

**YOUSSEF BOUZAKHER V. TUNISIA**  
**Submitted to the United Nations Human Rights Committee**  
**12 February 2024<sup>1</sup>**

**I. STATEMENT OF FACTS**

1. Youssef Bouzakher, ‘the Author’ of this communication, is one of the most senior judges in Tunisia. He has been a serving judge since 2001. During his distinguished career over two decades, he ascended to the most senior judicial rank, and in 2017 was elected by his judicial peers as a member of the High Judicial Council (HJC). In 2019, he was elected by HJC members to the presidency of the HJC. His HJC term should have run until 27 October 2023, and he expected to retire from the judiciary around 2034.
2. However, through a series of presidential decrees adopted during 2021-2, the Author was removed from his position as HJC member and President, dismissed from his judicial position, and subjected to an arbitrary criminal process, with serious impacts on his honour, reputation, professional development, health and well-being.
3. The measures taken against the Author are part of a recognized rule of law crisis unfolding in Tunisia today. Having declared a state of exception, pursuant to article 80 of the Constitution, on 25 July 2021, Tunisia’s President, Kaïs Saïed, arrogated to himself power over the legislative, executive and judicial branches of the state, eviscerating the separation of powers and judicial independence. Pursuant to these powers the President took a series of measures amounting to multiple violations of the rights of the Author. The core facts in relation to this claim are set out in this section. The exhaustion of domestic remedies is at Section II, the violations of rights at Section III and the relief requested at Section IV.

***Presidential usurpation of the executive, legislature and judiciary***

4. Between at least July 2021 and December 2022, President Saïed incrementally assumed executive and legislative control:
  - i. On 25 July 2021, the President declared himself the head of the executive. By [Presidential Decree 2021-69](#) of 26 July 2021, he dismissed the Head of the Government and several senior Government Ministers, including Interior, Defence and Justice. Through subsequent decrees, he conferred upon himself full executive powers (Presidential Decree [2021-117](#) of 22 September 2021) and appointed a new Government (Presidential Decrees [2021-137](#) and [138](#) of 11 October 2021).
  - ii. From 25 July 2021 to December 2022, President Saïed assumed control of the legislature. On 25 July 2021, Parliament was suspended and the immunities of its members were lifted (see Presidential Decrees [2021-80](#) of 29 July 2021 and [2021-109](#) of 24 August 2021). By Presidential Decree [2021-117](#) of 22 September 2021, parliamentarians’ allowances were stopped, the President granted himself full legislative powers (through decree laws) and effectively suspended the 2014

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<sup>1</sup> This document is redacted from the application form and annexes submitted to the UNHRC in accordance with its procedural requirements, which contains further details of fact.

Constitution. Decree 2021-117 also dissolved the Provisional Body competent to review the constitutionality of draft legislation.

- iii. The President definitively dissolved Parliament itself on 30 March 2022 ([Presidential Decree 2022-309](#)). Legislative elections were not held until December 2022, under the Constitution promulgated in August 2022.
- iv. Decree [2021-117](#) explicitly stated that the decree laws would not be subject to judicial review. As such, it entrenched the *de facto* concentration of unaccountable executive and legislative powers in the hands of the President.
5. Since at least July 2021, the President and others have publicly vilified judges and prosecutors (both hereinafter referred to as ‘magistrates’) and the HJC; repeatedly calling for a ‘cleansing’ of the judiciary.
6. The Author resisted executive criticism of the judiciary and HJC, and the multiple efforts by the executive to co-opt the HJC. In the exercise of his functions as HJC President, the Author opposed efforts at unconstitutional presidential overreach and encroachment into judicial independence, and measures being taken against magistrates beyond the framework and procedures established in the law and the 2014 Constitution<sup>2</sup>. As a result, presidential criticism of the HJC intensified.
7. Public presidential attacks on the judiciary were the precursor to specific decrees that would dismantle the HJC, remove the Author and other magistrates from judicial office and commence arbitrary criminal charges against them, with the effect of eviscerating judicial independence in Tunisia.

### ***High Judicial Council Disbanded and Replaced***

8. In January and February 2022, the HJC was disbanded and replaced by a council under presidential control, thereby removing the Author from his role as HJC member and President:
  - i. On 19 January 2022, [Decree Law 2022-4](#) terminated the allowances and benefits of the Author and other members of the HJC. The HJC members continued to exercise their functions notwithstanding.
  - ii. On 6 February 2022, the President declared that the HJC would be dissolved by decree, to ‘cleanse’ Tunisia.
  - iii. On 12 February 2022, [Decree Law 2022-11](#) disbanded the HJC. The decree replaced the dissolved HJC with a smaller Temporary HJC under presidential control. Through this decree, the President arrogated to himself powers over the appointment, promotion, transfer, discipline and dismissal of judges and prosecutors as well as over the appointment of Temporary HJC’s members. As a result of the dissolution of the HJC, the Author was immediately removed from his position as elected President and member of the HJC one year and seven months before the end of his term.
  - iv. Article 7 of Presidential Decree [2021-117](#) precluded the possibility of challenging decree laws. Hence the Author could not challenge Decree Law 2022-11 or its effects.

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<sup>2</sup> These included the President’s effort to exert control over the prosecution service, the presidential calls to purge the judiciary and draft legislative proposals that the HJC considered unconstitutional.

### ***Arbitrary Dismissal and Unsubstantiated Criminal Cases***

9. On 1 June 2022, the President announced in a public speech that he was dismissing members of the judiciary accused, *inter alia*, of corruption, abuse of power and immorality. Further encroaching on judicial independence, on the same day he issued Decree Law [2022-35](#) arrogating to himself unilateral power, even without the THJC's involvement, to summarily dismiss magistrates.
10. Presidential Order [2022-516](#) was then published in the official gazette, listing the names of the Author and 56 other magistrates dismissed by the President. It was in this way the Author learned that his judicial career had been brought to an end.
11. Decree Law [2022-35](#) also stated that criminal proceedings would be initiated against all dismissed magistrates. As such, the President acted as prosecutorial authority, deciding who would be subject to criminal proceedings, further undermining the independence of the justice system. The decree foreclosed the possibility of appealing against their dismissals until the conclusion of the criminal proceedings.
12. On 20 August 2022, the Ministry of Justice stated publicly that it had opened 109 investigation files for, among others, financial, economic and 'terrorism-related' crimes allegedly committed by the dismissed magistrates.
13. In September 2022, spurious and unsubstantiated accusations of serious criminal activity (in relation to terrorism and financial crimes) were made against the Author. Criminal investigations therefore remain looming over the Author, and there exists a real risk of him being arbitrarily detained. The Author has no possibility to prevent this arbitrary resort to criminal law.
14. The measures taken against him amount to multiple violations of the ICCPR and expose him to a real risk of additional violations. They have caused him grave personal, professional and economic loss, with serious impacts on his honour and reputation, health and well-being, and carry the risk of further irreparable harm.

## **II. EXHAUSTION OF DOMESTIC REMEDIES**

15. All domestic remedies that are available, sufficient and effective to address the violations (eg *Patiño v Panama* 1994 para 5.2) available have been duly exhausted in accordance with article 2 and article 5(2) of the first Optional Protocol to the ICCPR and Rule 96(f) of the UNHRC's Rules of Procedure.
16. Where a remedy is unavailable due to legislation or established jurisprudence (*Barzhig v France* 1989) or it is ineffective, due to the lack of a fair process before an independent court (*Arzuaga Gilboa v Uruguay* 1985), it does not constitute a 'remedy' for the purposes of the rule on exhaustion. The facts of this case make clear that there is no effective domestic remedy in law, or in practice. Despite this, as noted below, the Author has made every effort throughout to prevent, challenge and bring to an end the violations of his rights, to no avail.

### ***No Constitutional Remedy:***

17. First, there was and is no court or body competent to bring or to consider a challenge to the impugned decrees (or measures taken under them) in relation to the ‘state of exception’.
  - a. Article 80 of the 2014 Constitution in force at all relevant times provided that the body competent to *review* measures taken pursuant to the ‘state of exception’ was the Constitutional Court. However, the Constitutional Court was never established. The body that had been provisionally charged with reviewing the constitutionality of draft laws pending the establishment of the Constitutional Court was not mandated to review exceptional measures, and was in turn abolished by Presidential Decree 2021-117.
  - b. It was precisely as no Constitutional Court existed to consider challenges to the decrees adopted under the ‘state of exception’, that the African Court on Human and Peoples’ Rights (ACtHPR) ruled that the exhaustion of domestic remedies requirement was satisfied in *Belguith v Tunisia*. Furthermore, the 2022 Constitution no longer provides for a review of presidential measures under the ‘state of exception’ at all (article 96 2022 Constitution).
  - c. Moreover, the body competent to *bring* challenges to these decrees under the 2014 Constitution was Parliament – which was suspended and later dismissed by Presidential Decrees 2021-80, 2021-109, 2021-117 and 2022-309.

***No Administrative Remedy:***

18. Second, although the Author has made every effort to pursue a remedy through the administrative courts, they do not provide an effective remedy in the context of this case. In the Tunisian system, the Administrative Court’s competence to review decrees adopted in connection with ‘the state of exception’, which are deemed to constitute ‘government acts’ or ‘legislative acts’, respectively falling outside the competence of the courts, is doubtful; this is based on a French rule (see *Conseil d’Etat*, Ass., 2 mars 1962, [Rubin de Servens](#), GAJA n° 79, p. 532) followed by Tunisian administrative courts.
19. Moreover, Decree Law 2022-35 stated that presidential orders dismissing a magistrate could not be challenged until the conclusion of the criminal proceedings instigated by the dismissal. Despite this, in the absence of an alternative forum and determined to make use of any possible remedy in the Tunisian system, the Author made an application to the Administrative Court, arguing that his dismissal under Presidential Order 2022-516 should be annulled as an abuse of power and violation of his rights. He argued violations of his rights of access to justice, presumption of innocence, fair proceedings, to defend oneself and to reasoned decisions, individual punishment, equality before the law, access in general terms of equality to public service in his country, to private life and to enjoy these rights without discrimination. On 9 August 2022, an interim ruling by the First President of the Administrative Court accepted that the Author’s grounds for seeking suspension of his dismissal were based on ‘*prima facie* serious reasons’ and the implementation of the dismissal would cause the Author ‘consequences that are difficult

to reverse;’ the judge suspended the Author’s dismissal pending a determination of the case.<sup>3</sup>

20. However, the executive has refused to implement this unappealable ruling. While this decision is not, in any event, a sufficient remedy - as it could only provisionally suspend his dismissal pending review - the fact that the Government refuses to implement it puts beyond any doubt its ineffectiveness as a remedy.
21. The Author also sought to enforce the judicial decision suspending his dismissal and to challenge the Government’s refusal to implement it without success. His application to invoke criminal sanctions against those refusing to implement the decision has been flatly ignored. Again, this action, aimed at ensuring a degree of executive accountability, would not in any event provide adequate relief, such as reinstatement or reparation, and does not constitute an effective remedy for the purposes of exhaustion. However, it does attest the Author’s concerted efforts to use every possible avenue to secure redress within the judicial process, and the state’s disdain for that process.

### ***Remedies are Explicitly Precluded by Law***

22. Third, it is crucial to recall that, as set out above and in annex 1, the lack of domestic remedies in this case is enshrined in law. In particular, article 7 of [Presidential Decree 2021-117](#), explicitly precludes legal challenge of the impugned decree laws, on which the violations in this case are based. With respect to dismissals, although there is in theory the possibility of reviewing the dismissal once the criminal proceedings that automatically ensued from dismissal have run their course, this would have the anomalous result of requiring a victim to wait for one violation to fully unfold before being able to challenge another.
23. This case reveals the extent to which measures taken during the ‘state of exception’ have undermined judicial independence in Tunisia. There are plainly no effective remedies before an independent and impartial court in this case, in accordance with the Committee’s jurisprudence on exhaustion of domestic remedies. There can be no doubt of the manifest lack of any effective domestic remedy, in law or in practice, in the present case.

## **III. LEGAL ARGUMENT**

### **ARTICLE 14 ICCPR: JUDICIAL INDEPENDENCE AND FAIR TRIAL**

24. Judicial independence is an underlying principle upon which all Covenant rights - including access to justice and the right to a remedy to protect other rights - depends. This principle’s significance for human rights, the separation of powers and the rule of law is evident throughout the Committee’s work, including its General Comments, Concluding Observations and individual case decisions cited in this complaint. International standards referenced in reports of the UN Special Rapporteur on the independence of judges and lawyers, cases from each of the regional human rights

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<sup>3</sup> Decision of the First President of the Administrative Court, Case No. 4107758, 9 August 2022, p. 9

systems, and myriad other standards attest to the significance of judicial independence for human rights protection.

25. Judicial independence is at the **core of states' obligations** under article 14 ICCPR specifically. Core fair trial rights, including guarantees of judicial independence and the right to an effective remedy, are non-derogable and not subject to any exception.<sup>4</sup> While the fair trial rights of many in society are undermined by attacks on judicial independence, the Committee has recognized that such attacks may also violate the rights of individual judges.<sup>5</sup> Committee members have underscored these dual implications for the rights of judges and for society as a whole.<sup>6</sup>
26. States must **refrain** from interference with the independent operation of the judiciary and fulfil their **positive obligations** to ensure that judicial independence is protected from any undue external influence.<sup>7</sup> [General Comment 32](#) makes clear that article 14 'entails the absence of any direct or indirect influence pressure or intimidation or intrusion from whatever side and for whatever motive' in respect of the judicial function.<sup>8</sup> In its Concluding Observations, this Committee has frequently expressed concern about executive pressures and influence and the failure to adequately guarantee and safeguard judicial independence as required by article 14.<sup>9</sup> Positive obligations to secure judicial independence also require establishing clear, non-political procedures for appointing, remunerating, promoting, suspending, dismissing or disciplining judges, as well as legal and institutional frameworks that guarantee judicial independence.
27. The Special Rapporteur on the independence of judges and lawyers has emphasized the obligation to 'adopt all appropriate measures' to ensure institutional independence and impartial decision-making by judges.<sup>10</sup> The [2020 Human Rights Council Resolution](#) 'calls upon all States to guarantee the independence of judges ... including by taking effective legislative, law enforcement and other appropriate measures that will enable them to carry out their professional functions without interference, harassment, threats or intimidation of any kind,'<sup>11</sup> recalling the [UN Basic Principles on Judicial Independence](#).<sup>12</sup>
28. This case involves violations of article 14's negative and positive obligations, through the attacks on the judiciary, removal and prosecution of magistrates without cause or

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<sup>4</sup> [HRC General Comment 29](#), paras 11, 14-16, [HRC General Comment 32](#), para 6 and 19. There has been no derogation lodged in any event.

<sup>5</sup> See e.g. [Baltasar Garzon v Spain](#) Communication 2844/2016 CCPR/C/132/D/2844/2016 (2021), [Adrien Mundy Busyo et al. v. Democratic Republic of the Congo](#), Communication No. 933/2000, U.N. Doc. CCPR/C/78/D/933/2000 (2003); [Mikhail Ivanovich Pastukhov v. Belarus](#), [Communication No. 814/1998](#), UN Doc. CCPR/C/78/D/814/1998 (2003); see other courts and bodies decisions below.

<sup>6</sup> [Pastukhov](#), *ibid*, individual opinion of Ruth Wedgwood and Walter Kaelin found violations of rights 'guaranteed to him and to the people of Belarus'.

<sup>7</sup> [Pastukhov](#), *ibid*. [Busyo et al. v. Democratic Republic of the Congo](#), para. 5(2) notes the duty to respect and ensure article 14 rights.

<sup>8</sup> UNHRC [General Comment 32](#), §25.

<sup>9</sup> UNHRC, *Concluding observations on the second periodic report of the Congo*, [UN Doc. CCPR/C/79/Add.118 \(2000\)](#), §14; see also UNHRC *Concluding observations on the third periodic report of Venezuela*, UN Doc. CCPR/Co/71/VEN, (26 April 2001), paras 13-14.

<sup>10</sup> See e.g. Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/HRC/38/38, 2 May 2018 ([2018 report](#)).

<sup>11</sup> [Resolution 44/9](#) adopted by the Human Rights Council, 16 July 2020, §1.

<sup>12</sup> [The Basic Principles on the Independence of the Judiciary](#) (1985).



fair process and disbanding the HJC. The Author submits that, in line with the approach adopted by this Committee in the past, his article 14 rights have been violated in several ways:

- i. First, the **attacks on and arbitrary dismissal** of the Author, and consequent loss of income and benefits, were direct **attacks on judicial independence**, in violation of article 14(1).
- ii. Second, the **complete denial of basic due process rights** – including the failure to provide detailed reasons for the dismissal or any opportunity to challenge the measures taken against him or the decrees upon which they are based before an independent or impartial tribunal – violate article 14(1).
- iii. Third, **dismantling the HJC** and removing the Author as president before the expiry of his term, violated the positive obligations to protect and safeguard judicial independence under article 14.
- iv. Fourth, the **arbitrary resort to criminal** process – mandated by the president, without any plausible basis or due process, as a reprisal for opposing the encroachment into judicial independence – violates article 14(1) and (3), and creates the real risk of detention in violation of Article 9.
- v. Considered together, the nature of the measures taken against the Author – his dismissal and prosecution at presidential behest - violate the **presumption of innocence** under article 14(2).

***i) Dismissal of the Author and other Judges Violated Article 14 Rights***

29. International standards indicate the fundamental importance of security of judicial tenure and the need for there to be **exceptional grounds, and strict procedural safeguards**, for dismissal of judges to be justified. Longstanding standards, such as those enshrined in the [UN Basic Principles](#), underscore that the threshold for dismissal of judges must be high.<sup>13</sup> Reports of UN Special Rapporteurs make clear that judges should not be removed from office absent clear grounds, based on sufficiently serious and established misconduct, incapacity or behaviour that renders them unfit to discharge their duties.<sup>14</sup> The Human Rights Council has emphasized that grounds for removal should be explicit, well-defined, and involve incapacity or behaviour unfitting their role, and that disciplinary and removal procedures should adhere strictly to due process.<sup>15</sup>
30. This Committee has repeatedly underscored the need for safeguards to ensure judges are not sanctioned for ‘minor infractions or for a controversial interpretation of the law’<sup>16</sup> or dismissed without specific reasons and effective judicial protection.<sup>17</sup>

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<sup>13</sup> [Basic Principles on the Independence of the Judiciary](#) (1985), article 18.

<sup>14</sup> Report of the Special Rapporteur on the independence of judges and lawyers, [UN Doc. A/HRC/38/38](#), (2 May 2018), §60.

<sup>15</sup> [Human Rights Council Resolution 44/9](#) on the independence and impartiality of judiciary, jurors and assessors and the independence of lawyers (2020), article 3.

<sup>16</sup> UNHRC, [Concluding observations on the fourth periodic report of Azerbaijan](#), CCPR/C/AZE/CO/4, §26; *Garzon v Spain* supra, §5.5.

<sup>17</sup> [Human Rights Committee General Comment 32](#), §20. In its *Garzon v. Spain* decision (Eng. Translation 2023) UN Doc. CCPR/C/132/D/2844/2016, §5.4, the Committee found violations from the dismissal and prosecution

31. [General Comment 32](#),<sup>18</sup> like other standards,<sup>19</sup> emphasizes that decisions regarding removal or sanction must be made wholly independently of the executive. Safeguards are essential whether judges are dismissed directly or sanctioned indirectly.<sup>20</sup>
32. The present case reveals flagrant arbitrariness and violations of each of the benchmarks noted above. As noted in the Facts section, the dismissal was part of a massive judicial ‘purging’ – the scale of which was itself indicative of the absence of strictly exceptional circumstances to justify removing judges from their positions. The Author was never provided with detailed grounds and individualized reasons, and his removal was carried out with no due process. Far from oversight by an independent body, his dismissal was by presidential dictate, in exercise of unfettered powers President Saied assumed that day by decree to unilaterally remove judges, and precluded legal challenge.
33. The Committee has found a violation of article 14(1) – and recognized that the measures were an ‘attack on the independence of the judiciary’ – where judges have been dismissed in comparable circumstances. In [Adrien Mundy Busyo et al. v. Democratic Republic of the Congo](#), following the massive dismissal of judges by presidential decree on grounds such as alleged immorality, corruption, and incompetence, the Committee found a violation of the judge’s rights under article 14<sup>21</sup>. The Committee has also found violations of article 14(1) arising from the dismissal and prosecution of a judge based on his judicial activity in the [Garzon v. Spain](#) case, absent evidence of ‘grave crime’ and stringent ‘safeguards of judicial independence and due process’.<sup>22</sup> Finally, as the Committee noted in [Allan Brewer-Carías v. Venezuela](#), in certain circumstances where judges or prosecutors are removed, the burden shifts to the state to prove that security of tenure guarantees were in place to enable justice actors to operate independently; absent sufficient information from the state, adverse inferences may be drawn.<sup>23</sup>

***ii) Inability to Challenge Dismissal before a Fair, Independent and Impartial Tribunal violated Article 14***

34. As noted above, [General Comment No. 32](#) makes clear that article 14(1) requires not only ‘serious grounds’ to dismiss judges but ‘fair procedures ensuring objectivity and impartiality set out in the constitution or the law’.<sup>24</sup> More broadly, it requires that measures restricting rights be subject to challenge before a competent, independent and impartial tribunal established by law and guaranteeing due process standards.

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of a judge absent evidence of ‘grave crime, corruption, bad faith, or incompetence, following high standards of judicial independence and due process’.

<sup>18</sup> Ibid.

<sup>19</sup> [International Bar Association Minimum Standards of Judicial Independence](#) 1982. [Universal Charter](#) of the Judge 1999, [Bangalore Principles of Judicial Conduct](#) 2006, among others.

<sup>20</sup> See also [European Commission v. Republic of Poland](#) CJEU (24 June 2019), §76; [Baka v. Hungary](#), ECtHR (23 June 2016) §108,109,110.

<sup>21</sup> [Busyo v DRC](#), UN Doc. CCPR/C/78/D/933/2000 (2003), §5.2.

<sup>22</sup> [Garzon v Spain \[\(2021\)\]](#) (Eng. Translation 2023) UN Doc. CCPR/C/132/D/2844/2016, §5.4

<sup>23</sup> [Allan Brewer-Carías v Venezuela](#), UN Doc. CCPR/C/133/D/3003/2017, (2022), §9.3.

<sup>24</sup> [Human Rights Committee General Comment](#) 32, §20.



35. The Committee has found violations of judges' rights under article 14 in cases raising the same issues to those arising in the present case.<sup>25</sup> Other courts and bodies have also found violations of fair trial rights where judges, prosecutors or lawyers were dismissed without the ability to challenge their dismissal in a fair process before an independent judicial body. Several ECtHR cases, closely reflecting the facts of the present case, have led to findings of violations of article 6 ECHR.<sup>26</sup>
36. Similarly, in several cases before the Court of Justice of the European Union addressing the principle of the 'irremovability' of judges and importance of due process safeguards, the Court found that, where the body determining the lawfulness of removal of judges lacks independence and impartiality, it cannot be considered capable of guaranteeing the right to access to a 'court' at all.<sup>27</sup>
37. Finally, the Author draws to the Committee's attention the judgment in *Belguith v Tunisia* (2022) in which the African Court on Human and Peoples' Rights specifically addressed the lack of a competent court before which to challenge the Tunisian presidential usurpation of executive and legislative powers; the Court found a violation of the right to be heard (together with the right to participate in public life, discussed below).<sup>28</sup>
38. The present case is characterized by arbitrariness, and the complete dearth of any fairness or due process. There was no procedure followed in the summary termination of the Author's judicial career and no reasons were given for it. The impugned laws added insult to injury by precluding the right to judicially challenge measures taken pursuant to 'the state of exception', including, *inter alia*, the dismantling the HJC and the summary dismissals. There was and is no independent 'court' or tribunal before which any effective challenge could be brought (see section on ICCPR art. 2(3) below). As in the cases cited above, the THJC established by presidential decree and operating under his control, lacks the independence and impartiality to be considered a court established in law providing a fair judicial process – even if there were to be a hearing before this body, which has not happened to date.

### *iii) Disbanding Independent High Judicial Council Violated Article 14*

39. States' positive obligations under article 14, recognized by the Committee, require **institutional safeguards** to protect judicial independence and the separation of

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<sup>25</sup> *Mikhail Ivanovich Pastukhov v. Belarus*, UN Doc. CCPR/C/78/D/814/1998 (2003), §7.3. A judge of the Constitutional Court was dismissed by presidential decree 'several years before the expiry of the term for which he had been appointed'. The Committee determined that no effective judicial protections were available to contest his dismissal, resulting in a violation of article 14.

<sup>26</sup> *Volkov v. Ukraine*, European Court of Human Rights (App no. 21722/11) (2013); *Paweł Juszczyszyn v. Poland*, ECtHR, (App no. 35599/20 ), (4 August 2020); *Reczkowicz v. Poland*, ECtHR (app.no. 43447/19), (July 22, 2021); *Xero Flor w Polsce sp z o.o. v. Poland*, ECtHR (App. no. 4907/18) (2021)

<sup>27</sup> *Commission v. Poland*, CJEU, C- 619/18 (2019) §26;; *AK v. Krajowa Rada Sadownictwa*, CJEU, C-585/18, C-624-18, and C-625/18 (2020) §2; see also *Case of Dolińska-Ficek and Ozimek v. Poland*, ECtHR, (2022), §54, 256 and *Case of Advance Pharma sp. z o.o v. Poland*, ECtHR (2022), §149.

<sup>28</sup> *Belguith v. Tunisia*, Application No. 017/2021, African Court on Human and Peoples' Rights, (24 September 2022), §127.

powers.<sup>29</sup> It was indeed on this basis that an independent HJC was enshrined in the 2014 Tunisian Constitution following the transition from one-party rule.

40. The UN Special Rapporteurship on the independence of judges and lawyers has clarified the role independent judicial councils can play in fulfilling these obligations, and recommended their establishment.<sup>30</sup> The UN Special Rapporteur notes international and regional human rights standards that support the role of such judicial councils in preserving judicial independence.<sup>31</sup> These include the Committee's own Concluding Observations on the Congo in 2000 which expressed concern about judicial independence being compromised by the absence of independent mechanisms for recruitment and disciplining of judges, among other factors.<sup>32</sup> The Rapporteur's 2018 report on the subject cites, among other regional standards, an Interamerican Commission report that urges those States that lack such bodies 'to create them and endow them with the guarantees that enable them to perform each of their assigned functions independently', in the manner prescribed by international law standards.<sup>33</sup>
41. The ECtHR has also addressed the importance of judicial councils, and violations arising from the removal of judges from them.<sup>34</sup>
42. It is submitted that, in the circumstances of this case, the disbanding of the HJC and its replacement with a temporary HJC had the intention and effect of ensuring presidential control of the judiciary, and punishing the Author for his independence and resistance to such control. As such, the disbanding of the HJC and its replacement with a temporary HJC violated international standards and the obligation to protect judicial independence under article 14.

#### *iv) Arbitrary Criminal Process Violated Article 14*

43. The criminal proceedings against the Author in response to the exercise of his judicial functions and his refusal to support the erosion of judicial independence, are arbitrary, and violate article 14 in several respects.
44. First, the **prosecution of the Author was triggered by presidential decree**, which dismissed the Author and 56 other magistrates and dictated that criminal charges would

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<sup>29</sup> [Human Rights Committee General Comment 32](#); *Ibid* (application 017/2021), Judgment (22 Sept 2022), §97 on the obligation to establish and improve appropriate national institutions for the promotion and protection of human rights and freedoms and to guarantee the independence of the courts.

<sup>30</sup> See e.g. Report of the Special Rapporteur on the independence of judges and lawyers, [UN Doc. A/HRC/38/38](#), 2 May 2018, §26. In *Grzeda v. Poland* the UNSR intervened in the case pending before the ECtHR, citing to recommendations of successive UNSR's on establishing independent councils: [Grzeda v. Poland](#), App. No. 43572/18, (2022), §243.

<sup>31</sup> See Report of the Special Rapporteur (2018), *ibid*, §21-26, citing the Universal Charter of the Judge as providing for the establishment of "a Council for the Judiciary, or another equivalent body ... save in countries where this independence is traditionally ensured by other means" and including specific provisions relating to the composition and competences, and fuller range of regional standards, which reflect the ICCPR rights.

<sup>32</sup> Concluding Observations on Second Periodic report of the Congo, [UN Doc. CCPR/C/79/Add.118](#) (2000).

<sup>33</sup> Inter-American Commission on Human Rights, "Guarantees for the independence of justice operators: towards strengthening access to justice and the rule of law in the Americas" (December 2013), §240–248 at 248; Special Rapporteur report, *ibid*, at §26. See multiple European standards cited therein.

<sup>34</sup> [Grzeda v. Poland](#), §124-142; [Zurek v. Poland](#), App. No. 39650/18 (2022).

be lodged against them all. This is at odds with the independence of the prosecution services as a ‘fundamental component of the administration of justice.’<sup>35</sup>

45. Second, a **criminal process that is inherently arbitrary**, brought without a plausible basis for prosecution and evidence of individual culpability, in order to punish or silence judges, itself violates article 14. The *Garzón v. Spain* decision<sup>36</sup> was the first time the Committee found that a state’s ‘arbitrary’ use of criminal law against a judge for the exercise of their duties amounted to violations of article 14(1). The violations arose from two criminal processes, one of which led to conviction and one to acquittal, as the violations entailed the fact that he was ‘*subject to criminal action*’ based on his judicial activity.<sup>37</sup> The Committee’s Concluding Observations also reflect that concerns under article 14 arise not only from the outcome of any criminal process, but because the process itself can ‘*expose judges to political pressure and jeopardize their independence and impartiality*.’<sup>38</sup>
46. In the present case, the context of dismissals *en masse*, and automatic prosecution of all dismissed magistrates, attest to their arbitrariness. The spurious factual basis for the investigation indicate the lack of a sufficient individualized basis to pursue criminal charges. The facts of this case point to an ulterior purpose in resorting to criminal law, to punish and silence dissenting judges, which is flagrantly arbitrary and unjustifiable.<sup>39</sup> The implications for the Author are extremely grave, and there is also a serious, chilling effect on other judges and dissenters.
47. Third, the extreme nature of the **lack of due process protections in the criminal process** against the Author are at odds with article 14(3). The complete dearth of reasons or information being provided to the Author, the lack of any factual basis for the spurious accusations, and the fact that there is by law no process to refute allegations and prevent the arbitrary criminal investigation, together amount to violations of Article 14(3).<sup>40</sup> The Author is left powerless to defend his rights and prevent a wholly arbitrary and unfair criminal process from occurring. In circumstances where judges are to be criminally investigated, there must be strict safeguards from the outset of the legal process; yet the law explicitly excludes the opportunity to challenge this process, set in motion by an unchallengeable presidential decree and unfettered presidential powers. There can be no doubt that these accusations have already had severe consequences for the Author, who has been summarily dismissed and tarnished with accusation of serious criminality.
48. The very serious nature of the accusations, and heightened penalties, alongside the lack of safeguards or opportunity to challenge, accentuate the wholly disproportionate and arbitrary nature of resort to criminal law in this case, in violation of article 14 (1) and

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<sup>35</sup> E.g. [UNODC report on The Status and Role of Prosecutors](#), 2014, p. 8.

<sup>36</sup> *Garzón v. Spain*, UNHRC, 2021.

<sup>37</sup> *Ibid*, §5.5; 5.11.

<sup>38</sup> UN HRC, *Concluding Observations: Vietnam*, UN Doc. CCPR/CO/75/VNM (5 August 2002), §10.

<sup>39</sup> In e.g. *Kavala v. Turkey*, ECtHR (app no. 28740/18)(2020), §125-130 and 215-232, the ECtHR underscores that criminal charges without ‘reasonable suspicion’, which pursue ‘ulterior’ purpose of silencing human rights defenders violates the ECHR. This is made clear in art. 18 ECHR, and implicit in the ICCPR framework.

<sup>40</sup> Article 14(3)(a) provides that in the determination of any criminal charge everyone shall be ‘informed promptly and in detail ... of the nature and cause of the charge against him’.

(3) ICCPR (with article 2(3) below). They also give rise to the real risk of arbitrary detention under Article 9 ICCPR, which currently hangs over the Author's head, exacerbating the impact of the violations in this case.

#### ***Article 14(2) Presumption of Innocence was Breached***

49. The circumstances of this case considered as a whole also indicate a violation of the presumption of innocence under article 14(2). The Author was not suspended pending enquiries, but definitively dismissed from his position by President Saied prior to any investigation or fair process. The presumption of innocence was jeopardized from the outset by repeated public slurs about the judiciary and HJC of which he was president. It was directly set aside by the outright dismissals, and automatic prosecution of magistrates *en masse*, at President Saied's behest. To the extent that there are any allegations of fact, as explained above they are collective and vague, not individualized and substantiated. The decision to block any independent, timely challenge to the measures taken against the Author is consistent with their predetermined outcome. Together, these facts indicate violations of the presumption of innocence, which is essential at all stages of the criminal process.

#### ***Conclusion: Holistic Assessment of Measures against the Author as Violation of Article 14 (1), (2), and (3)***

50. The series of decrees and the measures taken pursuant to them, have eviscerated judicial independence, the right to a fair trial and access to justice for all in Tunisia, as multiple UN reports have confirmed.<sup>41</sup>
51. The Author's premature removal from the HJC, the latter's dissolution, the Author's dismissal by decree as part of a massive judicial purge, and his prosecution mandated by presidential decree, are all attacks on judicial independence and fair process in flagrant contravention of article 14(1). Arbitrariness is epitomized by the fact the dissolution and dismissals were meted out in the absence of reasons or due process and legal challenge was precluded by decree, while the new THJC lacks the independence and impartiality necessary to be considered a 'court' capable of conducting any fair disciplinary processes.
52. The circumstances of the dismissal and automatic prosecution also violate the presumption of innocence under article 14(2).
53. The wholly arbitrary nature of the criminal process, and the lack of fair trial guarantees from the outset, violate both article 14(1) and article 14(3).
54. Taken together, the facts of this case reveal multiple violations of the author's article 14 rights, as well as the rights of all those within Tunisia denied an independent and impartial judiciary.

## **ARTICLE 17: PRIVATE LIFE, HONOUR AND REPUTATION**

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<sup>41</sup> Communication of the Special Rapporteur, 9 June 2022, [AL TUN 5/2022](#), p. 3. and [statement](#) of 15 July 2022. Communication of several Special Procedures, 26 May 2023, [AL TUN 2/2023](#), pp.1 and 2, 11-12.

55. The notion of private life under the ICCPR is broad, as the Committee has noted.<sup>42</sup> Article 17 protects against unjustifiable attacks on honour, reputation, health and well being, and requires states to adopt ‘adequate legislation’ and other measures to ensure that individuals are ‘effectively able to protect [themselves] against any unlawful attacks that do occur and to have an effective remedy against those responsible’. Unfounded allegations against individuals, by the state or others, which go unaddressed, may represent an interference with article 17.<sup>43</sup>
56. As the concept of ‘privacy’ under article 17 ‘has not been thoroughly defined’ in the Committee’s jurisprudence.<sup>44</sup> In this connection, the jurisprudence of the ECtHR may be particularly helpful. The ECtHR recognizes that private life (article 8 ECHR) covers ‘an interference affecting an individual’s ability to engage in professional activities’.<sup>45</sup> In *Denisov v. Ukraine*, the ECtHR reiterated that employment disputes may impact on an individual’s ‘inner circle,’ relationships with others, social and professional reputation and, therefore, private life.<sup>46</sup> In *Polyakh and Others v. Ukraine*, where civil servants were dismissed, banned from public service for ten years and had their names entered onto a public register, this had ‘**very serious consequences** for the applicants’ capacity to establish and develop relationships with others and **their social and professional reputation and affected them to a very significant degree**’ under Article 8.<sup>47</sup>
57. Violations of private life have been found to arise in several cases concerning the dismissal or suspension of judges specifically. In *Juszczyszyn v. Poland*, the impact on the judge’s reputation of his suspension from the Polish judicial council, amid accusations of misconduct and criminality, was sufficient to violate article 8.<sup>48</sup> Various factors were cited in support, which are also present in this case, namely: (i) the unsubstantiated nature of the allegations of misconduct and criminality (ii) allegations that were ‘couched in virulent terms’ and which ‘related to the core of his judicial integrity and his professional reputation’, and iii) the fact that suspension ‘deprived him of the opportunity to continue his judicial work and to live in the professional environment where he could pursue his goals of professional and personal development.’<sup>49</sup> The Court drew attention to the nature and duration of the negative effects of the suspension (which lasted two years, three months and 18 days), which, in

<sup>42</sup> *Coeriel and Aurik v. The Netherlands*, HRC, Communication No. 453/1991, 31 October 1994, UN Doc. CCPR/C/52/D/453/1991, §10.2.

<sup>43</sup> *UNHRC General Comment 16*, §11. See also *Komarovski v. Turkmenistan*, HRC, Communication No. 1450/2006, U.N. Doc. CCPR/C/93/D/1450/2006, 24 July 2008, §3.8 and 7.7, concerning an unfounded portrayal of a journalist where the Committee found a violation of article 17(1).

<sup>44</sup> Sarah Joseph and Melissa Caston, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, 3<sup>rd</sup> ed. (2013), p. 534.

<sup>45</sup> *Taliadorou and Stylianou v. Cyprus*, ECtHR, App. nos. 39627/05 and 39631/05, Judgment 16 October 2008, §53. See also, *Sidabras and Dziutas v. Lithuania*, ECtHR, App. nos. 55480/00 and 859330/00, Judgment of 27 July 2004, §48.

<sup>46</sup> *Denisov v. Ukraine*, ECtHR (app. no. 76639/11), Judgment of 25 September 2018, §115-116.

<sup>47</sup> *Polyakh and Others v. Ukraine*, ECtHR, app. nos. 58812/15, Judgment 17 October 2019, §208-209.

<sup>48</sup> *Juszczyszyn v. Poland*, ECtHR (app no. 35599/20) §222’. see also *Gumenyuk and Others v. Ukraine*, (no. 11423/19, (22 July 2021).

<sup>49</sup> *Ibid*, §228 – 237.



all the circumstances, affected the dismissed judge's private life to a 'very significant degree' in violation of article 8.

58. Other factors cited as relevant to assessing whether there was a violation in [\*Xhoxhaj v. Albania\*](#) included loss of remuneration, consequences for the applicant's 'inner circle', well-being and family, and the social stigmatization of being labelled unworthy of performing a judicial function.<sup>50</sup>
59. Remarkably similar circumstances to those addressed in each of these cases arise in the instant case. The Author has been removed from the HJC, dismissed (not only suspended) from his judicial role, precluded from developing his career, publicly vilified and accused of unethical and criminal conduct. The removal from office is permanent, with serious financial implications; the public smear campaign and allegations of unlawfulness impacted his relations with others and his honour and reputation; and stigmatization ensues from the baseless but very serious and publicly announced criminal allegations of 'terrorism-related' and economic and financial offences. As such, each of the factors alluded to in the cases above, as indicative of interference with private life, are present in this case.
60. To be permissible, any interference must be provided for in law, necessary and proportionate to a legitimate aim.<sup>51</sup> Yet, the measures in this case meet none of these criteria. Far from being provided for in a clear legal framework, they involve the unfettered exercise of power through decrees that epitomize arbitrariness. There were no grounds or procedures provided for in the decrees to constrain or justify the measures taken. They did not pursue a legitimate aim, but rather the ignominious goal of subjugating the judiciary to executive control, misappropriating power, and undermining judicial independence and rule of law. The measures were neither necessary nor proportionate interferences with rights, but blanket measures with wide-reaching and long-term impacts on the Author's professional career, honour and reputation. They were accompanied by none of the necessary procedural safeguards or effective remedies inherent in permissible restrictions. Moreover, the arbitrariness of the measures taken against the Author, and his powerlessness to defend himself against them, have an inevitable impact on the health and well-being protected under article 17.
61. The series of measures taken against the Author, including arbitrarily removing him from his position as judge and president and member of the HJC, therefore violate his article 17 rights.

## ARTICLE 19: FREE EXPRESSION

62. Expressions of judicial opinion made within framework of the Author's role as president of the HJC – in this case concerning judicial and prosecutorial independence, rule of law and legislative reform – are protected speech under article 19 ICCPR. Under

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<sup>50</sup> [\*Xhoxhaj v. Albania\*](#), EctHRs, (Application no. 15227/19), Judgment (9 February 2021), §362-364.

<sup>51</sup> [Human Rights Committee General Comment 16](#).



constitutional and legal provisions in force at the time, the Author had not only a right but an obligation to speak up and defend judicial independence.<sup>52</sup>

63. The [UN Basic Principles on the Independence of the Judiciary](#) state that ‘members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary’.<sup>53</sup> [The Bangalore Principles](#) equally reflect that judges (i) may speak out on matters that affect the judiciary; (ii) may participate in a discussion of the law; and (iii) may feel a moral duty to speak on such matters.
64. The requirement that judges be independent and impartial undoubtedly leaves scope for appropriate limits on judges’ freedom of expression, but those limits must be prescribed by law, pursue a legitimate aim and constitute necessary and proportionate interferences.<sup>54</sup> As noted above, the measures taken against the Author in response to his resistance to presidential encroachment into judicial independence were not enshrined in any legal framework with the quality of law, the aim pursued was antithetical to the Covenant, and there was no necessity or proportionality.
65. The ECtHR case of [Baka v. Hungary](#) bears remarkable similarity to the facts of this case.<sup>55</sup> It concerned the premature termination of the mandate of Judge Baka, in his capacity as president of the Supreme Court and head of the National Council of Justice, following his criticism of legal reforms that he believed would undermine judicial independence. The ECtHR (Grand Chamber) found that a judge’s freedom of expression requires a high degree of protection, and strict scrutiny of any interference.<sup>56</sup> As in this case, where the premature termination of the judicial mandate arose in circumstances that indicate this was a consequence of the exercise of freedom of expression, the Court found incompatibility with the principle of judicial independence and a violation of freedom of expression under article 10 ECHR.
66. Likewise in [Zurek v. Poland](#),<sup>57</sup> a judge whose appointment to the judicial council (KRS) was cut short because of public statements condemning legislative amendments that weakened the Polish judiciary, was found to be a victim of a violation of freedom of expression (combined with a violation of fair trial rights due to the lack of independent judicial review for those members of the KRS whose terms were cut short).
67. Just as in these cases, the measures taken against the Author (among others) to punish and silence his opposition to measures being adopted by the executive concerning the role of the judiciary, to exercise a chilling effect on other judges and to exert control

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<sup>52</sup> [2014 Constitution](#), in force at the time when the Author was president of the HJC, art. 114, §1-2; Organic Law 2016-34 of 28 April 2016 on the HJC, arts 1 and 42 (Annex XX).

<sup>53</sup> Article 8 [UN Basic Principles on the Independence of the Judiciary](#) (1985)

<sup>54</sup> Article 19 ICCPR and [Human Rights Committee General Comment 10](#).

<sup>55</sup> [Baka v Hungary](#), ECtHR (app. no. 20261/12)(2016), §162 – 167

<sup>56</sup> The Court considered that a State Party could not legitimately invoke the independence of the judiciary to justify the premature termination of the mandate of a Court President for reasons that had not been established by law and which were unrelated to professional incompetence or misconduct.

<sup>57</sup> [Zurek v. Poland](#), ECtHR, app.no. 39650/18,(2022).

over the judiciary, amount to a violation of the right to free expression under article 19 ICCPR.

## ARTICLE 25: PARTICIPATION IN PUBLIC LIFE

68. In accordance with the clear jurisprudence of this Committee, the dismissal of the Author from his position as a judge – and from his elected positions on the HJC – also violates his right to have access to public service in terms of equality, protected in article 25(c).
69. As [General Comment No. 25](#) makes clear, public service is a broad concept that ‘deals with the right of individuals to participate in processes which constitute the conduct of public affairs;’ as such article 25 underpins democracy and ‘the principles of the Covenant’.<sup>58</sup> A Commentary to the ICCPR notes that this provision ‘*seems to encompass all positions within the executive, judicial, legislature and other areas of state administration (emphasis added)*’.<sup>59</sup> [General Comment No. 25](#) also makes clear that any restrictions on the exercise of the right to hold public office in article 25 must be established by law and have objective and reasonable criteria.<sup>60</sup>
70. In several cases with strikingly similar facts to the present case, the Committee considered attacks on judicial independence as violations of article 25 (in conjunction with article 14(1)).
- i) In [Adrien Mundy Busyo et al. v. Democratic Republic of the Congo](#), following the mass dismissal of judges by presidential decree on various grounds – such as alleged immorality, corruption, and incompetence – with no opportunity to challenge before a court of law, the Committee stated that ‘in this specific case, the facts show that there has been a violation of article 25, paragraph (c), read in conjunction with article 14, paragraph 1, on the independence of the judiciary, and of article 2, paragraph 1, of the Covenant.’<sup>61</sup>
  - ii) [Mikhail Ivanovich Pastukhov v. Belarus](#), another comparable case, concerned a judge dismissed by presidential decree. The Committee noted that the grounds given for dismissal were ‘manifestly’ insufficient and that ‘no effective judicial protections were available to the author to contest his dismissal by the executive.’<sup>62</sup> It concluded: ‘in these circumstances ... the author’s dismissal from his position as a judge of the Constitutional Court, several years before the expiry of the term for which he had been appointed, constituted an attack on the independence of the judiciary and failed to respect the author’s

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<sup>58</sup> [Human Rights Committee General Comment 25](#), UN Doc CCPR/C/Rev.1/Add.7 (1996) §1-2, *et seq.*

<sup>59</sup> Joseph, Schultz, Castan, Cases material and Commentary ICCPR, 2<sup>nd</sup> ed., p. 671, §22.49

<sup>60</sup> [Human Rights Committee General Comment 25](#), §4.

<sup>61</sup> [Adrien Mundy Busyo et al. v. DRC](#), HRC, UN Doc. CCPR/C/78/D/933 (2003) §5.2.

<sup>62</sup> [Mikhail Ivanovich Pastukhov v. Belarus](#), §7.3.

right of access, on general terms of equality, to public service in his country... reveal[ing] a violation by the State Party of article 25 (c) of the Covenant, read in conjunction with article 14, paragraph 1, on the independence of the judiciary and the provisions of article 2.’<sup>63</sup>

71. In the same way in the present case, the circumstances in which the Author was removed as a judge and from his positions on the HJC, constitute an unlawful interference with article 25 (c) in conjunction with article 14.

## ARTICLE 26: DISCRIMINATION

72. Article 26 ICCPR guarantees ‘equal protection of the law’ and prohibits discrimination on any ground, including explicitly ‘political or other opinion’. The Committee’s [General Comment No. 18](#) states that this applies ‘in any field regulated and protected by public authorities,’<sup>64</sup> while commentary adds that article 26 prohibits the application of legislation ‘in an arbitrary or discriminatory manner.’<sup>65</sup> It plainly applies to decrees, policies and measures that target persons based on their political opinions, including opposition to particular executive action.
73. The importance of guaranteeing non-discrimination in relation to judicial appointments, and by extension removal, including in relation to ‘political or other opinion’, is underlined by the [UN Basic Principles on the Independence of the Judiciary](#), which state that, ‘in the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion....’<sup>66</sup>
74. The measures taken against the Author in this case were based on his opposition – in his role as president of the HJC – to presidential measures taken under the ‘state of exception’. There can be little doubt, based on their timing and nature, that the measures taken against the Author stemmed from his refusal to be beholden to President Saied and surrender his judicial independence or that of the HJC. The discriminatory measures in the Author’s case served the insidious aim of removing an independent-minded president, member of the HJC and judge; as such they did not pursue a legitimate aim,<sup>67</sup> and were not objectively justifiable.<sup>68</sup>
75. Replacing the HJC and removing the Author from its helm, his dismissal from judicial office and prosecution in these circumstances also amount to violations of article 26, in conjunction with articles 14, 17, 19, 25 and 2(3).

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<sup>63</sup> *Ibid.*

<sup>64</sup> UNHRC [General Comment No. 18: Non-discrimination](#), 10 November 1989, §13.

<sup>65</sup> Sarah Joseph and Melissa Caston, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, 3<sup>rd</sup> ed. (2013), p. 768, citing Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, pp. 605 to 606.

<sup>66</sup> Article 10 of the [UN Basic Principles on the Independence of the Judiciary](#) (1985).

<sup>67</sup> [UNHRC General Comment No. 18](#), §13.

<sup>68</sup> *Love v. Australia*, HRC, Communication No. 983/2001, U.N. Doc. CCPR/C/77/D/983/2001 (25 March 2003), §8.2. *Broeks v. The Netherlands*, HRC, Communication No. 172/1984, U.N. Doc. CCPR/C/29/D/172/1984 (9 April 1987), §13-16.

## ARTICLE 2(3): RIGHT TO REMEDY

76. Article 2(3) requires States Parties to ensure that individuals have **accessible, effective and enforceable remedies** in respect of their ICCPR rights.<sup>69</sup> The Committee has often reiterated that a finding of a violation of rights triggers the obligation under article 2(3) to provide full, ‘integral’ and appropriate reparation.<sup>70</sup>
77. In *Adrien Mundy Busyo et al. v. Democratic Republic of the Congo* where, as noted above, a presidential decree led to illegal dismissal of judges, this Committee noted the authors were entitled to an appropriate remedy, which should include, *inter alia*: ‘(a) in the absence of a properly established disciplinary procedure against the authors, **reinstatement** in the public service and in their posts, with all the consequences that that implies, or, if necessary, in similar posts; and (b) **compensation** calculated on the basis of an amount equivalent to the salary they would have received during the period of non-reinstatement.’<sup>71</sup> This Committee added that the State Party was obliged to ensure ‘that similar violations **do not occur in future** and, in particular, that a **dismissal measure can be taken only in accordance with the provisions of the Covenant**’;<sup>72</sup> as in the present case, the applicants claims were inadmissible on the grounds that presidential decrees constituted an act of government, so they argued there were no effective remedies.<sup>73</sup> As stated in *Yevdokimov v. Russia*, article 2(3) may also require amending legislation to comply with the Covenant, among other measures to prevent future violations.<sup>74</sup>
78. Effective remedies imply procedural guarantees for ‘a fair and public hearing by a competent, independent and impartial tribunal’.<sup>75</sup> In multiple cases cited in this complaint, attacks on judicial independence have been challenged before courts or bodies that themselves lacked independence, and the Committee, like the ECtHR or the ACHPR, have found the right to a remedy has been violated (alongside article 14).
79. With regard to criminal charges (see Section I and article 14 above), there must be the possibility to **stop** an abusive criminal process, not only to wait until after conviction or acquittal. The Committee made this clear in a case concerning a lawyer dismissed in Venezuela who had a ‘well-founded fear of being subjected to arbitrary criminal proceedings’ and the right to seek annulment of the criminal process. An effective remedy under article 2(3) required that the state *inter alia*: ‘(a) declare the proceedings against the author null and void ... provide the author with adequate compensation

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<sup>69</sup> *Kazantzis v. Cyprus*, HRC, Communication No. 972/2001, UN Doc. CCPR/C/78/D/972/2001 (19 September 2003); *see paras XX on Domestic Remedies above*.

<sup>70</sup> *Poplavny v. Belarus*, HRC, Communication No. 2139/2012, UN Doc. CCPR/C/118/D/2139/2012 (2016); *Garzon v. Spain*.

<sup>71</sup> *Busyo et al. v. Democratic Republic of the Congo*, §6.2.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*, 3.8.

<sup>74</sup> *Yevdokimov v. Russia*, HRC, Communication No. 1410/2005, UN Doc. CCPR/C/101/D/1410/2005 (2011), §9.

<sup>75</sup> See *Arzuaga Gilboa v. Uruguay*, HRC, Communication No. 147/1983, UN Doc. CCPR/C/26/D/157/1983 (1985) §7.2.

[and] prevent similar violations in the future.’<sup>76</sup> In the *Garzon* case, expunging the criminal record and ensuring non-repetition were essential aspects of an effective remedy in response to abusive criminal process.<sup>77</sup>

80. The Facts section makes clear that there has been and is no effective remedy in this case. This is laid bare *inter alia* by the fact that decrees explicitly remove judicial oversight under the ‘state of exception’ and by the non-implementation of the one limited interim decision in his favour.<sup>78</sup> There was and is no constitutional court or equivalent body to rule on the lawfulness of measures related to the ‘state of exception’, the decrees or their application in practice. With respect to the Author’s dismissal from the judiciary, which in principle may be appealed domestically, he is required to wait for other violations – his unjustified criminal prosecution – to run its course before such an appeal can be brought. Requiring the victim to wait for one set out violations to unfold before being able to access a remedy in respect of others, can hardly be considered to provide a timely and effective remedy. Finally, appointments to and tenure on the THJC are now under presidential control, precluding an effective remedy there, even if the Author were given a hearing on the matter of his judicial immunity which has so far not taken place.
81. The Committee is asked to find that article 2(3) has been violated in the present case, in conjunction with articles 14, 17, 19, 25 and 26.

#### IV. RELIEF SOUGHT

82. The Committee’s jurisprudence supports the need for ‘integral reparation.’ The remedies sought by the Author in this case include:
- public acknowledgement of the violations of his rights;
  - termination of the criminal investigations and annulment of any charges;
  - restitution, including reinstatement in his judicial role;
  - compensation; and
  - guarantees of non-repetition, necessary to undo the serious harm that has been inflicted on human rights, the rule of law and judicial independence in Tunisia, as set out in this complaint.
83. The Committee is urged to ensure that the author does not suffer further reprisals in response to the presentation of this case.

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<sup>76</sup> *Allan Brewer-Carías v. Venezuela*, HRC, Communication No. 2003/2017, UN Doc. CCPR/C/133/D/3003/2017 (18 October 2021), §9.7 and 11.

<sup>77</sup> *Garzon v. Spain*, §7. Separate opinions clarified that restitution also fell within the ‘integral’ reparation required.

<sup>78</sup> Section I, para XX