

Algeria

Judges and prosecutors do not enjoy security of tenure and can be transferred without their consent by a decision of the Minister of Justice. The independence of the judiciary is severely undermined by the constant interference of executive branch officials with the work of the judges. During 1999, the power of the courts to investigate and punish serious human rights violations was further restricted by President Bouteflika's decision to grant a broad amnesty to Islamist militants and the lack of political will to investigate members of the security forces allegedly involved in serious human rights abuses.

The Republic of Algeria gained independence from France on 5 July 1962. The Constitution of 1976 was amended a number of times. In 1989 an amended constitution was put to the popular vote in a referendum and approved. The 1989 Constitution has also been amended on a number of occasions, the latest being in 1996 through a referendum which was contested on the basis of alleged irregularities in the process. The 1996 amendments include the creation of a second chamber in parliament and the extension of presidential powers.

The Constitution does not establish clearly the principle of the division of powers among the branches of government. Algeria's constitutional system grants substantial powers to the President of the Republic at the expense of diminished powers for the other branches of government. The army has traditionally played a key role in the country's political, social and economic life although the Constitution confines its role to defence matters (Article 25). The President serves a five-year term which is immediately renewable only once.

Legislative power is vested in a bicameral parliament composed of the National Popular Assembly and the National Council (Conseil de la Nation). Members of the National Assembly are elected through general elections and serve a five-year term whereas the members of the National Council are appointed one third by the President of the Republic and the other two thirds are elected indirectly by the local assemblies and authorities, and serve for a six-year term. The latest parliamentary elections were held in 1997. In the same year there were provincial and municipal elections.

Under the Constitution, Islam is the official state religion. The President has the authority to rule by decree in special circumstances (Article 124). The President must subsequently submit to the parliament for approval the decrees issued while the parliament was not in session.

Towards the end of 1998, President Liamine Zeroual, who was elected in 1995 for a five-year term, announced that he would be standing down from office before the end of his term and called for earlier presidential elections, which were initially scheduled for February 1999 but later postponed until 15 April 1999. The elections held on that date resulted in the triumph of Mr. Abdelaziz Bouteflika, a former Minister of Foreign Affairs, candidate of the ruling National Democratic Rally (Rassemblement National Democratique - RND) and the National Liberation Front. He obtained 73.8% of all cast ballots, although the turnout to the polls was said not to be higher than 50% of all voters. Mr. Bouteflika's triumph was foreshadowed by the withdrawal, some days before the date of the election, of the other six candidates alleging serious irregularities and fraud in the electoral process. President Bouteflika is believed to have enjoyed, throughout the electoral campaign and afterwards, the support of the military and the economic and financial elite of Algeria.

The election of Mr. Bouteflika to the presidency in Algeria has had a profound impact on the general political and human rights situation in the country. President Bouteflika, who was sworn into office in May 1999, immediately declared his intention to start a national reconciliation process to put an end to the seven-year conflict in the country. On 6 June 1999, the Islamic Salvation Army (Armée Islamique du Salut- AIS), the military wing of the Islamic Salvation Front (Front Islamique de Salut - FIS), announced that it had decided to make permanent its unilateral cease-fire declared in 1997. This announcement was confirmed by President Bouteflika who offered Islamist fighters an amnesty but excluded from its benefit the AIS members. In September 1999, President Bouteflika called once again for a referendum to approve a civil harmony initiative that would grant a limited amnesty to those involved in the struggle against the government. The law was approved by a large majority of the people. In January 2000 President Bouteflika granted amnesty to all armed groups (see below).

Human Rights Background

Serious human rights violations continued to be committed in Algeria, although at a lower rate than in previous years. This decrease was attributable to the peace initiatives implemented by President Bouteflika and the permanent cease-fire announced by the AIS in the middle of the year. However, Algeria continued to be one of the most violent countries in the Middle East and North Africa regions.

Although there is no official figure, there were thousands of people killed as a result of the political violence. The Armed Islamic Group (Groupe Islamique Armé - GIA), which did not accept giving up the armed struggle, carried out indiscriminate killings of civilians, including children and women. Throughout the year this group carried out massacres, attacks with car-bombs in the cities, summary executions, and abduction of women who were first kept as sexual slaves and then executed. The AIS, the main armed opposition group, was also considered responsible for a series of attacks on the civilian population.

On 22 November 1999, FIS leader Abdelkader Hachani was murdered in Algiers, allegedly by groups opposed to the peace process in Algeria. The killing of Mr. Hachani, who was released in 1997 after spending more than five years in detention without trial, constituted a severe blow to the efforts to bring peace to the country.

Government security forces have also been considered responsible for many serious human rights violations, amongst them summary executions, torture and arbitrary detention with long periods of incommunicado detention, against suspected members of terrorist bands. Under the pretext of fighting terrorism, the security forces continued to organise, collaborate with or otherwise tolerate, the activities of self-defence paramilitary groups fighting against Islamic armed groups. Many of the violations of human rights against civilians were committed by either paramilitary groups alone or in complicity with security forces.

The number of people killed since violence started in 1992 was assessed as being approximately 100,000 by President Bouteflika himself shortly after his taking office in May 1999. By September 1999, the official Human Rights Observatory recognised that the authorities had received at least 4,300 complaints of forced disappearances which they had agreed to investigate. A similar figure has been given by certain human rights organisations.

Although the Constitution prohibits arbitrary arrest and detention, the security forces continued this practice throughout 1999. The Constitution provides that administrative detention for investigation should not exceed 48 hours, after which the detainee should be brought before a judge. The 1992 Anti-Terrorist Law extended the period of administrative detention up to 12 days. The same law, still in force, allows police to arrest people and search houses without a judicial order.

Following the AIS announcement in June 1999 that it would give up its armed struggle against the government and seek to reintegrate into the political system, the government, as a gesture of good will and reconciliation, released a significant number of AIS members (more than 2,000 during the whole year) who were held in detention, mostly without trial.

According to government sources these numbers did not include AIS fighters convicted of crimes involving blood shedding or rape. However, many more presumed AIS fighters or sympathisers remained in prison. Human rights organisations said that approximately half of the prison population, officially 34,000 inmates, is charged or convicted in connection with terrorism and crimes of subversion. Many of them have been charged with or convicted of vaguely worded crimes such as "belonging or participating in a terrorist organisation", acting to "advocate, encourage or finance" acts of terrorism, the "failure to report crimes to the authorities" or rendering "assistance to terrorist groups". Their trials were carried out by special courts, with anonymous judges, that did not comply with international standards on due process and did not permit them to prepare an adequate defence. These special courts were abolished in 1995.

The Bouteflika administration upheld the 1992 decree prescribing the state of emergency, which empowers authorities, inter alia, to ban public gatherings and demonstrations. The Constitution bans all political parties which are founded on a religious, linguistic, racial, sexual or regional basis (Article 42). President Bouteflika has refused to lift the ban on the Islamic Salvation Front.

Throughout 1999, international human rights organisations and activists were denied authorisation to visit the country. There is, nevertheless, some space for local human rights groups to work. In September 1999, the International Committee of the Red Cross resumed the supervision of prisons in Algiers.

Impunity and Amnesty Laws

Despite the progress made regarding peace and reconciliation, the Algerian authorities have made no progress in investigating and bringing the perpetrators of serious human rights violations to justice.

A draft bill for a law on civil harmony (*concorde civile*) was introduced in parliament by President Bouteflika and approved by a large majority of both chambers in July. The bill was then submitted for a referendum which was held on 16 September 1999. President Bouteflika's peace plans were backed by 98% of votes with a record turnout of 80% of the total electoral population.

The Civil Harmony Law granted immunity from prosecution to Islamist militants implicated in acts of terrorism and subversion excluding blood-shedding acts, AIS fighters being considered to be amongst the latter. The law also offered reduced punishments to those Islamist militants involved in crimes that caused the death or permanent injury of a person,

rape or the use of explosives in public places. Those responsible for crimes punishable with the death penalty would instead be punished with a maximum of 20 years in prison. The conditions to benefit from the law included: that the Islamist militants turned themselves in before 13 January 2000, provided a detailed account of their activities and vowed to cease them. The law does not include provisions regarding members of the security forces who are allegedly responsible for serious human rights violations. Thus, no amnesty was granted to them. However, no serious effort has been made to initiate investigations nor bring those responsible to justice.

Official figures released in January 2000, when the Civil Harmony Law expired, report that some 1,500 Islamists had surrendered and benefited from the law. Also in January President Bouteflika decided to grant a general amnesty to all members of the AIS after the latter threatened to break the truce with the government because of alleged cases in which some of its militants were denied full benefits under the Civil Harmony Law. The AIS decided in the same month to disband.

The implementation of the Civil Harmony Law and the January 2000 general amnesty law has been the subject of major concern among the victims of serious human rights violations and human rights organisations in Algeria and abroad. The terms of the January 2000 general amnesty have not been disclosed nor have been the number and identity of those who are to benefit from it. It is feared that the amnesty law would permit that those responsible for serious violations, such as murder, rape or mass killings, will be granted impunity.

A similar criticism was addressed to the manner in which the Civil Harmony Law was implemented. This law, based on the 1995 Decree N° 12 on Clemency Measures (see Attacks on Justice 1998), did not grant immunity from prosecution to Islamist militants allegedly responsible for serious human rights violations, but in practice all Islamist militants who have sought to benefit from it, more than 1,500, have been granted full amnesty without any meaningful investigation into the nature of their crimes. The absence of an impartial and independent mechanism to determine the circumstances and nature of the crimes committed might be the cause of the failure to implement the law in an appropriate way. Victims' interests and concerns have been neglected by the government and many fear that the victims and their relatives will not be given a place in a peace process which they believe fails to bring truth and justice to the country.

Peace and reconciliation efforts in Algeria have also raised concern due to their insufficient attention to past human rights violations committed by the security forces. As said above, there remain thousands of alleged Islamist fighters in prison, arbitrarily arrested and held without trial. President Bouteflika has not addressed the issue of the security forces' responsibility for these and other acts.

The Judiciary

Chapter Three of Title Two of the Algerian Constitution regulates the judiciary. Article 138 states that the judiciary is independent and Article 147 states that the judge is subject only to the law and should be protected against any form of pressure that may undermine his or her impartiality (Article 148).

However, through several laws and decree laws the executive branch has undermined the judicial independence and put under control of the Ministry of Justice most aspects regarding

the functioning of the judiciary. In November 1999, President Bouteflika appointed a commission to review the functioning of the judiciary and to recommend measures to improve it.

Structure

The judicial system is composed of a Supreme Court, three Courts of Appeal and a system of lower courts that include civil, criminal and commercial courts. The jurisdiction of the military courts, originally meant to try members of the military, has been extended to try civilians accused of state security crimes under the state of emergency law.

The Special Security Courts, established by Decree Law N° 3 of 1992 on terrorism and subversion, were abolished in 1995. However, most of the procedural rules used by these special courts have been incorporated into the ordinary legal system and the composition of the ordinary criminal courts empowered to try these kind of crimes, has been changed. Nevertheless, some observers maintain that long-term detentions without trial have increased because security forces are reluctant to release suspects of terrorism and subversion to the ordinary criminal courts.

The Supreme Court is the body which regulates the activities of the courts and tribunals, while the State Council (Conseil d'Etat) regulates the activities of the administrative jurisdictions (Article 152). Both jurisdictions ensure the unification of the jurisprudence throughout the country and the respect of the law.

The Tribunal of Conflicts (Tribunal des Conflits) settles conflicts of competence between the Supreme Court and the State Council.

A 1989 law created a High Judicial Council (Conseil Supérieur de la Magistrature - CSM) and established rules for the appointment and career of magistrates within the judiciary. However, this law was abrogated by an executive decree of 1992. The High Council, which is still in place, although with diminished powers, is headed by the President of the Republic, and its membership has been reduced since 1992, from 26 to 17 members (with only six directly elected by their peers). The 1992 executive decree has had a negative impact on the independence of the judiciary.

There is also a Constitutional Council, which reviews the constitutionality of treaties, laws and regulations. Although the Council is not part of the judiciary, it has the authority to nullify laws found to be unconstitutional.

Appointment and Security of Tenure

According to the 1989 law, the High Judicial Council was to be in charge of the appointment, promotion, transfer and discipline of magistrates (judges and prosecutors alike) within the judiciary. The law established the principle that judges who have served for ten years already are not subject to transfer or removal without their consent (Article 16). The Minister of Justice was to keep the power only to transfer those magistrates working for the prosecution service, but even this power was not meant to be discretionary and could be challenged before the High Judicial Council.

The 1992 executive decree constitutes a step backwards with regard to the security of tenure of magistrates. This decree, issued in contravention to constitutional provisions which do not permit a law to be modified by a decree but only by another law, substantially amends the terms of the 1989 law, re-establishing the Minister of Justice with his old powers with regard to appointment, transfer and discipline of magistrates. It curtails also the rights of magistrates, in particular the right not to be transferred or promoted without their consent. The decree makes it compulsory for judges to accept a promotion even if this implies a transfer.

The 1992 decree has had a profound and negative impact on the independence of judges. Judges and prosecutors are frequently instructed by administrative officials as to the way they should perform their duties. Those who refuse to follow instructions are frequently harassed, threatened with transfer or suspension based, most of the time, on non-existent disciplinary grounds. Judges and prosecutors do not, therefore, enjoy security of tenure.

Judges are forbidden from joining political organisations. The 1989 law states that "all citizens except judges, army and security service personnel, and members of the Constitutional Council have the right to join political organisations".

Resources

Resources are scarce and delays in the judicial process are frequent. Reportedly, several hundred people are still awaiting trial on security-related charges.

Lawyers

Lawyers are entitled to have access to their clients at all times. However, the authorities do not always respect the legal provisions regarding defendant's rights. Defence lawyers representing members of the FIS have suffered harassment, death threats and arrest. In addition, some of them have been arrested and held in incommunicado detention.

Generally, numerous pressures and intimidation are exercised over Algerian lawyers, and of particular concern are the lawyers dealing with cases of disappeared persons. Approximately 20 lawyers disappeared or were killed during the conflict. A number of lawyers who had successfully defended cases of Islamists were killed. A lawyer disappeared one day on the highway between Algiers and Médéa. No investigation has been opened regarding these cases.

Cases

Mahmoud Khelili lawyer, President of the National Union of Algerian Lawyers, President of the Algerian Bar Association and human rights defender: Mr. Khelili and his family continued to be harassed. His son, 35 years old, who is mentally disabled, was mistreated while in detention by the security forces between 4 February 1998 and 7 February 1998 (see Attacks on Justice 1998). No response was given to the complaint made by Mr. Khelili concerning the disproportionate violence used against his son. The Observatoire National des Droits de l'Homme declared that Karim Khelili had not been submitted to any ill-treatment.

Another of Mr. Khelili's sons, Mr. Farid Khelili, has been sentenced to two years in prison. Initially accused of "belonging to a terrorist group" in 1994, the charge was modified as "non-denunciation of terrorism" in 1999.

The harassment against Mr. Khelili and his family is due to his work for human rights and his professional activities as a lawyer.

Nadhira Mesbah lawyer: Mrs. Mesbah was accused of fraud by one of her clients, arrested and put in preventive detention by an investigating judge in Blida on 19 December 1999. Although she was pregnant, she was nevertheless arrested in violation of Article 123 of the Algerian Code of Criminal Procedure which states that preventive detention is only a subsidiary measure. The conditions of her arrest remain unclear and subject to legitimate suspicion, as the arrest warrant was not well-grounded. The Criminal Tribunal of Blida denied her conditional release for health reasons. Her doctor described Mrs. Mesbah's state of health as a high risk pregnancy, both for the mother and the foetus, as Mrs. Mesbah is diabetes insulino-dependent, a condition which can deteriorate at any time, and thus, he concluded, Mrs. Mesbah was in need of immediate medical care. Even Mrs. Mesbah's father, who is himself a lawyer, was prevented from visiting her while in preventive detention for more than one month.

The Algerian Bar Association (Syndicat des Avocats Algériens) organised a press conference and lodged a complaint for forfeiture and lack of assistance to a person in danger of death, threat to the liberty of the person (including the foetus) and to their dignity. Mrs. Mesbah's petition for release on medical grounds, which would not prejudice the final judgement, was rejected by the judge on 18 January 2000. The trial was then postponed until 25 January because of the absence of the prosecutor. On that date Mrs. Mesbah was convicted and sentenced to 18 months imprisonment and immediately taken to hospital. The decision has been appealed, and meanwhile she has been released for medical reasons. The decision on her appeal will be taken during the year 2000.

A lawyer since 1991, Mrs. Nadhira Mesbah assisted, in particular, clients who have been victims of torture before the Special Court of Algiers in charge of terrorist cases.

Rachid Mesli lawyer and human rights defender: Mr. Mesli was arrested towards the end of July 1996 and held incommunicado until his release which was granted due to the pressure of human rights defenders' organisations (see Attacks on Justice 1998). He was also convicted and sentenced to three years in prison on 16 July 1997, after having spent almost twelve months in detention during an unfair trial in which he was charged with "encouraging" and "providing apologies" for terrorism, although these charges were not initially in the indictment. On 20 June 1999 the sentence was confirmed and Mr. Mesli's allegations that his right to a fair trial had been violated were dismissed.

During the trial, which was closed to the public, Mr. Mesli was questioned about the nature of his relations with his clients, as well as about his contacts with the international human rights organisation Amnesty International.

Mr. Mesli was one of the prisoners released by the decision of President Bouteflika in July 1999.