

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Chairman-Rapporteur: Ms. Leigh Toomey (Australia)

Vice-Chair: Ms. Elina Steinerte (Latvia)

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HUMAN RIGHTS COUNCIL

UNITED NATIONS GENERAL ASSEMBLY

In the Matter of

Esmaeil Fattahi, Leili Faraji and Zeinap Sahafi, Citizen of Islamic Republic of Iran

v.

Government of the Republic of Turkey

URGENT ACTION REQUESTED

Petition for Relief Pursuant to Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31, 2006/102, 6/4, 15/18, 24/7, and 42/22¹

¹ Resolutions 1991/42, 1994/32, 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the UN Working Group on Arbitrary Detention. The Human Rights Council, which assumed[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights... pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, 6, (15 Mar. 2006), later extended the mandate through Resolutions 6/4, 15/18, 24/7, 42/22.

BASIS FOR URGENT ACTION REQUEST

The petitioners were exiled different cities of the Republic of Turkey following their arrest in removal center. At domestic level, immigration office located in Denizli province of Turkey, issued deportation decision about the petitioners on the ground that they pose a threat to the national security of the Republic of Turkey.

One of the petitioners, Esmael Fattahi, lodged an individual application to the Constitutional Court of Turkey but his application was rejected. Now there is no any procedural or judicial safeguard protecting them from deportation.

Petitioners are citizens of Islamic Republic of Iran, The Republic of Turkey issued deportation decision against petitioners and they will be deported to Iran where they are prosecuted and wanted. In case, they are deported to Islamic Republic of Iran, they will be subjected to torture, degrading and ill-treatment.

Therefore, the UN Working Group on Arbitrary Detention, is kindly asked to receive and threat the petition under regular procedure with an urgent request.

A. Identity

1. Family Name: SAHAFY

2. First Name: ZEINAB

3. Sex: Male

4. Age at the Time of Detention: 25

5. Nationality: Iran

6. (a) Identity Document (if any): Passport

(b) Place of Issue: AHVAZ

(c) On (date): 2015/11/11

(d) No.: N35688797

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

Human Right Defender

Freelancer Journalist

8. Address of usual residence: Yenimahalle MAH.3214 SK. NO:1 /40 Atakum/ SAMSUN / TURKEY

B. Arrest

1. Date of arrest: 05 April 2021

2. Place of arrest (as detailed as possible): Denizli Security Police

**3. Did they show a warrant or other decision by a public authority?
presentation of a warrant is not required at the time of arrest.**

4. Authority who issued the warrant or decision:

Denizli Security Police

5. Relevant legislation applied (if known):

Administrative Detention

Legal Duty to sign

Banishment

A final deportation order has been issued but has not been carried out, and there is a possibility of re-arrest and deportation at any moment

C. Detention

1. Date of detention: 06 April 2021

2. Duration of detention (if not known, probable duration): 33 Days

3. Forces holding the detainee under custody: Ministry of Internal Affairs

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

Aydin Deport center

5. Authorities that ordered the detention: Ministry of Internal Affairs

A. Identity

1. Family Name: FARAJI

2. First Name: LEILI

3. Sex: FEMALE

4. Age at the Time of Detention: 40

5. Nationality: Iran

6. (a) Identity Document (if any): Passport

(b) Place of Issue: ESLAMABAD GHARB

(c) On (date): 2018/06/27

(d) No.: I45862612

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

Human Right Defender

Freelancer Journalist

8. Address of usual residence: Paşabey 2sok. Verep APT. B BLOK 7/D27. Sivas. Turkey

B. Arrest

1. Date of arrest: 05 April 2021

2. Place of arrest (as detailed as possible): Denizli Security Police

*3. Did they show a warrant or other decision by a public authority?
presentation of a warrant is not required at the time of arrest.*

4. Authority who issued the warrant or decision:

Denizli Security Police

5. Relevant legislation applied (if known):

Administrative Detention

Legal Duty to sign

Banishment

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C. Detention

1. Date of detention: 06 April 2021

2. Duration of detention (if not known, probable duration): 33 Days

3. Forces holding the detainee under custody: Ministry of Internal Affairs

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

Aydin Deport center

5. Authorities that ordered the detention: Ministry of Internal Affairs

A. Identity

1. Family Name: Fattahi

2. First Name: Esmaeil

3. Sex: Male

4. Age at the Time of Detention: 33

5. Nationality: Iran

6. (a) Identity Document (if any): Passport

(b) Place of Issue: BOSTANABAD

(c) On (date): 2015/6/27

(d) No.: J34164481

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

Human Right Defender

Freelancer Journalist

*8. Address of usual residence: Erenler mah. 2759 sok. Özefe 2015 apt- No:35 D:10
AFYONKARAHISAR/TURKEY*

B. Arrest

1. Date of arrest: 05 April 2021

2. Place of arrest (as detailed as possible): Denizli Security Police

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

presentation of a warrant is not required at the time of arrest.

4. Authority who issued the warrant or decision:

Denizli Security Police

5. Relevant legislation applied (if known):

Administrative Detention

Legal Duty to sign

Banishment

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1. Background information about Istanbul Convention

The Convention is the first European instrument that aims legally to prevent gender-based violence, protect victims of violence, and punish perpetrators. It explains what countries have to do to prevent and combat violence against women and domestic violence.

Some of the measures are awareness raising, data collection, and legal measures (for example recognising that forced sterilisation or female genital mutilation is a form of violence against women). The focus is for governmental bodies to be involved in prevention, prosecution, and protection activities. This can be done through training, education, resources, law enforcement, and legal systems.²

The convention was drafted by the Council of Europe, an international organization founded after World War II to uphold human rights, and sets legally binding standards not only on punishing perpetrators — but also on violence prevention as well as victim protection.

The treaty contains government obligations, including investing in education, collecting data on gender-related crimes, and offering support services for victims. The convention has been signed by 45 European countries, as well as the EU as an organization.³

The Istanbul Convention is the most far-reaching international treaty specifically designed to tackle violence against women and domestic violence. It sets out minimum standards for governments in Europe on prevention, protection, and prosecution of violence against women and domestic violence.⁴

The Istanbul Convention is a legally binding instrument (State parties to it have an obligation to comply with its provisions). Globally, it is the third regional treaty addressing violence against women and the most comprehensive one after the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) adopted in 1994 and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) in place since 2003.⁵

² <https://www.edf-feph.org/the-istanbul-convention/> accessed on 23 March 2022

³ <https://www.dw.com/en/istanbul-convention-how-a-european-treaty-against-womens-violence-became-politicized/a-56953987> accessed on 23 March 2022

⁴ See available at : <https://www.amnesty.org/en/latest/news/2021/05/heres-why-the-istanbul-convention-saves-lives/> accessed on 23 March 2022

⁵ Ibid

2. Withdrawal of The Republic of Turkey from Istanbul Convention

On 20 March, Turkey's Official Gazette announced a presidential decision to withdraw from the Istanbul Convention, the Council of Europe's treaty on preventing violence against women and domestic violence⁶

Misinformation campaigns about the term "gender" and spurious allegations by certain governments and interest groups that the Convention undermines the notion of the "traditional family" are resulting in a few countries failing to ratify the Convention.

For example, Parliaments in Slovakia and Hungary have rejected initiatives to ratify the Convention and in Bulgaria, the country's Constitutional Court has ruled that the Convention is not compatible with its Constitution.

In March 2021, Turkey, the first country to sign and ratify the Convention, announced its withdrawal from it, also arguing that it was being used to 'normalise homosexuality', which is 'incompatible with Turkey's social and family values'. The withdrawal took effect on 1 July 2021. Paradoxically, Turkey was a leading supporter of the Convention at the time of its opening for signatures and was instrumental in mobilising other European States to sign up to it.

Turkey's unprecedented move follows similar threats in Poland where there is a pending request by the Prime Minister to the Constitutional Tribunal to assess the constitutionality of the treaty and a bill in Parliament calling on the President to withdraw Poland from the Istanbul Convention and to create a new convention on the "rights of the family".⁷

⁶ See available at : <https://www.opendemocracy.net/en/can-europe-make-it/why-turkeys-withdrawal-from-the-istanbul-convention-is-a-global-problem/>

⁷ See available at: <https://www.amnesty.org/en/latest/news/2021/05/heres-why-the-istanbul-convention-saves-lives/> accessed on 24 March

3. Background information on the petitioners

Following Turkey's withdrawal from İstanbul Convention, Esmail Fattahi, Leili Faraji and Zeinab Sahafi, who participated in the press statement organized in Denizli, on March 20, 2022, and Mohammed Kermani who did not participate in action, had been taken into custody on April 5. The objection to deportation decision, which was made at speed of light on April 6, has been rejected recently.

Esmail Fattahi, Leili Faraji and Zeinab Sahafi call for solidarity with the video published by *Ekmek ve Gül magazine* Right defenders draw attention to the ill-treatments like violence, unjust custody and detention they would be subjected to in Iran under the case of deportation, reminding that participation in İstanbul Convention protest is not illegal.

Zeinab Sahafi, who struggled for women to be able to watch the matches in the stadiums when she was in Iran, says: "I have not committed any kind of crime. I had just attended a protest for woman's rights. Thereafter they decided to deport us." in the video published.

Human rights defender and journalist Esma Fattahi, who has imprisoned for four years due to making propaganda against regime in Iran, remarks that they are in fear of their life by saying: "I call everyone to be in solidarity against unlawful decision about us. We will subjected to torture and heavy penalties if we are given back to our country.

Women's rights defender Leili Faraji, who was exposed to oppression by Iran intelligence service due to striving at finding the killers of her sister, having been killed by intelligence forces, says that they are waiting for solidarity: "My asylum request was accepted by international protection. This means that if I am sent back to Iran I will receive major

punishments. However, it not noticed by Turkey so the authorities decide to deport us. I am waiting for support and solidarity from all women’s rights activists.”

Mohammad Pourakbari Kermani is also at risk of being deported although he has not participated İstanbul Convention protests, just because he called Esmaeil Fattahi within that day.

LEGAL ANALYSIS

a. Deprivation of Liberty under category-I

A detention is arbitrary under Category I when there is no legal basis or justification for it⁸ The Working Group has found lack a legal basis for the purposes of Category I when an individual is arrested without substantive evidence to justify the arrest⁹ and when the Government uses vague and/or overbroad laws to prosecute an individual¹⁰

In the current case, the petitioners, attended in a press conference following the Republic of Turkey’s withdrawal from Istanbul Convention. And the petitioners were arrested for attending press statement on the ground that they did not ask for permission from competent authorities. This is unlawful ground because according to Turkish Constitution, there is no requirement to get permission from the relevant authorities to attend meetings and protest. This is laid down

⁸). 60 A Category I deprivation of liberty occurs “[w]hen it is impossible for the government to invoke any legal basis under domestic law for detaining the individual” Report of the Working Group on Arbitrary Detention, 16th session, A/HRC/16/47, Annex 8(b) (Jan. 19, 2011), <https://documents-ddsny.un.org/doc/UNDOC/GEN/G11/102/76/PDF/G1110276.pdf?OpenElement>.

⁹ Gargari v. Mexico, UN Working Group on Arbitrary Detention, Opinion No. 58/2016, para. 21 (Nov. 25, 2016), <https://www.unwgadatabase.org/un/Document.aspx?id=3283>.

¹⁰ 61 Individuals v. United Arab Emirates, UN Working Group on Arbitrary Detention, Opinion No. 60/2013, para. 22 (Nov. 22, 2013), <http://hrlibrary.umn.edu/wgad/60-2013.html>; Judicaël et al. v. Republic of Congo, UN Working Group on Arbitrary Detention, Opinion No. 44/2014, paras. 26-37 (Feb. 4, 2015), <http://hrlibrary.umn.edu/wgad/44-2014.pdf>.

in Article 34 Turkish Constitution: Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission.¹¹

Petitioners attended press conference and the Istanbul Convention Protest and deprivation of their liberty on the ground that they attended the press conference and the protest without prior permission is arbitrary. There is no such a legal base or justified grounds at domestic law. The Working Group has found that Category I detention occurs when authorities lack evidence such that there is “no justified grounds for the detainees arrest¹²

Additionally, Article 3 of Law No 2911 law on the meetings and protest states that Everyone can organize meetings and demonstration marches without prior permission, unarmed and without attack in accordance with the provisions of this Law, for certain purposes that are not considered a crime by law has the right to exercise those rights.¹³

Therefore, the petitioners were arrested and detained in the absence of justified ground and thus their arrest and detention falls under category-I.

b. Deprivation of Liberty under Category-II

A detention is 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 freedom of thought, conscience and religion¹⁴ The Government arbitrarily arrested and detained petitioners on the basis of his exercise of the right to freedom of expression and right to peaceful assembly.

b.1 The government of Turkey violated Petitioners’s Right to Freedom of Expression

Article 19(2) of the Covenant provides, “Everyone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas

¹¹ Article 34 Turkish Constitution available at: <https://www.anayasa.gen.tr/1982Constitution-1995-1.pdf> accessed on 24 March 2022

¹² See, e.g., Gargari v. Mexico, UN Working Group on Arbitrary Detention, Opinion No. 58/2016, para. 21 (Nov. 25, 2016), <https://undocs.org/a/hrc/wgad/2016/58>.

¹³ see available at: <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.2911.pdf> Accessed on 24 March 2022

¹⁴ Revised Methods of Work, supra note 97, Category III, at para. 8b

of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”¹⁵ The same right is protected under Article 19 of the UDHR. Freedom of expression is also guaranteed in the Sri Lankan Constitution under Article 14(1)(a).¹⁶ The right to freedom of expression as provided in Article 19(2) of the Covenant is not limited by form or subject matter. As General Comment No. 34 explains, the right protected by Article 19(2) “includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others... It includes... cultural and artistic expression, teaching, and religious discourse.”¹⁷ Moreover, all forms of expression are covered, including electronic and internet-based modes of expression¹⁸

In the case of petitioners, they were arrested for expressing their opinion and make a news about withdrawal of Turkey from Istanbul Convention. In other words, they tried to inform the public about withdrawal process from the convention. Hence, joining press conference, expressing the ideas about Istanbul Convention and making news about this process is nothing other than exercising right to freedom of expression.

While the right to freedom of expression is not absolute, the state can only place restrictions on the freedom under limited conditions. Article 19(3) of the Covenant provides that freedom of expression may only be restricted when provided by law and necessary for the respect of the rights or reputations of others, protection of national security or public order, health or morals¹⁹ The UNHCR has held that such government limitations in accordance with Article 19(3) must “meet a strict test of justification.”²⁰ Here, the exceptions to the right to freedom of expression do not apply. This is because the restriction is not prescribed by law, necessary for the respect of the rights or reputations of others, protection of national security or public order.

Moreover, if a legitimate justification had existed, the Turkish government had a duty to specify the manner of the threat posed by Petitioners’s story. Under the UNHRC’s

¹⁵ ICCPR, supra note 10, at art. 19(2).

¹⁶ Sri Lanka Constitution, supra note 19, at art. 14(1)

¹⁷ UN Human Rights Committee, General Comment No. 34, Article 19 (Freedom of Opinion and Expression). para. 11 (July 29, 2011) [hereinafter General Comment No. 34].

¹⁸ Id., at para. 12.

¹⁹ ICCPR, supra note 10, at art. 19(3).

²⁰ Communication No. 628/1995, Park v. Republic of Korea, U.N. Doc. CCPR/C/64/D/628/1995, ¶ 10.3 (1998), <http://hrlibrary.umn.edu/undocs/session64/view628.htm>

jurisprudence, “the State party must demonstrate in specific fashion the precise nature of the threat to any of the enumerated purposes”²¹ The government also failed to do so.

b.2 The government violated right to peaceful Assembly of the petitioners

The right of peaceful assembly protects the non-violent gathering by persons for specific purposes, principally expressive ones²² It constitutes an individual right that is exercised collectively²³ Inherent to the right is thus an associative element.

Everyone has the right of peaceful assembly: citizens and non-citizens alike. It may be exercised by, for example, foreign nationals²⁴ migrants (documented or undocumented),²⁵ asylum seekers, refugees²⁶

Article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches.

Petitioners were refugees namely foreigner at the time when they attended the protest of Istanbul Convention. And as it was stated the protest is also a form of exercising the right to

²¹ Communication No. 926/2000, *Shin v. Republic of Korea*, U.N. Doc. CCPR/C/80/D/926/2000, ¶ 7.3 (2004), <http://ccprcentre.org/wp-content/uploads/2013/02/926-2000-Shin-v.-Republic-of-Korea-2004.pdf>.

²² *Kivenmaa v. Finland* (CCPR/C/50/D/412/1990), para. 7.6; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 9.3; and *Poplavny and Sudalenko v. Belarus* (CCPR/C/118/D/2139/2012), para. 8.5.

²³ General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 9.

²⁴ General comment No. 15 (1986) on the position of aliens under the Covenant, paras. 1–2; and CCPR/C/KWT/CO/3, para. 42.

²⁵ CCPR/C/DOM/CO/6, para. 32.

²⁶ CCPR/C/NPL/CO/2, para. 14.

Peaceful Assembly. Petitioners were arrested for attending press conference/press statement with regard to Istanbul Convention.

With regards to the requirement of prior permission argued by the government, this requirement must not be misused to stifle peaceful assemblies and, as in the case of other interferences with the right, must be justifiable on the grounds listed in article 21²⁷ The enforcement of notification requirements must not become an end in itself²⁸

A failure to notify the authorities of an upcoming assembly, where required, does not render the act of participation in the assembly unlawful, and must not in itself be used as a basis for dispersing the assembly or arresting the participants or organizers, or for imposing undue sanctions, such as charging the participants or organizers with criminal offences. Where administrative sanctions are imposed on organizers for failure to notify, this must be justified by the authorities²⁹

Petitioners in the current case were arrested on the ground that they did not notify the competent authorities by asking for prior notification. This is clear violation of their right to peaceful assembly. In the conclusion, deprivation of liberty of petitioners are arbitrary because their arrest and detention was the result of their right to freedom of expression and right to peaceful assembly. Hence falls under category-II.

c. Deprivation of Liberty under category-III

According to Category III of the Working Group’s Revised Methods of Work, a deprivation of liberty is arbitrary “[w]hen the total or partial non-observance of international norms relating to the right to a fair trial, spelled out in the UDHR 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.”³⁰

²⁷ Kivenmaa v. Finland, para. 9.2. See also Sekerko v. Belarus, para. 9.4.

²⁸ Popova v. Russian Federation (CCPR/C/122/D/2217/2012), para. 7.5.

²⁹ See, e.g., Popova v. Russian Federation, paras. 7.4–7.5. See also A/HRC/31/66, para. 23.

³⁰ Revised Methods of Work, supra note 97, Category III, para. c.

Due Process is at the core of the right to a fair trial. The minimum international standards of due process are established in the UDHR, the Body of Principles for the Protection of All persons under any Form of Detention or Imprisonment (the “Body of Principles”), and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”)³¹

Petitioners were forced to sign voluntarily return form and that signing event was done against their free will. Police officers forced them to sign a document. In other words, petitioners were forced to sign self-incriminating confession which is prima facie the right not to testify against himself under article 14 (3) (g) of the Covenant.

when petitioners were under arrest, wanted to communicate with their lawyer and asked the police officer to call their lawyer. However, their request to communicate with lawyer was rejected without any justification. The source submits that Article 14(3)(b) of the ICCPR guarantees both the right to “adequate time and facilities for the preparation of [a] defence” and the right to “communicate with counsel of [one’s] own choosing. The UN Human Rights Committee has opined that “adequate facilities” requires access to “all materials that the prosecution plans to offer in court against the accused or that are exculpatory.”³²

Deportation decision was given about petitioners by Denizli immigration office for petitioners. The sources submit that the republic of Turkey is a state party to the Convention relating to the Status of Refugees, article 33 (1) of which enshrines the principle of non-refoulement, the obligation not to repatriate individuals who have reason to fear persecution is also customary in nature.³³ Under article 33 of the Refugee Convention, refugees cannot be sent to a place where they may be persecuted. This fundamental principle is known as non-refoulement. This principle now also applies to places where a person may suffer torture or other cruel, inhuman or degrading treatment.³⁴

³¹ Id., at Category III, paras. 7(a)-(b).

³² UN Human Rights Committee, General Comment No. 32 (Article 14: Right to equality before courts and tribunals and to a fair trial), UN Doc. No. CCPR/C/GC/32, 23 August 2007, para 33

³³ See A/HRC/13/42, para. 43; and UNHCR, “The Principle of Non-Refoulement as a Norm of Customary International Law” (1994), available from <http://www.refworld.org/docid/437b6db64.html>.

³⁴ Article 33(1) of Refugee Convention

CONCLUSION

Petitioners kindly ask the secretariat to find violation of international law and urge the government to compensate the damage of them.