communication from the source

4. Mukhtar Ablyazov, born on 16 May 1963, is a Kazakh national whose habitual residence is Rome. Mr. Ablyazov is a leading entrepreneur, the former Minister of Energy, Industry and Trade, and the co-founder of the political party Democratic Choice of Kazakhstan.

5. According to the source, for the past 20 years, Mr. Ablyazov has been targeted by the Government of Kazakhstan because he is regarded as a leader of the political opposition and a prominent critic of the President, Nursultan Nazarbayev. In 2002, Mr. Ablyazov was imprisoned for fraud on the basis of contrived charges. This occurred shortly after he had begun funding the opposition. The source alleges that Mr. Ablyazov's imprisonment was intended to punish him for criticizing the Kazakh regime. While he was in prison, Mr. Ablyazov was subjected to torture and ill-treatment. During this period, Amnesty International declared him a political prisoner.

6. In May 2003, after serving 10 months of a 6-year prison sentence, Mr. Ablyazov was released following a presidential pardon. The source mentions that the pardon was granted on condition that he cease all political activity; Mr. Ablyazov was forced to accept this condition.

7. After his release, Mr. Ablyazov moved to the Russian Federation. However, in 2005, he returned to Kazakhstan to take up the post of president of BTA JSC Bank. According to the information provided by the source, he succeeded in turning the institution into one of the largest and most prosperous banks in Kazakhstan.

8. In 2009, Mr. Ablyazov became once again a target of the Government when it nationalized BTA JSC Bank and charged him with financial misconduct on the basis of fabricated accusations. Concurrently, the Russian Federation and Ukraine initiated their own proceedings for financial misconduct against Mr. Ablyazov, in 2010.

9. In 2009, Mr. Ablyazov and his family fled the country on account of the threats of violence and death threats made against them and sought asylum in the United Kingdom of Great Britain and Northern Ireland. The source reports that, after carefully considering the asylum application for over two years and "recognizing that the criminal proceedings brought by Kazakhstan were part of a politically-motivated campaign of persecution", the United Kingdom granted him political asylum.

10. In the interim, the prosecuting authorities in Kazakhstan, the Russian Federation and Ukraine issued arrest warrants and succeeded in having Mr. Ablyazov placed on the International Criminal Police (INTERPOL) red notice list. In parallel, BTA JSC Bank, which had by that point been nationalized, brought a civil suit against Mr. Ablyazov before the courts of the United Kingdom for fraud that he allegedly committed while at the helm of the Bank. The suit was intended to punish him for commercial practices that were commonplace, and the source contends that it "served as a form of reprisals against Mr. Ablyazov for his peaceful political activities".

11. During Mr. Ablyazov's stay in the United Kingdom between 2009 and 2012, the British authorities refrained from enforcing the INTERPOL red notices and thus did not arrest him. On the contrary, the source states that the intelligence and police services sought to protect Mr. Ablyazov. In January 2011, a letter known as an "Osman warning" was issued by London's Metropolitan Police to inform Mr. Ablyazov that he was at real and imminent risk of abduction and physical harm because of his political convictions. He then left the United Kingdom for continental Europe in February 2012 after receiving credible death threats. Owing to this serious danger and fearing for his life, Mr. Ablyazov and his family went into hiding.

12. In May 2013, Kazakh diplomats collaborated with senior Italian officials to set up the abduction of Mr. Ablyazov's wife and daughter, then aged 6, in Rome. Their forced

removal from Italy and transfer to Kazakhstan have been acknowledged by the Government of Italy as a case of extraordinary transfer or extradition. The case was the subject of a joint urgent appeal issued by the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and transmitted to the Government of Italy on 7 June 2013 (UA ITA 1/2013). Another joint urgent appeal was issued by the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture and transmitted to the Government of Kazakhstan on 17 July 2013 (UA KAZ/2013).

13. According to the source, Mr. Ablyazov was eventually located by private detectives working for Kazakhstan. They then notified the French lawyers representing BTA JSC Bank of Mr. Ablyazov's presence in French territory. The source claims that one of the lawyers then contacted the Advocate General in Aix-en-Provence directly to request Mr. Ablyazov's arrest.

14. On 31 July 2013, Mr. Ablyazov was arrested by the French police on the basis of an INTERPOL red notice. On 31 July and 1 August 2013, he was held in a police station in Nice. On 1 August 2013, the court in Aix-en-Provence ruled that Mr. Ablyazov should be detained as long as the case remained pending. On the same day, he was transferred to a detention centre in Luynes, near Aix-en-Provence.

15. According to the source, on 14 August 2013 Ukraine formally requested Mr. Ablyazov's extradition in a note verbale sent to France. The extradition request included a copy of a decision by a Kyiv court dated 19 April 2012 referring to an alleged arrest warrant dated 24 September 2010 that also ordered Mr. Ablyazov's remand into pretrial detention. The arrest warrant was not, however, attached to the extradition request. On 5 November 2013, Mr. Ablyazov was formally notified that the authorities of the Russian Federation had made a request for his extradition.

16. On 5 December 2013, the Aix-en-Provence court decided to consider both extradition requests together. On 12 December 2013, a panel of three judges at the appeals court in Aix-en-Provence examined the two files. On 9 January 2014, the court handed down its decision in favour of extradition by the Government of France to either the Russian Federation or Ukraine and, at the same time, designated the Russian Federation as the preferred destination for extradition.

17. On 9 April 2014, following the lodging of an appeal by Mr. Ablyazov's lawyers, the Court of Cassation voided the decisions of the Aix-en-Provence court, finding that procedural violations had been committed by the lower court in its handling of the extradition requests by Ukraine and the Russian Federation. It decided to refer the requests to the judicial authorities of Lyons for full reconsideration.

18. The court in Lyons held a hearing on the request for Mr. Ablyazov's extradition to Ukraine on 25 September 2014 and another on the request for his extradition to the Russian Federation on 17 October 2014. On 24 October 2014, the court ruled in favour of Mr. Ablyazov's extradition to either the Russian Federation or Ukraine, stating a preference for extradition to the Russian Federation. Mr. Ablyazov's lawyer appealed the ruling before the Court of Cassation.

19. In parallel, in 2014, the British Home Office withdrew Mr. Ablyazov's refugee status on the grounds that he might have committed financial offences prior to its being granted. Mr. Ablyazov challenged the decision and the case remains pending before the British courts. The same year, his wife, who had been abducted by the Kazakh authorities, was able to return to Italy, where she obtained refugee status.

20. On 4 March 2015, the Court of Cassation upheld the decision of the Lyons court in favour of extradition after finding that the lower court had not committed any procedural errors. In its decision, the Court stressed that, under French law, the Court of Cassation cannot rule on the merits of a decision rendered by a lower court in matters of extradition. In other words, the Court of Cassation does not re-examine the evidence or review the findings made in the decision being challenged but, rather, ensures that procedural rules have been observed.

21. On 17 September 2015, despite numerous appeals by non-governmental organizations for the defence of human rights, such as Human Rights Watch and Amnesty International, the Prime Minister of France, Manuel Valls, signed a decree ordering the extradition of Mr. Ablyazov to the Russian Federation. On 6 October 2015, Mr. Ablyazov was notified of the decision. On 4 November 2015, Mr. Ablyazov lodged an appeal before the Council of State, the country's highest administrative court, to challenge the decree. The source claims that extradition decrees are usually upheld and that it is highly likely that Mr. Ablyazov is facing extradition to the Russian Federation.

22. The source considers that the case satisfies the requirements of category I because there is no legal basis for such a long period of deprivation of liberty in an extradition matter. The source claims that the extradition procedures fail to comply with the laws currently in force because of the excessive duration occasioned by the lack of due diligence.

23. Moreover, the source states that Mr. Ablyazov has filed numerous requests for conditional release, offering to be subjected to strict house arrest and electronic monitoring. His requests were denied on 22 August 2013, 3 October 2013, 6 October 2014, 19 December 2014 and 11 March 2016, chiefly because of the authorities' fear that Mr. Ablyazov would flee if released.

24. The source also claims that the French authorities did not have any legal grounds to detain Mr. Ablyazov because the red notices issued by INTERPOL on the basis of the extradition requests by the Russian Federation and Ukraine were in fact politically motivated and because these two countries were in reality colluding on behalf of the Government of Kazakhstan. The source contends that the most glaring evidence in support of this claim is the fact that the legal proceedings in the Russian Federation and Ukraine were brought at a time when Mr. Ablyazov was no longer in the good graces of President Nazarbayev and that he was not the sole target of political persecution.

25. According to the source, the Government of Kazakhstan targeted Mr. Ablyazov's family and his former associates in order to intimidate and muzzle him. Kazakhstan has a long and well-documented history of persecution of members of the political opposition and those who disagree with President Nazarbayev. The source adds that Mr. Ablyazov's persecution has been widely acknowledged and condemned by the international community.

26. According to the source, the fact that the French lawyers representing Ukraine were hired, at a cost of hundreds of thousands of euros, by BTA JSC Bank of Kazakhstan and not by the Government of Ukraine demonstrates the extent to which Kazakhstan is using Ukraine to obtain Mr. Ablyazov's extradition, thus hinting at the political nature of the procedures undertaken.

27. The source claims that the case satisfies the requirements of category III, as the Government of France violated certain procedural guarantees enshrined in both national and international law. Firstly, the source considers that the police arrested Mr. Ablyazov without a warrant and that the Government of France was unable to provide the grounds for his arrest within the allotted time. The French police arrested Mr. Ablyazov on 31 July 2013, on the order of the Advocate General in Aix-en-Provence, with a view to enforcing the INTERPOL red notice posted following the issuance of an arrest warrant by Ukraine on 24 September 2010. At the time of his arrest, Mr. Ablyazov could not have been informed of the reasons for his arrest because he did not benefit from the services of a Russian interpreter. On 17 October 2013, Mr. Ablyazov received a translation of the extradition request by Ukraine, that is 78 days after the beginning of his detention by the French authorities.

28. According to the source, the alleged Ukrainian arrest warrant which was cited for the purposes of the INTERPOL red notice and on which the Advocate General in Aix-en-Provence relied as the basis for the order to arrest Mr. Ablyazov was not transmitted to him until 4 December 2013, or 126 days after his arrest. The source claims that it was not an arrest warrant but, rather, a summons to appear before the Ukrainian courts. The source contends that Mr. Ablyazov's arrest infringed articles 696-8 and 696-23 of the French Code of Criminal Procedure, which stipulate that the arrest warrant is a crucial procedural

component and an indispensable document that must, first and foremost, actually be issued and, subsequently, must be appended to the extradition request as evidence.

29. The source stresses that the grounds for Mr. Ablyazov's deprivation of liberty should have been provided to him not only in a Russian translation, but also in French, so that his French lawyer could challenge his extradition. However, when the French version of the extradition requests was finally provided to him, the translation was of such questionable quality that the request by Ukraine was very difficult to understand while the one by the Russian Federation was incomprehensible.

30. The source argues that the French translation provided by the Government of the Russian Federation was of such poor quality that, following the annulment of the decision of the Aix-en-Provence court by the Court of Cassation in 2014 and the ordering of a new hearing, the Lyons court sided with Mr. Ablyazov's defence lawyers, stating that the translation provided by the Government of the Russian Federation was not up to the standards required under current legislation.

31. On 12 June 2014, the Lyons court requested a French translation of the entire file regarding extradition to the Russian Federation. Mr. Ablyazov's lawyer received a comprehensible translation of the extradition request by the Russian Federation on 3 September 2014, that is 9 months and 21 days after 5 November 2013, the date on which Mr. Ablyazov was notified of the extradition request and his detention began.

32. Secondly, the Government of France was not able to act within a reasonable time frame or without excessive delay. The source claims that due diligence was not respected in the judicial extradition proceedings with regard to Mr. Ablyazov insofar as lengthy delays were incurred at various stages of the proceedings, with the result that the entire process lasted 2 years and 10 months.

33. In support of the application, the source submits that, on finding out that the Court of Cassation had voided the decision of the Aix-en-Provence court on 9 April 2014 and had ordered new proceedings in Lyons, the Aix-en-Provence court made significant procedural errors. At the hearing of 9 May 2014, Mr. Ablyazov was once again formally notified of the extradition request by Ukraine, which implies a period of detention of 9 months and 26 days before new judicial proceedings were initiated before the Lyons court.

34. The source asserts that the way in which the Government handled the issuance of the extradition decree against Mr. Ablyazov in September 2015 also demonstrates the extent of its failure to act swiftly, for which there was, moreover, no good reason. The decree was signed by the French Prime Minister on 17 September 2015; however, Mr. Ablyazov was not made aware of the decree until it was transmitted to him on 6 October 2015 while he was in detention. In other words, it took 19 days to translate the decree into Russian when the document was only a few paragraphs long.

35. Thirdly, the Government of France was unable to guarantee Mr. Ablyazov a hearing before an impartial and independent court. The source contends that, throughout the judicial extradition proceedings, the judicial authorities showed clear bias against Mr. Ablyazov, demonstrating their intention to carry out his extradition regardless of the facts and the law. In support of this claim, the source demonstrates that the French judicial authorities did not act of their own accord but, rather, were influenced by political pressure and that they could not, therefore, act in a fair, impartial and independent manner.

36. More specifically, according to the source, the French courts allowed representatives of Kazakhstan, Ukraine and the Russian Federation to exercise undue influence on the extradition proceedings by authorizing them to unlawfully introduce documents into evidence, including documents which formed the basis for the French courts' decisions and which were kept secret and not disclosed to the defence. The external influence included pressure by BTA JSC Bank, which had been nationalized by the Government of Kazakhstan and was clearly acting on the latter's behalf. Under French law, the representatives of Kazakhstan, Ukraine and the Russian Federation could not be recognized as parties in the proceedings. The source notes, however, that Ukraine and the Russian Federation, unlike Kazakhstan, were granted permission to send representatives to the hearings in order to observe the proceedings and make statements through French lawyers

hired privately for this purpose. The source emphasizes that French law does not permit requesting States to review all the evidence or to submit additional evidence directly to the court for consideration.

37. In this connection, the source claims that the French authorities kept in close contact with the representatives of Kazakhstan, Ukraine and the Russian Federation. The source mentions more specifically the alleged relationship between the Advocate General responsible for extradition matters in the Office of the Principal State Prosecutor attached to the appeals court in Aix-en-Provence and one of the French lawyers representing BTA JSC Bank. The lawyer was involved in the case from the moment of Mr. Ablyazov's arrest and throughout the hearing before the Aix-en-Provence court and later continued to be closely involved in the case, keeping an eye on the proceedings before the Court of Cassation and the Lyons court.

38. These details were revealed through the publication of declassified information contained in a large number of confidential documents that were made public following the collapse of the government of Viktor Yanukovich in Ukraine. The information disclosed included documents from the French court and e-mails and telephone recordings allegedly demonstrating that the Advocate General secretly provided documents to the judges in the extradition case before the hearing in Aix-en-Provence. Reportedly, it was private individuals acting on behalf of Ukraine, the Russian Federation and Kazakhstan who transmitted these documents to the Advocate General. According to the source's allegations, the documents contain significant errors and false information. Mr. Ablyazov never had the opportunity to challenge them before the court. Nevertheless, the judges used the documents to prepare the decisions in favour of his extradition to either the Russian Federation or Ukraine.

39. The source considers that the role played by the Advocate General, who became involved in illegal *ex parte* communication with an agent of the Government of Kazakhstan, used information provided to him by the agent, including secretly obtained documents, and secretly shared that information with the judges, illustrates the lack of impartiality and the fundamental injustice that marred the judicial proceedings from the outset. The source stresses that a criminal investigation has been initiated to shed light on the offences allegedly committed by the Advocate General and the judges in the course of the judicial proceedings on extradition.

40. According to the source, in April 2015, an investigating judge questioned the judge who had presided at the Aix-en-Provence court and the Advocate General and ordered their telephone records be transmitted to the French police. The source asserts that the measures taken by the investigating judge confirmed Mr. Ablyazov's allegations regarding serious irregularities. In tandem with the investigation currently under way, the source claims to have received credible information from official sources that the French judicial authorities consider Mr. Ablyazov's complaint regarding the poor management of his case by the judges and Advocate General in Aix-en-Provence to be an attempt to "destabilize" the French judicial system.

41. The source claims that the decision of the Aix-en-Provence court approving Mr. Ablyazov's extradition to Ukraine or the Russian Federation contains a significant number of irregularities and refers to new, very specific information that was never submitted to the defence. The source thus concludes that the Advocate General and the judges were in possession of documents that were not shared with the defence. The source mentions that it was thanks to a disclosure by the media that Mr. Ablyazov's lawyer learned that the Advocate General of Aix-en-Provence and the judges had allegedly hidden documents obtained secretly through the representatives of Ukraine and the Russian Federation. These documents were not submitted to the court; therefore, the defence was unable to challenge the arguments they contained.

42. In this connection, the source contends that it is clear from their disregard for the serious consequences of Mr. Ablyazov's prolonged detention and possible extradition, as well as the systemic problems that were brought to light regarding the handling of extradition cases by the French judicial authorities, that said authorities were determined to

secure the approval of the extradition requests and to conceal or overlook the ruses and shortcuts used to that end.

43. Fourthly, the Government of France limited Mr. Ablyazov's access to his lawyer and opportunities to be represented by him. The source contends that the Lyons court prevented Mr. Ablyazov's family's lawyer and his Russian lawyer from speaking at the hearings on 25 September 2014 (during the judicial proceedings regarding the extradition request by Ukraine) and 17 October 2014 (during the judicial proceedings regarding the extradition request by the Russian Federation). The court ruled that these two lawyers would not be authorized to speak in their capacity as lawyers, experts or even witnesses.

44. In addition, the source claims that, when the case came before the Court of Cassation, Mr. Ablyazov was not given full access to his lawyers and documentation in order to prepare his arguments for the Court at what were critical points in the judicial proceedings. The purpose of the arguments was to challenge the decision of the Lyons court approving the extradition request.

45. The source contends that, on 27 November 2014, Mr. Ablyazov was preparing his defence ahead of the hearing before the Court of Cassation when he was abruptly transferred from Corbas Prison, near Lyons, to a prison in the Paris area, without prior notice. The pieces of evidence he had collected, along with his personal effects, were left behind at Corbas Prison. Then, on 8 December 2014, he was transferred once more, again without prior notice, from the prison in the Paris area to Villefranche-sur-Saône Prison in the Lyons area.

46. On 12 December 2014, Mr. Ablyazov's lawyer tried to meet with the administration of Villefranche-sur-Saône Prison to agree on a way of facilitating his meetings with Mr. Ablyazov in the light of the imminent submission of his case to the Court of Cassation. The warden refused to meet with him. The lawyer was invited to return on Wednesday, 17 December 2014, as visits by lawyers were not permitted on 15 and 16 December 2014.

47. The source claims that Mr. Ablyazov's access to his lawyer and documents essential to the preparation of his defence was hindered during the crucial period of preparation for the filing of his case, i.e. from 27 November to 16 December 2014. This considerably undermined his ability to prepare for the filing of his case with the Court of Cassation and to adequately mount his defence. He later lost his case before the Court, which led to the issuance by the Prime Minister of the decree sanctioning his extradition.

48. The source also claims that, in addition to the times when Mr. Ablyazov's lawyers were completely barred from visiting him, the rules imposed by the French authorities regarding prison visits made it nearly impossible to mount an effective defence. The limitations imposed covered, *inter alia*, the maximum number of hours that could be allocated for visits from Mr. Ablyazov's lawyer and the type of materials that Mr. Ablyazov could have access to while in prison. The impact of these restrictions was exacerbated by the lengthy travel time for Mr. Ablyazov's lawyers, by the fact that much of the work required the support of interpreters and translators, and by the complexity of the case itself: the file contains documents in French, Russian, Ukrainian, English and Kazakh, while laws from seven separate judicial systems (French, Russian, Ukrainian, Kazakh, British, European and international) are referred to.

49. In addition to these elements, the source contends that Mr. Ablyazov had limited financial resources and that this had negative repercussions on his ability to cover the travel costs of his lawyers, who had to travel long distances to meet with him, and to reimburse the costs associated with the interpretation and translation services. In practice, the costs, logistics and time and schedule constraints meant that, because Mr. Ablyazov was deprived of his liberty, he was able to have only limited meetings with his French lawyers.

50. During the three hearings on the extradition cases that were held in France, Mr. Ablyazov was unable to have confidential consultations with his team of lawyers, having been seated apart from his lawyers in the hearing rooms. In Aix-en-Provence on 12 December 2013, consultations between Mr. Ablyazov and his lawyers were greatly impeded by the fact that he had been seated in a glass box with two interpreters and by the fact that the size of the hearing room made it impossible for him to have a confidential

conversation with his lawyers. Similarly, on 25 September and 17 October 2014 in Lyons, confidential conversation was allegedly impossible.

51. Fifthly, the Government of France was unable to provide adequate interpretation services at the hearings. Simultaneous interpretation was impossible owing to the lack of necessary equipment. Mr. Ablyazov received only partial summaries of the statements made by the parties before the court. Furthermore, the Aix-en-Provence court and the Lyons court both rejected the suggestion made by Mr. Ablyazov's defence team, long before the start of the hearings, to use a simultaneous interpretation agency that had already provided the same services for the Grenoble court in the past. This decision was based on the principle that Mr. Ablyazov should not benefit from better interpretation services than those habitually provided to other defendants. Consequently, only 5 per cent of what was said at the hearings was interpreted for Mr. Ablyazov.

52. In addition to the inadequate interpretation equipment at the hearings, the source stresses that France was unable to provide a timely and intelligible translation at several critical stages of the judicial proceedings regarding Mr. Ablyazov. There was no interpreter present at the time of his arrest, which means that he was not informed of the grounds for his deprivation of liberty. He did not receive a Russian translation of the extradition request by Ukraine until seven weeks into his detention. Similarly, the source states that the delays in translating the court's decision into Russian were inexcusable. The Russian translation of the decision of the Lyons court of 24 October 2014 was not transmitted to him before the deadline for the filing of his appeal of that decision with the Court of Cassation.

53. Sixthly, the Government of France restricted his right to mount a defence and his right to call and question witnesses and withheld important pieces of evidence. The source contends that the judicial authorities limited Mr. Ablyazov's right to a fair trial and undermined his ability to adequately defend himself by not allotting him enough time to prepare his defence, to gain access to the evidence against him and to present his own evidence and witnesses.

54. Regarding the undue restrictions placed on the presentation of his defence, the source claims that the proceedings were needlessly and inappropriately hasty during the hearings before the courts in Aix-en-Provence and Lyons. The hearing before the Aix-en-Provence court, which dealt with the extradition requests by both Ukraine and the Russian Federation, lasted only one day, despite the highly complex nature of the cases and the amount of evidence. Taken together, the two files consist of thousands of pages when the submissions of the defence are taken into account. The source stresses that it was not reasonable to expect that each extradition request could be considered by the court in a half-day.

55. The Aix-en-Provence court was unable to give Mr. Ablyazov enough time to present his arguments. Most of the time allocated for the hearing was used to repeat the allegations against him and cite foreign law. The day was already well under way when Mr. Ablyazov's turn came to present his defence. After only a few minutes, the presiding judge asked him to hurry up because "people had to take public transport to get home". The source reports that, after spending the day listening to all the allegations against him, Mr. Ablyazov was forced to conclude his remarks after only 20 minutes, in violation of the principle of equality of arms.

56. According to the source, the manner in which the proceedings unfolded in Lyons was scarcely any different. Despite the fact that Mr. Ablyazov had taken pains to submit his observations in writing ahead of time, so that preliminary procedural issues could be resolved more quickly and smoothly, several of these issues were broached only on the day of the hearing. As a consequence, they were handled in the same manner as Mr. Ablyazov's request for conditional release and the extradition requests by the Russian Federation and the Ukraine. The court refused to extend the hearing of the extradition requests beyond that day. As a result, the time allotted for the presentation of Mr. Ablyazov's defence was so limited that the witnesses could not be called to testify.

57. In preparation for the hearing before the Lyons court, the defence had registered, in keeping with French procedural requirements, the names of seven witnesses, including known leaders of the opposition in the Russian Federation, Ukraine and Kazakhstan and

representatives of civil society. Although they were present in the courtroom on the day of the hearing, the judges did not allow them to testify. The defence considered the presentation of this testimony as essential to the court's understanding and assessment of the political context and to the demonstration of the considerable risk of serious human rights violations to which Mr. Ablyazov would be exposed if extradited to the Russian Federation or Ukraine.

58. The source considers that the French justice system did not show due diligence in view of the lack of thoroughness on the part of the court and other officials. The source claims that Mr. Ablyazov and his lawyers were continuously denied the possibility of exercising their right to challenge the conduct of the judicial authorities in order to have it corrected. The source alleges that several requests, applications, appeals and complaints were filed by the defence concerning procedural violations but were summarily ignored or dismissed.

Response from the Government

59. The Working Group transmitted a communication to the Government of France on 20 May 2016, specifying that a reply was expected by 19 July 2016. However, the Government did not reply until 25 July 2016, without justifying the delay or requesting an extension. The Working Group cannot, therefore, consider the response as having been transmitted within the required time.

Additional observations from the source

60. The late reply of France was shared with the source, who submitted additional observations. However, these observations did not include any new factual elements to be transmitted to the Government.

Discussion

61. The Working Group is confronted with a highly complex case that involves judicial proceedings against Mr. Ablyazov in various countries. Mr. Ablyazov is a national of Kazakhstan, where a number of proceedings are pending against him. It is alleged that all his current problems stem from his status as a political opponent of his country's Government. He was a political refugee in one country, then resided in another, where some of his family members were secretly detained and sent back to their country of origin in violation of their legal status. They have since been released and have returned to their country of residence. Mr. Ablyazov himself was arrested in France following the issuance of an INTERPOL red notice. After his arrest in France, another country requested his extradition for other financial crimes. These facts have not been contested.

62. Under these conditions — and even though the main issue before the Working Group is Mr. Ablyazov's detention in France — it was clear that further information was needed from some of the other States concerned in order to fully understand the circumstances that led to his detention and the allegation that he is being persecuted. The Working Group must carry out its tasks with discretion, transparency, impartiality and rectitude and must rely on objective and dependable facts based on appropriate evidentiary standards (see the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council, art. 8 (a) and (c)). Moreover, the Working Group must take account of all sources of information it considers credible and relevant and must cross-check the information it receives to the best extent possible (see the Manual of Operations of the Special Procedures of the Human Rights Council, para. 23). The Working Group is of the view that it must be faithful to its mandate from the Human Rights Council and examine all the circumstances of the human rights violations that might render a detention arbitrary, in keeping with the five categories of arbitrary detention defined in its methods of work. In the present case, the Working Group considered it necessary to request information from the Russian Federation, Kazakhstan and Ukraine. The Governments of these countries have replied and the Working Group has carefully assessed the huge quantity of information it received.

63. The Working Group reminds all States Members of the United Nations that they have a duty to cooperate with it. This duty includes taking a zero-tolerance approach to any act of intimidation or reprisals against a source that submits information to the Working Group. In the present case, the Working Group has received information about legal action taken against relatives of Mr. Ablyazov in a third country on the basis of the communication sent by the Working Group to one of the aforementioned three States. The Working Group considers that this misuse of its communication constitutes a further form of reprisals against the alleged victim and urges the States to refrain from resorting to any similar practices in future.

64. The Working Group has duly weighed the detailed information provided by the source. It notes that the facts as submitted by the source regarding the central issue of detention in France are consistent with the various decisions of the French justice system. Therefore, the source's credibility and the reliability of the information provided are not, in essence, in doubt.

65. The Working Group notes that Mr. Ablyazov undertook a meticulous appeal process before the French courts up to the highest level, namely the Court of Cassation and the Council of State, in addition to the appeal currently before the Constitutional Council. In each challenge, he raised some of the arguments submitted here. The Court of Cassation handed down its ruling on 5 October 2016, finding that his detention in connection with the extradition request by Ukraine had already lasted three years, which was excessive. The Working Group will proceed with its discussion of the six specific points raised in the source's application.

66. The source asserts, firstly, that international law requires all persons who are arrested to be immediately informed of the reasons for their arrest and detention and promptly notified of the charges against them. In the present case, the source itself states that an INTERPOL notice had been issued at the time of the arrest. France states that the detention was confirmed the very next day by a judge. It can thus be inferred that Mr. Ablyazov was made aware of the reasons for his arrest. Subsequently, there was a delay before a notification could be drawn up in a language that Mr. Ablyazov understands, but the Working Group does not consider, in this case, that the time taken to produce the translation led to the violation of any rights.

67. Secondly, the source asserts that the proceedings against Mr. Ablyazov did not take place within a reasonable time. However, the numerous legal challenges filed by Mr. Ablyazov may have contributed to the duration of his detention. Nevertheless, the Court of Cassation found in its recent ruling that the proceedings in connection with the extradition request by Ukraine, which lasted three years and during which time Mr. Ablyazov was detained, were excessively long. Even if the extradition request by the Russian Federation were to be considered separately, the detention would also be deemed excessively long, since the entire period of detention has already exceeded three years. It is clear to the Working Group that, in the case of an extradition procedure, this overall duration of detention is especially excessive and violates the right to a prompt hearing. Accordingly, on this basis alone, the detention can be considered as having become arbitrary owing to its excessive length, in violation of articles 9 (4) and 14 (3) (c) of the International Covenant on Civil and Political Rights. This violation falls within category III.

68. Thirdly, the source challenges the independence and impartiality of the judiciary, but on the basis of insinuations that the Working Group is unable to corroborate for want of sufficient evidence. Accordingly, this argument should be rejected.

69. Fourthly, the source asserts that the prison authorities limited Mr. Ablyazov's access to his lawyer. Again, the source makes this assertion without providing objective evidence; therefore, the Working Group is not in a position to come to a decision and rejects this argument.

70. Fifthly, the source claims that the authorities failed to provide the necessary interpretation services at the hearings. However, the Working Group is of the view that, in an extradition procedure and under the circumstances of the present case, especially the fact that Mr. Ablyazov always had the counsel of his lawyers, such a violation, if substantiated,

would not be of sufficient consequence to lead to a finding of arbitrary detention. The argument should therefore be rejected.

71. Sixthly and finally, the source contends that the authorities limited Mr. Ablyazov's ability to mount a defence by preventing him from calling and questioning witnesses. The source also contends that key pieces of evidence were not transmitted to Mr. Ablyazov. In the Working Group's opinion, neither of these two arguments can succeed. The extradition procedure is not intended to determine Mr. Ablyazov's responsibility. While Mr. Ablyazov is correct in claiming these rights, they would have greater bearing on the consideration of the merits of the case. The Working Group does not consider that a violation in relation to either of these aspects could be of sufficient consequence to justify a finding of arbitrary detention. The argument should therefore be rejected.

72. The Working Group is fully aware of the specificities of the procedure under way in France. It is an extradition matter not a criminal trial. In criminal matters, it is universally agreed that detention must remain the exception rather than the rule. It is inconceivable that this principle would not apply in non-criminal procedures: indeed, insofar as extradition is an administrative procedure, detention should be even more exceptional. Accordingly, the issue at the heart of the present case is the rationale for Mr. Ablyazov's detention. The parties do not provide enough information in this regard, but it is clear that the French judicial bodies, in rejecting the request for conditional release, have provided an answer to this question: if released, Mr. Ablyazov would have the means of jeopardizing the evidence against him and evading justice. This rationale, according to the highest French court, does not, however, justify Mr. Ablyazov's being held for three years in connection with the extradition request by Ukraine. The Working Group agrees with this conclusion and extends it to the request by the Russian Federation as well. It notes that the Government of France has not excluded release under judicial supervision, which would be less constraining than detention, particularly since Mr. Ablyazov's detention has already been excessively long.

73. The transmission to other mandate holders of all relevant information relating to other human rights violations that have been brought to the Working Group's attention through the communication procedure is a well-established practice. In this connection, paragraph 33 (a) of the methods of work states that: "If the Working Group, while examining allegations of violations of human rights, considers that the allegations could be more appropriately dealt with by another working group or special rapporteur, it will refer the allegations to the relevant working group or special rapporteur within whose competence they fall, for appropriate action." Accordingly, the Working Group will continue its practice of transmitting information to all the relevant mandate holders, including the Special Rapporteur on torture, as will be done in this case because of the allegations of torture made.

Disposition

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

The deprivation of liberty of Mukhtar Ablyazov, being in contravention of articles 9 (4) and 14 (3) (c) of the International Covenant on Civil and Political Rights, is arbitrary.

75. Consequently, the Working Group is of the view that France must take the necessary steps to end the arbitrary detention while providing Mr. Ablyazov with the most appropriate reparation.

76. In keeping with paragraph 33 (a) of its methods of work, the Working Group refers the matter to the Special Rapporteur on torture.

Follow-up procedure

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

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

- (b) Whether compensation or other reparations have been made to Mr. Ablyazov;
- (c) Whether an investigation has been conducted into the violation of Mr. Ablyazov's rights and, if so, what the outcome of the investigation was;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of France with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

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

79. The Working Group requests the source and the Government to provide the above information within six months of the date of the 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.

80. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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.¹

[Adopted on 23 November 2016]

¹ See Human Rights Council resolution 33/30, paras. 3 and 7.