

PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA

v.

AHMED MANSERI

October 2022

AMICUS CURIAE
BRIEF BY
INTERNATIONAL SENIOR LAWYERS PROJECT

1. Defendant, Ahmed Manseri, has been charged with having posted certain messages in support of an opposition movement on social media and thereby threaten public order and security in alleged violation of Sections 79, 100 and 196 bis of Algeria's penal code. This Amicus Curiae brief will not discuss the facts, but rather will offer the Court the reasons why the prosecution and threatened conviction of Mr. Manseri are contrary to Algeria's longstanding international treaty obligations to protect freedom of speech and freedom of assembly, and abide by the rule of law.

2. This brief is respectfully submitted by International Senior Lawyers Project, an independent, not-for-profit, non-governmental organization of 2000 experienced lawyers devoted to advocacy on a pro bono basis for the rule of law, human rights, and just, accountable, and inclusive development.

3. In 1989 Algeria signed and ratified the International Covenant of Civil and Political Rights (ICCPR), which, among other things, protects the right of all individuals to full enjoy and realize their freedom of expression , and, in particular, the right of citizens to criticize government. The paramount purpose of Article 19 of the ICCPR is to protect and promote political expression. It is the sine qua non of democracy.

4. Article 19(1) of the ICCPR insures that "Everyone shall have the right to hold opinions without interference." Article 19(2) guarantees that "Everyone shall have the right to freedom of expression; this right shall involve freedom to...impart information and ideas of all kinds...." Article 19(3) provides that the exercise of these rights "may...be subject to certain restrictions, but these shall only be such as provided by law and are necessary...for the protection

of ...public order..." Algeria accepted that freedom was so fundamental that any restrictions must be "provided by law and [] necessary [f]or the protection of national security or of public order (ordre public), or of public health or morals."¹ Any other restrictions would be against the ICCPR. According to the Human Rights Committee, who monitors the member States' compliance with the ICCPR,² any restrictions to the freedom of expression "may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict test of necessity and proportionality."³

5. Significantly, the European Convention on Human Rights (ECHR), Article 10 incorporates the same protections for freedom of expression as ICCPR Article 19. Article 10(1) guarantees that "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority..." Article 10(2) of the ECHR parallels ICCPR Article 19(3) by making "the exercise of those freedoms...subject to such...restrictions...as are prescribed by law and are necessary in a democratic society...for the prevention of disorder...for the protection of the rights of others..."

6. The prestigious European Court of Human Rights has, in over 1000 judgments, developed Article 10 case law which is highly protective of political criticism. Those cases represent broadly recognized statements of international norms, and will be cited herein.

¹ CITE.

² In signing the Optional Protocol to the International Covenant on Civil and Political Rights in 1989, Algeria recognized that body's authority to monitor the proper implementation of the ICCPR.

³ ICCPR General Comment No. 34.

7. The protections in Article 10(1) represent principles; the possible restrictions in Article 10(2), however, are exceptions which must be strictly and narrowly construed.⁴ The requirement, "prescribed by law," means a restriction must be clear, precise and accessible, so that a citizen can regulate his conduct to foresee the consequences that a given action may entail. Vague or imprecise laws tend to chill legitimate expression and violate Article 10.⁵ A restriction is "necessary" only when it (a) corresponds to a "pressing social need," which must be "convincingly established," (b) is proportionate and, (c) is the least restrictive means.⁶

8. The provisions of the Cybercrime Law and the Constitution which authorize punishment of non-violent expression will be analyzed in light of these norms.

ALGERIA'S ANTI-TERRORISM STATUTE USED TO PROSECUTE MR. MANSERI IS IMPERMISSIBLY VAGUE

9. Pursuant to ICCPR Article 19(3), a norm imposing any restrictions on the freedom of speech must be specifically set forth under the law, and be sufficiently precise to allow a person to conduct himself or herself accordingly and no unrestricted discretionary interpretation may be left out.⁷ The African Convention imposes a related standard, as Article 9(2) protects an individual's broad "right to express and disseminate his opinions *within the law*."⁸ Scholars of international law have observed that: "To be legitimate, a rule must communicate what conduct is permitted and what conduct is out

⁴ *Sunday Times v. UK*, (1979) 2 EHRR 245.

⁵ *Silver v. UK*, (1983) 5 EHRR 347.

⁶ *Handyside v. UK*, (1976) 1 EHRR 737.

⁷ *Korneenko et al v. Belarus*, No. Communication No. 1553/2007 (Human Rights Committee of the International Covenant on Civil and Political Rights October 31, 2006); General Comment No. 34, 6–7.

⁸ Emphasis added.

of bounds.”⁹ If a restraint on speech either is not expressly provided by law or is so vague that individuals are not on notice as to what speech is subject to the law, that restraint poses substantial risks to be enforced selectively, pretextually, or abusively by the state.

10. Section Article 196 bis of Algeria’s Penal Code, which criminalizes the dissemination or publication of “false or slanderous information or news likely to undermine public security or order” does not meet the standard under ICCPR Article 19(3). The lack of a definition of “false information” provides the authorities with disproportionate and discretionary power allowing them to suppress critical content and controversial information.

11. The terms “false” and “slanderous” are purely subjective and arbitrary, can have very broad interpretations. Their enforcement is even more unclear when the test is whether the information is “likely to undermine public security or order”, as it does not even require that any risk have materialized. In other words, none of the tests under the law is capable of an objective, reasonable interpretation.

TO IMPRISON OR FINE A CRITIC FOR ONLINE NON-VIOLENT EXPRESSION
IS DISPROPORTIONATE

12. This prosecution is in direct violation of Manseri’s freedom of expression because it interferes with his right to impart information and ideas, and Mr. Manseri’s nonviolent political speech must be protected under Art. 19 of the ICCPR. Indeed, Mr. Manseri did nothing but exercise his right of nonviolent political speech as he is being prosecuted because: (1) he

⁹ Thomas M. Franck, *The Power of Legitimacy Among Nations* 57 (1990).

admitted to owning the phone and the account used to post posts and share with friends, (2) he shared a post online of the map of Algeria divided into three parts demonstrating the Rachad movement, and (3) he shared a video that showed people repeating mottos that said “A civil state not a military state, terrorist intelligence, down with the military mafia, they must all leave, free democratic Algeria.”

14. Moreover, ICCPR Article 19 and ECHR Article 10 require that any restriction on freedom of expression must be "necessary in a democratic society." Restrictions to the right of freedom of expression must be necessary for a legitimate purpose and they must conform to the principle of proportionality—they must be appropriate to achieve their protective purpose, they must be the least intrusive possible, and they must be proportionate to the interest that is being protected. Here, neither of these standards is met.

11. The ECtHR has ruled on several occasions that imprisoning or fining a critic for online non-violent expression is always disproportionate. In Stern Taulats and Roura Capellera v. Spain,¹⁰ anti-monarchists set fire to a large photograph of the royal couple and were convicted of insult to the crown. If defendants failed to pay a fine, they would be imprisoned. The ECtHR reasoned that setting fire to the photograph had been part of a political critique of the institution of monarchy in general, and in particular of the Kingdom of Spain, and went no further than the use of a certain permissible degree of provocation in order to communicate their message. Further, the ECtHR stated that the disputed act could not reasonably be construed as incitement to hatred or violence nor could it be considered as constituting hate speech. Moreover, the criminal penalty imposed on the applicants – a prison sentence, to be executed in the event of failure to pay the

¹⁰ Judgement of 13 March 2018.

fine – amounted to an interference with freedom of expression which had been neither proportionate to the legitimate aim pursued nor necessary in a democratic society.

10. In Otegi Mondragon v. Spain¹¹ an activist denounced the King of Spain at a press conference, as "the person in command of torturers, who defends torture and imposes his monarchic regime on our people through torture and violence." The activist was imprisoned for serious insult to the King. The ECtHR found that although provocative, the language did not incite violence and did not amount to hate speech. The sanction was disproportionate and violated Article 10.

11. In Cumpana and Mazare v. Romania,¹² the ECtHR held that to imprison journalists for publishing insults against public officials was disproportionate, not necessary in a democratic society, and thus violated Article 10. Imposing criminal sanctions creates a chilling effect. The Court notes that it must "exercise the utmost caution where the measures taken or sanctions imposed by the national authorities are such as to dissuade the press from taking part in the discussion of matters of legitimate public concern."

12. In Renaud v. France,¹³ a critic posted on his website denunciations of the mayor, compared her to a dictator, claimed she encouraged delinquency and insinuated she was corrupt, cynical, schizophrenic and a liar. The French court convicted the critic of criminal defamation and imposed a fine and civil damages. The ECtHR found a violation of Article 10, notwithstanding the controversial language. A public official must tolerate such criticism as part

¹¹ Judgement of 15 March 2011.

¹² 41 E.H.R.R. 14 (2004); Cf. Smajić v. Bosnia and Herzegovina, Judgement of 16 January 2018.

¹³ Judgement of 25 February 2010. See also Lingens v. Austria, Judgement of 8 July 1986.

of public debate which is essential in a democracy. The critic's conviction and fining did not meet any social need, and could engender a chilling effect on public debates.

13. In sum, for the ECtHR, imprisoning or fining defendants who express non-violent speech, particularly if it is political, violates freedom of expression guaranteed under ECHR Article 10.

14. By contrast, the provisions in Algeria's penal Code provisions used to pursue Mr. Manseri for doing nothing but express his opinions, namely Articles 79, 100 and 196 bis, impose imprisonment to punish defendants who publish precisely non-violent speech online, and are by definition unlawful limitations of Mr. Manseri's right to free expression.

15. We submit that the Court should weigh those provisions against both (1) the guarantee of freedom of expression which Algeria made in ratifying Article 19 of the ICCPR, an international treaty and (2) international norms which protect freedom of expression found in the Article 10 case law of the ECtHR.

16. When politicians deploy criminal actions against their critics, ostensibly to vindicate their honor, dignity and reputation or to preserve order, a more realistic view holds that their purpose and certainly their effect is to intimidate and silence their critics. Such actions raise the stakes against the prospect of future critical coverage and commentary. What suffers is the free flow of information that is vital to vigorous political discourse. If political expression is to be protected effectively, the rules governing political litigation against critics are critically important.

**MR. MANSERI'S PROSECUTION IS AN IMPERMISSIBLE INFRINGEMENT
ON HIS FREEDOM OF ASSEMBLY**

17. Mr. Manseri is being prosecuted because in one Mr. Manseri's posts, there was a call to assemble and participate in allegedly "unauthorized protests".

18. Under Articles 21 and 22 of the ICCPR, Algeria agreed to protect and promote everyone's "right to freedom of association with others" and that such rights suffered no restrictions other than those "which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others." The freedom of assembly is also protected under Article 11 of the ECHR, which also does not allow any restrictions unless prescribed by law and "necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others."

19. The Human Rights Committee has stated that the freedom of assembly is a fundamental human right that is indispensable for the public expression of a person's views and opinions and essential in a democratic society. This can only be restricted in conformity with the law and if it is necessary in a democratic society, "in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others."¹⁴ When a state restricts a person's right to freedom of assembly to protect these interests, it should seek to facilitate the individual's right rather than to favor unnecessary or

¹⁴ Murat Telibekov v. Kazakhstan, No. 2687/2015 (Human Rights Committee of the International Covenant on Civil and Political Rights June 15, 2020).

disproportionate limitations on it.¹⁵ It is the state's obligation to justify the restriction imposed and to prove that it is not a disproportionate obstacle to the exercise of the right.¹⁶

20. The freedom of peaceful assembly goes hand in hand with the freedom of expression,¹⁷ as its main aim is to allow individuals to express their personal opinions by securing a forum for public debate and the open expression of protest.¹⁸

21. According to its accusers, Mr. Manseri's posts "involved direct incitement and calling people to participate in unauthorized protests and reactivate the unauthorized popular Hirak protests [...] these posts are directly inciting to assemble and protesting." In other words, in his accusers' own words, those posts solely advocated peaceful protests and there is no suggestion that any of Mr. Manseri's posts were to engage in violence. As such, they did not and could not constitute a threat to national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.

22. In those posts, Mr. Manseri was exercising his fundamental human right to organize peaceful gatherings in public locations, and no legal or factual grounds exist to impose any restrictions, let alone to criminally prosecute him.

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¹⁵ Yan Melnikov v. Belarus, No. CCPR/C/120/D/2147/2012 (Human Rights Committee of the International Covenant on Civil and Political Rights July 14, 2017).

¹⁶ Anatoly Poplavny and Leonid Sudalenko v. Belarus, No. CCPR/C/118/D/2139/2012 (Human Rights Committee of the International Covenant on Civil and Political Rights November 24, 2016).

¹⁷ Freedom and Democracy Party (Özdep) v. Turkey, No. 23885/94 (European Court of Human Rights December 8, 1999).

¹⁸ Ezélin v. France, No. 11800/85 (European Court of Human Rights April 26, 1991); Éva Molnár v. Hungary, No. 10346/05 (European Court of Human Rights October 7, 2008).

Respectfully submitted,

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