



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2128/2012\*, \*\*

<i>Communication submitted by:</i>	Kouider Kerrouche
<i>Alleged victim:</i>	The author
<i>State party:</i>	Algeria
<i>Date of communication:</i>	11 October 2011 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 4 January 2012 (not issued in document form)
<i>Date of adoption of Views:</i>	3 November 2016
<i>Subject matter:</i>	Criminal conviction for having reported acts of corruption
<i>Procedural issues:</i>	Failure to substantiate claims
<i>Substantive issues:</i>	Inhuman or degrading treatment; conditions of detention; right to a fair trial; unlawful attacks on honour and reputation; right to freedom of expression
<i>Articles of the Covenant:</i>	2 (3), 7, 10, 17, 14 and 19
<i>Articles of the Optional Protocol:</i>	2

1. The author of this communication is Kouider Kerrouche, born on 7 January 1956 in Mascara, Algeria and now living in France. He claims to be a victim of a violation by the

\* Adopted by the Committee at its 118th session (17 October-4 November 2016).

\*\* The following members of the Committee participated in the examination of the communication: Mr. Yadh Ben Achour, Ms. Photini Pazartzis, Sir Nigel Rodley, Mr. Dheerujlall Seetulsingh, Mr. Yuval Shany and Mr. Konstantine Vardzelashvili. Pursuant to rule 90 of the Committee's rules of procedure, Mr. Lazhari Bouzid did not participate in the consideration of this communication.

The individual opinion of Mr. Olivier de Frouville, Committee member, is attached to these Views.



State party of articles 2 (3), 7, 10 (1), 14 (1) and (3) (b), (c) and (d), 17 (1) and 19 of the Covenant. He is not represented by counsel. The Covenant and its Optional Protocol entered into force for the State party on 12 December 1989.

#### **The facts as submitted by the author**

2.1 In 2004 the author was employed as an accountant at the State-owned road-building and engineering corporation ETGR, whose main activity is road resurfacing. The company is based at Mascara and is represented by its Managing Director.

2.2 On 20 January 2005, a dispute arose between the author and the Director of ETGR over the company's tax return for the month of December 2004. The Director had put pressure on the author to enter a figure of zero for VAT-taxable turnover, when the true figure was 15 billion centimes, calculated on the basis of actual receipts. In the author's view, the Director's oral instructions were at odds with his professional duties, as the Director was asking the author to make a false tax statement; he therefore refused to sign the statement. The Director subsequently brought strong pressure to bear on another employee and eventually managed to get him to sign a statement showing a VAT-taxable turnover figure of zero.

2.3 On 26 January 2005, following his refusal to comply with the Director's instructions, the author received a letter of dismissal, informing him that his functions at ETGR would be terminated as of 31 January 2005 because his contract would come to an end on that date, even though the author was a permanent, not a contractual, employee.

2.4 On 2 February 2005, the author reported a number of criminal acts committed by the Director of ETGR to the Mascara prosecution service: tax fraud, embezzlement, squandering of public funds, unlawful procurement, acceptance of uncovered cheques for a total of 1.1 billion centimes, forgery and use of forged documents, and destruction of commercial documents.

2.5 On 25 March 2005, on the orders of the Mascara prosecution service, the economic and financial unit of the Mascara police opened a preliminary investigation into the author's allegations. On 30 March 2005, the author was summoned by the Mascara criminal police. When he arrived, he was questioned for an hour. He answered the investigators' questions and handed over all the evidence in his possession, along with a list of witnesses, and then signed a record of his statements.

2.6 After the author had lodged his complaint, the Director of ETGR had the company's head of human resources, who was related to the Minister of the Interior and Local Government, intervene. After the head of human resources had approached the *Wilaya* of Mascara and pressure had been brought to bear on the criminal police and the Mascara prosecution service, the police went to the ETGR head office and seized all the relevant accounting records with the intention of destroying any trace of them. The investigating officer subsequently stated that he had found no evidence to support the charges that had been made. However, the author maintains that he was questioned by the police a second time and provided investigators with the numbers of all the relevant accounting records, which are registered in the computerized bookkeeping system.

2.7 On 20 April 2005, the author sent a letter to the regional police inspector, which he copied to the chief prosecutor of Mascara and the chief of the intelligence and security service of Mascara, objecting to the manner in which the preliminary investigation had been conducted. He received no reply to his letter. The regional inspector did approach police headquarters in Mascara to ask that the investigation be conducted fairly, but to no avail.

2.8 When he realized that the preliminary investigation was going to be closed and his complaint dismissed by the Mascara prosecutor, and when he learned that the Director of ETGR intended to file charges under article 300 of the Criminal Code against him for making malicious accusations, the author went to the public prosecutor's office on 18 June 2005 to find out what action had been taken to pursue the investigation and to explain that he was the victim of a conspiracy and of serious breaches of criminal procedure. The prosecutor met with the author for just five minutes and asked no questions about his claims concerning the inadequacy of the investigation or the intervention by the secretary general of the *wilaya*. Nor did the prosecutor respond to the author's request that he arrange for the gendarmerie to conduct a speedy enquiry into the ETGR case. Two days later, the author again went to see the prosecutor, who refused to give him any information and threatened him, saying that if he came back again he would be prosecuted and possibly imprisoned. On that basis the author concluded that the investigation was not impartial.

2.9 On 20 June 2005, the author wrote to President Bouteflika, describing the various procedural irregularities observed in the preliminary investigation and the abuses of power committed by Mascara judicial authorities. The letter was forwarded to the chief prosecutor of Mascara, who said he was shocked by the author's criticisms of the public prosecutor of Mascara. The chief prosecutor then brought charges against the author under article 144 of the Criminal Code for insulting a public official in connection with the performance of his duties. The author maintains that his letter contained no offensive language and reflected his right to freedom of expression and his efforts to combat corruption.

2.10 On 19 September 2005, by Judgment No. 43, the Court of Bouhanifia sentenced the author to 18 months' imprisonment and fined him 50,000 Algerian dinars (DA). It also ordered him to pay the plaintiff DA 100,000 in damages. The author appealed the judgment.

2.11 On 14 November 2005, the author was notified by the Mascara police that the public prosecutor of Mascara had decided to discontinue the preliminary enquiry because of the lack of evidence to support charges of embezzlement and corruption against the Director of ETGR. Fearing reprisals, in view of the fact he had already been convicted of a criminal offence for having brought up the same matter with the President of the Republic, the author decided not to challenge this decision.

2.12 On 25 January 2006, by Judgment No. 289, the Appeal Court of Mascara upheld the Bouhanifia trial court's decision of 19 September 2005 in the case involving charges of insulting a public official. On 29 January 2006, the author appealed this decision in the Ordinary and Minor Offences Division of the Supreme Court of Algiers.

2.13 On 7 July 2008, the author received an order from the Supreme Court to submit a brief within 30 days regarding his appeal in cassation of 29 January 2006 against the Mascara Appeal Court judgment of 25 January 2006 (see para. 2.12). The order stipulated that the brief must be signed by a lawyer who had been admitted to practise before the Supreme Court under article 505 of the Code of Criminal Procedure. On 2 August 2008, as he could not afford to hire a lawyer, the author sent a request for legal aid to the chief prosecutor of the Supreme Court. On 13 August 2008, in response to his application for legal aid, the prosecution service of the Supreme Court instructed the author to submit a certificate of indigence issued by the municipality within one month. Accordingly, on 2 September 2008 the author applied to the mayor of Bouhanifia for such a certificate, attaching a payslip for the month of August 2008. A week later, the mayor verbally denied the author's request on the grounds that he was employed. On 8 September 2008, the author applied to the prosecution service of the Supreme Court for an extension of the deadline so that he could appeal to the *Wilaya* of Mascara for a certificate of indigence. On 23 November 2008, the legal aid office of the Supreme Court denied the author's request for legal aid on the grounds that he had failed to produce a certificate of indigence. On 17 December 2008, the Ordinary and Minor Offences Division of the Supreme Court notified

the author of this decision and directed him to produce a brief, signed by an authorized lawyer, within the following two weeks. The author approached several lawyers, asking them to allow him to pay in instalments. He engaged one of them and was obliged to sell some of his household effects in order to pay part of the fees, even though the lawyer was not well enough qualified to mount a proper defence.

2.14 On 27 May 2009, by Judgment No. 12792, the Ordinary and Minor Offences Division of the Supreme Court dismissed the author's appeal against Mascara Appeal Court Judgment No. 289 of 25 January 2006 (see para. 2.12). According to the author, in July 2009 the Director of ETGR once again enlisted the aid of a person who was related to the Minister of the Interior in an effort to have the executive branch intercede on his behalf with the judicial authorities and secure protection for him.

2.15 On 10 June 2006, a year after the dismissal of the author's complaint, the Director of ETGR lodged a complaint under article 300 of the Criminal Code with the Bouhanifia prosecution service against the author for making malicious accusations against him. On 24 April 2007, by Judgment No. 596, the Court of Bouhanifia sentenced the author to a 1-year suspended sentence and fined him DA 20,000. In the civil suit, it ordered him to pay DA 50,000 in damages to the Director of ETGR. The author appealed this ruling in the Appeal Court of Mascara.

2.16 On 26 March 2008, by Judgment No. 1928, the Appeal Court of Mascara upheld Judgment No. 596 of 24 April 2007 of the Court of Bouhanifia, but struck down the 1-year suspended sentence. On 1 April 2008, the author entered an appeal against this decision in the Ordinary and Minor Offences Division of the Supreme Court of Algiers. Since then, 42 months have gone by, and the appeal remains pending before the Supreme Court.

2.17 In March 2009, in an unsigned letter to the Mascara prosecution service, the ETGR staff association reported further incidents of embezzlement and corruption allegedly committed by the Director of ETGR. The new public prosecutor of Mascara ordered the Mascara police to launch a preliminary enquiry. On 3 May 2009, the author informed the public prosecutor about the complaint that he had lodged in 2005, which had been dismissed. As a result, the prosecutor took the investigation out of the hands of the Mascara police and instructed the Mascara gendarmerie to carry out a second investigation; he then decided to reopen the investigation into the author's complaint of 2005.

2.18 In September 2009, the gendarmerie of Mascara submitted its report on its preliminary investigation, which confirmed all the allegations made by the ETGR staff association, to the Mascara prosecution service. The Mascara prosecutor referred the case to an investigating judge. That same month, the public prosecutor decided to reopen the investigation into the complaint filed by the author in 2005. A month later, the author was summoned to the Bouhanifia police station. The author adds that in October 2009 the executive branch again interceded with the Mascara judicial authorities in order to protect the Director of ETGR. As a result, the Mascara judicial authorities reversed their decision to reopen the investigation into the author's complaint and divided the new case into two different cases at the investigation stage in order to avoid a classification of "serious offence".

2.19 On 4 March 2010, the author was summoned to the Bouhanifia police station and was arrested immediately upon his arrival. The police officers told him that he was being arrested in enforcement of Appeal Court Judgment No. 289 of 25 January 2006, whereby he had been sentenced to 18 months' imprisonment for insulting a public official. That same day, he was put in Mascara prison. He was given a brief medical examination and found to be in good health.

2.20 The author claims that the conditions in Mascara prison are not in conformity with the requirements of the Covenant. He states that the prison was overcrowded, housing at

least 600 prisoners at that time, which was well beyond its capacity of 100. The author was held in Block No. 3, which comprised a dormitory and a courtyard. The dormitory measured 7 metres wide by 10 metres long by 6 metres high. Despite having originally been designed to accommodate 20 prisoners, it in fact held 176 men between the ages of 18 and 80. The dormitory had 60 metal bunk beds with foam mattresses but no sheets or pillows. As there were not enough beds, the prisoners were forced to sleep two to a bed, while the rest just had to sleep huddled together on the floor. The dormitory had only two toilets and one washbasin in a corner, which occasioned long queues and jostling for access. The toilets did not flush, and the resulting stench and rat infestation prevented the prisoners from sleeping. The dormitory had eight small windows high up, with metal bars and grilles that blocked out the light. Only one of the two ventilator vents on the wall was working, and the ceiling fan never worked. As most of the prisoners smoked, it was almost impossible to breathe because of the smoke and the heat, which had a serious effect on the health of the majority of the prisoners. The author had eye problems and, since there was not enough light to read or write by anyway, none of the prisoners could pursue any courses or study. Moreover, the prisoners were forbidden to send sealed letters out of the prison, with the exception of correspondence addressed to the chief prosecutor of Mascara.

2.21 Prisoners could not make telephone calls to their families. Leave passes were granted in a discriminatory manner, with only those prisoners who had been made responsible for keeping order being allowed to go out of the prison. For seven hours a day, inmates remained in the dormitory courtyard, which was 70 square metres in size. They could not do any exercise or even walk around because there was so little space in the yard, so they had to stand for seven hours each day, winter and summer alike, with no shelter or shade. Breakfast and lunch were of good quality, but the evening meal was inedible, and all the prisoners refused to eat it. Prisoners were entitled to only one shower a week. Their physical safety was not ensured, and fights broke out frequently, but the guards did nothing. Their personal effects could easily be stolen. The guards appeared in the yard only very briefly, once at 8 o'clock in the morning and again at 4.30 in the afternoon.

2.22 On 30 March 2010, the author was transferred to the prison at Ghriss, 20 km from Mascara, where he was held until his release. The author describes the conditions at this prison as appalling as well: he was held in Cell No. 1, which was 30 square metres in size and held 43 prisoners; it had 20 metal bunks with no bedding, and 23 of the prisoners had to sleep on the floor. The cell was well-ventilated but was not heated in winter. The prisoners could attend training courses or classes but could not send sealed mail. The quality of the food, which was prepared by inmates, was extremely poor, and the quantity of food was insufficient. To stave off their hunger, most of the inmates ingested powdered fruit juice with bread. Because of the acidity of this concoction and the fact that they were underfed, many of them had stomach problems, for which they received no treatment. The author's health deteriorated quickly, to the point where headaches and dizziness prevented him from walking altogether. On 2 May 2010, he asked to be taken to hospital; he underwent a medical check-up, which showed that he had disturbingly high blood pressure. He was given treatment and a better diet, as a result of which his health improved.

2.23 In April 2010, reprisals were taken by the Algerian authorities against the president of the Algerian branch of Transparency International, Djilali Hadjadj, for having supported the author and spoken out against his imprisonment. He was sentenced in absentia to imprisonment and later incarcerated.

2.24 On 5 July 2010, the author was released when a presidential pardon was decreed as part of the country's independence celebrations. Fearing reprisals, the author decided not to file a legal complaint about the conditions of detention to which he was subjected. He points out that, under article 144 of the Criminal Code, anyone criticizing the public

authorities or challenging the actions of the judicial authorities may be convicted, and no remedy is available.

2.25 On 10 October 2010 the Mascara court sentenced the Director of ETGR to 2 years' imprisonment for embezzlement and squandering of public funds in the case relating to the incidents reported by the staff association. On 26 January 2011, the Appeal Court of Mascara acquitted the Director of ETGR.

### **The complaint**

3.1 The author claims to be the victim of a serious miscarriage of justice, in violation of article 14 (1) of the Covenant. He first refers to the fact that the complaint that he lodged with the Mascara prosecutor's office had been dismissed without a fair and transparent investigation having been conducted into that complaint. Although a preliminary investigation was subsequently opened, the action that he took in that regard resulted in his being sentenced to 18 months in prison and fined DA 50,000, under article 144 of the Criminal Code, for insulting a public official when all he had done was to send a letter of protest which contained no offensive language. The author adds that the wording of article 144 is quite vague.<sup>1</sup>

3.2 Regarding article 14 (3) (b), the author claims that the two-week period that he was given by the Supreme Court to file a defence brief signed by a lawyer who had been admitted to practise before the Supreme Court was insufficient, since he could not find such a lawyer in that amount of time.

3.3 The author further indicates that his appeal to the Supreme Court of 1 April 2008 against the decision of the Appeal Court of Mascara dated 26 March 2008 had still not been heard by the time he submitted his communication to the Committee 42 months later. In the author's view, this constitutes an unreasonable postponement that violates his right under article 14 (3) (c) to be tried without undue delay.<sup>2</sup>

3.4 The author argues that he is also a victim of a violation of article 14 (3) (d) of the Covenant, inasmuch as he was exempted from the obligation to be represented by a lawyer who has been admitted to practise before the Supreme Court. The end result was that he lost his appeal; the rejection of his application for legal aid was unjust because the applicable law is unclear and does not specify income scales or levels of purchasing power.

3.5 Recalling his conviction for malicious accusation and defamation following his complaint concerning the Director of ETGR, the author maintains that, in making the statements and taking the actions for which he was convicted, he was exercising his right to freedom of expression. He notes that he was sentenced under article 144 of the Criminal Code, which, according to the author, violates article 19 of the Covenant.<sup>3</sup>

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<sup>1</sup> The author refers here to the concluding observations adopted by the Committee (CCPR/C/DZA/CO/3) following its consideration of the report of Algeria in 2007 in which the Committee requested the State party to amend its legislation in order to decriminalize defamation and insulting behaviour.

<sup>2</sup> See paragraph 5.2 herein regarding subsequent developments.

<sup>3</sup> Article 144 of the Criminal Code stipulates the following: "Anyone who insults a public official, public servant or officer, senior officer or officer of the law in the course of their performance of their duties or when on duty, whether by word or deed, by threat, by the sending or presenting of an object of any kind, or by written text or drawings not otherwise made public, with the intention of undermining their honour, dignity or due respect for their authority, shall be liable to 2 months' to 2 years' imprisonment and/or a fine of DA 1,000 to DA 500,000. Where one or more public officials or officers of the court are insulted during court proceedings, the prison term shall be 1 or 2 years. In all cases the court may further order that its decision be displayed and published in whatever form it

3.6 Referring to the Committee's general comment No. 20 on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment (1992), the author also cites article 7 of the Covenant and claims that the conditions in which he was held at the Mascara and Ghriss prisons were inhuman and degrading.

3.7 In connection with article 10 of the Covenant, the author again refers to the conditions of detention in Mascara and Ghriss prisons and, in particular, to the fact that the dormitories were too small for the number of prisoners who were held in them. He argues that this constituted a violation of prisoners' right to be treated with humanity and with respect for their dignity.

3.8 The author also cites article 17 (1) of the Covenant, stating that he was the victim of unlawful attacks on his honour and reputation. After his release on 5 July 2010, he spent nine months with no work or income, as his retirement pension did not start to be paid until March 2011. No employer in the area would hire him because of his conviction.

3.9 Lastly, the author refers to article 2 (3) of the Covenant, noting that, after his release on 5 July 2010, he dared not bring a complaint regarding the inhuman treatment to which he had been subjected in prison for fear of reprisals, since articles 144 and 300 of the Algerian Criminal Code prescribe criminal penalties for anyone bringing complaints against the authorities or criticizing the actions of judicial authorities. The author repeats that the absence of accessible, effective and enforceable remedies is a violation of article 2 (3).

3.10 The author therefore requests the Committee to find that the State party has violated article 2 (3), read in conjunction with articles 7, 10 (1), 14 (1), 14 (3) (b), (c) and (d), 17 (1) and 19 of the Covenant, and to recommend that the State party take all necessary measures to: (i) amend article 147 of the Constitution,<sup>4</sup> which undermines the impartiality of the courts;<sup>5</sup> (ii) amend article 144 of the Criminal Code, which undermines freedom of expression; (iii) amend article 300 of the Criminal Code, which is contrary to article 14 of the Covenant and to the United Nations Convention against Corruption; (iv) amend article 505 of the Code of Criminal Procedure, which undermines the right to mount one's own defence; (v) amend article 508 of the Code of Criminal Procedure, which is contrary to article 14 (3) (b) of the Covenant; (vi) amend the law on legal aid, since the eligibility criteria are unreasonable; and (vii) take the necessary measures to guarantee the author full redress for the harm suffered.

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deems fit, at the expense of the guilty party, provided that such expense does not exceed the maximum fine specified above."

Article 144 bis (as amended) stipulates the following: "Anyone who offends the President of the Republic by insult, abuse or defamation in the form of written text, drawings, speech, or words or images in any other form and in any medium, whether electronic, computer-based or informatics-based, shall be liable to a fine of from DA 100,000 to DA 500,000. Criminal proceedings shall be instituted ex officio by the public prosecutor. The fine shall be doubled for a repeat offence."

Article 144 ter (new) stipulates the following: "Anyone who insults the Prophet (peace and blessings be upon him) or the messengers of God or denigrates the teachings or tenets of Islam in writing, drawings or speech, or by any other means, shall be liable to a term of imprisonment of from 3 to 5 years and/or a fine of from DA 50,000 to DA 100,000. Criminal proceedings shall be instituted ex officio by the public prosecutor."

<sup>4</sup> Now article 165 (since the Constitution was amended in 2016).

<sup>5</sup> This article provides that "judges shall obey only the law".

**State party's observations**

4. On 4 May 2015, after three reminders, the State party challenged the admissibility of the communication, referring to the "background memorandum of the Algerian Government on the inadmissibility of individual communications submitted to the Human Rights Committee in connection with the implementation of the Charter for Peace and National Reconciliation", first sent to the Committee in July 2009.<sup>6</sup> The State party has submitted no observations on the merits of the case.

**Author's comments**

5.1 On 2 July 2015, the author pointed out that the State party did not comment on any of the facts set out in his communication. The author further states that the information submitted by the State party concerns crimes of enforced disappearance and the application of the Charter for Peace and National Reconciliation, which have nothing to do with his complaint or claims.

5.2 The author reiterates his claims in their entirety and adds that, on 27 December 2012, i.e., nearly five years after he submitted his appeal of 1 April 2008 against the judgment of 26 March 2008 of the Appeal Court of Mascara (para. 2.14 above), the Supreme Court finally handed down its decision, in which it dismissed the appeal on the merits. The author argues that this delay was manifestly unreasonable and that he was unable to defend himself or obtain legal aid during the proceedings. Moreover, owing to the existence of article 147 of the Algerian Constitution,<sup>7</sup> which states that "judges shall obey only the law", and to the monist system established by the Constitution, the author was unable to invoke the Covenant before the Supreme Court. In his view, this provision penalizes him, is an impediment to the impartiality of the courts and is contrary to the principle of the primacy of international law. Accordingly, article 147 of the Algerian Constitution should be amended.

**Failure of the State party to cooperate**

6. The Committee recalls that, after having received three reminders, the State party challenged the admissibility of the communication by making reference to its "background memorandum of the Algerian Government on the inadmissibility of individual communications submitted to the Human Rights Committee in connection with the implementation of the Charter for Peace and National Reconciliation", which has no bearing whatsoever on the case under consideration. The Committee finds it regrettable that, in so doing, the State party has abstained from formulating any response regarding the admissibility or merits of the complaints lodged by the author. In accordance with article 4 (2) of the Optional Protocol, the State party is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State. In the absence of a reply from the State party, due weight must be given to the author's allegations to the extent that they have been properly substantiated.<sup>8</sup>

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<sup>6</sup> See, for example, communication No. 1899/2009, *Lakhdar-Chaouch v. Algeria*, Views adopted on 21 March 2014, paras. 4.1 to 4.9.

<sup>7</sup> Now article 165.

<sup>8</sup> See, for example, communication No. 1422/2005, *El Hassy v. the Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 4.



## Issues and proceedings before the Committee

### *Consideration of admissibility*

7.1 Before examining any complaint submitted in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, determine whether the communication is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 With regard to the exhaustion of domestic remedies, the Committee wishes to reiterate its concern at the fact that, despite having been sent three reminders, the State party has not provided it with any relevant observations or information concerning the admissibility or the merits of the communication. The Committee therefore finds that there is nothing that precludes it from considering the communication in accordance with article 5 (2) (b) of the Optional Protocol.

7.4 The Committee finds the communication admissible insofar as it raises issues under articles 2 (3), 7, 10, 14 (1) and (3) (b), (c) and (d), 17 and 19 and therefore proceeds to its consideration on the merits.

### *Consideration on the merits*

8.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

8.2 The Committee notes that the State party has not responded to the author's claims concerning the merits of the case and recalls that, as has been established in its jurisprudence, the burden of proof should not rest solely on the author of a communication, especially given the fact that the author and the State party do not always have the same degree of access to evidence and that often the State party alone has the necessary information.<sup>9</sup> Accordingly, and as implied in article 4 (2) of the Optional Protocol, the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with the information available to it.<sup>10</sup> In the absence of any explanations from the State party in this respect, due weight must be given to the author's allegations, provided they have been sufficiently substantiated.

8.3 The Committee takes note of the claim made by the author under article 7 of the Covenant that the deplorable conditions in which he was held in Mascara and Ghriss prisons, including prison overcrowding and a lack of hygiene, ventilation, lighting, food and physical exercise, were not in compliance with the requirements of the Covenant (paras. 2.20-2.22 above). The Committee notes that the State party has not contested those claims. In the absence of a rebuttal by the State party, the Committee finds a violation of article 7 of the Covenant in respect of the author. Having found a violation of article 7, the Committee decides not to give separate consideration to the claim made on the basis of article 10 of the Covenant.

<sup>9</sup> See, inter alia, communications Nos. 1779/2008, *Mezine v. Algeria*, Views adopted on 25 October 2012, para. 8.3; 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, Views adopted on 26 July 2010, para. 7.4; 1781/2008, *Djebrouni v. Algeria*, Views adopted on 31 October 2011, para. 8.3; and 1791/2008, *Boudjemai v. Algeria*, Views adopted on 22 March 2013, para. 8.3.

<sup>10</sup> See communications Nos. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 8.3; *Mezine v. Algeria*, para. 8.3; and *Boudjemai v. Algeria*, para. 8.3.

8.4 As to article 14 (1) of the Covenant, the Committee takes note of the author's allegations that, after he reported acts of corruption and embezzlement of which he had become aware in his capacity as accountant for ETGR, a preliminary investigation was launched by the Mascara police but was never completed because of the pressure brought to bear by the executive branch. His complaint was therefore dismissed. According to the author, the authorities conspired to use his subsequent appeal to the President of the Republic against him and, as a result, criminal proceedings were brought against him by the Mascara prosecutor on charges of having insulted a public official; he was sentenced to 18 months' imprisonment and fined DA 50,000, as well as being ordered to pay DA 100,000 in damages.

8.5 The author further argues that, in his appeal to the Supreme Court in the case involving the charge of insulting a public official, his application for legal aid was unfairly rejected, and he was thus denied the necessary time and assistance to prepare his defence. He goes on to argue that a defence counsel was not assigned to him, in violation of article 14 (3) (b) and (d) of the Covenant. Lastly, the author argues that his appeal before the Supreme Court in the case of defamation brought against him by his former employer was heard only after an unreasonable delay, as he had lodged the appeal on 1 April 2008 but it was not heard until 27 December 2012, nearly five years after its submission. In the absence of a rebuttal or clarification from the State party, the Committee gives due weight to the author's claims and finds a violation by the State party of article 14 (1) and (3) (b), (c) and (d) of the Covenant.

8.6 Regarding article 17, the Committee notes that the author claims to have been the victim of unlawful attacks on his honour and reputation and that, after his release in July 2010, he spent nine months with no work or income, given that no employer in the area would hire him because of his conviction. The Committee further recalls that the author was convicted, following proceedings that the Committee has characterized as failing to provide the guarantees of a fair trial, for reporting acts of fraud that he had detected in the course of his work as an accountant for ETGR; those acts were subsequently confirmed and resulted in the conviction of the Director of ETGR. The author has not, however, received any redress, had to endure a long period of unemployment that was apparently due to his unjust conviction and now fears reprisals if he complains about the treatment to which he was subjected. The Committee recalls that article 17 provides that everyone has the right to be protected against unlawful attacks on their honour and reputation and finds that the treatment to which the author was subjected constitutes a violation of article 17 of the Covenant in respect of the author.

8.7 As to the author's claim under article 19, the Committee must determine whether, as the author has argued, his criminal conviction under article 144 of the Criminal Code for insulting a public official after he wrote to the President of the Republic criticizing the judicial authorities of Mascara constituted a violation of his right to freedom of expression, including his right to impart information, as guaranteed in article 19 (2) of the Covenant. The Committee recalls its concluding observations, adopted following its consideration of the State party's periodic report in 2007, in which it noted with concern that the 2001 amendment of the Criminal Code makes it an offence to defame and insult State officials and institutions and, in particular, that such offences are subject to severe penalties, including imprisonment (CCPR/C/DZA/CO/3, para. 24).<sup>11</sup>

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<sup>11</sup> See also the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/20/17/Add.1) on his visit to Algeria in April 2011, in particular recommendation No. 93, in which the Special Rapporteur states that defamation should be a civil matter and that fines should be significantly reduced in order not to discourage freedom of expression.

8.8 The Committee recalls that article 19 (3) of the Covenant allows restrictions to be placed on the freedom of expression, but only such as are provided for by law and are necessary for the respect of the rights or reputations of others. In this case, the Committee notes that the State party has offered no explanation that would show that the author's criminal trial and conviction for defamation were necessary to protect the integrity of the judiciary. It follows that, in this case, the conviction and sentencing of the author under article 144 of the Criminal Code were in violation of article 19 (2) of the Covenant.<sup>12</sup>

8.9 The author also cites article 2 (3) of the Covenant, whereby States parties are required to guarantee access to effective remedies for all individuals whose Covenant rights have been violated. The Committee attaches importance to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing claims of rights violations. It refers to its general comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant (2004) in which it states that a failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. With regard to the present case, the Committee recalls that, in his capacity as an accountant for ETGR, the author reported facts that appeared to reveal acts of embezzlement and corruption committed in ETGR, a State corporation. His complaint was dismissed even though no transparent investigation had been carried out, and the author was sentenced, under article 144 of the Criminal Code, to 18 months' imprisonment and fined DA 50,000 for insulting a public official. The author also stated that, given the provisions of articles 144 and 300 of the Criminal Code, which prescribe criminal sanctions for anyone bringing complaints against the authorities or criticizing the actions of judicial authorities, he fears further reprisals and prosecution and, therefore, since his release from prison, he has not dared to complain about the abuses he suffered. In the absence of any explanation from the State party, the Committee finds that the facts before it reveal a violation of article 2 (3) of the Covenant, read in conjunction with article 7, article 10 (1), article 14 (1) and (3) (b), (c) and (d), and article 19 of the Covenant in respect of the author.

9. The Committee, acting under article 5 (4) of the Optional Protocol to the Covenant, is of the view that the information before it discloses a violation by the State party of articles 7, 10 (1), 14 (1) and (3) (b), (c) and (d), 17 and 19 of the Covenant and of article 2 (3), read in conjunction with article 7, article 14 (1) and (3) (b), (c) and (d), article 17 and article 19 of the Covenant.

10. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This provision requires that States parties make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is under an obligation, inter alia, to conduct a full and effective investigation, to prosecute and punish the perpetrators, and to provide appropriate measures of satisfaction. Pursuant to article 2 (2) of the Covenant, the State party is also required to review its national legislation, in particular article 144 of the Criminal Code, in order to bring it into conformity with article 19 of the Covenant. The State party is also under an obligation to adopt measures to prevent similar violations in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation is found to have occurred, the Committee wishes to receive information from the

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<sup>12</sup> See communication No. 1180/2003, *Bodrožić v. Serbia and Montenegro*, Views adopted on 31 October 2005, para. 7.2.

State party, within 180 days, about the measures taken to give effect to its Views. The State party is also requested to publish the Committee's Views and to have them translated into the official language of the State party and widely disseminated.

## Annex

### Individual opinion of Olivier de Frouville

1. I agree with the Committee's findings regarding the violations that it attributes to the State party, as set forth in paragraph 9 of its Views. However, I cannot support the Committee's approach to the author's claims under article 19 of the Covenant. In paragraph 8.7 of its Views, the Committee interprets the author's claim to mean that he considers his criminal conviction on the basis of article 144 of the Criminal Code for insulting a public official to be the sole factor for determining the violation in question. Yet the claim outlined in paragraph 3.5, which is admittedly somewhat ambiguous, demonstrates that the author's complaint, in which he invokes the freedom of expression, does not relate solely to the above-mentioned conviction but also to his conviction for malicious accusation and defamation against the Director of ETGR. The alleged violation actually comprises a "composite" act, that is to say, a series of actions and omissions that include these two convictions, which served the dual purpose of intimidating the author in an effort to prevent him from speaking out and taking reprisals against him for reporting the reprehensible acts and practices he detected while working as an accountant at ETGR.

2. Article 19 of the Covenant protects the right of all persons to impart information but also the right of the public to receive it. As a matter of fact, it is broadly accepted today that States have the obligation, in order to implement the right to freedom of expression, to establish a legislative framework and practices that facilitate and protect the disclosure of information on matters of public interest, within the limits prescribed by article 19 (3). Drawing on recent developments in international law and the practices of States, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. David Kaye, defined a "whistle-blower" as "a person who exposes information that he or she reasonably believes, at the time of disclosure, to be true and to constitute a threat or harm to a specified public interest, such as a violation of national or international law, abuse of authority, waste, fraud, or harm to the environment, public health or public safety".<sup>a</sup> Among other measures, the Special Rapporteur recommends that States provide "effective and protective channels for whistle-blowers to motivate remedial action", and, in the absence of such channels, permit public disclosures;<sup>b</sup> avoid legal proceedings against whistle-blowers, save for "exceptional cases of the most serious demonstrable harm to a specific legitimate interest";<sup>c</sup> and investigate reprisals and other attacks against whistle-blowers and hold the persons responsible for those acts accountable.<sup>d</sup>

3. In view of the facts that have been reported by the author and that have not been contested by the State party, it appears that the author falls firmly within the category of whistle-blower and that it was in his capacity as such that he suffered reprisals and acts of intimidation that constitute a serious violation of his right to freedom of expression. It is regrettable that the Committee has not acknowledged this fact or taken the opportunity to

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<sup>a</sup> A/70/361, report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. David Kaye, 8 September 2015, para. 28. See also, in particular, the definition given in Recommendation CM/Rec (2014)7 of the Committee of Ministers of the Council of Europe on the protection of whistleblowers (30 April 2014).

<sup>b</sup> A/70/361, para. 64. See also the jurisprudence of the European Court of Human Rights in *Guja v. Moldova*, Application no. 14277/04, Grand Chamber judgment of 12 February 2008, para. 73 and *Bucur and Toma v. Romania*, Application no. 40238/02, judgment of 8 January 2013, para. 95 et seq.

<sup>c</sup> A/70/361, para. 65.

<sup>d</sup> *Ibid.*, para. 66.

develop its own jurisprudence on the legal status of whistle-blowers under article 19 of the Covenant.

4. It is, moreover, worth noting in the context of this case that, beyond international human rights law, the protection of whistle-blowers finds specific application in the fight against corruption under the terms of the United Nations Convention against Corruption, which was ratified by Algeria on 25 August 2004. Article 33 of this Convention requires States parties to include in their domestic legal systems “appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention”.

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