

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Mr. José Guevara (Mexico)

Vice-Chairperson: Ms. Leigh Toomey (Australia)

Vice-Chairperson: Ms. Elina Steinerte (Latvia)

Mr. Seong-Phil Hong (Republic of Korea)

Mr. Sètondji Adjovi (Benin)

HUMAN RIGHTS COUNCIL UNITED NATIONS GENERAL ASSEMBLY

In the Matter of

Abdullah Al Houth

Citizen of Arabic Republic of Syria

v.

Government of The Republic of Turkey

Submitted by

Prisoners Defenders Asia Director

Kurtuluş BAŞTİMAR

I. IDENTITY

1. Family name:al Houmse

2. First name: Abdullah

3. Sex: (Male)

4. Birth date or age (at the time of detention):09/02/1975

5. Nationality/Nationalities:

6. (a) Identity document (if any): 99619377382

(b) Issued by: Syria

(c) On (date): N/A

(d) No.: N/A

7. Profession and/or activity (if believed to be relevant to the arrest/detention):

Politician/ Businessman

8. Address of usual residence:

Istanbul

II. Arrest

1. Date of arrest:09/09/2022

2. Place of arrest (as detailed as possible):

On Saturday, 09/09/2022, at around 20.45, he was taken from in front of his house only to ask a few questions, but not content with being asked, they arrested him and they came in civilian form and there was no police clothes. In other words, the civil police came to the house of the applicant. The police officers did not present any arrest warrant either.

3. Forces who carried the arrest or are believed to have carried it out: Turkish Police officers

4. Did they show a warrant or other decision by a public authority?

(No)

5. Authority who issued the warrant or decision: There was no arrest warrant.

6. Reasons for the arrest imputed by the authorities:

Calling for All Syrians to strike, in order to demonstrate to the nation that Syrians have huge potential for Turkish work sector.

7. Legal basis for the arrest including relevant legislation applied (if known):

III. Detention

1. Date of detention: 09.09.2022

2. Duration of detention (if not known, probable duration): Since 09-09-2022

3. Forces holding the detainee under custody:

Turkish Police officer

4. Places of detention (indicate any transfer and present place of detention):

Kocaeli immigration center

5. Authorities that ordered the detention: Turkish government

6. Reasons for the detention imputed by the authorities: Calling for All Syrians to strike, in order to demonstrate to the nation that Syrians have huge potential for Turkish work sector.

7. Legal basis for the detention including relevant legislation applied (if known): N/A

IV. Describe the circumstances of the arrest.

Abdullah Alhoumse, the applicant, was born in Syria who is a businessman working in Syria, Qatar, Dubiada and Lebanon. The applicant went back to Syria when the Syrian uprising in 2011 began, and he was paying attention to arrests and sharing them on his fake accounts, at that time they killed a lot of his relatives (uncle, his aunt's son, his wife's brother) and he couldn't

stand to be silent anymore and he was talking about the murders carried out by Syrian intelligence on his behalf.

When the applicant felt that his life was in danger (they had tried to kill him). He took all his money and settled in Lebanon with his family (23.01.2013). Feeling that his life was in danger again in Lebanon, he decided to settle in Turkey (25.02.2013). He set up a hair transplant and travel company in Turkey. He did not ignore the murders carried out by Syrian intelligence and continued to speak against human rights violation and killing of people in his country.

In 2017, the applicant announced on social media that he would be the president of Syria in the general national election. They sent spies agent to him to work in his company, however the applicant was not aware at first, the spy employees were tracking all his movements (they put a tape recorder in his car, they put devices in his room in the office, they monitored his meetings), they told Syrian intelligence all his movements and everything he did. They quit their jobs out of fear that they would learn about it, after a while they realized that there were hardworking spies in Syrian intelligence, they found the audio recording devices in his office in his car in his room.

Abdullah Alhoumse started to receive threats (leaving a sign on the door of his office, putting threatening papers on his car and leaving threatening letters on the door of his house), realizing that his life and his family's lives were in danger, temporarily shut down his company, tried to contact Turkish intelligence to understand a security measure, but he did not create a job, and now racism against Syrians was increasing in Turkey, Turkish people were trying to humiliate Syrians. They started to threaten, beat and even kill Syrians, Abdullah didn't want to be silence anymore because people were being persecuted and he tried to communicate with Turkish intelligence, but again he didn't get any results, he sued the authorities who tried to incite the Turks against the Syrians and started to send him threats on Twitter, so racism was increasing day by day (they only made Syrians work without insurance, They worked 14 hours a day and gave only half of the salary that the Turks received, they gave a salary that was not enough for anyone, that is, they ignored workers' rights).

After all of those developments, Abdullah Alhoumse invited the Syrians to a one-week work strike (he offered the Syrians to quit their jobs for only one week in order for the Turks to know and understand the value of the Syrians, to reduce racism and to ensure unity).the date he

proposed the strike (07.09.2022), the confidence of Turkey who heard this perceived this as an incitement.09.09.2022 On Friday at 20.45 in the evening, they(Police officers) said that they called him to come to his house and ask only a few questions (they said it would take 2 hours at most) Because he was not at home and there were small children (5 years old, 8 years old and 10 years old respectively) Abdullah refused to go (he stated that he would come the next day), although his children were crying, the police officers who came told him not to worry about their children that they would only get an hour's work, Abdullah agreed to come to avoid any incident (they made him cry at home and leave his children alone). After asking a few questions, they forced him to remove the posts he had shared for the strike (without his own administration), and they said that if he shared posts that would stop the strike, they said that they would leave him otherwise he would stay there, Abdullah did what he wanted to avoid the incident again, but they lied to him and did not remove him from there, they took his statement, but they did not make up and write something themselves, not the statement given by Abdullah, and then he took out of Istanbul and went to the prison in Kocaeli. They put it (Afghans and inflated people are bulging inside the prison). To this day, he is still in prison and they disturb him so much in prison that his family fears for Abdullah's life.

LEGAL ANALYSIS

DEPRIVATION OF LIBERTY UNDER CATEGORY-I

A detention violates Category I when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty. The Working Group has found detentions arbitrary under Category I when some of the following violations are present: (1) when the government has held an individual incommunicado for a period of time; (2) when the government has arrested an individual without judicial authorization for such deprivation of liberty; (3) when vague laws are used to prosecute individuals; and (4) when laws are used to target government critics.¹ Article 9(2) International Covenant on Civil and Political Rights states that 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.²

¹ See, e.g., Bettar v. Morocco, Working Grp. on Arbitrary Detention, Commc'n No. 3/2013, paras. 30-314 (April 30, 2013); 61 Individuals v. United Arab Emirates, Working Grp. on Arbitrary Detention, Commc'n No. 60/2013, para. 22 (November 22, 2013)

² Article 9 ICCPR

Mr. Abdullah was arrested and stayed in prison since his arrest, despite the fact that he asked for many times the officials to inform him about the charges, no explanation was made to him. Hence, her right under Article 9(2) was violated.

DEPRIVATION OF LIBERTY OF UNDER CATEGORY-II

Deprivation of liberty is arbitrary under Category II when it results from the exercise of the rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 20, and 21 of the UDHR and Articles 12, 18, 19, 21, 22, 25, 26, and 27 of the ICCPR³

A detention is also arbitrary under Category II of the Working Group's Revised Methods of Work when it results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of expression and religion⁴ Mr. Abdullah was forced to remove his post from all his social media accounts. Hence, his post in social media was used as a ground for his arrest.

Article 19(2) of the ICCPR provides that "everyone shall have the right to freedom of expression."⁵ The Working Group has confirmed the right of human rights defenders "to investigate, gather information regarding and report on human rights violations."⁸⁰ The Human Rights Committee has also specifically recognized that Article 19(2) protects the work of journalists.⁶ and "includes the right of individuals to criticize or openly and publicly evaluate their Government without fear of interference or punishment."⁷

³ Human Rights Council, Methods of Work of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/30/69, para. 8(b) (August 4, 2015) (hereinafter "Methods").

⁴ A detention is arbitrary under Category II "when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14 and 18-21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18-19, 21-22 and 25-27 of the International Covenant on Civil and Political Rights." *Methods of Work of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/33/66, para. 8b [hereinafter "Revised Methods of Work"]

⁵ ICCPR at art. 19(2).

⁶ *Movlonov et. al. v. Uzbekistan*, UN Human Rights Committee, Communication No. 1334/2004, U.N. Doc. CCPR/C/95/D/1334/2004 (March 19, 2009).

⁷ *De Morais v. Angola*, UN Human Rights Committee, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002, para. 6.7 (March 29, 2005).

in fact, the imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny; the Working Group has recognized the necessity to “subject interventions against individuals who may qualify as human rights defenders to particularly intense review”⁸

In the case of Mr. Abdullah, he was targeted for his expression through his social media accounts. The government held him liable for exercising his right to freedom of expression. Hence, his deprivation of liberty is arbitrary under category -II.

The government of Turkey, in case deporting Mr. Abdullah to Syria violated one of the main principle of international human rights law principle namely The principle of non-refoulement which

forms an essential protection under international human rights, refugee, humanitarian and customary law would be violated. It (Principle of non-refoulement) prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations. Under international human rights law the prohibition of refoulement is explicitly included in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). In regional instruments the principle is explicitly found in the Inter-American Convention on the Prevention of Torture, the American Convention on Human Rights, and the Charter of Fundamental Rights of the European Union. International human rights bodies, regional human rights courts, as well as national courts have guided that this principle is an implicit guarantee flowing from the obligations to respect, protect and fulfil human rights. Human rights treaty bodies regularly receive individual petitions concerning non-refoulement, including the Committee Against Torture, the Human Rights Committee, the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child.

Mr. Abdullah was and still is being forced to sign voluntarily return form to be released from Kocaeli Immigration center. However, this would not be release of him from the prison. On the

⁸ Nega v. Ethiopia, UN Working Group on Arbitrary Detention, Opinion No. 62/2012, U.N. Doc. A/HRC/WGAD/2012/62, para. 39 (November 21, 2012); see also, Sotoudeh v. Islamic Republic of Iran, UN Working Group on Arbitrary Detention, Opinion No. 21/2011, U.N. Doc. A/HRC/WGAD/2011/21, para. 29 (January 27, 2011).

contrary, it will be approval of deportation of him to Syria and that is clear violation of principle of non-refoulement.

Article 7 of the ICCPR guarantees that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 10(1) of the ICCPR further provides that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” The right to freedom from torture and cruel, inhuman or degrading treatment or punishment is reiterated by Articles 1, 4 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), to which Vietnam is party, Article 5 of the UDHR, Principle 1 and 6 of the Body of Principles, and Rules 1 and 43 of the Mandela Rules. The Vietnamese Constitution also prohibits “torture, violence, coercion, corporal punishment or any form of treatment harming his or her body and health or offending his or her honour and dignity.”

Mr. Abdullah was poisoned in Immigration office located in Kocaeli and he was beaten while he was taken to hospital. Despite the fact that lawyers at domestic level visited him in Immigration center, no information or no medical report was given to us.

In conclusion, he was subjected to ill-treatment while he is under detention.

DEPRIVATION OF LIBERTY UNDER CATEGORY-III

A deprivation of liberty is arbitrary under Category III where “the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out 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.”⁹ The minimum international standards of due process applicable in this case are established by the ICCPR, the UDHR, the UN Body of Principles for the Protection of All

⁹ Human Rights Council, Methods of Work of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/30/69, para. 8(c) (August 4, 2015), <https://studylib.net/doc/6805883/methods-of-work-of-the-working-group-on-arbitrary-detention>

Persons under Any Form of Detention or Imprisonment (the “Body of Principles”), and the UN Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”)¹⁰

Article 14(3)(g) International Covenant on Civil and Political Rights states that In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: Not to be compelled to testify against himself or to confess guilt.¹¹

Mr. Abdullah he was forced to sign the documents that are proving that he committed a crime despite that he could not understand what is written in those papers. Therefore, his rights under Article 14(3)(g) International Covenant on Civil and Political Rights. Also, he was forced to sign the voluntarily return form.

Under Article 9(3) of the ICCPR, a detainee shall “be brought promptly before a judge or other officer authorized by law to exercise judicial power” to challenge the legality of his continued detention (right to habeas corpus, also incorporated in Article 9(4) for non-criminal defendants)¹² The Human Rights Committee has interpreted the term “promptly” to be within about 48 hours, except in exceptional circumstances¹³ and has noted that this right shall be observed “even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.¹⁴ Moreover, incommunicado detention inherently violates Article 9(3) of the ICCPR¹⁵ The right to habeas corpus is reiterated in Principles 4, 11, 32(1) and 37 of the Body of Principle¹⁶

In addition to the right to habeas corpus, Article 9(3) of the ICCPR also enshrines the right to an individual’s release pending trial, providing that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody.” The Human Rights Committee has found that “[d]etention pending trial must be based on an individualized determination that [such detention] 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 . . . Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.¹⁷

¹⁰ Id. at paras. 7(a), (b).

¹¹ Article 14(3)(g) ICCPR

¹² ICCPR, art. 9(4) (“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”).

¹³ General Comment No. 35, supra note 62, at para. 33.

¹⁴ Id. at para. 32.

¹⁵ Id. at para. 35.

¹⁶ Body of Principles, supra note 60.

¹⁷ Id. at para. 38.

In the case of Mr. Abdullah, he was arrested on 9 September 2022 and since then he was not brought to see the judge. Therefore, his right under article 9(3) International covenant on civil and political Rights was violated.

Principle 19 of the Body of Principles provides that “detained or imprisoned persons shall have the right to be visited by and to correspond with, in particular, members of his family . . . subject to reasonable conditions and restrictions as specified by law or lawful regulations.” Similarly, this right is protected by the Mandela Rules, notably Rule 43 stating that “[d]isciplinary sanctions or restrictive measures shall not include the prohibition of family contact,” Rule 58 stating that “[p]risoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals,” and Rule 106 stating that “[s]pecial attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both.

The applicant was not allowed to be visited by his close friends and family members at the first days of his detention in Kocaeli immigration center. Thus, his rights under principle 19 of the Body of Principle was violated.

DEPRIVATION OF LIBERTY UNDER CATEGORY-V

Mr. Abdullah was arrested and deprived of his liberty on the basis of his nationality and for political reasons.. Moreover, Mr. Abdullah’s deprivation of liberty reportedly occurred in the wake of nationalist requests and official statements that all Syrian refugees living in Turkey illegally would be deported. Finally, the authorities treated Mr. Abdullah in a manner which suggests a discriminatory attitude, including leaving him in prison for days to consider signing the repatriation form. The Government did not provide any information to rebut these considerations, including specific reasons why Mr. Abdullah’s activities can be accepted as a ground for detention.

VII. Full name, postal and electronic addresses of the person(s) submitting the information (telephone and fax number, if possible):

Kurtuluş BAŞTİMAR
Prisoners Defenders Asia Director

Pincipe de Vergara No: 109

28002, Madrid, Spain

Email: bastimar.kurtulus@gmail.com

DocuSigned by:
Kurtulus Bastimar
ABF3ED5ADDBE462...