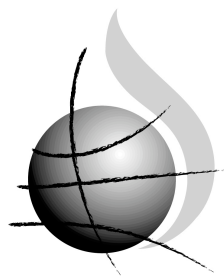


**L'OBSERVATOIRE  
pour la Protection des Défenseurs  
des Droits de l'Homme**



INTERNATIONAL  
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Organisation Mondiale  
contre la Torture



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**TRIAL AGAINST THE BAR ASSOCIATION**

**TUNISIA**

**NOVEMBER 19, 2002 – APRIL 22, 2003**

**MISSION REPORT**

**BY MR. PIERRE LYON-CAEN**

**COUNSEL FOR THE PROSECUTION AT THE COURT OF CASSATION OF FRANCE**

## **PRELIMINARY NOTE**

It was agreed that this report would be presented to the reader in the chronological order of its narrative, in order to remain as close as possible to the observations made by Mr. Pierre Lyon-Caen concerning the hearings and the context within which they took place.

## INTRODUCTION

On February 2, 2002, Hamma Hammami, Spokesman of the Tunisian Communist Workers Party (*Parti communiste des ouvriers de Tunisie*, hereinafter "PCOT"), was tried, together with two of his fellow party members, before the Court of First Instance in Tunis for acts amounting to crimes of opinion. During the trial, which became a symbol of the repression suffered by those who oppose the power of President Ben Ali in Tunisia, the Council of the Bar Association protested against various infringements on the rights of the defense. In the days following the hearing, the Council recommended that all lawyers in Tunisia suspend their professional activities on February 7, 2002. This call for a strike was widely followed in a country that has some 3, 800 lawyers, except by lawyers close to the Democratic Constitutional Rally (*Rassemblement constitutionnel démocratique*, hereinafter "RCD"), the party in power.

A lawsuit was then filed by six lawyers, three of them deputies from the RCD. Their lawsuit seeks a retroactive annulment of the decision to strike and calls for the Council of the Bar Association to be prohibited from mounting strikes in the future. They claim that this decision is contrary to human rights and fundamental liberties, including the right to work and professional freedom. Yet no lawyer had been prevented from working on the day of the strike and none had been the subject of penalties on the part of the Council. This is not the first time that Tunisian lawyers have ceased to discharge their professional duties in order to denounce the malfunctioning of the administration of justice in Tunisia. However, this is the first time that a lawsuit has been brought in response to such acts.

This case, tried before the Court of Appeal of Tunis, was the subject of numerous adjournments: April 2, 2002, September 24 2002, November 19, 2002, December 24, 2002, and February 25, 2003. The sixth hearing was held on April 22, 2003. M. Pierre Lyon-Caen, Counsel for the Prosecution at the Cour de Cassation in Paris attended the sessions of November 19 and December 24, 2002 and that of February 25, 2003.

The report of the observation of the hearings reveals once again the malfunctioning of the administration of justice in Tunisia as well as the increasingly significant gap between official discourse, which proclaims its attachment to respect of human rights, and the reality of the daily repression of free expression in the country. The law and the judicial system are often used by the authorities to repress opponents of all kinds, with the government exercising constant pressure on judges in order to influence their rulings.

This instrumentalization of the justice system affects anyone who expresses criticism of the authorities, including human rights defenders and, among these, members of the legal profession. The independent human rights associations, including the National Council for Liberties in Tunisia (*Conseil national pour les libertés en Tunisie*, (CNLT)) and the Tunisian League of Human Rights (*Ligue tunisienne*

*des droits de l'Homme* (LTDH)) are particularly targeted. Legal proceedings have been started against the LTDH, notably Mr. Mokhtar Trifi, president of the League, who is being prosecuted for “circulating false news likely to disturb public order”, an accusation that a considerable number of rights defenders also face. Harassment of human rights defenders is also characterized by obstacles put in place to prevent them from holding meetings, defamation campaigns, constant police surveillance, cutting of telephone lines and numerous instances of physical aggression.

Magistrates and lawyers are also subject to this repression, as illustrated by the case of Judge Mokhtar Yahyaoui. This judge had denounced the lack of independence of the judiciary in Tunisia in a letter published in July 2001. As a result, he was relieved of his functions and he and his family were subjected to a campaign of harassment. His nephew, Zouhayr Yahyaoui, organizer of the Internet site TUNeZINE concerning fundamental freedoms in Tunisia, was condemned to two years and four months in prison for “disseminating false information”.

Tunisian lawyers are often the target of such harassment. The Bar of Tunisia appears to be one of the few pockets of liberty remaining in Tunisia: the President of the Bar and members of the Council of the Bar Association are chosen following free elections over which the authorities struggle to exercise control. The Bar Association defends individual liberties, denounces police violence and inhuman conditions of detention, and regularly protests against signs of dependence on the part of the judicial authorities toward the executive. However it does not escape pressures and violence directed against it. Many lawyers are subjected to professional pressure characterized by the loss of contracts with state enterprises and other important companies; pressure is even exerted on their regular clientele. Searches are carried out in lawyers' offices and they are the target of constant police surveillance. Cases of physical aggression against lawyers have risen continually since the beginning of legal proceedings against the Council of the Bar Association. On May 8, 2003, the President of the Bar himself was assaulted in the middle of the night by plain-clothes police agents. This incident is of urgent concern to all of the country's human rights defense organizations.

The proceedings against the Council of the Tunisian Bar Association are an illustration of the climate reigning in Tunisia. Moreover they are highly symbolic, as they affect the institution representing lawyers in the country, a professional body that has always expressed its commitment to fundamental rights and liberties peacefully.

## HEARING OF NOVEMBER 19, 2002

At the request of the International Commission of Jurists (ICJ), the Observatory for the Protection of Human Rights Defenders (a joint program of the International Federation of Human Rights (FIDH) and the World Organization Against Torture (OMCT)) and Lawyers Without Borders, I traveled to Tunis to attend, as an observer, a hearing of the Tunis Court of Appeals held on **November 19, 2002**. The aim of the hearing was to examine the appeal initiated by several lawyers within the Tunisian Bar to annul the decision by the Council of the Bar Association recommending the suspension of its members' professional activities on February 7, 2002.

The decision to strike had been taken following assaults on H. HAMMAMI and two of his fellow party members during a hearing at the Court of First Instance in Tunis on February 2, 2002, in which the aforementioned persons were to be judged, having appealed against their conviction *in absentia*.<sup>1</sup>

Prior to the opening of the Court session and accompanied by a member of the Council of the Tunisian Bar Association, I paid a courtesy visit to the presiding judge of the hearing I was to attend. He received me briefly, standing up, and agreed to accept my visiting card.

### THE HEARING

Upon my arrival in the courtroom, one of the plaintiff lawyers, Mr. Habib ACHOUR, handed me an "explanatory note" written in French and obviously prepared for the benefit of the foreign observers. This note attempts to demonstrate that the real defenders of fundamental liberties were actually the plaintiffs who were seeking to annul the decision to strike and not the President of the Bar, the members of the Council of the Association and the majority of lawyers who followed them.

The authors of the text try to give the impression that the decision of the Council of the Bar Association had infringed upon the right to work and professional freedom.

I questioned several lawyers on this subject, all of whom pointed out to me that the appeal for a work stoppage on the day of February 7, 2002 had not been accompanied by any constraints or sanctions; there were neither picket lines nor proceedings against lawyers who did not participate in the strike. A special resolution, which was shown to me in the original Arabic text, had been adopted specifically to respond to rumors asserting the opposite.

In the above-mentioned "explanatory note", moreover, it is stated that on the day of the strike "*hundreds of lawyers in professional garb went to the courts to attend hearings and to exercise their functions normally*". Evidence is therefore produced by the authors of the note themselves that, contrary to their

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<sup>1</sup> I had attended as an observer on behalf of the FIDH what had seemed to me a parody of legal proceedings (cf. FIDH report «Tunisie, Le procès Hammami: une caricature de justice», January 2003).

assertion, there had been no infringement of the free exercise of the legal profession by those persons – the number of whom is contested – who did not wish to follow the recommendation of the Council of the Bar Association.

I noted the presence in the courtroom of a representative of the President of the Brussels Bar Association - this Bar was preparing to sign an agreement with its Tunisian counterpart - as well as members of the embassies of the United States, Great Britain, the Netherlands and Switzerland, with whom I spoke briefly at the conclusion of the hearing concerning the reasons for the adjournment which had just been decided.

Indeed, the hearing only lasted a very short while, the case being postponed for the fourth time until **December 24, 2002** at the request of the plaintiffs, to allow them time to present new findings.

## OBSERVATIONS

Beyond the technical justifications, this new adjournment can be explained by a desire to wear down the foreign observers. The choice of the date of the next hearing, December 24, is not insignificant in this regard.

Another hypothesis can be ventured – which does not exclude the previous one - continue to hang a sword of Damocles over the Tunisian Bar: indeed the Bar has legitimate reason to fear that the Court of Appeals will pronounce in favor of the annulment of the decision in question,<sup>2</sup> while the plaintiffs hold out for the prospect of a withdrawal of their lawsuit, which would put an end to the procedure without the Court of Appeals having to give a ruling. As long as a withdrawal remains a possibility, the authorities can hope that the Tunisian Bar will not take any measures likely to disturb them.

Finally, it is conceivable that the authorities are hesitating – and thus gaining a bit of time – to make a gesture toward the Bar in the hope of mollifying it. Like any authoritarian regime, it wants to give itself an image of respectability, which is contested in certain quarters: hence a few gestures of leniency following a great deal of authoritarianism. Thus, H. Hammami was released last September, well before serving his entire sentence, after a long hunger strike by his wife which was given a lot of media coverage, especially in France; and more recently the two men convicted with him were also released. On November 7, 2002, on the occasion of the 15th anniversary of his coming to power, President Ben Ali made reference in his speech to the difficulties being encountered by the Tunisian Bar, something that had never happened before, according to the lawyers with whom I spoke. Is it the sign of a desire

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<sup>2</sup> Nevertheless, this annulment is by no means a foregone conclusion: the Tunisian Bar had decided to issue strike appeals in the past without provoking a reaction from the authorities. Thus a one-hour strike in solidarity with the Palestinians was widely followed by lawyers; likewise, when several lawyers were assaulted by the police while meeting with their clients, the strike decided by the Council of the Bar Association did not cause any difficulties. The President of the Paris Bar had the opportunity to remind his Tunisian colleagues that the Bar associations in France, and particularly that in Paris, had issued appeals for strikes on several occasions.

to calm relations between the Bar and the authorities, which when the time comes, will result in a withdrawal?

What exactly is at stake in this case? It is public knowledge that the plaintiff lawyers are members of the governing party and are thus seen to be acting in close collaboration with the authorities.

Now, the Tunisian Bar is one of the few pockets of liberty remaining in the country.

The President of the Bar and the Members of the Council of the Bar Association are chosen following free elections, over which the authorities in power do not seem to be able to exercise any influence.

The Bar Association courageously defends individual liberties, denounces police violence and inhumane prison conditions, and protests against signs of dependence on the part of the judicial authorities toward the executive. As a result, a collective movement of lawyers which is given significant media coverage outside the country is very poorly tolerated by the authorities.

To sanction the call to strike as illegal would subsequently make it possible to threaten the participants with disciplinary proceedings, which could go as far as suspension or disbarment and thus reduce the scale of the movement, making it easier to punish the more limited number of participants. It is thus preservation of the collective role of Tunisian lawyers in the sphere of defense of liberties that is at stake.

The seriousness of these problems is all the more pronounced given that individually lawyers continue to be threatened in the exercise of their functions. A given lawyer, because he participates in the activities of an association for the independence of the judiciary in Tunisia, is regularly summoned by the Prosecutor's office and by the police for the purpose of intimidation. Another sees his most important clients abandon him under pressure from the authorities, without the slightest criticism being hereto voiced by any of his clients.

Still another notices that his clients are threatened at the entrance of the building where his law offices are located. Another is the victim of a burglary which has all the markings of organized vandalism, etc.

At the same time, "pro-government" lawyers see an increase in their clientele, notably national companies, public legal entities and important clients whose interests lead the lawyers to support the authorities in power and handle them with care.

## HEARING OF DECEMBER 24, 2002

During a previous hearing on November 19 2002, the case was postponed until December 24 to allow the plaintiffs time to present new conclusions.

### THE HEARING

On **December 24 2002**, at the hearing which I attended at the Court of Appeals in Tunis, it was decided that a new adjournment would take place on February 25, 2003 to hear the pleadings, without any prior proceedings having taken place. There is no way of knowing whether the case will indeed be heard on this date or once again adjourned.

It was pointed out to me by several lawyers that the case could have been heard that day or postponed for a week, according to the customary practice. The two-month adjournment can only be explained by the reasons given above (to maintain pressure on the Bar Association and leave the door open for a possible compromise) and demonstrates an awareness of the high stakes that are involved in this case.

In the courtroom I again met the representatives of the embassies of the United States, the Netherlands and Belgium – who congratulated me once again on my presence.

Also present at the hearing was Ms. Doris Leuenberger, member of the Council of the Bar Association of Geneva and the Swiss League of Human Rights.

I did not see representatives of the international press agencies.

As at the previous hearing, one of the petitioning lawyers approached me to deliver a “recapitulative fact sheet” dated December 24 and obviously intended for the foreign observers.

This note<sup>3</sup> essentially restates the premise of the previous note<sup>2</sup> that the petition for annulment of the decision by the Council of the Bar Association is based on the infringement that this decision represents on the fundamental principle of the free exercise of the practice of law, and as a result, on the fact that “*no one can decide to oblige a lawyer to stop exercising his profession...*”

But this same document indicates “*the Council of the Bar Association decided to list the names of those lawyers who did not accept to submit to the strike decision*”, (...) “*hundreds of lawyers in professional garb went to the courts to attend hearings and to exercise their functions normally.*” Thus, there was no obligation for Tunisian lawyers to stop exercising their professional activities, but only an incitement to do so.

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<sup>3</sup> See annex.



According to information collected among Tunisian lawyers, there are approximately 250 lawyers (out of a total of 4,000) who are members of the party in power and 63 lawyers who did not want to participate in the strike.

## OBSERVATIONS

Since the previous hearing, the relations between the Tunisian Bar and the Government have become noticeably strained. Indeed, some 15 lawyers, including Mr. Jmour, Secretary General of the Tunisian Bar Association, have been the subject of physical attacks which could not have been coincidental.

There appears to be a link between these attacks and the recent creation of the International Association for the Support of Political Prisoners, in Tunis, notably by Judge Mokhtar Yahyaoui, who was himself violently assaulted in the street.

I was anxious to visit my colleague Yahyaoui, whose acquaintance I had made during my previous missions to Tunis. I communicated to him my heartfelt solidarity, as well as that of the international community, in the physical and moral hardships he is suffering. Indeed, not only was his physical safety endangered, but he continues to be deprived of any means of communication with the outside world and is not authorized to travel abroad. Moreover, his status as a founding member and President of the Tunisian Centre for the Independence of the Judiciary and founding member of the International Association for the Support of Political Prisoners subjects him to constant police surveillance.

During our meeting, M. Yahyaoui told me that the Conference of the Association of Tunisian Magistrates had just been held.

He related to me an incident that is very revealing about the relations between the government and the Tunisian judiciary: the administrative office of the Ministry of Justice had proposed to assist in reproducing the report of the outgoing Board of this Association [Association of Tunisian Magistrates]. It performed this task, but only after having “censored” the report, in particular by removing a paragraph concerning the freedom of expression of magistrates, which was considered an intolerable reference to the incident at the origin of Judge Yahyaoui’s removal from office.

The judge also informed me that 3 lists of candidates for the Board of this Association had been in competition with one another, including an “official” list which had been eliminated in favor of that of the outgoing members, who were reelected. The authorities reproach the latter for not being sufficiently docile. Their key demand concerns the adoption by Tunisia of international standards on the independence of the judiciary (in particular, the *UN Basic Principles on the Independence of the*

*Judiciary*, approved by resolutions 40/32 and 40/146 of the UN General Assembly, November 29 and December 13, 1985 respectively).

This satisfying reaction on the part of the Tunisian judiciary is not new—already in 1985, as Mr. Yahyaoui informed me, young magistrates had formed an association and gone on strike to secure modification of the status of the judiciary with a view toward achieving greater independence. The authorities had reacted by deciding to dissolve the association in question and starting disciplinary proceedings against its leaders

## HEARING OF FEBRUARY 25, 2003

On **February 25, 2003**, attending the proceedings for the third time, I was present at the 5th postponement by the Court of Appeals in Tunis (until next April 22) of the trial opposing a number of Tunisian lawyers, members of the RCD party, and the Council of the Tunisian Bar Association, and aimed at securing the annulment of a decision by this Council calling for a strike by Tunisian lawyers<sup>4</sup>.

### THE HEARING

As at the previous hearings I had attended, the 1<sup>st</sup> Secretary of the Embassy of the Netherlands, the 2<sup>nd</sup> Secretary of the Embassy of the United States and representatives of the embassies of Great Britain and Switzerland were present in the courtroom.

A desire to wear down the foreign observers is perhaps the motivation behind the number of postponements and the choice of dates liable to inconvenience the European monitors – December 24 and Easter Tuesday, April 22. They nevertheless continue to come to Tunis. On February 25, a lawyer from Brussels, Mr. Braun, representing the President of the Bar Association and whom I had already met at the hearing of November 19 was present, as was Mr. Asselineau, an attorney at the Paris Bar, also representing the President of his Bar Association and who had attended the sessions involving the initial postponements in the case last spring. Also present was Mr. Alain Werner, an attorney at the Geneva Bar, currently training in the United States, representing Human Rights Watch. Three Dutch lawyers were also to have attended the hearing, but were prevented from doing so, having been turned back at the airport. There may be a link between this refusal of entry onto Tunisian territory and the fact that in November 2002, a charter flight carrying 50 Dutch attorneys had been the subject of a refusal of landing rights at the airport in Tunis<sup>5</sup>. Indeed, these lawyers had intended to travel to Tunis to lend their support to the President of the Bar Association, Mr. Bechir Essid, prior to the December 24 hearing.

### COMMENTS

The maintenance of pressure on the Tunisian Bar Association was simultaneously confirmed and contradicted by what I learned on the spot. I was told that the Secretary General of the Union of Arab Lawyers (a lawyer from Cairo) had paid a visit several weeks before to the Tunisian Minister of Justice, to ask him to see to it that the lawyers of the governing party – the RDC – withdraw their action for annulment of the decision by the Council of the Bar Association. The Minister is said to have opposed the request in anticipation of the decision of an extraordinary General Assembly of Tunisian lawyers,

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<sup>4</sup> In addition to being mandated by the CIJ and the Observatory, I also received a commission from the Syndicat français de la Magistrature (French Union of the Magistracy) to observe the hearing of February 25, 2003.

<sup>5</sup> See the AFP dispatch of November 20, 2002.

which was held February 16, 2003, following the physical attacks suffered by certain lawyers in Tunis during the previous month of December, breaches of the immunity of certain lawyers' chambers, as well as the ransacking of the offices of the President of the Tunisian Bar Association, Mr. Essid, during the night of January 24/25, 2003<sup>6</sup>.

Contrary to the hopes of the authorities, even though the first meeting of the General Assembly could not be validly convened since it failed to achieve the required quorum (506 lawyers were present, while a quorum required approximately 1,100 - a large number of the notifications to attend having been intercepted and therefore having not reached the person to whom they were addressed). The second meeting was validly convened with more than 1,000 lawyers present, and a motion in support of the President of the Bar and the majority of the Council of the Bar Association was adopted virtually unanimously, with only a few dozen pro-government lawyers opposing it, according to information provided to me by the Secretary General of the Bar Association, Mr. Jmour

The pretext given by the plaintiffs for requesting the adjournment was the fact that they had returned late the night before from the Congress of Arab Lawyers, which had been held in Cairo. The President of the Bar – who was also attending the Congress – did not oppose the adjournment, given that the Bar Association is not in any hurry for the case to be judged – having every reason to fear that the decision would not be in its favor – and, moreover, a former President of the Bar had apparently encouraged the Council of the Association to appear conciliatory, letting dangle the possibility of a withdrawal of the suit.

In any case, the Tunisian Government did not exert any pressure, either on the petitioning lawyers, or on the Court of Appeals, to urge that this case be examined in depth at this hearing, the decision to postpone having been taken in a matter of minutes, without any discussion. Indeed it seems that the increasingly likely possibility of a war in Iraq is of deep concern here, with the Tunisian authorities in particular fearing that it could lead to a destabilization of the country. They almost certainly do not wish to open an internal conflict with the Tunisian lawyers.

Whatever the case, the extraordinary congress of the Union of Arab Lawyers meeting in Cairo in light of the international situation, had specifically expressed its anxiety concerning the dangers of the effects of the war on the Iraqi civilian population and instructed the Tunisian Bar to communicate its humanitarian concerns to the European NGOs and Bars.

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<sup>6</sup> See AFP dispatch of February 1, 2003.

**HEARING OF APRIL 22, 2003<sup>7</sup>**

The 6<sup>th</sup> hearing in the trial against the Council of the Bar Association took place on **April 22, 2003** and the case was heard that day. The verdict will be announced on May 20, 2003.

Ms. Doris Leuenberger, Member of the Council of the Geneva Bar Association and Vice President of the Swiss League of Human Rights had been mandated by the Council of the Geneva Bar to monitor the proceedings on April 22. In her report on the trial, Ms. Leuenberger noted the following:

I noted that the procedures were respected insofar as the lawyers for the Council of the Bar Association, including a former President of the Bar and a professor at the University of Tunis, were able to express themselves without being interrupted by the Court. In substance, they emphasized that the lawyers petitioning for annulment of the decision by the Council of the Bar Association had neither current nor personal interest in bringing the action, insofar as they themselves had not participated in the strike, which moreover had already taken place.

They also underlined that the right to strike was enshrined in the Tunisian Constitution and that the Council of the Bar Association had the absolute authority to call a one-day strike, especially since the question had been submitted to an extraordinary general assembly which had approved it by majority vote. In fact, this strike was not of a constraining character for those who did not wish to participate in it, and they had not been the subject of any disciplinary sanctions.

The judgment will be rendered on May 20. Nevertheless, the Council of the Tunisian Bar Association is almost certain that the case will not be declared in its favor, as rulings in this kind of case are always rendered in conformity with the instructions received from the authorities. Can an opinion be hazarded already on the verdict in this case?

According to our Tunisian colleagues, this trial is of particular importance, because if the authorities, by resorting to legal proceedings, succeed in censuring decisions of the Council of the Bar Association which are not to their liking, it will be the very independence of lawyers – untouchable so far - that will be affected.<sup>8</sup>□

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<sup>7</sup> The partner organizations decided not to send Mr Lyon-Caen to Tunis on this date, for fear that the hearing would again be the subject of a postponement.

<sup>8</sup> See «Rapport sur deux missions d'observation d'un procès dirigé contre le Conseil de l'Ordre des avocats, sur mandat du Conseil de l'ordre des avocats de Genève» («Report on two trial observation missions in connection with proceedings against the Council of the Tunisian Bar Association, as commissioned by the Council of the Geneva Bar Association») by Doris Leuenberger, May 1, 2003.

## CONCLUSION

As indicated above, the hearing of April 22 was the 6<sup>th</sup> hearing in this trial. Given that this was not the first time that the Council of the Bar Association had called for a strike<sup>9</sup>, the question remains, why it had never been the subject of proceedings before.

It is therefore essential to analyze this trial in the context of the strong position taken by the Council of the Bar Association in protest against the developments in the proceedings against Messieurs H. Hammami, A. Maddouri and S. Tammallah on February 2, 2002. The strike was intended to protest against the lack of fundamental fair trial guarantees during the aforementioned proceedings, the attacks against the accused by the police in the courtroom and the failure to respect the rights of the defense. The strike was also aimed at denouncing the outrageous treatment to which the defense lawyers were subjected, the latter having themselves been physically assaulted during the hearing.

In conclusion, it is clear that the proceedings instituted against the Bar Association had no other purpose than to punish the lawyers for having protested against the lack of independence of the judiciary and against grossly inequitable procedures that remove all credibility from the functioning of the Tunisian justice system. Indeed the Hammami trial has become a symbol of the malfunctioning of the administration of justice in the country.

The Tunisian authorities also intend to create a terrible precedent: a judicial decision stripping the Council of the Bar Association of the power to call a strike would deprive the lawyers of their most effective weapons in the struggle for justice. This is all the more disquieting because lawyers are among the most active human rights defenders in Tunisia.

The verdict is expected on May 20, 2003. We would like to believe that the Tunisian authorities will not take the risk of once again presenting a judgment that would sanction a justice system in which the law no longer has a place.

### Addendum

As expected, on 8 July 2003, the Court of Appeal of Tunis retroactively annulled the lawyers' strike that had been called by the Council of the Bar Association.<sup>10</sup>

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<sup>9</sup> See note on page 4.

<sup>10</sup> Please see joint ICJ/CIJL, FIDH, OMCT, and ASF press release, "*Les avocats bâillonnés par la décision d'une justice aux ordres*" 19 July 2003 on the ICJ website <[www.icj.org](http://www.icj.org)>

## Recapitulative fact sheet

### **Honourable colleagues, ladies, gentlemen,**

In the name of all of the plaintiff lawyers and the colleagues who are defending them, we present to you this recapitulative fact sheet concerning the action which we have brought against the strike decision issued by the Council of the Tunisian Bar Association on 02/02/2002, in the hope of shedding light on the facts of the case and the noble issue at stake in our action.

- On the aforementioned date the Council of the Bar Association took the decision to strike, enjoining the lawyers of Tunisia to stop all professional activity on 07/02/2002.
- On 05/02/2002, in defense of fundamental liberties, including the right to work, a group of lawyers lodged an appeal against said decision before the Court of Appeals in Tunis, in accordance with the provisions of Articles 71 and 72 of the Legal Profession Act, on the grounds that this decision was contrary to the aforementioned law and in particular its Article 62 .
- On 06/02/2002, the President of the Bar Association and the Public Prosecutor at the Court of Appeals were notified of the appeal.
- On 07/02/2002, hundreds of lawyers in professional garb went to the courts to attend hearings and to exercise their functions normally.
- On 01/03/2002, the Council of the Bar Association decided to display a list of lawyers who had not accepted to submit to the strike decision. At the order of the President of the Bar, this list was posted on the notice boards of the Council of the Bar Association.
- On 02/04/2002, the plaintiff lawyers presented their conclusions to the Court of Appeals in Tunis, in which they qualified the decision of the Council as illegal for having infringed on – among others – Article 62 of the Legal Profession Act, which does not attribute to the Council the power to decide a strike, and they requested the Court to pronounce the annulment of said decision.
- On 24/09/2002, the plaintiff lawyers filed a new reply in Court, in which they noted that the decision of the Council is contrary to:
  - human rights and fundamental liberties, including the right to work, protected by the law and the Constitution;
  - professional freedom;
  - article 62 of the Legal Profession Act
- Furthermore, they reproach the Council for the procedural irregularity of its decision in that no minutes were produced certifying the decision and due to the manifest absence of a legal quorum of members for holding its meeting.

- For all these reasons, the plaintiffs have maintained their petition for annulation of the contested decision.
- At the request of the President of the Bar Association, the Court postponed the case on 19/11/2002 to allow the defenders of the contested decision to file a new reply.
- At the hearing of 19/11/2002, the plaintiffs again requested a postponement of the case in order to present additional observations. The President of the Bar Association submitted to the decision of the Court, which decided to postpone the case until 24/12/2002 to allow the plaintiffs to produce their observations.
- **In our reply today, we furthermore request the Court to consider the free exercise of the legal profession as a fundamental principle and to rule as a consequence that no one can decide to oblige a lawyer to stop exercising his profession even momentarily, except in cases expressly and restrictively foreseen by the law.**

**Honourable colleagues, ladies, gentlemen,**

- Our action aims to have an illegal decision annulled that is contrary to fundamental liberties and human rights.
- Our combat is a combat in favour of respect for the law and free exercise of the legal profession.

And we are deeply convinced that you share this ideal with us.

With our thanks and respect,

On behalf of the plaintiffs and the Counsels for the Defense