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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its 100th session, 26–30 August 2024

Opinion No. 33/2024 concerning Akin Öztürk (Türkiye)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.
2. In accordance with its methods of work,¹ on 20 February 2024 the Working Group transmitted to the Government of Türkiye a communication concerning Akin Öztürk. The Government submitted a late response on 23 May 2024. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination, based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ [A/HRC/36/38](#).

1. Submissions

(a) Communication from the source

(i) Context

4. Akin Öztürk, born on 21 February 1952, is a citizen of Türkiye. He usually resides in Ankara.

5. The source explains that between 2013 and 2015, Mr. Öztürk served as the Commander of the Turkish Air Force. In 2015 he was appointed as a member of the High Military Consultative Council, and on 15 July 2016 he was the most senior military personnel member in the Turkish Air Force. The source specifies, however, that after handing over the commandship of the Turkish Air Force, Mr. Öztürk was not in command of any personnel, apart from his military aides, nor was he responsible for carrying out any duties. It is noted that he was only required to attend the meetings of the High Military Consultative Council. Mr. Öztürk was therefore in a semi-retired position.

6. The source reports that between 1 and 20 July 2016, Mr. Öztürk was on his annual leave, which had been scheduled months before. Until 15 July 2016, he spent his holiday in the military summer holiday facility in Izmir. During his holiday, he left the facilities only to see his family. There is no allegation that he had any communication with anyone alleged to have been involved in the coup attempt of 15 July 2016.

7. At midday of 15 July 2016, Mr. Öztürk returned to Ankara, as his wife had some health issues. After landing in Ankara, he went with his wife to the house of a close family member and decided to remain there overnight, as they had done numerous times before.

8. At 9.32 p.m. on 15 July 2016, Mr. Öztürk was informed by one of his military aides that there had been an attack on the General Staff. He then attempted to gather more information from the Air Force operations centre and from other high-ranking officers. After 11 p.m., Mr. Öztürk succeeded in speaking with the Commander of the Turkish Air Force, who requested him to go to Akinci Air Base to bring the situation under control.

9. Having promptly arrived at Akinci Air Base, Mr. Öztürk was surrounded by masked military personnel who accompanied him to the office of the commander of the base. Once there, the Chief of General Staff of the Turkish Armed Forces requested Mr. Öztürk to convince some high-ranking military personnel, also present in the office, to stop the coup attempt.

10. Thereafter until the morning, Mr. Öztürk went back and forth three or four times between the base headquarters and the location of the individuals involved in the coup in Squadron 143 in order to convince them to stop the coup attempt in accordance with the orders of the Chief of General Staff.

11. At around 6 a.m. on the following day, 16 July 2016, with these individuals starting to be convinced to stop the coup, Mr. Öztürk returned to the base headquarters and gave an update on the situation to the Chief of General Staff. Initially, the Chief of General Staff suggested going with Mr. Öztürk to see the Prime Minister. However, having consulted with other authorities, he suddenly changed his mind and told Mr. Öztürk to stay at Akinci Air Base. Mr. Öztürk was thus asked to control the military personnel who attempted the coup and was informed that he would be picked up in an hour.

12. The source notes that the pick-up did not take place. Mr. Öztürk decided to go to the Office of the Prime Minister himself by helicopter. However, the helicopter that he took was shot at and Mr. Öztürk sustained a minor injury in his left leg.

13. Mr. Öztürk returned to Akinci Air Base and found out that some high-ranking officers were being held hostage. In the early hours of the morning of 16 July 2016, he located and freed several high-ranking military officers.

14. The source reports that it was approximately at that time that the State media started a campaign against Mr. Öztürk, labelling him as the leader of the coup attempt who was to be tried for treason.

15. At approximately 11 a.m., Mr. Öztürk and other high-ranking military officers left Akinci Air Base under police protection. This is noted in the official report, which states that Mr. Öztürk was among the hostages who were rescued from the instigators of the coup attempt. The source adds that efforts by Mr. Öztürk to subdue the coup attempt were acknowledged in the press releases of both the General Staff and the Turkish Air Force as well as in the official follow-up reports.

16. On the evening of 16 July 2016, Mr. Öztürk went to his house and spent the night at his home with his family.

(ii) *Arrest and detention*

17. At approximately 2 a.m. on 17 July 2016, Mr. Öztürk received an invitation from the Central Command to present a witness statement. No further explanation was given. Mr. Öztürk therefore assumed that he was being summoned as a witness. However, once Mr. Öztürk arrived at the Central Command Station, he was immediately detained and placed in police custody. The officials of the Ankara Central Command Forces who carried out the arrest did not present a warrant or other decision by a public authority.

18. Mr. Öztürk was taken to a closed gym at the Counter-Terror Branch of the Ankara Security Department, in which approximately 500 individuals were being held as arrestees. Upon his arrest, Mr. Öztürk was subjected to ill-treatment and to various forms of torture after being stripped naked. The police officers reportedly told Mr. Öztürk that they had received specific orders to exercise “special care” on him.

19. During the police custody, Mr. Öztürk was not allowed to put on his clothes, was forced to squat or stay on his knees for prolonged periods of time, had acid poured on his fingernails, was subjected to intense verbal assaults, and was severely beaten by police officers and by other arrestees who were coerced by the police to do so. Mr. Öztürk was furthermore deprived of food, kept in a permanently and heavily lit environment, and not allowed to sleep or use the toilet when he needed to do so. He was denied proper medical assistance and sanitation.

20. On 17 and 18 July 2016, Mr. Öztürk was held by the Ankara Counter-Terror Branch in the Doors sports facility. Neither during nor after the police custody was he allowed to talk to his own legal representative. Instead, a Bar-appointed lawyer whom Mr. Öztürk had never encountered before was assigned to him as his counsel. This lawyer, upon observing Mr. Öztürk’s injuries, documented during his interrogation with the prosecutor that there were clear signs of physical injuries on Mr. Öztürk.

21. On 18 July 2016, the Ankara Public Prosecutor filed an official request for Mr. Öztürk to be placed in pretrial detention. In this respect, the prosecutor has stated that in the context of the incidents that took place on the night of the coup attempt, some evidence was found demonstrating that the suspect contributed to the criminal acts. For this reason, it was requested that the suspect be placed in pretrial detention in connection with concrete evidence showing strong suspicion of crime committed by the suspect, and the possibility of absconding and of tampering with the evidence, under article 100 (3) (a) 2–11 of the Code of Criminal Procedure.

22. The prosecutor has omitted to specify the nature and content of the evidence referred to in the request.

23. On the same day, 18 July 2016, the Ankara Fifth Criminal Magistrates’ Court ordered Mr. Öztürk to be placed in pretrial detention. The judge stated that considering the concrete evidence showing the existence of strong suspicions that the suspect committed the crimes of attempting to oust the Government (art. 312 of the Criminal Code) and attempting to overthrow the constitutional order (art. 309 of the Criminal Code), that the suspect had the possibility of absconding and tampering with evidence, that there were still suspicions that the suspect would attempt to make the coup succeed, that the offence that the suspect was charged with and the detention measure were proportionate, and that the alleged crime was listed in article 100 (3) of the Code of Criminal Procedure, it was decided that the suspect was to be placed in pretrial detention in accordance with article 100 of the Code of Criminal

Procedure. After 18 July 2016, Mr. Öztürk's detention was extended monthly by the Ankara criminal magistrates' judgements.

24. The source notes that the judge at the Ankara Fifth Criminal Magistrates' Court also did not mention what the concrete evidence was that could have justified Mr. Öztürk's placement in pretrial detention. On 21 July 2016, three days after he was placed in pretrial detention, the General Staff issued a press release stating that Mr. Öztürk had gone to Akinci Air Base on the night of the coup attempt on the orders of the Commander of the Turkish Air Force to stop the coup.

25. On 18 July 2016, Mr. Öztürk was transferred to Ankara Sincan F2-Type High Security Prison, where he was held in strict isolation for 10 months and 8 days, until 26 May 2017. On 6 June 2017, the Prison Administration reportedly categorized Mr. Öztürk as a dangerous detainee. Consequently, he was deprived of the ability to watch television or buy a radio and his access to the small outdoor yard attached to his cell, where he is kept alone, was reduced to one hour a day. The source notes that this has aggravated Mr. Öztürk's solitary confinement.

26. The source recalls that in a medical assessment report by the Human Rights Foundation of Türkiye, Mr. Öztürk's detention conditions were assessed as constituting torture, cruel and inhuman treatment. According to the report, these conditions have had a detrimental impact on Mr. Öztürk's health.

27. On 31 March 2017, an indictment was prepared by the Office of the Ankara Prosecutor against Mr. Öztürk and 431 other defendants. The indictment was accepted by the Ankara Fourth Assize Court. Mr. Öztürk's case was later merged with case 2017/109 before the Ankara Seventeenth Assize Court, in which 224 defendants, including high-ranking officers, were tried under allegations of having orchestrated the coup attempt of 15 July 2016. In the indictment, Mr. Öztürk was accused of being the leader of the coup attempt. After Mr. Öztürk's indictment was filed and accepted by the Assize Court, his detention was extended monthly by his trial court – the Ankara Seventeenth Assize Court.

28. During the trial phase, Mr. Öztürk faced several implausible allegations, such as having made statements about a coup attempt in a town he had never visited. In his statements defending himself during the hearings, Mr. Öztürk refuted all the allegations. The source concludes that there is no reasonable suspicion to justify the deprivation of Mr. Öztürk's liberty, neither at the time of the initial arrest, nor during the initial pretrial detention nor during the extension of his detention.

29. At the end of the trial at the Ankara Seventeenth Assize Court, on 20 June 2019, Mr. Öztürk was sentenced on 141 counts to aggravated life imprisonment as well as to thousands of years of prison time on accusations of being the leader of the coup attempt of 15 July 2016. In addition, the Ankara Seventeenth Assize Court decided to extend the detention of Mr. Öztürk.

30. The source submits that judges of the Ankara Seventeenth Assize Court, who ordered the extension of Mr. Öztürk's detention, conducted the trial in a manner inconsistent with the principles of an independent and impartial court. It argues that occurrences outlined below illustrate how the Ankara Seventeenth Assize Court acted in deliberate denial of justice, making effective review of his detention impossible.

31. In this regard, the source notes that the reasoned decision of the Ankara Seventeenth Assize Court ordering the continuation of Mr. Öztürk's deprivation of liberty only quotes parts of the opening statements of the defendants, including Mr. Öztürk, but entirely disregards remaining elements of the defence, such as their defence on the merits, which is more detailed and bears more importance than the opening statements.

32. Moreover, when the hearing commenced, Mr. Öztürk, along with all the other defendants, was compelled to defend himself and provide his initial statements – the only ones referenced in the reasoned decision – without being permitted to review and examine the attachments to the indictment.

33. The reasoned decision cites all the arguments of the prosecution, but does not mention the statements of the lawyers of the defendants, including the defence statements presented by the lawyer of Mr. Öztürk.

34. The decision reportedly contains no individualized reasoning in relation to Mr. Öztürk, and neither in relation to the other 200 defendants also sentenced to life imprisonment. Most defendants were convicted using identical wording.

35. Furthermore, the reasoned decision is reportedly a duplicate of the indictment. The source submits that even the grammatical and punctuation errors are identical to those found in the indictment, indicating that the text was copied and pasted.

36. In the reasoned decision, relevant developments that occurred during the hearing are entirely disregarded. For example, the Ankara Seventeenth Assize Court composed the reasoned decision as if the statements obtained from the defendants and witnesses did not exist.

37. Moreover, in the hearings, at least 151 out of 226 defendants stated that they had received some form of ill-treatment, ranging from bad custody and prison conditions to electrocution and severe beatings. They were allegedly subjected to this mistreatment before, during and after their statements had been taken.

38. The source submits that the judges of the Ankara Seventeenth Assize Court have continuously questioned hundreds of suspects on the basis of statements obtained through torture. Moreover, they have also failed to inform and refused to inform the relevant authorities about the defendants' repeated complaints of torture. The sitting judges have an obligation to promptly inform the Office of the Prosecutor as soon as they are made aware of acts of torture, as stipulated in article 158/2 of the Code of Criminal Procedure. Despite having been informed about numerous incidents of torture, the trial judges have reportedly failed to submit a single notification to the Office of the Prosecutor.

39. Moreover, it is submitted that the trial court did not exclude statements and evidence acquired through torture from the case file. Instead, the judges of the Ankara Seventeenth Assize Court reportedly relied on these in the reasoned decision ordering Mr. Öztürk's deprivation of liberty to be extended.

40. The source also reports that the judges sitting on the bench refused to collect any evidence demanded by the defendants, including Mr. Öztürk, or any evidence that could have supported statements of the defendants. However, all the requests of the prosecution and the complainants were accepted.

41. The judges sitting on the bench refused to hear accounts from witnesses whose testimony reportedly was essential as regards allegations concerning the coup attempt of 15 July 2016.

42. The presiding judges of the Ankara Seventeenth Assize Court precluded Mr. Öztürk, his co-defendants, and all their legal representatives from participating in key witness hearings and from conducting questioning of key witnesses. Crucial witnesses were heard in private during a closed session without the presence of the defendants and their lawyers. Consequently, the defendants, including Mr. Öztürk, were denied the opportunity to question key witnesses.

43. The unedited camera footage of the night of the coup attempt has reportedly never been shared with the defendants, including Mr. Öztürk. Later, it was discovered that out of 319 hours of unedited camera footage, only 101 hours of edited camera footage were shared with the defendants. Therefore, 70 per cent of the unedited CCTV camera footage has been reportedly deleted and or has not been added to the case file. For this reason, the defendants could not support their versions of the facts with this footage. The defendants have also been unable to draw attention to alterations to the footage that were allegedly purposefully made to incriminate them.

44. It is reported that some defendants, using the material available in the case file, acquired independent expert reports proving manipulations of the camera footage. However, in the reasoned decision, the judges disregarded these reports. The source notes that the experts who were appointed by the court to analyse the camera footage were army officials,

which is strictly prohibited by the provisions of the Code of Criminal Procedure. Furthermore, some of these court-appointed experts appear to also have been complainants according to the case file.

45. The source remarks that at the beginning of the trials, the defendants were lined up outside the courtroom, and were escorted by gendarme commandos with automatic weapons. Snipers were placed on the roof of the court building, and mini drones were filming the defendants from above. In this setting, the defendants were made to walk for more than 100 metres in front of an organized angry crowd shouting words of hate and calls for the death penalty at the defendants and throwing execution ropes towards them. Mr. Öztürk, handcuffed, was always forced to walk at the front. This procession, described by the source as the staged walk of shame, was reportedly aired live by the State media outlets.

46. It is noted that during the hearing, the audience constantly insulted the defendants, particularly the high-ranking ones, including Mr. Öztürk. However, no member of the audience was subjected to any kind of disciplinary proceedings for their actions in the courtroom.

47. The Head Judge of the Ankara Seventeenth Assize Court was the same judge who decided to initially arrest some of the defendants. Numerous objections concerning the independence and impartiality of the judges were reportedly filed during the trial proceedings. However, the judges reportedly failed to make any decision on these.

48. Moreover, the Head Judge of the Ankara Seventeenth Assize Court, who sentenced Mr. Öztürk on 141 counts to aggravated life imprisonment, reportedly participated in a workshop arranged by the Police Academy as an activity of the executive branch of government in October 2017, contrary to the Bangalore Principles of Judicial Conduct. At the end of the workshop, contrary to the basic principles of international law, the International Covenant on Civil and Political Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and the Constitution, he reportedly endorsed without reservations the statement that there would be no need to provide concrete evidence while fighting with the Gülen group and if there was even the slightest suspicion, the State had to benefit from it.

49. According to the source, immediately after delivering his decision in the case of Mr. Öztürk, the Head Judge of the Ankara Seventeenth Assize Court was promoted and assigned as a judge at the Court of Cassation, the highest court in Türkiye. Between 2017 and 2019, this member of the judiciary also reportedly adjudicated several other similarly controversial cases concerning the coup attempt.

50. Finally, the source notes that Mr. Öztürk has been held criminally liable for the death of 140 individuals. However, no autopsy or ballistic examinations were carried out following the deaths of these individuals, notes the source. To date, no information has been available as to which individuals were killed by which weapons and by whom.

51. Mr. Öztürk appealed his sentence to the Twenty-first Criminal Division of Ankara Regional Court, and on 13 October 2020 the same court extended Mr. Öztürk's detention. Mr. Öztürk has appealed against that decision to the Court of Cassation. He remains in detention as his appeal is currently pending before the Court of Cassation.

(iii) *Analysis of violations*

52. The source submits that the deprivation of liberty of Mr. Öztürk is arbitrary and falls under categories I, III and V of the Working Group.

a. *Category I*

53. In relation to category I, the source argues that at the time Mr. Öztürk was taken into police custody, there existed no reasonable suspicion that could lead an objective observer to think that Mr. Öztürk was somehow involved in, let alone lead, the coup attempt. At the time he was taken into police custody, there was no one, neither a witness nor a defendant, alleging or stating that Mr. Öztürk was involved in the coup attempt. There was also no camera footage that showed any criminal activity by Mr. Öztürk.

54. Moreover, the source recalls that the initial decision to place Mr. Öztürk in pretrial detention was taken on 18 July 2016, two days after he was taken into police custody. During those two days, no evidence incriminating Mr. Öztürk was obtained. For that reason, at the time of the initial decision to place him in pretrial detention, there existed no reasonable suspicion, and hence Mr. Öztürk's deprivation of liberty has no basis in law.

55. Furthermore, three days after Mr. Öztürk was placed in pretrial detention, on 21 July 2016, the General Staff issued a press release explaining Mr. Öztürk's efforts to subdue the coup attempt. However, the source submits that this press release was removed from the Internet shortly after. Although one defendant made a statement relating to Mr. Öztürk, that statement did not refer to any pertinent criminal act by Mr. Öztürk. Furthermore, that defendant retracted his statement once the hearing had started, also giving a detailed account that the statement had been prepared by the police, that he had signed it without reading it and that he had been subjected to torture prior to making the statement. Hence, even during the hearings there existed no incriminating evidence against Mr. Öztürk. For that reason, Mr. Öztürk's pretrial detention continued to have no basis in law.

56. In the decision by the Ankara Seventeenth Assize Court to convict Mr. Öztürk, his detention was again extended. There is no evidence in the case file justifying the deprivation of liberty of Mr. Öztürk. Mr. Öztürk's deprivation of liberty after his conviction also had no basis in the law.

57. On 13 October 2020, the Twenty-first Criminal Division of Ankara Regional Court, under case No. 2020/1, extended the detention of Mr. Öztürk with a standard decision. In this case, there was and still is no evidence in the case file justifying the order to continue Mr. Öztürk's deprivation of liberty.

b. Category III

58. In relation to category III, the source recalls its arguments relating to the manner in which the trial has been conducted and the alleged lack of impartiality of the judicial hearings. The source concludes that the above-mentioned circumstances demonstrate that international norms relating to the right to a fair trial have been entirely disregarded and that Mr. Öztürk has been deprived of an opportunity to challenge his detention effectively.

c. Category V

59. Finally, in relation to category V, the source submits that Mr. Öztürk has been deprived of his liberty for reasons of discrimination based on his political and other opinions. It argues that Mr. Öztürk, together with other officials, was targeted because he opposed certain types of operations.

60. According to the source, there was and is no reasonable suspicion that might lead an objective observer to conclude that Mr. Öztürk has committed the alleged crime of leading the coup attempt. Nevertheless, he has been deprived of his liberty and held in solitary confinement for over seven years.

61. The source recalls the targeted campaign against Mr. Öztürk immediately following the coup attempt. According to the source, the security forces, the prosecution and judges undertook significant efforts to incriminate Mr. Öztürk and incarcerate him, in the absence of any concrete evidence.

62. The source argues that these facts underscore that the deprivation of liberty of Mr. Öztürk is politically motivated. These include severe and unusual torture inflicted upon Mr. Öztürk, with officers emphasizing "special care" for him; the ill-treatment or torture of other suspects to incriminate Mr. Öztürk; indefinite and continued solitary confinement without tangible or plausible legitimate grounds and despite the existence of a medical evaluation report affirming that Mr. Öztürk can no longer be expected to endure the isolation; the removal of evidence demonstrating Mr. Öztürk's innocence from the Internet; disregard by the prosecution and courts of numerous statements proving that Mr. Öztürk attempted to subdue the coup; and false and systematic media reports portraying Mr. Öztürk as the coup leader even hours before his arrest.

63. The source submits that domestic courts have, up until the present moment, failed to establish an effective domestic remedy. It further submits that the Constitutional Court also proves to be an ineffective domestic remedy with regard to individual applications concerning the detention of Mr. Öztürk and other high-ranking officers. It is recalled that despite numerous applications, the Constitutional Court has not ruled on a violation of the right to freedom and security with regard to any officer detained as a result of allegations of having participated in the coup attempt. The Constitutional Court has reportedly rejected all these applications by means of standardized inadmissibility decisions.

(b) Response from the Government

64. On 20 February 2024, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 20 April 2024, detailed information about the current situation of Mr. Öztürk and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Türkiye under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Türkiye to ensure Mr. Öztürk's physical and mental integrity.

65. On 11 April 2024, the Government requested an extension of the time limit, in accordance with paragraph 16 of the Working Group's methods of work, and was granted a new deadline of 20 May 2024.

66. The Government submitted its response on 23 May 2024, which was after the deadline. Consequently, the Working Group cannot treat the reply as if it had been presented in accordance with the Working Group's methods of work.

2. Discussion

67. In the absence of a timely response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

68. In determining whether the deprivation of liberty of Mr. Öztürk is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.² In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source within the prescribed time limit.

69. As a preliminary matter, the Working Group notes that Mr. Öztürk's situation falls partially within the scope of the derogations that Türkiye made under the Covenant. On 21 July 2016, the Government of Türkiye informed the Secretary-General that it had declared a state of emergency for three months in response to severe dangers to public security and order, which amounted to a threat to the life of the nation within the meaning of article 4 of the Covenant.³

70. While acknowledging the notification concerning the derogations, the Working Group emphasizes that, in the discharge of its mandate, it is empowered under paragraph 7 of its methods of work to refer to the relevant international standards set forth in the Universal Declaration of Human Rights and to customary international law. Moreover, in the present case, articles 9 and 14 of the Covenant are the provisions that are relevant to the alleged arbitrary detention of Mr. Öztürk. As the Human Rights Committee has stated, States parties derogating from articles 9 and 14 must ensure that such derogations do not exceed those

² A/HRC/19/57, para. 68.

³ C.N.580.2016.TREATIES-IV.4 (depository notification).

strictly required by the exigencies of the actual situation.⁴ The Working Group reaffirms its welcoming of the lifting of the state of emergency on 19 July 2018 and the subsequent revocation of derogations by Türkiye.

71. Furthermore, the Working Group, addressing the Government's request to special procedures not to allow the Fethullahist terrorist organization and its members to abuse those mechanisms, and to dismiss their allegations, wishes to recall that the Human Rights Council has mandated it to receive and consider allegations of arbitrary detention from anyone around the world. The Working Group thus makes no distinction as to who can or cannot bring an allegation to its attention. The Working Group is also required to act impartially and independently. It therefore treats all submissions made to it equally and accepts them as allegations, inviting the Government concerned to respond. The onus is therefore on the Government to engage with the Working Group constructively by addressing the specific allegations made to assist the Working Group in reaching a conclusion in each communication brought to its attention.

72. The source has argued that Mr. Öztürk's detention is arbitrary and falls under categories I, III and V of the Working Group. In its late reply, the Government denies all the allegations and submits that the arrest and detention of Mr. Öztürk were carried out in accordance with all international human rights obligations assumed by Türkiye. The Working Group will proceed to examine the submissions under each of the categories in turn.

(a) Category I

73. According to the information provided by the source, during the arrest Mr. Öztürk was not informed about the reasons for his arrest, nor did the authorities present an arrest or search warrant.

74. The Working Group recalls that article 9 (2) of the Covenant provides that anyone who is arrested is to be informed, at the time of arrest, of the reasons for the arrest and is to be promptly informed of any charges. The Working Group has previously stated that in order for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law which may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.⁵ This is typically done through an arrest warrant or arrest order (or equivalent document).⁶ The reasons for the arrest must be provided immediately upon arrest and must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.⁷

75. In its late response, the Government did not attempt to explain how Mr. Öztürk's arrest without a warrant was strictly required by the exigencies of the security situation, other than asserting that Mr. Öztürk was behind the creation of the said security situation. The Working Group thus notes that Mr. Öztürk was not arrested in flagrante delicto, when the opportunity to obtain a warrant would typically not be available; at the moment of his arrest on 17 July 2016 he had returned to his home after attempting to prevent the coup, and there is no indication that he engaged in any criminal activity between the time he left Akinci Air Base and when he was summoned to provide testimony. The Working Group is not convinced by the Government's assertion that the state of emergency creates specific exigencies pertinent enough to justify such an arrest.

⁴ See the Committee's general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, para. 4. See also the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 6; general comment No. 34 (2011) on the freedoms of opinion and expression, para. 5; general comment No. 35 (2014) on liberty and security of person, paras. 65 and 66; and *Özçelik et al v. Turkey* (CCPR/C/125/D/2980/2017), para. 8.8.

⁵ Human Rights Committee, general comment No. 35 (2014), para. 23. See also opinions No. 9/2019, para. 29; No. 46/2019, para. 51; and No. 59/2019, para. 46; and art. 14 (1) of the Arab Charter on Human Rights.

⁶ Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

⁷ Human Rights Committee, general comment No. 35 (2014), para. 25; opinion No. 30/2017, paras. 58 and 59; and opinion No. 85/2021, para. 69.

76. The Working Group therefore concludes that Mr. Öztürk's arrest and subsequent detention were arbitrary under category I. The finding is not altered by the derogation discussed above. The Working Group considers that the guarantees of the right to liberty and security would be meaningless if it were accepted that people could be arrested and placed in pretrial detention without any respect for the procedure established by law.

(b) Category III

77. The source alleged that violations against Mr. Öztürk's right to due process under articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 13 of the Covenant amounted to an arbitrary deprivation of liberty that qualified under category III.

78. As regards the guarantee of being tried within a reasonable time frame, the Working Group considers that the period of two years and 11 months between Mr. Öztürk's arrest and his subsequent conviction is not excessive given the complexity of the case and the volume of the case file and the judgment. Therefore, it cannot find a breach of article 14 (3) (c) of the Covenant in that respect.

79. However, with respect to Mr. Öztürk's solitary confinement, the Working Group recalls that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has deemed that prolonged solitary confinement in excess of 15 days, whereby some of the harmful psychological effects of isolation can become irreversible,⁸ may amount to torture. Rule 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) likewise refers to solitary confinement for a time period in excess of 15 consecutive days as prolonged solitary confinement.

80. The Working Group notes the Government's reference to European Court of Human Rights case law. Firstly, it notes that while the Working Group respects the relevance of European Court of Human Rights jurisprudence, it is governed by its own jurisdiction and principles, which compel a distinct and careful examination of the facts at hand. Nonetheless, it is important to emphasize that this case stands apart. While the cases cited may address solitary confinement under certain conditions, the present situation involves prolonged isolation in conditions similar to those in the Court's very recent case of *Schmidt and Šmigol v. Estonia*, where a strong concern about the extended use of solitary confinement, particularly when not justified by compelling and exceptional circumstances, was expressed. Here, the cumulative effects of such prolonged isolation, coupled with inadequate social interaction and psychological support, subject the individual to distress that surpasses the unavoidable suffering inherent in detention.

81. The source further alleges that Mr. Öztürk, like many political prisoners, has been denied access to his case file and was therefore unable to prepare his defence adequately or to disprove the charges against him, in violation of the principle of equality of arms. He was not allowed access to a lawyer of his choice and instead was given a court-appointed lawyer whom he had never met. According to the source, in the past few years, almost every individual charged in a case with a political or public dimension has been automatically denied access to the case file on the grounds of article 153 of the Criminal Procedure Act.⁹ This limitation was not sufficiently explained by the Government.

82. Furthermore, the source alleges that Mr. Öztürk's right to access counsel was violated, as the relevant legislation stipulated that detainees would be denied access to lawyers for the first five days. According to principle 2 of the Basic Principles on the Role of Lawyers, the detainee should have access to an effective counsel at the earliest appropriate time. The Working Group considers that this principle is fundamentally related to the principle of equality of arms, as enshrined in article 2 of the Universal Declaration of Human Rights. Additionally, the Working Group recalls that article 14 (3) (b) of the Covenant guarantees the right of all persons charged with a criminal offence to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing.

⁸ A/63/175, para. 56; and A/66/268, para. 61.

⁹ Opinion No. 3/2023, para. 39.

In the present case, the Working Group finds that Mr. Öztürk's right to legal counsel at a critical stage of the criminal proceedings was violated.

83. Finally, the Working Group is seriously concerned that the Government, in its late reply, has not disproved the source's allegations regarding the use of witness statements obtained under duress in Mr. Öztürk's conviction. The admission of evidence obtained through torture or ill-treatment is fundamentally incompatible with the core principles of a fair trial. Such a practice would not only violate legal and moral standards but would also undermine the credibility and reliability of the entire judicial process. Allowing such evidence in a criminal trial would represent a grave miscarriage of justice. Importantly, these principles apply not only when the defendant is the victim of ill-treatment but also when third parties are affected, ensuring that the integrity of justice is upheld in all cases.

84. Accordingly, the Working Group finds that the violations of Mr. Öztürk's right to due process were of such gravity as to give his detention an arbitrary character. His deprivation of liberty is thus arbitrary under category III.

(c) Category V

85. The source submits that the present case joins a series of cases concerning individuals with alleged links to the Gülen movement that has come before the Working Group in the past few years, and invites the Working Group to conclude that the case belongs to the same pattern whereby those with alleged links to the movement are being targeted on the basis of their political or other opinion, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. However, in the present case, having regard to the materials available, the Working Group is unable to conclude that Mr. Öztürk's detention was arbitrary under category V.

(d) Concluding remarks

86. The Working Group notes the unrebutted allegations by the source concerning the state of Mr. Öztürk's health. The Working Group takes this opportunity to remind the Government of its obligation under article 10 (1) of the Covenant to ensure that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human person.¹⁰ In accordance with article 22 (a) of its methods of work, the Working Group invokes the "urgent action" procedure due to the dire state of Mr. Öztürk's health.

87. In the past seven years, the Working Group has noted a significant increase in the number of cases brought to it concerning arbitrary detention in Türkiye.¹¹ It expresses grave concern about the pattern that all these cases follow and recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law may constitute crimes against humanity.¹²

88. The Working Group once again reiterates that it would welcome the opportunity to conduct a country visit to Türkiye. Given that a significant period has passed since its last visit to Türkiye, in October 2006, and noting the standing invitation by Türkiye to all special procedures, the Working Group considers that it is an appropriate time to conduct another visit in accordance with its methods of work.

¹⁰ See, for example, opinions No. 46/2020, para. 64; and No. 66/2020, para. 66.

¹¹ See, for example, opinions No. 1/2017, No. 38/2017, No. 41/2017, No. 11/2018, No. 42/2018, No. 43/2018, No. 44/2018, No. 78/2018, No. 84/2018, No. 10/2019, No. 53/2019, No. 79/2019, No. 2/2020, No. 29/2020, No. 30/2020, No. 47/2020, No. 51/2020, No. 66/2020, No. 74/2020, No. 8/2022, No. 3/2023 and No. 29/2023.

¹² See, for example, opinion No. 47/2012, para. 22.

3. Disposition

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

The deprivation of liberty of Akin Öztürk, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

90. The Working Group requests the Government of Türkiye to take the steps necessary to remedy the situation of Mr. Öztürk without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

91. The Working Group considers that, considering all the circumstances of the case, the appropriate remedy would be to release Mr. Öztürk immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

92. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Öztürk and to take all appropriate measures against those responsible for the violation of his rights.

93. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

4. Follow-up procedure

94. 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. Öztürk has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Öztürk;
- (c) Whether an investigation has been conducted into the violation of Mr. Öztürk's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Türkiye with its international obligations in line with the present opinion;
- (e) Whether Mr. Öztürk's health status can be improved and be confirmed by independent health experts;
- (f) Whether any other action has been taken to implement the present opinion.

95. 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.

96. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of 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 implanting its recommendation, as well as of any failure to take action.

97. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has 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.¹³

[Adopted on 30 August 2024]

Advance edited version

¹³ Human Rights Council resolution 51/8, paras. 6 and 9.