

(Translated from Arabic)

People's Democratic Republic of Algeria

Permanent Mission of the People's Democratic Republic of Algeria to the United Nations Office at Geneva and other international organizations in Switzerland

Draft reply from the Ministry of Justice to the joint questionnaire from the Working Group on Arbitrary Detention and the Special Rapporteurs of the Human Rights Council special procedures

With regard to the joint questionnaire sent by the Working Group on Arbitrary Detention and the Special Rapporteurs of the Human Rights Council special procedures concerning the arrest and detention of journalists and a human rights defender and reprisals against the family of an Algerian blogger, I have the honour to provide you with the following responses:

With regard to Abderrahmane Semmar:

In response to a complaint lodged by the director of a private television channel on 23 October 2018, who had been subjected to threats and defamation by the person against whom the complaint was directed, Abderrahmane Semmar, also known in the media as Abdou Semmar, an investigation was launched into the involvement of the said person in the publication of articles that compromised the victim's dignity and honour and in blackmailing the victim through his electronic newsletter, with the participation of [REDACTED] and Amir Boukhors, who is known as Amir DZ (and against whom several legal proceedings have been instituted for blackmail and defamation via the social media). On 25 October 2018, legal proceedings were instituted against the aforementioned persons by the Public Prosecutor in the court of Bir Mourad Rais on charges of threats, defamation and encroachment on persons' privacy, offences that are punishable under articles 285, 297, 299 and 303 bis (1) of the Criminal Code. The competent judicial authority decided to place him in pretrial detention and on 8 October 2018 the same judicial authority ordered the release of the accused pending supplementary investigations into the case.

It should be noted that Abderrahmane Semmar is being prosecuted in other cases in response to several other complaints of blackmail and defamation. He is currently a fugitive.

With regard to the case of Adnan Mellah:

The questionnaire states that the said person was prosecuted by the Algerian judicial authorities in two cases:

1. The first case:

The judicial proceedings were instituted in response to two complaints. The first was filed by an Algerian businessman ([REDACTED]) on the ground that he had been subjected to defamation, blackmail and abuse of his industrial compound, and that his wife's honour had also been violated on the social media. Adnan Mellah leaked information through Amir Boukhors, known in the social media as Amir DZ (who is being prosecuted in several cases for extortion through defamation). Adnan Mellah had previously tried to approach the complainant to obtain funds for his website "Dzair Presse".

The second complaint was filed by the owner of a private television channel against Adnan Mellah and Abderrahmane Semmar after they posted provocative images against his channel on a social media site, together with Amir Boukhors, known in the social media as Amir DZ (who is being prosecuted in several cases for extortion through defamation).

Following the two complaints, investigations were opened and he was placed in detention (anyone placed in detention is legally entitled to benefit from the presence of



defence counsel and to contact his family; yet no lawyer requested to exercise the right to visit Adnan Mellah). On 25 October 2018, proceedings were instituted against him and Amir Boukhors (who is currently a fugitive) on the following charges: threats, defamation and blackmail through the revelation of shameful data for the purpose of obtaining funds; slander and encroachment on a person's private life by transmitting private and confidential conversations and discussions, recordings and photographs taken in private places without the person's permission or consent; preservation thereof and making them accessible to the public; transmission of data stored and fraudulently processed and trafficked by means of an information system; possession and dissemination thereof for the purpose of defamation and threats and with a view to undermining the status of public agencies and institutions. All these acts are punishable pursuant to articles 371, 303 bis (1), 394 bis (2) (01) and (02), 394 bis (3) and 396 of the Criminal Code.

After the investigating judge was informed of these facts and a number of legal procedures had been implemented, an order for the referral of the accused to the criminal court for legal proceedings was issued on 19 November 2018. The first hearing, which was scheduled for 22 November 2018, was postponed until 2 July 2019, and an order for the release of the accused Adnan Mellah was issued unless he was detained on another ground. A second deferral, until 2 May 2019, was subsequently announced.

2. The second case:

On 9 December 2018 Adnan Mellah, together with some other individuals, organized an unlicensed assembly in a district of Algiers, the capital city, in a show of solidarity with persons who were being prosecuted. When the security services tried to disperse them, they refused to leave the area, necessitating the intervention of the police force. Most of them then left, but Adnan Mellah and two of his companions remained. They were therefore arrested, taken to the police station, placed in custody and permitted to exercise all their legal rights.

On 11 December 2018, legal proceedings were instituted against them by the Public Prosecutor's Office at Bab el-Oued Court. They were charged with organizing an unarmed assembly, with incitement thereto, and with insulting public officers and insubordination, in accordance with prompt appearance procedures. The case was adjourned until a hearing on 18 December 2018. A pretrial detention order was issued for the defendant Adnan Mellah and orders were issued for the release of the defendants [REDACTED] and [REDACTED]. On 18 December 2018, a hearing was scheduled for 25 December 2018.

On 25 December 2018, Bab el-Oued Court convicted the accused of the charges filed against them. The accused Adnan Mellah was sentenced to a prison term of one year and a fine of 100,000 Algerian dinars (DA), and the accused [REDACTED] and [REDACTED] were sentenced to a prison term of four months and a fine of DA 50,000. They were acquitted of the offence of insulting police officers. Appeals were filed on 27 December 2018 by the Public Prosecutor's Office and the accused.

With regard to the case of Amir Boukhors:

Several legal proceedings have been instituted by the Algerian judicial authorities against Amir Boukhors (known in the social media as Amir DZ). However, the proceedings relating to the matters mentioned in the United Nations questionnaire were based on two complaints:

The first complaint against Amir Boukhors was filed by the owner of a private television channel for slander and encroachment on a person's private life, the fraudulent processing of personal data and its delivery to unauthorized persons. As Amir Boukhors failed to respond to summonses, an arrest warrant was issued and a judgment convicting him in absentia was handed down.

The second complaint was filed by the manager of a private company (a businessman) against Amir Boukhors and against [REDACTED] and other defendants on the grounds of blackmail, dissemination of private photographs on the social media and encroachment on persons' privacy. Following inquiries, legal proceedings were instituted against the above-mentioned persons in accordance with a request to open investigations. Amir Boukhors was prosecuted for: threats of defamation

and blackmail; revelation of shameful data for the purpose of obtaining funds; slander and encroachment on a person's private life by transmitting private and confidential conversations and discussions, recordings and photographs taken in private places without the person's permission or consent; preservation thereof and making them accessible to the public; transmission of data stored and fraudulently processed and trafficked by means of an information system; possession and dissemination thereof for the purpose of defamation and threats and with a view to undermining the status of public agencies and institutions.

On 31 December 2018, the accused Amir Boukhors was convicted of the charges and sentenced to a prison term of three years and a fine of DA 1,000,000 based on the arrest warrant issued against him. The other accused were convicted and the court imposed lenient sentences ranging from effective to suspended prison sentences.

The sentences in the case Amir Boukhors were all handed down in absentia pursuant to the provisions of the Code of Criminal Procedure, particularly article 409 thereof. The sentences handed down in the criminal proceedings will be deemed to be null and void as soon as an appeal is filed.

With regard to the measures taken against the family of Amir Boukhors (Houari Boukhors and Nedjadi Boukhors):

During the legal proceedings conducted against Amir Boukhors (Amir DZ) for the above-mentioned offences relating to participation in threats of defamation and blackmail for the purpose of obtaining funds, the Public Prosecutor's Office in Sidi Mohamed Regional Court in Algiers, the capital city, issued an arrest warrant on 23 October 2018 for Houari Boukhors and an order to search his home in Tiaret Province, where he resided with his father Nedjadi Boukhors, in order to complete the investigations, inasmuch as the family of the accused was suspected of having benefited from the funds extorted from the complainant.

With regard to the case of Abderrahmane Goura:

An investigation into Abderrahmane Goura was launched by the law enforcement services based on the charge of publication in the social media of inflammatory and false messages concerning the police. He was summoned in accordance with the law in force to present statements regarding the facts. It should be noted that he was neither arrested nor detained during this stage of the investigations. He remained at the police station solely during the period required to take his statements and he was then released. No further action was taken against him.

- **The extent to which the measures are consistent with international human rights norms and standards, in particular the right not to be arbitrarily deprived of one's liberty, the right to a fair trial and the right to freedom of expression, in line with articles 9, 14 and 19 of the International Covenant on Civil and Political Rights (answer to question No. 3):**

The legal proceedings instituted against all the above-mentioned persons were conducted in accordance with the legal norms enshrined in domestic legislation. The norms were not breached either during the police inquiries or during the legal investigations and trial.

The preliminary inquiry and investigation stage:

The preliminary inquiries conducted in these cases by law enforcement officers were overseen by the Public Prosecution Service. The basic rights of suspects in police custody were respected, in particular their right to contact a lawyer, the right to visits from their relatives, the right to a medical examination, etc. In addition, the legal time limits applicable to police custody were respected (it should be noted that the parties to the cases filed no complaints regarding failure to respect the aforementioned procedures).

With regard to the search (which was conducted in just one of the above-mentioned cases), it was also authorized by the competent judicial authorities, in accordance with the conditions specified by law (article 64 of the Code of Criminal Procedure; moreover, all measures taken were designed to obtain forensic evidence pertaining to the facts under investigation).

The legal investigations and the trial:

The measures taken by the investigating or trial judges during this stage of the proceedings (the judicial investigation) were lawful and sound. Moreover, no defence pleas or requests were submitted by the defendants or defence counsel (their lawyers) with a view to having the measures taken declared null and void.

It should be noted that all the defendants benefited from legal rights, in particular the right to present a defence, guarantees of a fair trial and the right to appeal against judgments handed down against them. The fact that the legal proceedings were sound in both procedural and legal terms is borne out by the fact that no appeals were lodged against any of the proceedings.

- **The measures taken by the Algerian State to guarantee respect for the presumption of innocence in the case of Amir Boukhors and Abderrahmane Semmar in order to ensure that their reputations were not sullied during the consideration of their cases by the judiciary; and the measures taken to ensure that journalists, bloggers and members of associations can exercise their rights without fear of harassment, stigmatization, repression or criminalization of any kind (answers to questions Nos. 4 and 5):**

With regard to respect for the presumption of innocence of Amir Boukhors and Abderrahmane Semmar:

As already noted, the legal proceedings instituted against the persons mentioned in the United Nations questionnaire were conducted in full respect for the principle of the presumption of innocence, which is guaranteed by the Constitution, and for the guarantees of a fair trial enshrined in the international human rights treaties ratified by the Algerian State and in Algerian legislation, in particular the Code of Criminal Procedure. The legal proceedings instituted against the persons concerned were based on complaints filed by the victims, and the investigations respected their dignity and basic rights. Their statements concerning the facts were submitted to the judicial authorities and they were afforded the right to present a defence and to discuss the charges against them. They were also entitled to challenge the warrants, judgments and rulings issued against them.

With regard to respect for freedom of expression and the press:

The Algerian Constitution and the other legislation in force guarantee adequate protection for freedom of expression and freedom of the press and audiovisual media. The Constitution and other legislation also protect the right to privacy and the dignity, freedoms and rights of others (arts. 48 and 50). The files pertaining to these cases show that the suspects, notwithstanding the fact that none of them was officially recognized as a journalist, exploited the audiovisual media to commit acts that compromised people's dignity and honour, and exploited their leaflets to extort funds from the complainants.

With regard to measures taken to ensure that the journalists' reputations were not sullied during the consideration of their cases by the judiciary:

Domestic legislation seeks to protect citizens' reputation, especially during criminal proceedings. Article 56 of the Constitution enshrines the principle of respect for the presumption of innocence. Articles 1 and 11 of the Code of Criminal Procedure also underscore the need to respect the presumption of innocence and the right to privacy, especially during inquiries and investigations, which must preserve confidentiality. Anyone who breaches these fundamental rules may be prosecuted.