



# General Assembly

Distr.: General  
20 July 2020  
English  
Original: French

---

## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its eighty-seventh session, 27 April–1 May 2020

#### Opinion No. 26/2020 concerning Moncef Kartas (Tunisia)

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in its resolution 1991/42. 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 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 28 October 2019, the Working Group transmitted to the Government of Tunisia a communication concerning Moncef Kartas. The Government replied to the communication on 26 December 2019. 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).



## Submissions

### *Communication from the source*

4. Moncef Kartas is a Tunisian and German citizen born on 23 August 1975. He was a member of the Panel of Experts on Libya, responsible for monitoring the implementation of the measures introduced by the Security Council in its resolution 1970 (2011), as an arms expert from 2 January 2019 to 15 February 2020. He had already been appointed to this position in May 2016 and August 2017.

#### a. Context, arrest and detention

5. The source explains that, on 26 March 2019, at approximately 6.30 p.m., a group of unidentified men armed with guns arrested Mr. Kartas in the arrivals hall of Tunis-Carthage International Airport. Mr. Kartas had just landed there from Berlin as part of a mission of the Panel of Experts on Libya. Claiming that they were police officers but refusing to provide proof, one of them took Mr. Kartas' passport, refused to return it and demanded that he accompany them to answer questions from the Chief of Police. Although Mr. Kartas stressed that he enjoyed the privileges and immunities of a United Nations expert on mission, the man grabbed his telephone from him as he was about to call his contact at the United Nations and refused to make the call himself in order to verify the status of Mr. Kartas, who was then taken outside.

6. The source reports that other unidentified men with assault rifles were waiting outside, alongside vehicles that were also unidentified, making up a total group of approximately 12 men. They then took Mr. Kartas to the apartment he was renting in Tunis. Some of these men were equipped with forensic kits and informed Mr. Kartas that they were going to carry out a search of his apartment. When Mr. Kartas asked to see a warrant, the aforementioned man reportedly showed him a sheet of paper while explaining that he could not disclose the contents to him because other names were listed on it.

7. According to the source, Mr. Kartas subsequently asked to see a lawyer, but his request was denied. He unlocked the door to his apartment, which the men thoroughly searched, opening all the boxes and drawers, and throwing things on the floor. They reportedly confiscated a large amount of equipment and documents related to the execution of his mandate as expert and also personal belongings. The men also asked Mr. Kartas where his safe, his gold and his money were, which he denied possessing, continuing to protest against the seizure of United Nations property. Among the items seized, for example, was a device used by Mr. Kartas to follow civil commercial flight paths in order to identify violations of the United Nations arms embargo against Libya. According to the source, this device, often used by United Nations experts on mission, is commercially available and is not suitable for intercepting military or encrypted communications, which was subsequently confirmed by the United Nations.

8. The source further submits that, at approximately 10.30 p.m., the armed men took Mr. Kartas to El Gorjani police station, the operational headquarters of the National Terrorist Crimes Investigation Unit. Upon his arrival, the men reportedly offered Mr. Kartas food, pointing out that he could not know when he would be fed again. In fact, Mr. Kartas was offered no food and only water for the next forty hours. All night long, Mr. Kartas was moved from office to office for questioning. The interrogations were not recorded and Mr. Kartas, according to the source, was deprived of sleep with the aim of frightening and intimidating him. Mr. Kartas continued to recall his status as an expert with privileges and immunities, with his principal interrogator continuing to tell him that he did not or no longer enjoyed such immunity, that it did not apply in Tunisia, or that he "did not care". Mr. Kartas was questioned about his role as an expert, about aspects of his private life and about the flight-following device, as well as about Libya and the arms embargo.

9. According to the source, Mr. Kartas was not informed at any time during that night of the interrogation of the reasons for his arrest, and no one reportedly showed him proof that his detention was lawful.

10. The source went on to say that, at 5 a.m. on 27 March 2019, the principal interrogator announced to Mr. Kartas that his hearing would begin right then. The interrogator then refused to speak French, although Mr. Kartas speaks little Arabic, and threatened him if he uttered a single word in French. After an hour of unrecorded

questioning, the interrogator reread his partial notes in Arabic, which were then translated into French by another officer. The translation did not correspond to Mr. Kartas' statements, including, for example, references to the sea that had not been made. Mr. Kartas initially refused to sign these notes in the absence of his lawyer, but was threatened with arrest if he did not, and, in the end, signed the document written in Arabic.

11. The source further submits that, at 10 a.m., Mr. Kartas was informed that he was under arrest, without being informed of the charges against him. Sixteen hours after his arrest at the airport, he had still not been given access to a lawyer, nor had his family or the United Nations been informed of his arrest and place of detention.

12. The source emphasizes that, as of 27 March 2019, Mr. Kartas has been detained at the Ministry of the Interior detention centre in Bouchoucha and was usually transferred to El Gorjani during the day for hearings. As of 11 April 2019, Mr. Kartas was transferred to Mornaguia prison, 14 kilometres from Tunis, until his conditional release on 21 May 2019.

13. The source reports that, when Mr. Kartas' formal detention began on 27 March 2019, he was placed on a chair in a cold and foul-smelling corridor and handcuffed in an uncomfortable position, in which he was left without food and water all day. He was then taken for the night to Bouchoucha, where he shared a cell measuring 10 by 18 metres with 20 other detainees, and sometimes as many as 50 on the following nights. After five nights in this cell, he was transferred to a smaller cell. At the request of his lawyers, Mr. Kartas was allegedly entitled to an occasional bottle of water, no more than once a day, and to a change of clothes once every two weeks, but was not entitled to wash. Limited to one meal a day since 28 March 2019 that were served during his daily interrogations in El Gorjani, he lost 10 kg during his first two weeks of detention.

14. On 28 March 2019, the source explains that Mr. Kartas was again handcuffed and placed in an uncomfortable position in El Gorjani and fed for the first time since his arrest. He was questioned again and then informed that he would be taken to Sousse, about 150 km south of Tunis, where Mr. Kartas' father's house is located. At this stage, Mr. Kartas had not had access to a lawyer, and no one was informed of his detention until 29 March 2019.

15. On 29 March 2019, the source reports that the police actually took Mr. Kartas to his late father's house in Sousse to conduct a search, still refusing to show a warrant. The police confiscated Mr. Kartas' father's rifle, before returning it to him in the end when he was released, without submitting it as evidence. Mr. Kartas refused to sign the list of items seized that day without a lawyer present.

16. The source further reports that members of the National Terrorist Crimes Investigation Unit of the Ministry of the Interior were responsible for supervising Mr. Kartas' detention. During the first two weeks of his detention, Mr. Kartas was only allowed to contact his lawyers for a half hour every five days. He had received only a visit of 60 minutes from the National Authority for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and a visit of 15 minutes from a representative of the Office of the United Nations High Commissioner for Human Rights.

17. The source recalls that the Office of Legal Affairs of the United Nations Secretariat sent two notes verbales to the Minister for Foreign Affairs, as early as 27 and 28 March 2019, requesting the immediate release of Mr. Kartas and recalling that he enjoyed immunity. The Resident Coordinator also reiterated on 28 March 2019 that the immunity of staff members applied wherever they were on mission, even in their home countries. Six notes verbales were then sent in the course of Mr. Kartas' detention. The source adds that it was only after 43 days of detention that the German Consul was able to visit Mr. Kartas.

18. The source explains that Mr. Kartas was allowed to see his lawyers for the first time on 30 March 2019. He was able to talk to one of them in an open room for 30 minutes, before being formally interviewed by the police in the presence of his three lawyers and an interpreter, whose vocabulary was too limited to accurately transcribe his statements, in particular with regard to his work and immunity. The hearing lasted more than three hours, during which Mr. Kartas was questioned about the flight-following device, his start-up consultancy on rule-of-law and governance issues, and his involvement in obtaining visas for Israeli professors at a seminar organized in Tunis by Yale University Law School in

January 2019. Despite frequent interventions by counsel to correct the notes taken by the interrogators, the notes contained numerous errors.

19. According to the source, on 11 April 2019, during his first hearing before the investigating judge of the third division of the Judicial Anti-Terrorism Unit, in the presence of the Prosecutor, Mr. Kartas was informed for the first time that he was being investigated, on the following charges:

(a) Disclosure of national defence secrets to a foreign State or its agents, or obtaining such secrets by any means with the aim of disclosing them to a foreign State or its agents, in accordance with articles 60 bis and 60 quater of the Criminal Code;

(b) Deliberate disclosure of information involving interference in or interception or audiovisual surveillance of operations, or of the data thereby collected, pursuant to article 62 of Organic Act No. 2015-26 of 7 August 2015 on the Fight against Terrorism and the Punishment of Money-Laundering;

(c) Deliberate obstruction of communications or audiovisual surveillance in circumstances other than those authorized by law, pursuant to article 64 of Organic Act No. 2015-26;

(d) Use of radio frequencies without authorization from the National Frequencies Agency, pursuant to article 82 of the Telecommunications Code.

20. The source points out that Mr. Kartas was then detained under Organic Act No. 2015-26, which allows the police to detain a person for a period of two weeks with the Prosecutor's written authorization, renewable every five days. Mr. Kartas' detention had been authorized by the Prosecutor on 1 and 5 April 2019.

21. During the hearing, despite reminders from Mr. Kartas' lawyers regarding the privileges and immunities he enjoyed as a United Nations expert on mission and repeated requests for his immediate release, the source maintains that the investigating judge confirmed the charges against Mr. Kartas and authorized his pretrial detention in Mornaguia prison for the duration of the investigation.

22. The source further explains that Mr. Kartas was transferred to Mornaguia to a cell he shared with four inmates and remained there until his conditional release on 21 May 2019. Throughout his detention, the United Nations continued to seek Mr. Kartas' release through notes verbales and several meetings. Furthermore, no request for the waiver of his immunity had been transmitted to the Secretary-General of the United Nations, although the Office of Legal Affairs had received a file from the Tunisian Government justifying Mr. Kartas' detention. The United Nations has not changed its position regarding its call for immediate release after reviewing these documents.

23. On 30 April 2019, the source reports that Mr. Kartas' lawyers filed a petition requesting his release, which was ignored by the investigating judge. Mr. Kartas' lawyers therefore reported such inaction to the Indictment Division of the Tunis Court of Appeal. Without setting a date for a hearing beforehand, the Court summoned the lawyers on the same day, 21 May 2019, and authorized Mr. Kartas' conditional release. Mr. Kartas left Tunisia on 22 May 2019 to return to Berlin. The United Nations then sent a further note verbale to Tunisia requesting the dismissal of the charges against Mr. Kartas, the recognition of his immunity and the restitution of the confiscated property.

24. According to the source, the investigation of Mr. Kartas has continued since his conditional release, preventing him from returning to Tunisia, whether for professional or private reasons. Mr. Kartas' personal and professional documents and effects that were confiscated during the searches are also still in the possession of the Tunisian justice system. Furthermore, damage has been done to the reputation of Mr. Kartas, whose name has been publicly and repeatedly associated with accusations of terrorism and espionage.

b. Legal analysis

i. Category I

25. The source recalls that Mr. Kartas is protected by the privileges and immunities associated with his status as a United Nations expert on mission on behalf of the Panel of Experts on Libya. The Government has been repeatedly informed by the United Nations

about the validity of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations, whose provisions have been incorporated into Tunisian law by article 20 of the Tunisian Constitution. His detention is therefore said to be unconstitutional.

26. For the source, it is indisputable that Mr. Kartas was an expert on mission, authorized and funded by the United Nations, whose immunity was not waived by the Secretary-General. Immunity is also valid in the countries of which the expert is a national. No request for a waiver of immunity was transmitted by Tunisia to the Secretary-General.

27. Furthermore, the source adds that Mr. Kartas' immunity was also violated in that his luggage and various personal belongings were confiscated, as well as documents relating to his work for the United Nations.

28. The source further adds that Tunisia is also a party to the Convention on the Safety of United Nations and Associated Personnel, article 7 (1) of which provides that United Nations and associated personnel, their equipment and premises must not be made the object of attack or of any action that prevents them from discharging their mandate. Under article 8, if United Nations or associated personnel are captured or detained in the course of the performance of their duties and their identification has been established, they must not be subjected to interrogation and they must be promptly released and returned to United Nations or other appropriate authorities.

29. The source therefore asserts that the Government of Tunisia has acted in a manner contrary to the Constitution and its international obligations to protect United Nations personnel, in particular its experts on mission.

30. The source also asserts that Mr. Kartas' arrest, detention and the investigation are not based on any evidence. The prosecutor did not substantiate the charges against Mr. Kartas with facts supporting such allegations but built his case on effects and documents seized during illegal searches. At the hearing on 11 April 2019, Mr. Kartas' lawyers demonstrated the lack of a factual basis for Mr. Kartas' detention, which was nevertheless upheld by the investigating judge.

## ii. Category II

31. The source further alleges that Mr. Kartas' deprivation of liberty constitutes a violation of his freedom of expression, in particular in view of his position as a United Nations expert, pursuant to article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

32. According to the source, Mr. Kartas' expert work consisted in gathering, examining and analysing information and reporting back on it to the Security Council. He frequently travelled to Tunisia to investigate potential violations of the sanctions imposed on Libya, which are sometimes the subject of reports of direct connections between Tunisian financial institutions and individuals in violation of the arms embargo under Security Council resolution 1973 (2011).

33. The source alleges that Mr. Kartas was targeted in order to be prevented from carrying out his investigations. He was repeatedly questioned about their content and stopped three weeks before the Panel of Experts on Libya submitted its interim report to the Security Council, which prevented him from including his final conclusions in the report. The detention of Mr. Kartas also effectively ended all travel to Tunisia by members of the Panel of Experts for several months. The Tunisian Government then made no attempt to justify the violation of Mr. Kartas' right to freedom of expression by reasons of national security.

## iii. Category III

34. Accordingly, the source considers that Mr. Kartas' right to a fair trial, as protected by article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant, has been violated.

35. According to the source, the fact that the Government did not promptly inform Mr. Kartas of the charges against him is a violation of article 9 (2) of the Covenant and article 29 of the Tunisian Constitution. Mr. Kartas was informed of this information and of his

rights 16 days after his arrest. The fact that he received certain information in Arabic was not sufficient to demonstrate that the Government has fulfilled its obligations, since article 14 (3) (a) of the Covenant specifies that everyone is entitled to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her. The source adds that the Government should also have informed the United Nations of the detention of a member of its staff and granted access to the detained person pursuant to General Assembly resolution 52/126.

36. The source emphasizes that Mr. Kartas' right to have access to a lawyer under articles 9 and 14 (3) (b) of the Covenant has not been respected. In fact, he did not have access to a lawyer during the first three days of his detention. Even in cases of terrorism, this time limit must not exceed 48 hours under national law.

37. According to the source, the judiciary also failed to act independently in this case. For example, the investigating judge reportedly told Mr. Kartas' lawyer that he would not close the case before the national elections in October 2019. Furthermore, the conditional release of Mr. Kartas was decided by surprise by the Tunis Court of Appeal on the very day that discussions on his detention were scheduled to take place in the Security Council. Moreover, Mr. Kartas had to wait 16 days before being seen by an investigating judge, which deprived him of any means of appeal against his detention, and his petitions for release were summarily rejected. He was then held in pretrial detention for 40 days, in violation of article 9 (3) of the Covenant and Tunisian law, which provide that pretrial detention is to be used as a last resort, as the Tunisian Government did not give any grounds for such detention. No access to independent judicial remedies was given to Mr. Kartas, in violation of article 14 (1) of the Covenant.

38. Finally, the source emphasizes that Mr. Kartas has been denied the right to be presumed innocent under article 14 (2) of the Covenant and article 11 of the Universal Declaration of Human Rights. The only evidence presented was gathered during the illegal searches and seizures of Mr. Kartas' residences.

39. Lastly, the source asserts that Mr. Kartas was subjected to inhuman and degrading treatment in detention, having been kept tied up for several hours in a stress position, in violation of article 7 of the Covenant, and having been denied access to water and food on numerous occasions during the first 40 hours of police custody.

40. In the light of the foregoing, the source asserts that Mr. Kartas' detention was arbitrary.

#### *Response from the Government*

41. On 28 October 2019, the Working Group transmitted the source's allegations to the Government under its regular communications procedure, requesting it to provide, by 27 December 2019 at the latest, detailed information on Mr. Kartas' situation and to clarify the legal provisions warranting his continued detention and its compatibility with the obligations of Tunisia under international human rights law, especially the treaties ratified by the State. Furthermore, the Working Group called upon the Government to ensure Mr. Kartas' physical and mental integrity.

42. On 5 December 2019, the Government requested an extension of the deadline for its response. The extension was granted with a new deadline of 27 January 2020. The Government submitted its response on 26 December 2019.

43. The Government explains that Mr. Kartas arrived in Tunis on 26 March 2019 from Rome on a flight that landed at 5.55 p.m. After presenting his Tunisian passport to the border police to obtain an entry stamp, Mr. Kartas went to the conveyor belt to retrieve his luggage, where he was stopped for questioning by officers of the National Terrorist Crimes Investigation Unit. It should be made clear that the staff of this unit are not under a legal obligation to wear a uniform. However, the Government points out that the leader of the squad who carried out the arrest of Mr. Kartas showed his official identification card attesting to his function.

44. According to the Government, at no time during the questioning did Mr. Kartas indicate that he enjoyed privileges or immunities or present any document issued by the United Nations. Nor did he provide any evidence that he was on mission for a panel of experts tasked with monitoring the implementation in Libya of the measures decided by the

Security Council in its resolution 1970 (2011). Mr. Kartas did not object to the search being carried out and did not request to get in contact with the United Nations services or his family in Tunisia. In short, Mr. Kartas was arrested in his capacity as a Tunisian citizen under judicial investigation and following a search warrant issued by the public prosecutor's office through the Judicial Anti-Terrorism Unit.

45. In addition, the Government explained that Mr. Kartas had been made aware that he was the subject of a judicial investigation and that he had been asked to accompany the National Terrorist Crimes Investigation Unit for a search of his Tunis apartment. Officials of the National Investigation Unit informed him of the grounds for this search, namely information that he was in possession of a device whose operation and use are strictly prohibited in Tunisia without prior authorization from the competent services under the Code of Telecommunications. As a result of the search, officers of the National Investigation Unit seized from Mr. Kartas' apartment a sophisticated device using encrypted channels and connected to Internet Protocol addresses abroad that is intended for wiretapping, identifying civil and military air traffic and detecting low-frequency communications. All traces of the information processed by this device are instantaneously erased after they are sent.

46. On the procedural level, the Government points out that the search order was duly presented to Mr. Kartas, who, in response, denied that he had a command of the Arabic language, which was used as the official language in the drafting of that judicial document. The source's allegations that officers of the National Terrorist Crimes Investigation Unit refused to disclose the contents of the search order to Mr. Kartas because other names were included in it are untenable, since it was a document that had one purpose only and could not contain other names to that end.

47. According to the Government, Mr. Kartas did not explicitly request the presence of a lawyer at his first hearing. He said he had no case to answer. It was only after the competent judicial authorities had issued an arrest warrant against him that he requested access to a lawyer. To that effect, it was pointed out to him that he was not entitled to this right during the 48 hours following the issuance of the arrest warrant, in accordance with the provisions of article 13 ter of the Code of Criminal Procedure. Once this time limit had passed, the investigators allowed Mr. Kartas to contact a lawyer.

48. With regard to the allegations concerning the conduct of the search of Mr. Kartas' apartment, the Government pointed out that, according to Tunisian law, the premises searched are automatically secured and the keys to them kept in storage under the name of the person concerned in the event of arrest. It should be added that no effects or documents relating to Mr. Kartas' mission to the United Nations were confiscated by the officers of the National Terrorist Crimes Investigation Unit.

49. Mr. Kartas, who was the subject of a custodial arrest warrant issued by the public prosecutor's office through the Judicial Anti-Terrorism Unit on 27 March 2019, was questioned about the provenance of the seized device. He stated that he had acquired it in Germany from a certain Simon, without giving further details as to the identity and registered office of the seller. On 5 April 2019, the services of the Ministry of the Interior sent a letter to the United Nations office in Tunis asking whether it had prior knowledge of the detained person's possession of the seized device. There has been no response to this query to date. Mr. Kartas has been repeatedly questioned about the provenance of this device and has denied having acquired it in the exercise of his functions and mandate as a United Nations expert.

50. The technical assessments carried out on the seized device indicated that it was intended to intercept all telephone communications, including those between the cockpits and the control towers, as well as radio communications used in particular by the military and national security forces. It was also intended to identify aircraft with a high degree of precision. During the search of the apartment, and in the presence of Mr. Kartas, officers of the National Terrorist Crimes Investigation Unit found that the device was in operation. It covered only a limited area of Tunisian territory – a few kilometres around the searched apartment – and could in no way reach Libyan territory, the object of Mr. Kartas' mission.

51. During the search of Mr. Kartas' apartment in Tunis, he was asked to indicate the place where he kept his valuables. This was in fact a legal measure taken by police units in Tunisia in order to avoid any allegations of theft or destruction of property or valuables.

Such property could, if necessary, be used as evidence in an investigation. The search of Mr. Kartas' family home in Sousse was carried out on the basis of a judicial warrant that was officially presented to him. Accompanied by members of the National Terrorist Crimes Investigation Unit, Mr. Kartas indicated that he did not have the keys to the family home and provided the officers of the National Investigation Unit with a telephone number to request the family's assistance in obtaining the keys to the front door. As regards the hunting rifle found in the house searched, it was not one of the items seized because, after the selection process, it was kept in storage in Mr. Kartas' name, especially as it did not constitute evidence.

52. The Government reiterates that the search was conducted in the presence of Mr. Kartas, under the supervision of a criminal investigation officer and in the presence of a small number of officers. The remaining members of the National Terrorist Crimes Investigation Unit were responsible for ensuring security outside. Mr. Kartas was also informed of the charges brought against him during his interrogation, in accordance with Tunisian law.

53. With regard to Mr. Kartas' conditions of detention, the Government alleges that in no way was he deprived of food or water. Mr. Kartas deliberately refused the meal served three times a day. The interrogation took place in strict compliance with legal rules and procedures and with full respect for the rights and dignity of the detainee. Thus, the allegations made by the source on the deplorable conditions under which the detainee was interrogated are untenable. Mr. Kartas was interrogated in the office of the Chief of Service of the National Terrorist Crimes Investigation Unit solely during working hours and in the presence of his three lawyers, who had approved the minutes summarizing the detainee's statements. The National Investigation Unit conducting the interrogation provided the detainee with a French-Arabic translation service by an interpreter under oath throughout the investigation.

54. With regard to the allegations concerning Mr. Kartas' personal hygiene, the Government points out that he had been allowed to change his clothes regularly and to freshen up once a day. The conclusions of the interrogation were officially communicated to the Public Prosecutor of the Judicial Anti-Terrorism Unit who issued a written order for Mr. Kartas' pretrial detention. At Mr. Kartas' request, his lawyer was informed of the decision to remand him in custody. The investigation was initiated within two weeks of Mr. Kartas' arrest, in accordance with the provisions of Tunisian legislation on combating terrorism and money-laundering. In addition, Mr. Kartas fully exercised his right to bring an appeal against the decision to remand him in custody and was released by a decision of the indictment division. To this end, the presumption of innocence and detention safeguards were strictly observed.

55. The Government also reports that a delegation from the National Authority for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and a representative of the High Commissioner's human rights field office in Tunis paid an unannounced visit to Mr. Kartas two days after his detention and were briefed on the conditions of his detention and the interrogation process. They neither noted nor reported any irregularities or offences relating to police custody. The content of the minutes of the interrogation is faithful to the statements. All hearings were held in the presence of Mr. Kartas' defence counsel and an interpreter under oath. The rules inherent in the presumption of innocence, the validity of procedures and the inviolability of the home were strictly observed.

56. In response to the allegations concerning the applicability of United Nations privileges and immunities to the case of Mr. Kartas in his capacity as a United Nations expert, the Government points out that article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations provides that Experts (other than officials coming within the scope of article V) performing missions for the United Nations are to be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In the case in question, however, Mr. Kartas did not state at the time of his arrest that he was travelling to Tunis as part of his duties as United Nations expert on Libya. Nor did he assert that he was acting in this capacity. On the contrary, Mr. Kartas merely presented his Tunisian passport. Thus, he was treated as a Tunisian citizen suspected of committing a terrorist crime, pursuant to Organic Act No. 2015-26. To that



end, the provisions of the Convention and specifically those of section 22 are not applicable to Mr. Kartas' case, either in respect of his person or of his luggage and possessions.

57. The Government also recalls that the case is pending before the investigating judge, who ordered a request for judicial assistance from the criminal investigation department. Mr. Kartas' lawyers are aware of this and are looking into the file.

58. The Government concludes by arguing that all the responses provided, which are substantiated in the present document, confirm that the various judicial proceedings were conducted in accordance with international rules, while ensuring that the rights and dignity of the detainee and principle of the independence of the judiciary were upheld.

*Further comments from the source*

59. The Government's reply was forwarded to the source on 15 January 2020 for additional comments, which the source sent on 29 January 2020.

60. According to the source, the Government's reply does not refute and, in fact, confirms the essential facts of its communication, leaving it unrefuted while ignoring or distorting the facts.

61. The source maintains first of all that the Government does not deny that Mr. Kartas is entitled to immunity under the Convention on the Privileges and Immunities of the United Nations in his capacity as a member of the Panel of Experts on Libya. Instead, the Government maintains that Mr. Kartas did not claim immunity at the time of his questioning when the Tunisian authorities arrested him at the airport. The source claims that this is legally irrelevant and factually incorrect. Mr. Kartas presented his United Nations certificate with his Tunisian passport when he arrived at the passport control point. From the moment the Tunisian authorities arrested him, he repeatedly stated that he was a United Nations expert on mission with immunity from arrest and detention, to which they replied that they "did not care". His friend and business partner who met him at the airport confirms that the police never identified themselves to either of them, that they confiscated Mr. Kartas' identity documents and mobile phone, and that he protested against his arrest and detention.

62. According to the source, the Government does not dispute that it was, and still is, well aware of Mr. Kartas' immunity. The Government ignores the fact that the Secretary-General of the United Nations notified it of his appointment to the Panel of Experts on Libya on 2 January 2019, three months before his arrest. Likewise, the Government does not take account of the following facts: (a) Mr. Kartas repeatedly informed the Tunisian authorities of his immunity during the 56 days of his detention; (b) The Government received nine notes verbales from the United Nations between March and May 2019 reiterating his immunity and requesting his release along with a public statement by the Spokesperson for the Secretary-General; and (c) his immunity was invoked in the communication from the source to which the Government replied.

63. The source alleges that the Government has misrepresented the circumstances of Mr. Kartas' detention. For example, the Government claims that Mr. Kartas did not request access to a lawyer until after the police formally placed him under arrest on 27 March 2019 at approximately 10 a.m., almost 12 hours after he was taken into police custody, his apartment was searched and the first interrogation was conducted. In fact, Mr. Kartas requested access to a lawyer immediately after he was detained at the airport and on several occasions thereafter.

64. The source also contends that the Government does not deny the essential facts concerning Mr. Kartas' detention, particularly the fact that the Government: (a) detained Mr. Kartas for 16 hours before informing him of the grounds for his arrest; (b) waited three days to inform his family of his arrest; (c) failed to inform him for 16 days of the charges against him and to bring him before an investigating judge; and (d) kept him in pretrial detention for a total of 56 days.

65. Furthermore, the source asserts that the Government does not offer any facts to support the allegation that Mr. Kartas was treated as a "Tunisian citizen suspected of committing a terrorist crime". The initial search of Mr. Kartas' apartment by the National Terrorist Crimes Investigation Unit was allegedly based on a warrant stamped 26 March 2019, the date of his arrest, authorizing a search for "weapons, ammunition, explosives and

other similar materials, equipment and facilities, documents and correspondence, money, audio and audiovisual clips, digital publications and data and information relating to terrorist persons, organizations and activities in his home”, none of which the Government ever claimed to have found any trace in his apartment. In particular, the terrorist crimes of which the Government accused Mr. Kartas make no reference to any unlawful use of the items listed in the search warrant. On the contrary, the Government’s case against him is based on the presence in his apartment of flight-following equipment used in his work as a United Nations expert. The Government’s description of the use of the device is, according to the source, erroneous. The source reiterates that this equipment was not capable of transmitting data or of interfering with or even monitoring non-civilian frequencies. Likewise, while the Government asserts that the range of the equipment did not extend to Libyan territory, the “object” of Mr. Kartas’ mission, it fails to take into account the fact that Security Council sanctions against Libya apply globally and that the work of the Panel of Experts on Libya is not limited to Libya’s territorial borders.

66. The source further refutes the Government by explaining that the United Nations did indeed inform the Government, in a note verbale dated 10 April 2019, that the equipment in Mr. Kartas’ possession was intended for use in the performance of his official duties. Mr. Kartas also told the police on numerous occasions: (a) that the flight-following equipment and his computer and telephones were work equipment; (b) that its equipment contained confidential material of the Organization; and (c) that by confiscating it, the police were violating the privileges and immunities of the Organization.

67. As to the Government’s reply concerning Mr. Kartas’ immunity, the source argues that the Government does not contest either Mr. Kartas’ status as a United Nations expert on mission or the Secretary-General’s decision concerning his functional immunity. On the contrary, the Government maintains that Mr. Kartas did not claim immunity at the time of his questioning when the Tunisian authorities arrested him at the airport and that his immunity was therefore lifted. The Government does not cite any authority in support of this assertion, and for good reason: that is not how diplomatic immunity works. As a United Nations expert on mission, Mr. Kartas enjoys diplomatic immunity under article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations and article 20 of the Tunisian Constitution. This includes immunity for official acts, as stipulated in the Charter of the United Nations and the aforementioned Convention, and “immunity from personal arrest or detention and from seizure of their personal baggage”. Immunity from personal arrest is absolute and is not subject to exceptions. This immunity applies regardless of the fact that Mr. Kartas claimed it in the first minutes of his interactions with the Tunisian authorities, which he did in fact do. The United Nations informed the Government of his diplomatic status prior to his arrest and detention and confirmed it on several occasions thereafter.

68. The source also argues that the Government has disregarded Mr. Kartas’ immunity and the corresponding obligations under international law, in particular by maintaining the charges against him to this day.

69. Furthermore, the source maintains that the Government does not provide any meaningful response on the merits of the accusations against Mr. Kartas, which it has not substantiated. Nor can the Government’s secondary argument that Mr. Kartas had not properly registered the equipment justify its arbitrary actions. Even if Mr. Kartas had violated Tunisian regulations on the registration of radio frequencies, which he did not appear to have done, the Government provided no explanation as to why he was charged with terrorist crimes and subjected to deprivations of liberty on an exceptional basis as a result. Five days after the hearing of 11 April 2019, at which the court summarily upheld Mr. Kartas’ continued detention, his lawyers submitted a written request for his release, explaining how the Government had failed to prove the charges against him. The Government has never provided a substantive response.

70. Lastly, the source argues that the Government does not respond to the argument that Mr. Kartas’ detention violated his right to freedom of expression. Nor does the Government deny that it violated international standards of due process by failing to inform him of the charges against him, denying him access to a lawyer, failing to provide him with an impartial judiciary, as the court had presumed him guilty, and subjecting him to inhuman and degrading treatment. In defence of the deplorable conditions in which Mr. Kartas was detained, the Government notes that he was interrogated in the very office of the Chief of

Service of the National Terrorist Crimes Investigation Unit and was offered the standard meal served to the members of this unit, which operates out of El Gorjani. Even if these statements were true, the Government does not address other conditions of Mr. Kartas' interrogation, such as the use of stress positions or his ill-treatment in Bouchoucha and Mornaguia. The National Authority for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has not yet submitted its report to the Tunisian parliament on its visit during Mr. Kartas' detention, and the United Nations sent a number of notes verbales requesting his release after a visit by a representative of the High Commissioner's human rights field office. The Government's assertion that these entities did not identify or report any irregularities regarding his detention is therefore erroneous.

71. The source concludes that Mr. Kartas' arrest, detention and continued deprivation of his rights were arbitrary. He was entitled to immunity as a United Nations expert on mission; the Government has not proved the charges against him; his deprivation of liberty stems from the exercise of his freedom of expression as a United Nations expert; and the Government's treatment of him violated his rights under the Universal Declaration of Human Rights and the Covenant.

## Discussion

72. The Working Group thanks the parties for their cooperation in submitting their written comments in a timely manner.

73. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68).

74. As a preliminary matter, the Working Group notes that Mr. Kartas was released on parole on 21 May 2019. However, the Working Group considers it essential to deal with the complaint in accordance with paragraph 17 (a) of its methods of work, considering that this case concerns a new issue that plays an important role in international relations and, above all, in the activities of international organizations. This is the issue of immunity of individuals working for the United Nations, and this is the first time that such a case has been brought before the Working Group.

## Category I

75. Central to this case is the status of Mr. Kartas. The source asserts that he had, at the time of the events, the status of a United Nations expert on mission and that the attendant immunities and privileges were violated by his arrest and detention for 56 days. The Government asserts that Mr. Kartas did not disclose his status at the time of his arrest. The source, for its part, credibly asserts that the officials who carried out the arrest were duly informed of his status, which they could also have checked with the passports seized from him. Furthermore, the Government did not explain why he was kept in detention despite the notification of his status through the various notes verbales from different United Nations sources produced by the source. The Working Group recalls that Mr. Kartas was first appointed to the Panel of Experts on Libya in May 2016 (see S/2016/443) and that he was reappointed in January 2019 (see S/2019/5). On each of these occasions, all Member States, including Tunisia, were duly notified of the appointment. The Working Group cannot therefore consider credible the fact that the Government was not aware of such a status.

76. The Working Group therefore considers that there could be no doubt that Mr. Kartas was a United Nations expert on mission, since he had been appointed by the Secretary-General to the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011) adopted under Chapter VII of the Charter. In this resolution, the Security Council urged all States to cooperate fully with the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya and the Panel of Experts. This provision has been included in each resolution extending the mandate of the Panel of Experts, the most recent being resolution 2441 (2018). Mr. Kartas travelled to Tunisia to meet with other experts of the Panel of Experts to conduct their investigations in accordance with the mandate under the above-mentioned resolutions. Furthermore, the

Working Group has no reason to doubt that Mr. Kartas showed the authorities his Tunisian passport and, more importantly, his United Nations expert certificate.

77. As such, Mr. Kartas was covered by Article 105 of the Charter and article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations. Tunisia is a State Member of the United Nations and acceded to the Convention on 7 May 1957. On the basis of the combined reading of these two international provisions, Mr. Kartas was protected, *inter alia*, against arrest, detention, search and seizure of his personal luggage, as well as against any legal proceedings related to his work, anywhere in the world, including in his country of nationality, in this case Tunisia.

78. The Working Group recalls that, according to article 9 (1) of the Covenant, no one may be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. Therefore, for the deprivation of liberty to be considered lawful, the procedure must be respected.<sup>1</sup> The Working Group stated in this regard that where the legal order – including the State's international obligations – requires the waiver of immunity as a precondition for depriving a person of liberty, this requirement must be observed. Once immunity has been lifted, the authorities are empowered to order the arrest and detention of the person concerned. Failure to waive immunity prior to the arrest of a person enjoying it renders subsequent detention arbitrary, since immunity legally precludes such a coercive measure. Such detention constitutes a violation, on the one hand, of the right not to be arbitrarily deprived of liberty provided for in article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant and, on the other, of the right to a fair trial in criminal proceedings provided for in article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant.<sup>2</sup>

79. The Working Group has repeatedly looked into the issue of immunities providing protection against arrest and detention.<sup>3</sup> If, for certain reasons, deprivation of liberty is to be applied to a person protected by immunities, law enforcement officials must first obtain a waiver or revocation of immunity. If they fail to do so, subsequent arrest and detention are illegal and without legal basis. The Working Group draws the same conclusion in the case in question. Not only was the arrest and detention on 26 March 2019 without legal basis, but this breach was to continue for 56 days despite the fact that the Government was fully informed of the immunities and privileges enjoyed by Mr. Kartas. As such, the arrest and detention were therefore arbitrary under category I. The Working Group therefore considers that it is not necessary to examine the other arguments in this regard.

#### *Category II*

80. The source also affirms that the reason for the arrest and detention is related to the right to freedom of expression that Mr. Kartas enjoyed in his work. The Government stated in its reply that Mr. Kartas was in possession of a flight-tracking device, in violation of the Telecommunications Code, and that that was why he was under the suspicion of the National Terrorist Crimes Investigation Unit.

81. The Working Group notes that Tunisia shares a common border with Libya, which constitutes the geographical centre of the Security Council sanctions, and that the 2018 report of the Panel of Experts on Libya identified certain violations of the sanctions on Tunisian territory (S/2018/812 and Corr.1). Mr. Kartas informed the authorities that the device was intended for his work. The United Nations Resident Coordinator reiterated this position in the note verbale of 10 April 2019 addressed to the Government, explaining that Mr. Kartas was in possession of equipment that could be used in the performance of his official duties. This equipment is clearly a main reason why the authorities deprived Mr. Kartas of his liberty. Again, the Working Group considers that this issue is related to the immunities of United Nations experts and that this device, which is necessary for his mission, was also covered by the same immunity. The Working Group further recalls that it has already rejected the Government's argument that it was unaware of the immunities and

<sup>1</sup> Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 11.

<sup>2</sup> Opinion No. 31/2016, paras. 113–114.

<sup>3</sup> Opinions No. 36/2017, paras. 79–87; No. 5/2018, para. 36; and 9/2018, paras. 37–39. See also *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62.

privileges enjoyed by Mr. Kartas. In these circumstances, the Working Group is not in a position to reach a conclusion on the existence of a category II violation.

### *Category III*

82. The Working Group is alarmed by the blatant disregard for the privileges and immunities that are in place to protect those performing essential work for the United Nations. Such a violation of international law undermines the ability of the Organization, through its various organs and agents, to carry out the mandate established in the Charter and the decisions taken by its organs, in particular the Security Council, as in the present case. This situation is particularly serious and deserves to be highlighted.

83. Under category III, the source alleges: (a) that the charges against Mr. Kartas were not communicated to him promptly; (b) that he was not notified in a language that he could understand; (c) that he was not given access to a lawyer during the first three days of his detention and that such access has been unduly restricted thereafter; and (d) that the Government failed to notify the United Nations of the arrest and detention of Mr. Kartas, in violation of international law, in particular paragraph 3 (b) of General Assembly resolution 52/126. The source further alleges that the investigating judge lacked independence when he stated that the case could only be dealt with after the elections.

84. With regard to the assistance of a lawyer, the Government asserted that Mr. Kartas could not benefit from this right during the 48 hours following the arrest warrant, according to national law, and admitted that he had not been provided with a lawyer at the first hearing, although it stated that Mr. Kartas had not requested one. The Working Group recalls that it is well established in law that a suspect or accused person has the right to be represented by a lawyer at all stages of the proceedings, from the moment of arrest and as soon as possible.<sup>4</sup> Not only were the charges against him not disclosed to Mr. Kartas until 11 April 2019, but he was also not allowed to speak to his lawyer for the first three days of his detention, even though he was interviewed. The Government further stated in its response that Mr. Kartas had not requested to get in contact with a lawyer but provided no evidence that the authorities had informed Mr. Kartas of his right to be assisted by a lawyer. The Working Group takes note of the legal expertise of Mr. Kartas, as well as the statements of his lawyer and a witness to his arrest. Consequently, the Working Group does not find the Government's response credible and concludes that Mr. Kartas' right to a fair trial was violated.

85. The Working Group notes that the source asserts that notification of the charges was given in Arabic, a language that Mr. Kartas does not understand. However, in a statement by the witness in support of the source's arguments, it is stated that Mr. Kartas spoke in Tunisian Arabic with the persons who arrested him. The Working Group takes note of the contradiction in the statement of the source and therefore does not draw a conclusion on this matter.

86. Lastly, the source alleges that the investigating judge stated that the case could only be heard after the elections. However, the judicial implications and the relevance to or impact on the court's independence in the handling of the case were not brought to the Working Group's knowledge. Therefore, the Working Group is not in a position to determine whether this is a factor that demonstrates a lack of judicial independence. However, it considers that this position has led to an unjustified delay in the proceedings, in violation of the right to be tried without undue delay under article 14 of the Covenant.

87. The Working Group concludes that the violations of the right to a fair trial under article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant are of such gravity as to give the arrest and detention an arbitrary character under category III.

<sup>4</sup> Human Rights Committee general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 34–37. See European Court of Human Rights, case of *Öneriyildiz v. Turkey*, application No. 36391/02, judgment of 27 November 2008.

### Disposition

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

The deprivation of liberty of Moncef Kartas, 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.

89. The Working Group requests the Government of Tunisia to take the steps necessary to remedy the situation of Mr. Kartas 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.

90. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Mr. Kartas an enforceable right to compensation and other reparations, in accordance with international law.

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

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

### Follow-up procedure

93. 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 compensation or other reparations have been made to Mr. Kartas;
- (b) Whether an investigation has been conducted into the violation of Mr. Kartas' rights and, if so, the outcome of the investigation;
- (c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Tunisia with its international obligations in line with the present opinion;
- (d) Whether any other action has been taken to implement the present opinion.

94. 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.

95. 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 implementing its recommendations, as well as any failure to take action.

96. 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.<sup>5</sup>

*[Adopted on 1 May 2020]*

---

<sup>5</sup> Human Rights Council resolution 42/22, paras. 3 and 7.