

Stand up for rule of law in Tunisia: Support Judge Yahyaoui and colleagues

By Kamel Labidi

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The alarming letter sent last week by a global coalition of 20 groups affiliated with the International Freedom of Expression Exchange (IFEX) to the International Association of Judges about the “unabated persecution” of independent judges in Tunisia (http://ifex.org/tunisia/2010/09/17/judges_persecuted) came as a reminder of the unprecedented deterioration of the country’s judiciary since its independence from France in 1956.

The circle of victims among independent judges has been widening since Judge Mokhtar Yahyaoui was fired in 2001 for writing to President Zine al-Abidine Ben Ali to denounce “the catastrophic state, which the Tunisian judiciary has reached” and to urge him to use his constitutional prerogatives to end “all interference with justice and the institutions of the State” (<http://bit.ly/bZv3v8>).

To date, Yahyaoui and his family remain harassed by one of the world’s most vengeful police states. Among the retaliatory measures, he is denied the right to earn a living and travel or play any role in the tightly controlled civil society. His daughter, a student in France, had to wait more than two years before she could receive her passport from the Tunisian Embassy in Paris last weekend. His son had to leave a Tunis public school to escape politically motivated persecution.

The Tunisian authorities’ “primitive and thuggish repression,” as the critical judge calls it, only strengthened his determination to resist oppression and to continuously warn against the dangerous consequences of Ben Ali’s policy of humiliating Tunisian judges and turning them into “obedient and fearful government employees.” It also enhanced his faith in the importance of international pressure and solidarity to help “alleviate the threats and suffering of all those who are today in the crosshair of dictatorship in Tunisia.”

The IFEX Tunisia Monitoring Group letter to the Rome-based International Association of Judges echoes the findings of a report released in Beirut in June entitled “Behind the Façade: How a Politicized Judiciary and Administrative Sanctions Undermine Tunisian Human Rights” (http://ifex.org/tunisia/2010/06/07/tmg_report/).

Unlike his predecessor, Habib Bourguiba, who “was a lawyer and a cultivated man,” before leading the country to independence and implementing significant educational, judicial and social reforms, Ben Ali “is a man of the barracks and an army general” inclined, since his 1987 coup, to keep the country’s institutions under his thumb, explains Yahyaoui.

“How can you have an independent judiciary when you are deprived of the right to freedom of expression?”

The heavy price paid by Yahyaoui and other brave human rights defenders, such as Mohammad Nouri, Nejib Hosni, Moncef Marzouki, Radhia Nasraoui and Mohammad Abbou, for opposing the use of Tunisian courts to issue unfair rulings and settle scores with dissidents and critical journalists helped raise awareness about the urgent need to reform the decaying judiciary and the rest of the political system. So did the rising and voracious influence of Ben Ali's family over the country's political and economic life and its alleged plan to restore hereditary rule, 53 years after the proclamation of the Tunisian Republic.

Attacks on independent judges intensified after the 2002 Soviet-style referendum allowing the amendment of the 1959 Constitution to lift the restrictions which prevented Ben Ali from running for more than three terms as president and granted him immunity from prosecution for life. His advisers are currently paving the way for a new Orwellian campaign to lift the constitutional age limit which precludes the so-called "Architect of Change" from running for president again in 2014.

The eviction in 2005 of the democratically elected board of the Association of Tunisian Judges and its replacement by a puppet board came as no surprise, given the strong commitment of its leading figures to protect their colleagues from political interference and arbitrariness. It was immediately followed by an unrelenting wave of persecution that saw over the past five years President Ahmad Rahmouni, Secretary General Kalthoum Kennou and other brave judges, including Wassila Kaabi, Raoudha Karafi and Leila Bahria, assigned hundreds of kilometers away from Tunis and their respective families, denied promotion or deprived of large portions of their salaries, without explanation.

"Why do you think we are subject to such mistreatment? It is simply because our association wanted to ensure certain protection and guarantees to the judge regarding his or her independence, assignment and promotion," said Kennou.

The lengthy and ruthless persecution of these brave judges apparently does not seem to bother the friends of President Ben Ali in the West, nor has it captured the attention of the UN Special Rapporteur on the Independence of Judges and Lawyers Gabriela Carina Knaul de Albuquerque e Silva.

In a report issued earlier this year, she stressed "the need for continuing education in international human rights law for magistrates, judges, prosecutors, public defenders and lawyers" (<http://www2.ohchr.org/english/issues/judiciary/docs/A.HRC.14.26.pdf>), as if highly educated judges or lawyers in human rights law could effectively do their job without efficient international pressure on dictators restricting them.

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