

Tunisia

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Tunisia has a strong presidential system with the President of the Republic being the chief executive of the country. He or she has substantial powers over the Cabinet and the armed forces.

The President nominates the Prime Minister and, on his or her suggestion, the other members of the government are chosen (Article 50 of the Constitution of Tunisia). The President's role is also to determine national policy. S/he may delegate all or part of his or her general regulatory power to the Prime Minister.

Tunisia's Constitution was revised in 1988 to allow the President to serve for three five-year terms. S/he is elected by universal and direct suffrage. The Presidential elections were held in October 1999. President Zine el-Abidine Ben Ali, who has been ruling the country since 7 November 1987, ran unchallenged for a third term in office, and won the elections.

The National Assembly (legislature) elections took place the same day and were won by the ruling Constitutional Democratic Rally of President Ben Ali. According to the 1991 Constitution, the unicameral legislature is elected by universal suffrage for a five-year term. The deputies vote on legislation and the budget. However, the President of the Republic has an equal prerogative regarding the presentation of legislation, and bills presented by the President of the Republic have priority (Article 28-1).

Human Rights Background

During 1999, the government of Tunisia continued its policy of persecution of political opponents and their families, as well as the practice of press manipulation. Torture and ill treatment remained widespread and systematic and the judicial system continued to fail to properly investigate allegations of these crimes. Human rights defenders, including lawyers, continued to be subjected to harassment and intimidation.

Torture and Ill-treatment

Hundreds of political prisoners, including prisoners of conscience, continued to be held in Tunisian jails throughout 1999. In May and December 1999, many prisoners carried out hunger strikes in protest against the poor prison conditions. On 6 November 1999, several hundred prisoners were conditionally released, including presumed members of the Islamist party, Annahdah, and the Tunisian Communist Workers Party known as PCOT.

Although it is prohibited by the Penal Code, torture is practised by the police and security forces. Under international pressure, the government amended the Penal Code in August 1998 and adopted a definition of torture that conforms with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It also increased the maximum penalty for those convicted of committing acts of torture from 5 to 8 years. In

practice, however, torture remains common and the perpetrators continue to go unpunished as the judicial power simply ignores allegations of such practices.

The case of Imane Darwiche is illustrative of the attitude of the authorities and the judiciary towards allegations of torture. In July 1999, Ms. Darwiche was convicted with others for belonging to the illegal organisation PCOT. During her appeal of 6 August Ms. Darwiche tried to testify that while in detention prison guards had attempted to rape her. However, the presiding judge refused to record references to torture and rape, saying that such statements were irrelevant to the case. When she insisted, the judge ordered her removal from the courtroom.

Facilitating the use of torture and ill treatment by the police and security forces is a lack of adequate independent supervision of detention facilities and prisons. Although there is a national human rights official who inspects the prisons, his reports are generally not made public. The government does not allow prison visits or monitoring by independent organisations or media bodies. Although the government had promised the country's main human rights organisation, the Ligue Tunisienne pour la Défense des Droits de l'Homme (LTDH), that it would be allowed to visit some prisons in December 1999, by the end of the year the organisation had still not been admitted to see a single one.

Also in response to international pressure, on 2 August 1999 the government of Tunisia shortened the maximum period of pre-arraignment incommunicado detention from 10 to 6 days. However, after consideration of the second periodic report in November 1998 regarding the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Committee against Torture had recommended the reduction of police custody in Tunisia to a maximum of 48 hours. The police are also now required to inform a detainee's family of his or her arrest at the time of the arrest.

These legal guarantees are not always respected in practice however. Reportedly, members of the police continue to falsify their records concerning dates of arrests so as to circumvent the regulations regarding arrest and detention. Furthermore, judges often do not entertain lawyers' arguments that the police falsified the dates of detention of the accused. This attitude of Tunisian judges makes them accomplices to these abuses.

Freedom of Opinion and Expression

There are serious problems concerning freedom of expression in Tunisia. The UN Special Rapporteur on the Freedom of Expression and Opinion visited Tunisia from 6 to 10 December 1999. This is the first time that a thematic rapporteur of the UN Commission on Human Rights has been authorised to visit the country. In his report the Special Rapporteur states that despite commitments to reform the Press Code, the most basic rights relating to the effective enjoyment of freedom of opinion and expression are continuously curtailed, under the pretext of maintaining stability and order in society.

The Special Rapporteur observed that the Tunisian press is characterised by a uniformity of tone, unfailingly presenting national news in a positive light and filtering subjects that are considered taboo. Government censorship and even self-censorship is practised. Journalists or publishers are subjected to pressure, as in the case of Mr. Taoufik Ben Brik, a correspondent for the French newspaper, *La Croix*, who has often been harassed, and was even violently beaten in the street by police officers on 20 May 1999. There is also the case of Ms. Sihem

Bensédrine, a publisher and human rights activist, who has been harassed and whose office was broken into twice in December 1999 by individuals thought to be members of the political police.

The broadcasting media are under strong state influence. New technologies have been widely adopted in Tunisia, but access is limited and certain internet sites are permanently blocked, especially those of non-governmental organisations and foreign press.

The Special Rapporteur also observed that the repression and control exercised by the government against opponents and persons criticising the regime is disproportionate in a country in which violence has been decreasing, almost disappearing, in fact, in recent years. There is an absence of political pluralism. Although legal opposition exists in Tunisia, it is said that in practice it enjoys little autonomy of action vis-à-vis the power exercised by the RCD (the party in power). Political parties have difficulties organising freely, since the Minister of the Interior has discretion to grant or withhold his or her approval of political parties. Many supporters of the Islamist Party are still often imprisoned and their relatives subjected to harassment. The Tunisian Worker's Communist Party (PCOT) is currently banned and one of its leaders, Hamma Hammami (who is the husband of lawyer Radhia Nasraoui) has been imprisoned many times for his political activities.

One positive step that came after the visit of the Special Rapporteur is the ending of the house arrest of Mr. Mouadda, former leader of the MDS (Social Democrats' Movement) who had been subjected to constant harassment over recent years and sentenced to several years in prison.

Human Rights Defenders

Human rights defenders continue to be arrested, threatened, intimidated, and their passports withheld. Human rights groups have also been subjected to numerous attacks.

The activities of non-governmental organisations (NGO's) are regulated by the Associations Act of 7 November 1959, which has been amended several times. The law grants excessive powers to the Minister of the Interior to approve or refuse the registration of societies and lays down harsh penalties for any person found guilty of membership of an illegally established association.

On 2 March 1999, the Ministry of the Interior refused to register a new NGO, the National Council for Freedom in Tunisia (CNLT). Its leaders, well-known human rights activists Dr. Moncef Marzouki and Mr. Omar Mistiri, continue to be frequently harassed. In July 1999, legal action was brought against them for having continued to issue press releases on behalf of the "illegal" CNLT, expressing their concern at the increasing limitations on the freedom of expression and opinion in Tunisia. It was also reported that the head of the Tunisian Association of Young Lawyers was interrogated by the police because he received CNLT members in his office.

Dialogue between the government and the LTDH, Tunisia's foremost human rights group, which is an ICJ affiliate, resumed in April 1999. Since August 1997, the government had refused to respond to LTDH petitions, prevented them from holding meetings and censored their press releases. Although the April 1999 meeting resulted in improvements as the government returned some of the passports they had confiscated from members of the LTDH,

promised to allow the LTDH to carry out visits to detention centres and allowed it to hold meetings, LTDH members continue to be subjected to harassment and intimidation. LTDH Vice-President, Khemais Ksila, convicted in February 1998 on charges of defamation, was released on 22 September 1999, but was interrogated again on 3 February 2000 because of an open letter addressed to the Minister of Justice regarding continued assaults on political activists which had not been investigated. Other LTDH members also reported that they were subjected to additional methods of intimidation such as the damaging of their property, the illegal entry and search of their homes, and the denial of passports.

In July 1999, the government arrested Abderraouf Chammarri, the brother of human rights activist Khemais Chammarri, who is currently in exile in France after repeated harassment. He was charged with defamation and the spreading of false information (in the form of a joke that Chammarri denied making) which linked a former minister to corruption. It was widely believed that the arrest was intended to put pressure on his brother, Khemais Chammarri. Abderraouf Chammarri was sentenced to 12 months imprisonment, although he was released on 30 August 1999 after appealing to the President of the Republic on health grounds.

The Arbitrary Deprivation of Passports

Political opponents and human rights defenders are often deprived of their passports. This is to prevent them from establishing contacts with foreign organisations or personalities. Human rights lawyers have been particularly targeted by this practice (see Attacks on Justice 1998).

Under strong international pressure, the 1975 law on passports, which granted wide powers to the Ministry of the Interior to withhold passports, was amended in 1998. The amendment gives judges the competence to withdraw a passport from a citizen. The Office of Immigration, Direction Générale des Frontières et des Etrangers (DGFE), still, however, sometimes delays issuing passports to Tunisians who are not favoured by the government.

The Judiciary

The Constitution provides for an independent judiciary (Article 65), outlining the fact that magistrates, in the exercise of their functions, are not subject to any authority other than the law. However, the executive branch strongly influences the judiciary.

Court Structure

The Judicial system in Tunisia is composed of ordinary courts, an administrative court and military courts. The ordinary courts include Magistrate Courts, Courts of First Instance and Courts of Appeal. All these courts are subject to the authority of a single body, the Court of Cassation in Tunis. The administrative court system is incomplete, as there is only one Administrative Tribunal, of a single level.

There is also a Constitutional Council, which, unlike many civil law countries, does not function as a court. This is a consultative body in charge of examining draft legislation submitted by the President of the Republic. The Council does not review the constitutionality of laws after their enactment, however.

Parallel to the civil system are the Military Tribunals, within the Ministry of Defence, which are competent to try military personnel and civilians accused of national security crimes. The

decisions of these courts can be appealed before the Court of Cassation. They are composed of one civilian judge and four military judges.

Appointments, Promotion and Transfer

The Higher Council of the Judiciary, a body headed by the President, and composed of appointed and elected judges, supervises the appointment, promotion, transfer and discipline of judges. However, the President is also the head of the Council. This situation places undue pressure on the work and independence of judges who render decisions in politically sensitive cases. The Council is also strongly dominated by the Ministry of Justice, which acts as its secretariat. Judges fear transfer when they issue judgements conflicting with the interests of the executive.

The Administration of Justice

Throughout 1999 the lack of independence of the judiciary was very apparent. This was particularly true in political trials, despite the fact that there were international observers present at many of them. The lack of regard for the rights of the defendant and for the due process of law was evident in many trials. In such cases, the task of defence lawyers was made increasingly difficult by various restrictions, for example, the difficulty in obtaining copies of judicial documents and the practice of granting visiting permits to lawyers but refusing to recognise them on the day they visit the prison to see their clients.

One of the most illustrative cases was the trial of twenty students, in July 1999, who had been held in detention for several months after attending a peaceful demonstration in protest against working conditions at the university, and in which lawyer Radhia Nasraoui was involved (see Cases). They were charged with belonging to a terrorist group, holding unauthorised meetings and slandering the judicial power.

The defendant's claim that they were subjected to severe torture and were constantly refused medical examinations, which are specifically provided for under Article 13 bis of the Code of Criminal Procedure. The judges simply ignored the students' allegations of torture and claims that they had signed their confessions under pressure. Although the demonstration was non-violent, the defendants were given prison sentences ranging from 15 months to 9 years.

Lawyers

Lawyers, and particularly human rights lawyers, are often the subject of persecution and attacks. Furthermore, they are frequently obstructed from carrying out their professional duties. Among the obstacles they face in carrying out their work is an inability to meet the judge of instruction (juge d'instruction). In February 2000, hundreds of lawyers protested against their working conditions in a large demonstration.

Cases

Jameleddine Bida (lawyer): This human rights lawyer has his passport confiscated. In 1999, he began a hunger strike in an attempt to get his passport back when his official request for a passport was unanswered.

Nejib Hosni (lawyer): Mr. Hosni was released in 1996 after he had served a two and a half years sentence in prison on questionable charges. In January 2000, he was still being prevented from practising his profession. He is prohibited from leaving Tunisia and his passport is being withheld.

Anouar Kosri (lawyer, human rights defender, and member of the Bizerte section of the LTDH): For the past three years Mr. Kosri has been the subject of harassment and pressure from the police (see the past three issues of Attacks on Justice). He has been deprived of his passport and is permanently followed. His office is strictly watched, as is his home. His, now rare, clients are also subjected to intimidation and harassment. Since January 2000, a policeman has been guarding his home.

Radhia Nasraoui (lawyer): Ms. Nasraoui is a highly respected lawyer who represents numerous clients in sensitive human rights cases. In 1998 her offices were burgled. Some weeks later, on 30 March 1998, Ms. Nasraoui was called to the office of the juge d'instruction. She was then informed that 11 charges were being pressed against her. These included membership in a criminal and terrorist organisation; organising and attending unauthorised meetings; inciting rebellion; offending the President; distributing false information with the purpose of disturbing public order; defaming the authorities; and distributing leaflets.

The judge then issued a restriction order, prohibiting her from travelling outside the country and limiting her right to move inside Tunisia to only three districts. The charges against Ms. Nasraoui, which are formulated in vague terms, could lead to her imprisonment for up to 25 years.

The CIJL believes that the charges and restriction order were aimed at preventing Ms. Nasraoui from carrying out her duties as a defence lawyer. They were also aimed at intimidating her from taking up human rights concerns in Tunisia. Not only Ms. Nasraoui, but also her family, have been under constant surveillance by the security services.

In early February, Ms. Nasraoui received the sudden news of the death of her mother-in-law, who lived in a different district. Ms. Nasraoui apparently telephoned the office of the juge d'instruction informing him of the situation and of her need to travel outside the three authorised districts to attend the funeral.

Ms. Nasraoui was called to appear before le juge cantonal de Tunis on 11 February 1999. She was represented by about 100 lawyers. She was, nevertheless, convicted for defying the restriction order and sentenced to two weeks imprisonment and was given a \$4800 fine. The prison sentence was suspended.

On the 6 August 1999, the Court of Appeal of Tunis confirmed the sentence passed by the sixième chambre correctionnelle du Tribunal de Première Instance de Tunis imposing a six months suspended sentence on advocate Radhia Nasraoui. The International Commission of Jurists (ICJ) and its CIJL sent Mr. Olivier Cramer, Advocate at the Geneva Bar, as an observer to attend two hearings before the chambre correctionnelle. Mr. Cramer submitted two reports, which demonstrate that the trial was unfair.

Ms. Nasraoui was accused of "assisting in the holding of meetings that incite hatred". The charge relates to the non-violent political work that Ms. Nasraoui's husband has been accused

of. Twenty other individuals were also charged along with Ms. Nasraoui - many of them being university students. Several defendants, including Ms. Nasraoui's husband, Mr. Hamma Hammami, have been forced into hiding. On 6 August 1999, the defendants were sentenced to 15 months imprisonment, with those in hiding being sentenced to nine years.

Although Ms. Nasraoui was not under arrest when charged, several others were. Those detained said that they were subjected to torture during their detention. One female student said that a policeman attempted to rape her. In the final court session of 6 August 1999, she said that she was able to provide his name. The court, however, refused to listen. When she insisted, the court ordered her outside the room. She was taken by the security police. The other defendants and their lawyers protested demanding that she be returned back. The court refused. The defence lawyers withdrew in protest. This behaviour is representative of how the entire trial proceedings have been handled.

The allegations of torture, and the inadequate manner in which all the judicial authorities examined the case, marred the proceedings. The accused did not have the opportunity to effectively express their views. At the level of investigation, which is a crucial stage in Tunisia's inquisitorial criminal law system, the accused were denied the right to bring witnesses to testify in their favour; they were denied proper medical examination despite serious allegations of torture; they were denied access to the official detention registry which ascertains the exact time of their detention; and the sentences they received were both excessive and disproportionate. The defence lawyers were repeatedly interrupted and silenced. In one case, threats were made against the defence. Based on these reports, the ICJ and its CIJL concluded that the trial was manifestly unfair.

Mukhtar Trifi (lawyer, member of *Fédération Internationale des Ligues des Droits de l'Homme* (FIDH), and member of *Amnesty International* in Tunisia): As defence counsel in several politically sensitive cases, Mr. Trifi has been under surveillance. His law offices are systematically observed and his phone and fax lines are tapped. Throughout 1999, severe pressure was exerted on members of his family and on his employees.

Najet Yakoubi (lawyer and human rights activist): Ms. Yakoubi is an active lawyer and member of the *Tunisian Association of Democratic Women* and of the *Young Lawyers Association*. In *Attacks on Justice 1998* we reported how she was harassed by the Tunisian authorities in 1998. She was, inter alia, put under surveillance. In 1999, she was again put under police surveillance. On 23 February 2000, her office was burgled and ransacked while she was attending a meeting abroad.