

TUNISIA

Despite the existence of constitutional and legal provisions guaranteeing the independence of the judiciary, the executive continues to exercise improper interference in the judicial domain. A number of political trials have reportedly been conducted without regard to the legal rights of defence and due legal process. Human right defenders, including lawyers have been subjected to harassment and intimidation.

Tunisia is a republic with a strong presidential system. According to the Constitution, the executive power is held by the President, who is elected every five years by universal and direct suffrage. The President appoints the Prime Minister, the Cabinet and the 24 governors. President Zine El-Abidine Ben Ali and his Constitutional Democratic Rally (RCD) have led the government, including the legislature, since 1987. The last legislative and presidential elections in October 1999 reaffirmed this dominance. President Ben Ali was re-elected for a third 5-year term with 99.44 percent of the vote. The ruling RCD party won 148 seats out of the 184 seats of the National Assembly (The Chamber of Deputies). In the last election, opposition presidential candidates were allowed to run for the first time pursuant to an amendment of the Constitution and Electoral Code in July 1999. The October 1998 changes in the Electoral Code reserved 20 per cent of the seats of the Chamber of Deputies for opposition parties. Currently, five opposition parties hold 34 of 184 seats of the Chamber. Despite some progress in liberalising the electoral process, problems remained, especially with regard to protection of the secrecy of the ballot and the accuracy of vote totals.

HUMAN RIGHTS BACKGROUND

Tunisia has ratified and published in its official gazette most of the major human right instruments, thereby giving them the force of law domestically. Among the ratified instruments are the Convention Against Torture, Inhuman and Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Tunisia has recognised the competence of the Committee Against Torture under article 22 of the CAT to receive and process individual communications.

Despite its ratification of international human rights instruments and its creation of human rights bodies in various ministries to address and resolve human rights violations, serious human rights abuses were committed during the period under review. These include, *inter alia*, repression, arbitrary arrest and detention of political opponents and their families, curtailing of freedom of opinion, expression and assembly, and torture and ill-treatment.

Torture and ill-treatment

Despite the existence of legal safeguards, torture and ill-treatment continued to be widely used by police to extract confessions and by prison guards to punish detainees. In its observations on the second periodic report of Tunisia, the Committee against Torture (CAT) noted the widespread practice of torture and other cruel and degrading treatment perpetrated by security forces and the police, which in certain cases resulted in death in custody. In order to address the various recommendations of the CAT, the Government enacted amendments to the Penal Code. These include the adoption of the CAT definition of torture; the issuance of instructions to police to inform detainees of their rights, including the right of a defendant to demand a medical examination while in detention; the shortening of the maximum allowable period of prearrest incommunicado from ten to six days; and increase of the maximum penalty from five to eight years for those convicted of committing acts of torture. However the new provisions have largely remained unenforced. Despite the reduction of incommunicado detention, torture continued, in part due to the climate of impunity fostered by a judiciary that ignored evidence of torture and routinely convicted defendants on the basis of coerced confessions. Official claims of institutional safeguards against torture are belied by the refusal of judges to follow up on complaints of torture or to order appropriate medical examination. (See *Attacks on Justice 1999*).

Freedom of opinion and expression

Numerous incidents have been reported of harassment, intimidation and punishment of individuals, including journalists, human rights activists and political activists who express dissenting opinions. Despite commitments made by the President to reform the Press Code in late 1999, the rights relating to the effective enjoyment of freedom of expression and opinion were abridged with frequency. The UN Special Rapporteur on Freedom of Expression and Opinion noted that while, on the one hand, the State supports the idea of promoting and guaranteeing human rights, on the other hand, it tampers with human rights under the pretext of maintaining stability and order in society. The Special Rapporteur observed that despite its apparent diversity, reflected by the publication of some 180 national periodicals in Arabic, French or both languages, and eight specialised political publications, the press in Tunisia is characterised by uniformity of tone and unfailingly presents national news in a positive light. The present Press Code (promulgated by the Act of 28 April 1975 and amended twice, in 1988 and 1993) is prohibitive in that it helps to maintain censorship and self-censorship within the editorial offices of Tunisian newspapers.

Human rights defenders

The government continued to subject human rights defenders and activists to harassment and intimidation. Many defenders have been prosecuted or threatened with prosecution, subjected to ill-treatment or had their telephone and fax lines cut. In a press release dated 7 December 2000, the UN Secretary-General's Special Representative on Human Rights Defenders called upon the Government to end the harassment of human rights defenders in the country. The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression urged the Tunisian government to put an end to the alleged intimidation and harassment of persons seeking to exercise their right to freedom of opinion and expression, in particular human rights defenders, political opponents, trade unionists, lawyers and journalists, and to bring those responsible for such harassment to justice.

The activities of non-governmental organisations (NGOs) in Tunisia are regulated by the Associations Act of 7 November 1959, which has been the subject of two amendments, one of which opens the way to judicial appeals against decisions of the Minister of the Interior in respect of the establishment and dissolution of an association. The 1959 Act 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 in an illegally established association.

It is almost impossible to set up new independent associations. Such requests are generally rejected by the Minister of the Interior on the grounds they are not in conformity with the Associations Act. The Special Rapporteur has noted that the 7,000 NGOs mentioned by the authorities largely represent associations established by or close to the government. The offices and activities of independent NGOs, including the Tunisian Human Rights League, the Tunisian Association of Democratic Women and the Tunisian section of Amnesty International are reportedly under constant police surveillance. The press releases of these NGOs are virtually never published in the national press. Similarly, the leaders and members of the associations are harassed in an attempt to get them to abandon their activities (see section on *Cases*). The confiscation of correspondence, the tapping of telephone conversations and the interception of faxes constitute important impediments to the exercise of everyday activities by these NGOs.

In December 2000, Moncef Marzoki, a doctor and spokesman for the National Council for Freedom in Tunisia (CNLT), was sentenced to one year's imprisonment for his human rights activities. He had been charged for spreading false information liable to disturb public order contrary to article 49 of the Press Code and maintaining an unauthorised association contrary to article 30 of the Associations Act. The first charge was related to a paper presented by Dr. Marzoki at a conference on Human Rights Defenders in Rabat in October 2000, in which he criticised the human rights record of the Tunisian government as well as the lack of independence of the judiciary. The second charge concerned CNLT, which was formed by Dr. Marzoki in 1998 and which was denied registration by the Minister of Interior. Both the trial of Dr. Marzoki and Nejjib Hosni, a human rights lawyer and leading member of CNLT (see section on *Cases*), and the circumstances surrounding the trial were fraught with violations of the right to freedom of expression, the right to a fair trial and the right to freedom of association. The manner of the two trials was unfair, with the independence and impartiality of the trial judge in question, a failure to examine witnesses and restrictions placed upon the legal representatives.

The Tunisian Human Rights League (LTDH), at its fifth general assembly held October 27 -30, 2000, elected to its board a majority of outspoken human rights activists, with Mukhtar Trifi, a lawyer and human rights activist, being chosen as president. The new board was expected to lead the organisation to a more robust approach in its activities. Three weeks after the LTDH election, a law suit demanding its nullification was filed by four LTDH members who claimed irregularities in the preparation of the election. Both the plaintiffs and Governmental authorities asserted that the Government had played no role in bringing the case. The plaintiffs won an interim injunction expelling the new steering committee from the LTDH offices, barring it from taking any actions in the name of LTDH, and replacing it with a court-appointed administrator. Despite the injunction, the LTDH steering committee has continued to issue communications and has attempted to conduct business, stating that its local sections have urged it to continue working while the case is on appeal. These activities have prompted further legal actions against the League's president and first vice-president, as well as large-scale police deployments to prevent the steering committee and other LTDH bodies from gathering. The four plaintiffs, who are known to be sympathetic to the Government, all ran as candidates in the League elections. Their lawsuit claims that procedural irregularities violated the LTDH's own internal rules and the plaintiffs' rights both as citizens and as members of an entity that is governed by the Act on Associations. Many of those irregularities had

been apparent and had been debated inside the League long before the election took place. However, the plaintiffs went to court only after they ran as candidates and lost. The vast majority of the League's members who have expressed themselves on the dispute reject the plaintiffs view. All four former members of the LTDH have signed a petition in support of the League demanding an end to efforts to block its functioning so that it might freely resume its activities. On 21 June 2001, the Appeal Court in Tunis pronounced its verdict in the case against the LTDH confirming the sentence given on 12 February 2001 by a lower court, which ordered that the results of the League's general assembly in October 2000 be annulled and the 25-member board elected at the time be dissolved. In a seemingly contradictory decision, the authorities ordered that this same board assume responsibility for organising a new assembly.

THE JUDICIARY

Article 65 of the Tunisian Constitution enshrines the principle of independence of the judiciary, providing that the judiciary is to be independent and that magistrates in the exercise of their functions are not to be subjected to any authority other than the law. The Act of 1967 establishes the statutes of the judiciary and ordains them to render justice impartially, without consideration of persons or interests. Numerous laws have subsequently aimed at strengthening this principle and consolidating the rights of defence.

Despite all these legal guarantees, the executive branch continued to strongly influence the judiciary and undermine its independence. The judicial branch was said to constitute effectively a part of the Ministry of Justice, with the executive branch appointing, providing tenure to, and transferring judges and the President serving as head of the Supreme Council of Judges. Judges therefore are amenable to influence. The UN Special Rapporteur on Freedom of Opinion and Expression noted that many political trials have reportedly taken place with no regard for the rights of defence and due legal process. The Special Rapporteur heard allegations that the judiciary is not entirely untouched by influence exerted by the executive branch.

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. The Court of Cassation, which sits in Tunis, is the highest court. It considers arguments only on points of law, not factual contentions. The administrative court system is incomplete, in the sense that there is only one Administrative Tribunal and no appellate level.

There is also a Constitutional Council, which, unlike in 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 has no power to review the constitutionality of laws after their enactment.

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 verdicts of these courts may be appealed before the Court of Cassation. A military tribunal consists 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 the possibility of transfer or discipline if they issue judgements conflicting with the interests of the executive.

LAWYERS

The Tunisian Bar has existed for over 100 years and is generally seen as having played a historically significant role in the struggle for independence. The first President of Tunisia, the late Habib Bougiba, was himself a lawyer who had used the Bar to intervene in the political process to defend human rights and pursue issues of public importance. The principle of intervention from the Bar remained in Tunisia after independence, when politicians, trade unionists or other groups under pressure or attack would turn to the Bar for protection. However, in 1991 Tunisian authorities began targeting lawyers who defended Islamists and using the press as means of attacking them. In recent years, the target has become human rights lawyers. Thus, Tunisian lawyers are frequently obstructed from carrying out their professional duties. The task of lawyers specialising in the defence of human rights has been made increasingly difficult by the restrictions imposed on their activities in the defence of their clients. For example, lawyers have faced difficulty in obtaining copies of judicial documents and gaining access to clients during visits to prisons.

CASES

Anouar Kousri (lawyer): Mr. Kousri is a vice-president of Tunisian Human Rights League (LTDH) and a human rights lawyer. For the past five years he has been the subject of harassment and pressure from the police (see the seventh, eighth, ninth and tenth issues of *Attacks on Justice*). Since March 2001, he has been kept under constant surveillance by the security services. This predicament came as a consequence of Mr. Kousri's involvement as a defence lawyer in the case of young man who died in police custody in September 2000 as a result of torture. The harassment of Mr. Kousri has been extended to his friends, relatives and clients.

Radhia Nasraoui (lawyer): Ms. Nasraoui is a distinguished lawyer who represents numerous clients in sensitive human rights cases. She has suffered repeated harassment, including the ransacking of her office, restrictions on her freedom of movement, pressures placed upon her clients and the attempted abduction of her daughter. In July 1999, following a trial that was described as a "parody of justice" by lawyers and international observers but which was upheld by the Court of Appeal, Ms. Nasraoui was given a suspended sentence of six months' imprisonment (see *Attacks on Justice 1999*). On 14 May 2001, she was subjected to harassment by the security service and her documents confiscated when she returned from abroad.

Nejib Hosni (lawyer): Mr. Hosni, a prominent Tunisian human rights lawyer and member of the National Council for Freedom in Tunisia (CNLT) board of directors, has faced intense persecution

since July 2000, when he issued a public statement criticising the Government's restrictions on civil liberties. Mr. Hosni had previously spent two-and-a-half years in prison on trumped up charges of forgery, and was released in late 1996. Since then, the authorities have arbitrarily disconnected his office and home telephone and fax and confiscated his passport. He has been preventing from resuming his legal practice, despite the fact that the Tunisian Bar Association, the sole competent institution in this matter, has insisted that he never should have been suspended. On that basis he joined other lawyers in entering a plea before a court on November 24, 2000 in the case of several political detainees on a hunger strike. On 18 December 2000, the District Court of Kef sentenced him to fifteen days imprisonment for "non-compliance with a judicial order" by asserting his right to practice his profession. Since then Mr. Hosni has been charged twice with breaching the judicial order banning him from practising his profession. It seems that the authorities intend to prosecute him for all the trials in which he appeared since he started to practise again in April 2000. On 12 May 2001, Mr. Hosni was released from the prison after having been granted a presidential pardon. The release of Mr. Hosni came as a result of strong national and international solidarity campaigns.

Mukhtar Trifi (lawyer): Mr. Trifi is the president 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 subject to continuous harassment, especially since the fifth congress of the LTDH at the end of October 2000. The forms of harassment suffered include the severing of phone lines, close surveillance, intimidation of his clients, legal proceedings and defamatory press campaigns.

Mokhtar Yahyaoui (judge): Judge Yahyaoui is the president of the Court of First Instance in Tunis. He was suspended from his post by the Ministry of Justice and his financial remuneration was cut on 14 July 2001. It was apparent that these arbitrary proceedings came in response to judge Yahyaoui's letter, dated 6 July 2001, addressed to the President of the Republic, denouncing the lack of independence of the judiciary and the harassment of judges. The arbitrary sanctions against judge Yahyaoui were lifted on 1 August 2001.