

# No. 46/2013 (Saudi Arabia)

## Communication addressed to the Government on 12 August 2013

Concerning Abdulkarim Al Khodr

**The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. 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 the detainee) (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 International Covenant on Civil and Political Rights (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 for reasons of discrimination based on birth; national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, or disability or other status and which aims towards or can result in ignoring the equality of human rights (category V).

### **Submissions**

#### *Communication from the source*

3. Abdulkarim Al Khodr, aged 47, is a professor of comparative law at Qassim University and one of the founding members of the Association of Civil and Political Rights in Saudi Arabia. He has been active in campaigning for the promotion and protection of civil and political rights and calling for constitutional reform in the country. He has published writings criticizing the official discourse in Saudi Arabia and its compatibility with democracy and human rights. The source reports that Mr. Al Khodr has regularly provided information on the alleged widespread practice of arbitrary detention in the country.

4. Mr. Al Khodr has been the subject of two urgent appeals from the Special Rapporteur on the situation of human rights defenders. The appeal dated 18 February 2011 concerned his arrest for attempting to register a political party. The appeal dated 12 June 2012 concerned his arrest as part of a group of members of the Association of Civil and Political Rights in Saudi Arabia that also included lawyers Suleimen Al Rashoudi and Mohamed Al Bajadi.

5. According to the source, Mr. Al Khodr and members of his family have been subjected to continuous harassment and intimidation by the Saudi authorities in recent years. His sons, Thamer Abdulkarim Al Khodr and Jihad Abdulkarim Al Khodr, were arrested in March 2010 and March 2011, respectively. On 2 September 2011, the Working Group on Arbitrary Detention issued its Opinion No. 42/2011 declaring arbitrary the detention of Thamer Abdulkarim Al Khodr.

6. The source reports that during the course of 2012, Mr. Al Khodr was repeatedly summoned for questioning. He was interrogated about his activities with Association of Civil and Political Rights in Saudi Arabia and its work on documenting human rights violations; his public statements; and his contacts with individuals both inside and outside Saudi Arabia.

7. On 30 January 2013, the criminal court in Buraidah summoned Mr. Al Khodr to appear before it on the general charge of "insulting the ruler."

8. On 11 February 2013, the first of the 10 hearings held in the trial of Mr. Al Khodr took place before the court in Buraidah. Mr. Al Khodr was absent from this hearing as he was reportedly attending his father, who was suffering from health problems. His request that the hearing be postponed for this reason was denied.

9. The specific charges brought against Mr. Al Khodr were communicated to his lawyer on the same day. These included: "incitement to revolt against the regime", "calling for protests", "defamation of religious and judicial authorities", "description of the regime as a police state" and "creating and chairing an unauthorized association which aims to divide society and undermine State institutions".

10. On 24 April 2013, during the fourth hearing of his trial, Mr. Al Khodr was arrested at court for refusing to enter the courtroom upon learning that his trial would not be open to all members of the public. The judge ordered that Mr. Al Khodr should be detained for a period of four months during the continuation of the trial.

11. Two months after his arrest, on 24 June 2013, Judge Ibrahim Al Hassani at the criminal court in Buraidah found Mr. Al Khodr guilty and sentenced him to 8 years imprisonment and to a 10-year travel ban (case no. 0002/458/32).

12. Following this verdict, Mr. Al Khodr's lawyer, Mr. Abdulaziz Al Shbaily, was arrested and briefly detained by agents of the intelligence services (Mabahith) for having argued, before the judge, that the allegations against his client should not have led to his conviction.

13. The source concludes that Mr. Al Khodr's arrest is without any legal basis. In its view, protesting against entering the courtroom cannot be qualified as being in contempt of court. The Law of Criminal Procedure of 2011 does not contain a provision permitting an arrest in such circumstances. Further, there was no justification for detention as Mr. Al Khodr had attended the two previous hearings and did not represent a flight risk.

14. The source argues that, in contravention of article 10 of the Universal Declaration of Human Rights, Mr. Al Khodr was unable to exercise his right to a fair trial before an independent and impartial court. According to the source, the judge presiding over his case had previously had a conflict with Mr. Al Khodr and was also personally responsible for bringing forward an accusation against him. Mr. Al Khodr's request for the judge's recusal was denied and the accusation of "questioning the integrity and honesty of justice" was reportedly held against him. His right to a public trial was also violated, as certain members of the public were not allowed into the courtroom.

15. According to the source, Mr. Al Khodr's deprivation of liberty resulted from the exercise of his right to freedom of opinion and expression and freedom of peaceful assembly and association, as guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights. In its view, Mr. Al Khodr's condemnation is directly linked to his human rights activities as a co-founder of the Association of Civil and Political Rights in Saudi Arabia. In this respect, the source draws the attention of the Working Group to its Opinion No. 22/2012.

16. In light of the foregoing, the source submits that Mr. Al Khodr's detention falls within categories I, II and III of the categories applicable to the consideration of cases submitted to the Working Group.

*Response from the Government*

17. The Working Group regrets that the Government has not responded to the allegations transmitted by the Group on 12 August 2013.

18. Despite the absence of any information from the Government, the Working Group considers it is in a position to render its Opinion on the detention of Mr. Al Khodr in conformity with paragraph 16 of its methods of work.

**Discussion**

19. The Working Group considers that Mr. Al Khodr was arrested and convicted due to his human rights activities. As a co-founder of the Association of Civil and Political Rights in Saudi Arabia, he has been active in campaigning for the promotion and protection of civil and political rights and calling for constitutional reform in the country. He has published writings criticizing the official discourse in Saudi Arabia and its compatibility with democracy and human rights. He has regularly provided information on the widespread practice of arbitrary detention in the country.

20. The Working Group considers that both Mr. Al Khodr and members of his family have been subjected to continuous harassment and intimidation by the Saudi authorities in recent years because of Mr. Al Khodr's human rights activities. In this regard, the Working Group recalls its Opinion No. 42/2011, in which it found that the deprivation of liberty of Mr. Thamer Abdulkarim Al Khodr was arbitrary.

21. In this regard, the Working Group recalls that mere conformity with domestic law in itself cannot be used to justify depriving an individual of his or her liberty. The rights to freedom of expression and assembly are fundamental human rights protected by international human rights law and a violation of these rights cannot be justified by reliance on domestic law.

22. In its Opinion No. 22/2012, the Working Group noted with concern that a consistent pattern of arbitrary arrests and detention is emerging in Saudi Arabia, as well as a silence on the part of the Government, which is not availing itself of the opportunity of responding to allegations put forward by the Working Group in cases alleging arbitrary detention which have been presented to it.

23. Furthermore, in its Opinion No. 42/2011 concerning Saudi Arabia, the Working Group noted with concern a consistent pattern of arrest and detention of persons exercising their basic human rights, in particular their right to freedom of opinion, expression and association.

24. The Working Group concludes that Mr. Al Khodr has been deprived of liberty for having peacefully exercised his right to freedom of expression, as guaranteed by article 19 of the Universal Declaration of Human Rights.

25. The deprivation of liberty of Mr. Al Khodr thus falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

26. In regard to the alleged violations of the right to a fair trial, the Working Group considers that it is not in possession of sufficient information about violations which would be of such gravity as to give the deprivation of liberty an arbitrary character.

**Disposition**

27. In light of the above, the Working Group on Arbitrary Detention renders the following Opinion: The deprivation of liberty of Mr. Al Khodr is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights; it falls under category II of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

28. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Al Khodr and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

29. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release Mr. Al Khodr and repeal the additional punishment imposed on him in this case, namely the travel ban.

30. The Working Group recalls the call by the Human Rights Council in its resolution 24/7 for all States to cooperate with the Working Group, 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.

[Adopted on 18 November 2013]