UN WORKING GROUP ON ARBITRARY DETENTION

Selçuk Kozağaçlı (Türkiye)

Opinion No. 48/2026 · adopted 3 September 2026

Challenging arbitrary detention at the UN

A practitioners' Q&A

The Working Group found that Türkiye has arbitrarily kept **Selçuk Kozağaçlı**, a human rights lawyer at the People's Law Office and honorary President of the Progressive Lawyers' Association (ÇHD), in prison since he became eligible for conditional release in February 2025. He was refused release on unwritten criteria and a threshold on his conduct's score set by the executive, freed by court order and rearrested the next day on the same facts, and held back for hunger strikes, letters and his refusal to renounce his convictions. The Working Group upheld all four grounds of arbitrary detention alleged and called for Kozağaçlı's **immediate release**, compensation and an independent investigation.

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JOINT COMMUNICATION TO THE WORKING GROUP BY

TLSP Turkey Litigation Support Project · ELDH European Association of Lawyers for Democracy & Human Rights · International Bar Association Human Rights Institute · Lawyers for Lawyers · The Law Society of England and Wales

What is the UN Working Group on Arbitrary Detention?

What is the Working Group?

It is made up of five independent experts. It was set up in 1991 by the UN Commission on Human Rights. Today it is a special procedure of the Human Rights Council (resolution 60/8).

Opinion 48/2026, para. 1

What does it do?

It decides individual complaints against any State, sends urgent appeals and visits countries. It can examine any deprivation of liberty, including how a sentence is carried out.

Methods of work, A/HRC/36/38

When does it consider detention to be arbitrary?

The Working Group applies five categories of arbitrary detention.

I **No legal basis.** It is clearly impossible to invoke any legal basis for the detention.

II **Exercise of rights.** The detention results from exercising rights protected by the Universal Declaration of Human Rights (UDHR), arts 7, 13, 14 and 18–21, and the International Covenant on Civil and Political Rights (ICCPR), arts 12, 18, 19, 21, 22 and 25–27.

III **Fair-trial violations.** Fair-trial guarantees are breached, wholly or partly, so gravely that the detention becomes arbitrary.

IV **Migration custody.** Asylum-seekers, immigrants or refugees are held in prolonged administrative custody with no possibility of administrative or judicial review or remedy.

V **Discrimination.** The detention breaches international law through discrimination on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or any other status.

Opinion 48/2026, para. 3; Methods of work, A/HRC/36/38, para. 8

What are the consequences of a WGAD opinion?

An authoritative UN body applying binding obligations

States are expected to implement its opinions. The Human Rights Council has called on all States to cooperate with the Working Group, take account of its views, take appropriate steps to remedy the situation of anyone arbitrarily deprived of liberty, and report on the steps taken.

Its opinions apply the State's obligations under international human rights law: the ICCPR, to which Türkiye is a party, the UDHR and the UN standards it cites, such as the Basic Principles on the Role of Lawyers.

Implementation is followed up. The State reports back within six months, and the Working Group can inform the Council of progress or of any failure to act.

Opinion 48/2026, paras 3, 74–77; HRC resolution 60/8, paras 6 and 9

How can someone bring a complaint to the WGAD?

The person concerned, their family, their representatives or human rights NGOs can file; so can Governments and inter-governmental organisations. The Working Group calls a complaint a "communication" and its decision an "opinion". Get the detainee's or family's explicit consent first.

1 Prepare the file	Fill in the model questionnaire and the consent form (English, French or Spanish). Keep it to 20 pages; longer annexes may not be read.
2 Send it	Preferably by email to hrc-wg-ad@un.org, with key annexes. By post: WGAD, OHCHR, United Nations Office at Geneva, 8–14 Avenue de la Paix, 1211 Geneva 10.
3 The State answers	The allegations go to the Government through diplomatic channels. It has 60 days to reply on the facts, the law and any investigation; one extension of up to a month is possible.
4 You reply	The Government's reply is sent to you for final comments.
5 The opinion	Adopted at one of the Working Group's sessions, even if the Government does not reply. Both sides report back on follow-up within six months.

OHCHR, Working Group on Arbitrary Detention: individual complaints; Methods of work, A/HRC/36/38; Opinion 48/2026, paras 74–76

What makes a case admissible?

No need to exhaust domestic remedies

Describe what you tried. That is "an information requirement, not an admissibility condition". Para. 32

Slow domestic cases don't block it

"A remedy invoked to displace international scrutiny must be one that operates." Para. 32

A pending ECtHR case doesn't block it

But filing here can close the door in Strasbourg for the same complaint. See page 4. Para. 33

How long does a case take? The Kozağaçlı case: seven months from filing to opinion



Feb 2026	Apr 2026	Jul 2026	Aug 2026	Sep 2026	Nov 2026
Joint communication filed	Sent to the Government	Government replies, after an extension	Source's further comments	Opinion 48/2026 adopted	Parties notified of the opinion

Opinion 48/2026, paras 2, 12–13 and 24

How to choose between the UN and Strasbourg?

A detention complaint can go to the Working Group or to the European Court of Human Rights, but the same complaint cannot go to both. The Court will not examine a complaint that is substantially the same as one already submitted to another international procedure, unless there is relevant new information, and it treats the Working Group as such a procedure.

Article 35 § 2 (b) ECHR; *Gürdeniz v. Turkey* (dec.), no. 59715/10, 18 March 2014; ECtHR Practical Guide on Admissibility Criteria (2026), §§ 264–273

THE WORKING GROUP	THE SAME COMPLAINT IN STRASBOURG
Has given an opinion on the same person, facts and complaints	✕ **Barred.** *Gürdeniz v. Turkey* (2014); *Sanchez i Picanyol and Others v. Spain* (2025), § 163
Has examined only some of the complaints	− **Barred only for the overlap.** *Al Nashiri v. Lithuania* (2026), §§ 198–203
Has examined the same facts but different complaints	✓ **Not barred.** *Sanchez i Picanyol and Others v. Spain* (2025), §§ 170–176
Has only sent an urgent appeal to the Government	✓ **Not barred.** *Kavala v. Turkey* (2019), §§ 92–94; *Taner Kılıç (no. 2)* (2022), §§ 62–63

In practice: the Kozağaçlı case

EUROPEAN COURT · APRIL 2021

Pre-trial detention

Application no. 41949/19, with colleagues, on his arrest and detention from 2017.

UN WORKING GROUP · FEBRUARY 2026

Denial and revocation of conditional release

Continued imprisonment since he became eligible for release in February 2025, and in particular since his rearrest in April 2025.

Türkiye relied on the Strasbourg application to argue against examination. The Working Group went ahead: the application concerns different facts and predates the conditional release decisions by almost four years. Its opinion is confined to conditional release and "expresses no view" on the pre-trial detention, trial or conviction.

Opinion 48/2026, paras 31 and 33

What did the WGAD find in the Kozağaçlı case?

Eligible, released, rearrested a day later

Mr Kozağaçlı is a human rights lawyer at the People's Law Office (*Halkın Hukuk Bürosu*) and honorary President of the Progressive Lawyers' Association (*Çağdaş Hukukçular Derneği*, ÇHD). Serving 11 years and 3 months for "membership of a terrorist organisation", he became eligible for conditional release in **February 2025**. He was refused, as a disciplinary sanction for a cell protest, served and lifted days earlier, still counted against him.

In **March 2025** the enforcement judge annulled the refusal. In **April 2025** the prison board found good conduct and he was released. The next day the prosecutor objected, the same court reversed itself without any new fact, and he was rearrested. Paras 4, 8, 30, 37, 39

Category I

No legal basis

A valid sentence does not end the inquiry. Article 9(1) ICCPR covers how a sentence is executed, including early release and its revocation.

Paras 35–36, 43; HRC General Comment 35, para. 20

Spent sanction still counted. A sanction served and lifted before eligibility still blocked release, contrary to the Government's own account of the rule. Para. 37

A rule rewritten by the court. An illustrative list of exceptions was read as exhaustive. Para. 38

An unwritten "sincerity" test (*samimiyet tasdiki*) has no basis in law. Paras 40–41

A threshold set by the executive: "a deficit of 2.25 points may keep a person in prison long after he has become eligible for release". Para. 42

> "A condition that determines whether a person is released or remains in prison … cannot rest on practice."
> Para. 41

Category II

Exercise of rights

Of the six grounds for revoking release, three were expressions on their face, and one demanded a change of opinion.

Paras 45, 51: UDHR arts 19, 20; ICCPR arts 19, 21, 22

Hunger strikes are protected protest. A hunger strike is "a form of peaceful protest", protected by Article 19 ICCPR and, when prisoners act together, by Article 21. Prisoners keep these rights, subject only to limits that imprisonment makes necessary. Para. 46

No double penalty. No legitimate aim is served by extra prison time for conduct already punished in full. Para. 47

No forced renunciation. Requiring "sincerity" makes a prisoner choose "between his convictions and his freedom". Para. 48

Defenders get heightened scrutiny, because sentence execution can be used to silence them. Para. 50

> "Advising a client of the right to silence is the discharge of a professional duty, not evidence of allegiance."
> Para. 49; UN Basic Principles on the Role of Lawyers, principles 16, 18, 23, 24

Who decides, how, and against whom

Category III
Fair-trial violations

Conditional release decisions do not ordinarily determine a criminal charge, but "it does not follow that they are unregulated": Article 9(1) and (4) apply.

Paras 53, 59: UDHR arts 8–10; ICCPR arts 2(3), 9(1), 9(4)

The prosecutor wears three hats: prosecutes the case, chairs the board that assesses rehabilitation and votes last, then objects to release. "The difficulty is structural." Para. 54

Appearances count. Unanswered questions about the prosecution offices meant "the appearance here is not reassuring". Para. 55

Reasons must reach the prisoner. A negative assessment given only orally, with no written decision, leaves nothing to appeal. Para. 56

Review must be speedy. His Constitutional Court application has been pending since May 2025. Para. 57

Spent sanctions are a second punishment, and a high-security prisoner is judged "against a standard he is structurally impeded from meeting". Para. 58

> "An avenue of appeal is not the same as an effective remedy."
> Para. 56

Category V
Discrimination

Where detention results from exercising civil and political rights, there is "a strong presumption" of discrimination on political or other opinion. Category II triggered it here.

Paras 61, 64: UDHR arts 2, 7; ICCPR arts 2(1), 26

"Equal treatment" contradicted by the State's own reply. The Government said its measures apply "equally to all convicts", yet described a separate regime for persons convicted of "terrorism-related offences". Paras 60, 62

A test of belief, not of gravity. The unwritten "severed ties" requirement demands of one class of prisoners, and no other, "a demonstrated change of mind, and withholds liberty until it is made". Para. 62

His profession made the ground. Where that class is defined largely by his legal practice and his office in a lawyers' association, the test discriminates on political opinion and on his status as a human rights defender. Para. 62

Part of a pattern. *Infaz yakma* (annulment of conditional release) against political prisoners, Ankara Bar findings of stereotyped decisions and formalistic review, and the same reversal of his release in September 2018. The Government did not answer, and the case is "consistent with that pattern". Para. 63

> "Not a differentiation by gravity; it is a differentiation by opinion."
> Para. 62

Concluding remarks

Beyond the four categories, the Working Group raised further concerns about Kozağaçlı's treatment in prison and about arbitrary detention in Türkiye more widely.

PARA. 65

Conditions of detention

The Government described the size of his cell but said nothing about the regime: hours outside the cell, contact with others, or activities in a high-security block. Article 10(1) ICCPR requires that every detainee be treated with humanity and respect for human dignity.

PARA. 66

Health and dignity

He needs surgery but has declined it, because detained patients are handcuffed and guarded during operations. Care that can only be accepted on degrading terms "is effectively not available". The Working Group asked that he be treated in conditions compatible with his dignity.

PARA. 67

A systematic practice?

Its many cases on Türkiye "might indicate a widespread or systematic practice of arbitrary detention". The Working Group recalled that States must not engage in acts that could amount to crimes against humanity, and must prevent and punish them.

PARA. 68

Request to visit Türkiye

Its last visit was in October 2006. Noting Türkiye's standing invitation to all UN special procedures, the Working Group considers it "an appropriate time" for another country visit.

> "Care that a patient cannot accept without submitting to degrading conditions is effectively not available."
>
> Para. 66

What the Working Group asked Türkiye to do

Remedy Kozağaçlı's situation "without delay" and bring it into line with the UDHR and the ICCPR. Para. 70

Release him immediately
with an enforceable right to compensation and other reparations (para. 71)

Investigate
fully and independently, and take measures against those responsible (para. 72)

Disseminate the opinion
through all available means and as widely as possible (para. 73)

Report back within six months
on release, reparations, the investigation, and changes to law and practice (paras 74–76)