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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its 101st session, 11–15 November 2024

Opinion No. 49/2024 concerning Ihsane el Kadi (Algeria)*

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.
2. In accordance with its methods of work,¹ on 17 July 2024 the Working Group transmitted to the Government of Algeria a communication concerning Ihsane el Kadi. The Government has not replied to the communication. 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).

* Mumba Malila did not participate in the discussion of the case.

¹ [A/HRC/36/38](#).



1. Submissions

(a) Communication from the source

4. Ihsane el Kadi is an Algerian journalist born on 27 April 1959. He is the founder and director of Radio M and the online newspaper *Maghreb émergent*, two independent media outlets known for their critical reporting on the Government and the army and considered to be among the last operating freely and independently in Algeria.

5. Mr. El Kadi is reportedly known for his outspoken criticism of the government. He was arrested and detained just a few days after publicly criticizing the Government.

(i) Arrest and detention

6. The source reports that, on 17 December 2022, Mr. El Kadi published an article in the newspaper *Maghreb émergent* speculating about the army's role in the upcoming presidential election and its support for a second term for President Abdelmadjid Tebboune. On 23 December 2022, he posted a statement on a social network, in which he expressed doubts about the President's announcement concerning the recovery of US\$20 billion in an embezzlement case. On the same day, Mr. El Kadi mentioned the likelihood of a second term for the President during a programme on Radio M.

7. Mr. El Kadi was investigated, under articles 95 and 95 bis of the Criminal Code, for receiving illegal funds with the aim of undermining State security. Article 95 bis of the Criminal Code establishes penalties of 5 to 7 years' imprisonment and a fine of between 500,000 and 700,000 dinars (DA) for "anyone who receives funds, a donation or an advantage, by any means, from a State, institution or any other public or private body or any legal or natural person, inside or outside the country, in order to perform or incite acts that may undermine State security".

8. On the night of 24 December 2022, Mr. El Kadi was arrested by security personnel at his home in Algiers. He was not shown an arrest warrant. He was handcuffed, without being informed of the reasons for his arrest. Nor was Mr. El Kadi informed of the charges against him at the time he was placed in detention. Furthermore, his lawyers were not able to see him or gain access to his file. Mr. El Kadi's detention was extended on 25 and 27 December 2022, without Mr. El Kadi being brought before the prosecutor.

9. On 25 December 2022, security officers searched the premises of Radio M and *Maghreb émergent* and placed them under seal. All the equipment was confiscated by the security forces.

10. On 29 December 2022, Mr. El Kadi was brought before the prosecutor and transferred to the El Harrach prison in Algiers, on the orders of the investigating judge at the Sidi M'Hamed court. Mr. El Kadi was informed of the reasons for his arrest and the charges against him for the first time when he appeared before the investigating judge. He also had access to a lawyer for the first time since his arrest.

11. After being transferred to the El Harrach prison, Mr. El Kadi was able to contact his family. The source notes that, although Mr. El Kadi was able to receive visits from his family every two weeks, some family members had their passports confiscated by personnel of the Directorate General of Internal Security, who wished to put pressure on and silence them.

12. On 15 January 2023, the indictment division of the Algiers court rejected Mr. El Kadi's appeal against the decision to place him in pretrial detention. Mr. El Kadi and his lawyers were not present, as they had not been informed of the hearing in time. Despite their absence, the court confirmed Mr. El Kadi's continued detention.

13. On 9 February 2023, while still in detention, Mr. El Kadi appeared before the investigating judge at a hearing on the substance of the case, without his lawyers present. The source explains that Mr. El Kadi and his lawyers had agreed that Mr. El Kadi would remain silent and that his lawyers would boycott the proceedings against him, in protest at the alleged violations of his right to a fair trial.

14. On 10 February 2023, Mr. El Kadi's lawyers issued a statement in which they explained their decision, stressing that the proceedings against Mr. El Kadi were contrary to

his right to a defence and to article 41 of the Constitution, which states that everyone is presumed innocent until their guilt has been established by a court after a fair trial.

15. On 15 February 2023, Mr. El Kadi again appeared before the investigating judge. Once again, he and his lawyers refused to participate in the proceedings.

16. On 23 February 2023, Mr. El Kadi appeared at a hearing during which the court dismissed the charges of publication of material likely to harm the national interest and unauthorized fundraising. The charges under articles 95 and 95 bis of the Criminal Code and article 107 of Act No. 14-04 of 24 February 2014 on audiovisual activity were confirmed. According to the source, these accusations are fabricated and reveal the political motivation behind Mr. El Kadi's arrest. The source explains that the media outlets run by Mr. El Kadi have indeed received foreign funding, but always in a public and transparent way. In November 2014, Radio M was chosen to benefit from a European development programme, which was publicly and transparently reported by *Maghreb émergent* on 10 November 2014. The source adds that projects and programmes in Algeria frequently benefit from foreign financing, particularly since the signing of the association agreement between the European Union and Algeria. The source cites several other projects, including a training programme for the judiciary, which have benefited from such funding and have not been the target of accusations such as those against Mr. El Kadi. According to the source, this differential treatment demonstrates that the accusations against Mr. El Kadi are fabricated and that he is being targeted in retaliation for his activities as a journalist.

17. On 2 April 2023, the Algiers court sentenced Mr. El Kadi to 5 years' imprisonment, with 2 years suspended, and a fine of DA 700,000, for receiving foreign funding for his company. The court also ordered the dissolution of Interface Médias, the parent company of Radio M and *Maghreb émergent*, and the confiscation of its assets. In addition, the company was fined DA 10 million. Mr El Kadi appealed his conviction.

18. On 18 June 2023, the Court of Appeal increased Mr. El Kadi's sentence to 7 years' imprisonment, with 2 years suspended. According to the source, the increase in Mr. El Kadi's sentence shocked the public both in Algeria and abroad. On 12 October 2023, the Supreme Court dismissed Mr. El Kadi's appeal on points of law, thus definitively upholding his conviction.

(ii) *Legal analysis*

19. The source argues that Mr. El Kadi's detention is arbitrary under categories II, III and V of the methods of work of the Working Group.

a. *Category II*

20. The source claims that Mr. El Kadi's detention is arbitrary under category II as it results from his exercise of the right to freedom of expression, as guaranteed by article 19 of the Covenant.

21. The source recalls that Mr. El Kadi is the founder and director of Radio M and the online newspaper *Maghreb émergent*, two independent media outlets known for their critical reporting on the Government and the army and considered to be among the last operating freely and independently in Algeria. In addition, the source points out that Mr. El Kadi is himself known for his public criticism of the government.

22. As a journalist, Mr. El Kadi had allegedly been harassed by the authorities on several occasions, through what the source describes as abusive proceedings brought against him in response to his political analyses and criticism of the Government. According to the source, the link between his arrest and the exercise of his right to freedom of expression is confirmed in particular by the search of the premises of Mr. El Kadi's two media outlets, on 25 December 2022. After seizing all the computers and storage devices, the police reportedly closed and sealed the premises, preventing the two media outlets from operating and causing around 30 employees to lose their jobs. In addition, since 15 January 2023, the digital platforms of both media outlets have been inaccessible in certain parts of the country and through several Internet service providers.

23. The source points out that Mr. El Kadi's arrest came a few days after he publicly criticized the authorities in an article published on 17 December 2022 in *Maghreb émergent*. On 23 December 2022, Mr. El Kadi also expressed doubts about the President's announcement that several billion dollars had been recovered in an embezzlement case.

24. The source believes that Mr. El Kadi was targeted because of his professional activities and the positions he expressed, in particular, in his article of 17 December 2022. In the source's view, Mr. El Kadi's arrest constitutes the culmination of years of judicial harassment aimed at silencing him and the last two Algerian media outlets providing free debate and criticism.

25. Indeed, the source points out that, in the three years prior to his arrest, Mr. El Kadi was targeted several times by the authorities. In June 2021, he was detained for 30 hours, accused of, among other things, disseminating false information posing a risk to national unity, disrupting elections and revisiting a national tragedy, namely, the civil war of 1992 to 2002. In June 2022, following a complaint lodged by the Minister of Communications in response to an article posted on the Radio M blog by Mr. El Kadi, the latter was sentenced to 6 months in prison and fined DA 50,000 dinars, on the basis of the same charges. The sentence was criticized as being contrary to national law, which prohibits prison sentences for press offences. The source notes that Mr. El Kadi remained at liberty pending hearing of his appeal, which was postponed several times. On 25 December 2022, the Court of Appeal upheld Mr. El Kadi's conviction, but the order for his detention had not yet been issued. Furthermore, in November 2022, Mr. El Kadi was summoned twice in one week, once by gendarmes and once by intelligence officers. He was questioned about an inspection of Radio M a year earlier, the operations of Interface Médias, the editorial policies of Radio M and his criticism of the Government in his broadcasts. When Mr. El Kadi was questioned for the second time, the procedure was akin to an information-gathering exercise on media content and took place outside any legal framework.

26. According to the source, this judicial harassment demonstrates that Mr. El Kadi is being targeted because of his activities as a journalist, in particular his independent political opinions and reporting. The source believes that Mr. El Kadi's arrest on 24 December 2022 is a continuation of the judicial harassment to which he has been subjected.

b. Category III

27. The source also asserts that Mr. El Kadi's detention is arbitrary under category III as his right to a fair trial was not respected.

28. The source argues that the authorities violated the principle of equality of arms since, as they indicated in their petition to the Supreme Court, Mr. El Kadi's lawyers were not able to consult the expert technical reports concerning the equipment searched at the Interface Médias premises on 25 December 2022. Furthermore, neither the trial court nor the court of appeal considered exculpatory evidence.

29. In addition, the source claims that Mr. El Kadi's lawyers were not given the opportunity to present their defence, since the court did not inform them of the change of hearing date. In fact, the hearing of the appeal against the order for Mr. El Kadi's detention, initially scheduled for 18 January 2023, was brought forward to 15 January 2023 and was held in the absence of his lawyers. According to the source, the lawyers had not been informed of this change of date, in breach of national law, which provides that lawyers must be notified in writing of the date on which the court will consider an appeal. The lack of notification led the defence to request the recusal of the judges of the indictment division on 23 February 2023, but this request was rejected by the President of the Algiers court on 28 February 2023.

30. On 15 January 2023, Mr. El Kadi's lawyers condemned the fact that the 20 days provided for in article 179 of the Code of Criminal Procedure for the hearing of the appeal before the investigation division had been exceeded. They added that articles 175 and 177 of the Code guarantee the right to defence and provide that every accused person has the right to a lawyer during the investigation phase.

31. The source claims that the authorities violated Mr. El Kadi's right to be informed of the reasons for his conviction, since the appeal judges failed to explain their decision to increase Mr. El Kadi's sentence to 7 years' imprisonment.

32. Furthermore, the source argues that Mr. El Kadi's right to be presumed innocent was violated insofar as, on 24 February 2023, one day after the hearing in his trial, the Algerian President declared on television that Mr. El Kadi was an informer who had betrayed the nation. The source notes that the President has made similar public statements in other cases involving journalists, disregarding their right to be presumed innocent. The source deplores the President's public remarks against Mr. El Kadi, made before the court had delivered its verdict. In addition, it is reported that, during the same television programme, the President confirmed that he was responsible for the closure of Radio M and *Maghreb émergent*, declaring that he had put an end to the illegal activities of a *khabardji*.²

33. Furthermore, the source maintains that Mr. El Kadi's right to be tried by an independent and impartial tribunal was not respected because the Algerian justice system is subject to interference by the executive. The source points out that, when it examined the fourth periodic report of Algeria, the Human Rights Committee expressed concern that the independence of the judiciary was not sufficiently guaranteed and that the executive played a significant role in the organization of the judicial branch.³ In the case at hand, the source claims that the President's public statements concerning Mr. El Kadi demonstrate interference by the executive. In the source's view, this interference is all the more worrying in view of Mr. El Kadi's critical stance towards the Government.

34. Finally, the source highlights Mr. El Kadi's fragile state of health, noting that he suffers from epilepsy, for which he requires medication without which he risks suffering seizures and hurting himself. According to the source, the lack of care provided to Mr. El Kadi is contrary to his right to a fair trial insofar as Mr. El Kadi's state of health is likely to have an effect on the exercise of his right to contribute to his defence.

35. The source therefore concludes that the authorities violated Mr. El Kadi's rights under article 14 of the Covenant.

c. Category V

36. The source asserts that Mr. El Kadi's arrest and detention are arbitrary under category V, since he was targeted for discriminatory reasons, in retaliation for his activities as a journalist. The source argues that Mr. El Kadi is being held on discriminatory grounds, namely, his political opinions and his affiliations with the two independent media outlets, Radio M and *Maghreb émergent*, known for their criticism of the Government.

37. The source points out that the journalistic environment in Algeria has deteriorated considerably in recent years. Independent journalistic productions and reports that oppose the Government's vision are subject to repression. According to the source, Mr. El Kadi's prolonged detention must be analyzed in this context of widespread repression of the media and of critical journalists.

38. The source concludes that Mr. El Kadi is being deprived of his liberty for discriminatory reasons, on account of his journalistic affiliations and his opinions, which is contrary to international law. The source therefore concludes that Mr. El Kadi's detention was arbitrary under category V.⁴

(b) Response from the Government

39. On 17 July 2024, the Working Group transmitted a communication concerning Mr. El Kadi to the Government, requesting it to provide detailed information about him by 16 September 2024 at the latest. Specifically, the Working Group requested the Government to clarify the legal provisions justifying his continued detention and their compatibility with the obligations of Algeria under international human rights law, in particular with the treaties

² An informant whose actions are comparable to an act of treason.

³ CCPR/C/DZA/CO/4, para. 39.

⁴ Opinion No. 83/2017, para. 87.

that the State has ratified. Moreover, the Working Group called upon the Government to ensure the physical and mental integrity of Mr. El Kadi.

40. The Working Group regrets that it did not receive a response from the Government and that the Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

2. Discussion

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

42. At the outset, the Working Group notes that Mr. El Kadi was released on 1 November 2024, following a presidential pardon. In accordance with paragraph 17 (a) of its methods of work, the Working Group reserves the right to render an opinion on whether the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. In the present case, Mr. El Kadi was the victim of serious violations of his rights. The Working Group therefore considers it important to render an opinion on his case.

43. In determining whether Mr. El Kadi's deprivation of liberty was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.⁵ In the present case, the Government has chosen not to challenge the allegations made by the source.

(a) Category I

44. Although the source did not allege violations under category I, the Working Group considers that several allegations raise concerns that are best dealt with under this category. Consequently, it is exercising its discretion to proceed with an analysis in relation to category I. The Working Group will examine first whether there have been violations under this category, which concerns deprivation of liberty without a legal basis.

45. The source has stated that Mr. El Kadi was arrested by security personnel and that no arrest warrant was shown to him, nor reasons given for his arrest. The Government has not responded to this allegation.

46. As the Working Group has stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case. This is typically done through an arrest warrant, an arrest order or equivalent document.⁶ Furthermore, article 9 (2) of the Covenant provides that anyone who is arrested must be informed, at the time of arrest, of the reasons for his or her arrest and must be promptly informed of any charges against him or her. Respect for these rights is essential for the other rights set out in article 9 of the Covenant, since all individuals must know the reasons for their arrest in order to challenge it effectively and must be brought before a court or judge in order to lodge an appeal.

47. According to the source's claims, which have not been contested by the Government, Mr. El Kadi was arrested without being shown an arrest warrant and without being informed of the reasons for his arrest. There is nothing to suggest that the case was one of *flagrante delicto*. Indeed, Mr. Kadi was arrested at his home. The Working Group therefore considers that the Government violated article 9 of the Universal Declaration of Human Rights, article 9 (1) and (2) of the Covenant and principles 2 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

⁵ [A/HRC/19/57](#), para. 68.

⁶ Human Rights Committee, general comment No. 35 (2014), para. 23; see also opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39. See also the Arab Charter on Human Rights, art. 14 (1).

48. The source alleges that, after his arrest on 24 December 2022, Mr. El Kadi did not appear before the investigating judge for the first time until 29 December 2022, that is, five days after his arrest. The Government has not responded to this allegation.

49. Article 9 (3) of the Covenant states that anyone arrested or detained on a criminal charge shall be brought promptly before a judge. The Human Rights Committee has observed that 48 hours is ordinarily sufficient to satisfy this obligation, and any longer delay must remain absolutely exceptional and be justified under the circumstances.⁷

50. The Government has provided no explanation to justify why Mr. El Kadi did not appear before the investigating judge until five days after his arrest. The Working Group therefore finds that the Government violated article 9 (3) of the Covenant.

51. According to the source, the investigating judge ordered Mr. El Kadi to be placed in pretrial detention. On 15 January 2023, the indictment division of the Algiers court rejected Mr. El Kadi's appeal against the decision to place him in pretrial detention.

52. In accordance with article 9 (3) of the Covenant, pretrial detention should be the exception rather than the norm, and should be ordered for the shortest time possible.⁸ It must, moreover, be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.⁹ The courts must examine whether alternatives to pretrial detention, such as release on bail, would render detention unnecessary.¹⁰ In determining whether the conditions governing pretrial detention have been met, the Working Group examines whether the national courts have taken into account the particular circumstances of the person concerned but does not check whether there are risks that would make pretrial detention necessary.¹¹

53. The Working Group notes that the Government has not explained why Mr. El Kadi's pretrial detention was necessary, nor how it was based on an assessment of his particular circumstances. The Working Group therefore finds a violation of article 9 (3) of the Covenant.

54. In view of the above findings, the Working Group considers Mr. El Kadi's detention to have had no legal basis, in violation of article 9 of the Covenant and articles 3 and 9 of the Universal Declaration of Human Rights. His detention was thus arbitrary under category I.

(b) Category II

55. According to the source, Mr. El Kadi's detention was arbitrary under category II as it resulted from his exercise of the right to freedom of expression, protected by article 19 of the Covenant. The Government has not responded to this allegation.

56. The Working Group recalls that arrest or detention is arbitrary if used to punish an individual for the legitimate exercise of the rights protected by the Covenant, including freedom of opinion and expression, as guaranteed by article 19. Furthermore, in accordance with article 19 (3) of the Covenant, two limitative areas of restrictions on the right to freedom of opinion and expression are permitted, which may relate either to respect of the rights or reputations of others or to the protection of national security or of public order (*ordre public*) or of public health or morals.

57. The Working Group notes that according to the source's uncontested submissions, Mr. El Kadi is known for his public criticism of the Government, notably as founder and Director of Radio M and *Maghreb émergent*. Moreover, according to the source, Mr. El Kadi had been harassed by the authorities on several occasions. His arrest came a few days after he publicly criticized the authorities. Noting the absence of any response from the

⁷ Human Rights Committee, general comment No. 35 (2014), para. 33. See also opinion No. 67/2019, para. 64.

⁸ A/HRC/19/57, paras. 48–58; and opinions No. 5/2019, para. 26; No. 62/2019, paras. 27–29; and No. 64/2020, para. 58.

⁹ Human Rights Committee, general comment No. 35 (2014), para. 38.

¹⁰ See, for example, opinion No. 64/2020, para. 58.

¹¹ Opinions No. 46/2020, para. 62; No. 37/2021, para. 72; and No. 15/2022, para. 66.

Government and, moreover, the absence of any allegation that Mr. El Kadi has been accused of violent acts, the Working Group concludes that his detention resulted from the exercise of his right to freedom of expression, in violation of article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. Mr. El Kadi's arrest and detention were thus arbitrary under category II.

(c) **Category III**

58. As the Working Group has found that Mr. El Kadi's detention was arbitrary under category II, it emphasizes that no trial should have taken place. However, according to the information provided by the source, Mr. El Kadi was found guilty and sentenced to 5 years' imprisonment, a sentence that was increased on 18 June 2023 by the court of appeal to 7 years' imprisonment, with 2 years suspended.

59. The source also asserts that Mr. El Kadi's detention was arbitrary under category III as it was contrary to article 14 of the Covenant. The Government has not responded to this allegation.

60. The source argues that Mr. El Kadi did not have access to a lawyer for the first time until five days after his arrest, in violation of article 14 (3) (b) and (d) of the Covenant. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their own choosing, as guaranteed by article 14 (3) (b) and (d) of the Covenant. This right applies at all times during their detention, including immediately after the moment of apprehension, and access to counsel must be granted promptly.¹² Any legislation that purports to remove the right to counsel is inherently contrary to international human rights standards.¹³

61. The Working Group notes that Mr. El Kadi had access to a lawyer for the first time after his arrest on 29 December 2022, when he appeared before the investigating judge at the Sidi M'Hamed court. Noting the absence of any explanation from the Government concerning the delay in granting access to a lawyer, the Working Group considers that the authorities violated Mr. El Kadi's right under article 14 (3) (b) and (d) of the Covenant to be assisted by counsel of his own choosing.

62. According to the source, the authorities violated the principle of equality of arms, since Mr. El Kadi's lawyers were not able to consult the expert technical reports concerning the equipment searched at the Interface Médias premises. The source adds that Mr. El Kadi's lawyers did not have the opportunity to present their defence, given that the court failed to inform them that the hearing of the appeal against the decision to detain Mr. El Kadi had been rescheduled. The source also maintains that Mr. El Kadi was denied his right to an independent and impartial tribunal and to the presumption of innocence because Algerian justice is subject to interference by the executive branch, and that the President declared on television that Mr. El Kadi was an informer who had betrayed the nation and implied that Radio M and *Maghreb émergent* were involved in illegal activity.

63. Noting the absence of a response from the Government, the Working Group considers the facts reported by the source in the present case to be sufficient to demonstrate breaches of the principle of equality of arms, of Mr. El Kadi's right to an independent and impartial tribunal and of the right to the presumption of innocence, in violation of article 14 of the Covenant and article 10 of the Universal Declaration of Human Rights.

64. The Working Group concludes that the violations of Mr. El Kadi's right to a fair trial are of such gravity as to render his deprivation of liberty arbitrary under category III.

¹² United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court ([A/HRC/30/37](#), annex), principle 9 and guideline 8; [A/HRC/45/16](#), para. 51; and Human Rights Committee, general comment No. 35 (2014), para. 35.

¹³ Opinion No. 40/2021, para. 84.

(d) Category V

65. According to the source, Mr. El Kadi's arrest and detention were arbitrary under category V, since he, as a journalist, was detained for discriminatory reasons, namely, his political opinions and his affiliation with the two independent media outlets, Radio M and *Maghreb émergent*, known for their criticism of the Government. According to the source, Mr. El Kadi's prolonged detention must be analyzed in this context of widespread repression of the media and of journalists critical of the Government.

66. The Working Group notes that, according to the source's uncontested submissions, Mr. El Kadi had allegedly been harassed by the authorities on several occasions, in particular through abusive proceedings brought against him in response to his political analyses and criticism of the Government. Furthermore, Radio M and *Maghreb émergent* were considered to be the last media outlets operating freely and independently in Algeria and were known for their critical reporting on the Government and the army. More generally, the source asserts, without this being contested by the Government, that independent journalistic productions and reports that oppose the Government's vision are subject to repression. In these circumstances, and noting the pattern of imprisonment of opponents of the Government on account of their political opinions in Algeria,¹⁴ the Working Group considers that Mr. El Kadi was detained on a discriminatory basis, in particular on account of his political opinions.

67. The Working Group concludes that Mr. El Kadi was deprived of his liberty on discriminatory grounds, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. His detention was thus arbitrary under category V.

3. Disposition

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

The deprivation of liberty of Ihsane el Kadi, being in contravention of articles 2, 3, 7, 9 and 10 of the Universal Declaration of Human Rights and articles 2, 9, 14, 19 and 26 of the International Covenant on Civil and Political Rights, was arbitrary and falls within categories I, II, III and V.

69. The Working Group requests the Government of Algeria to take the steps necessary to remedy the situation of Mr. El Kadi 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 Covenant.

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

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

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

4. Follow-up procedure

73. 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. El Kadi;
- (b) Whether an investigation has been conducted into the violation of Mr. El Kadi's rights and, if so, the outcome of the investigation;

¹⁴ Opinions No. 45/2022, para. 97; No. 53/2023, paras. 65 and 66; No. 58/2023, para. 75; and No. 29/2024, paras. 100 and 101. See also [A/HRC/56/50/Add.2](#), para. 83.

(c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Algeria with its international obligations in line with the present opinion;

(d) Whether any other action has been taken to implement the present opinion.

74. 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.

75. 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 of any failure to take action.

76. 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.¹⁵

[Adopted on 11 November 2024]

¹⁵ Human Rights Council resolution 51/8, paras. 6 and 9.