

Tunisian Judicial system: A Continuous Progress toward the Judicial Independence

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Abstract

This paper does not pretend to expose in detail the Tunisian judiciary system which remains complex. It settles for presenting mainly the theoretical jurisdictional organization of the system in a generalizable analytical framework. The work in this paper examines the judicial Tunisian system with a view to providing a deeper understanding of the management and administration of the different courts and tribunals of the judicial power. Historical method has been used to demonstrate the historical evolution of the Tunisian judicial system from the mid-nineteenth century to the present.

Introduction

The Tunisian judicial system is totally unique in its kind. Indeed, this judicial system which is different from those of Saudi Arabia, Afghanistan, Morocco or any other Arab country, is the result of the work of the Tunisian religious and political elites for almost two centuries. Indeed, the reform of the judicial system has been, always at the heart of political reform in Tunisia. Since 1840, judicial institutions have been put in place and their performance has been improved in response to a societal need. After the Tunisian Revolution of 2011, as we will see below, there has been an effort to reform the judiciary to get toward more independence. The ideas for reform in regard to judicial system have been consecrated in the new constitution of Tunisia. Thus, the Constitution adopted and stressed the importance of the independence of the Judiciary. In doing so, all kinds of interference in the functioning of the judicial system are now prohibited.

The paper is organized as follows: **Part 1** focus on the historical evolution of the Tunisian Judicial System; **part 2** provides a detailed treatment of the current organization of the Tunisian judicial system

Part 1: the historical evolution of the Tunisian Judicial System

Historically, the first Tunisian judicial instance the “*House of the Charaâ*” or “*Eddiwan*” “*La maison de Charaâ*” was created in 1856². Its implementation comes simply from the political system's response to a trouble in the relationship between judges, muftis³, and plaintiffs. On the one hand, judges of the time or Cadis⁴ were not immune from arbitrary dismissal and no regulatory protection covered them. They were working from their own homes, taking advice from the muftis who also practiced their tasks at home. On the other hand, the plaintiffs were not immune to covetousness, corruption, and intervention of any kind.

Indeed, the creation of “*the house of charaâ*” 1856 was an operation of reform of the judicial system, and it was the “*Shaykh al-Islam*”⁵ Mohamed Bayram⁶, who himself interpreted the

¹ A szerző a Szegedi Tudományegyetem Állam- és Jogtudományi Kar doktorandusza.

² Chemmam Mahmoud (1992): A synthesis of judicial history in Tunisia. El Wafa Publishing 157 p. (in Arabic)

³ Mufti is a muslim legal expert who is empowered to give rulings on religious matters.

⁴ Magistrat musulman qui remplit des fonctions civiles, judiciaires et religieuses.

⁵ Shaykh al-Islam”, “the Elder of Islam” or “the Master of Islam” is a title of respect for outstanding scholars of Islam. The title may also be used for the chief expert in Islamic Law of a city or kingdom.

founding text of “*Eddiwan*”. So there is no doubt that the basis of the modern Tunisian judicial system is a construction elaborated by the Tunisian former cadis and muftis of the 1850s. The founding text established the function of “*modern judge*” and improved his work conditions. The text gave the judge a specific place in which he settles disputes, created a corps of justice officials to help him in his function and defined the election procedures of Sheikh El Islam and Muftis.

As argued by Mahmoud Chemmam⁷ the “*Eddiwan*”’s law established more justice and reorganized the judicial procedures, but people continued to complain about arbitrariness, favoritism, nepotism, corruption and miscarriage of justice. Indeed, the continued civil disturbances and corruption prompted the British and French to force the Bey⁸ to issue the Fundamental Pact⁹ “*Ahd al-Amān*” in 1857 which was a set of revolutionary reforms and declaration of rights for subjects of the Bey of Tunis and all inhabitants living on his territory¹⁰. And here, it is important to highlight the fact that the fundamental pact resulted precisely, from an incident involving a Tunisian Jew, Batto Sfez, who was executed on orders of the Bey for having blasphemed Islam. As a matter of fact, the establishment of mixed courts to handle matters between Moslems and Jews was among the fundamental objectives of the Pact. A commission was appointed to implement changes and it united statesmen as Hayreddin Pasha¹¹ and religious representatives as Sheikh El Islam Mohamed Bayrem and the Mufti.

In addition, the implantation of reforms which lasted three and a half led to the promulgation of the first Tunisian Constitution on April 25, 1861. With in mind, it has come to recognised that the first constitution has an immediate link with the judicial system. The constitution created the law of Criminal and customary provisions “*kanoun al jinayat wal ahkem el irfia*” composed of 664 articles which cover, crimes of all kinds as well as a civil section of obligations and contracts. Moreover, this law was followed by the creation of judicial councils “*majaliss hikmia*” in the main cities of Tunisia (Kairouan, Sousse, Sfax ...). Mahmoud Chemmam, rightly point to the conclusion that these jurisdictions were operational before the protectorate and are not the result of any “*Western spirit*” but the response to a need of Tunisians¹². In 1864, the constitution was suspended as an emergency measure by the Bey. However, it can be noted that the commission, which has as a principal mission to

⁶ Mohamed Bayram V was born on March 1840 in Tunis and died on December 1889 in Helwan (Egypt) is a Tunisian intellectual and academic.

⁷ Sheikh el Fadhel Mahmoud Chemmam Ben Bashir was born in 1912 in Tunis and died on October 13, 2012. He held the “*Zeitounian*” diploma “*Tatwiaâ*” and a degree in law. He had taught at Zitouna University and the Faculty of Law of Tunis. He has been a lecturer at the Higher Institute of Judiciary and a member of the High Islamic Council .

⁸ Muhammad II Ibn al-Husayn was born on September 1811 and died on September 1859. He was the eleventh Husainid Bey of Tunis, ruling from 1855 until his death. After his accession, he proceeded with reforms, including, on 10 September 1857, the Fundamental Pact which recognized religious freedom and equality before the law for all inhabitants of the country, regardless of their religion.

⁹ Fundamental Pact was the bearer of revolutionary reforms: it proclaims that all the inhabitants are equal and established the freedom of cults and commerce and especially gives foreigners the right of access to property and of the practice of all professions.

¹⁰ Encyclopædia Britannica : Tunisia, available at: <https://www.britannica.com/place/Tunisia/History#ref488027> [cit. 2018-11-04].

¹¹ Hayreddin Pasha, who born in 1820 and died in January 1890 was an Ottoman-Tunisian politician. First serving as Beylerbeyi of Ottoman Tunisia, he later achieved the high post of the Grand Vizier of the Ottoman Empire. He was a political reformer during a period of growing European ascendancy.

¹² Chemmam Mahmoud : *op. cit.*170.

develop the Tunisian civil and criminal law worked only between 1896 and 1906¹³. After Tunisia gained its independence from France in 1956, a new constitution was drafted.

It was adopted on 1 June 1959¹⁴. The Constitution recognized, in the first paragraph of Article 65, the independence of the judicial authority to carry out judiciary functions. The constitution also referred to the legal framework in which judgments are rendered and enforced, the independence of the magistrates, their appointment, their guarantees, the composition of the Supreme Judicial Council, the high court and the Council of State and their competence¹⁵. However, the Constitution leaves to the legislature the freedom to decide on the organization of the courts, the procedures applicable to it, as well as guarantees recognized to judges. With this in mind, it has come to recognize that the Tunisian judicial Authority finds its legal basis not only in the Tunisian Constitution of 1959 but also in the organic law No.29 of 1967 of 14 July 1967¹⁶ on the organization of the judiciary, the High Council of the Judiciary and the special status of the judiciary¹⁷.

On the basis of the constitutional provision of 1959 and the law, the judicial system was divided into two orders, including several categories of judicial courts on the one hand and, on the other, the Council of State comprising the hierarchy of administrative courts and the Court of Auditors. In addition, there is a permanent military court to rule on offenses committed by soldiers under the rules of the code of procedures and military penalties promulgated by the decree of January 10, 1957. In the wake of the Tunisian revolution of 2011 also called "*the jasmine revolution*" or "*dignity revolution*", the Tunisian people could overthrow the presidential regime dominated by the political party of the Democratic Constitutional Rally¹⁸. The Tunisian people elected, on October 23, 2011, on the occasion of the first democratic and

¹³ Abdelaziz Thaâlbî: Tunisia martyrdom 1920. Dar El Gharb El Islami. 2nd edition. 1985.

¹⁴ The constitution of 1959 is considered as the founding text of the first Republic of Tunisia. It was drafted and approved by the national constituent assembly elected according to the Beylical decree dated December 29, 1955. The constitution of 1959 was enacted by law n°59-57 dated June 1st, 1959 only in the Arabic language. It was amended sixteen times the first being in 1965 and the last in 2008. The application of the constitution of 1959 was suspended after the revolution of January 14, 2011, and it was decided to put an end to its provisions according to article 27 of the constituent law n° 2011-6 dated December 16, 2011, relating to the provisional organization of public authorities.

Reference: Republic of Tunisia presidency of the Government, Legislation TN national portal of legal information

¹⁵ Tunisian Constitution of 1959 art. 64, 65, 66, 67, 68 and 69.

¹⁶ J.O.R.T No. 30 of July 14, 1967.

¹⁷ As amended and supplemented by the following laws:

- Law n° 67-30 of August 5th, 1967- J.O.R.T n° 34 of August 8th, 1967.

- Law No. 69-5 of January 24, 1969- J.O.R.T No. 4 of January 28, 1969.

- Law No. 71-19 of May 3, 1971- J.O.R.T No. 20 of April 30, 1971.

- Law n° 73-48 of August 2, 1973- J.O.R.T n° 29 of July 31, 1973.

- Organic Law No. 77-1 of March 7, 1977- J.O.R.T No. 15 of March 1, 1977.

- Law n° 85-79 of August 11, 1985- J.O.R.T n° 59 of August 16, 1985.

- Organic Law n° 86-72 of July 28, 1986- J.O.R.T n° 43 of August 1, 1986.

- Law n° 87-14 of April 10, 1987- J.O.R.T n° 27 of April 14, 1987.

- Organic Law n° 88-73 of July 2, 1988- J.O.R.T n° 47 of July 8, 1988.

- Decree-Law No. 88-1 of 15 September 1988- J.O.R.T No. 61 of 16 September 1988.

- Law No. 88-113 of 27 October 1988- J.O.R.T No. 74 of 1 November 1988.

- Organic Law n° 91-9 of February 25, 1991- J.O.R.T n° 17 of March 1, 1991.

- Organic Law n° 2005-81 of August 4, 2005- J.O.R.T n° 64 of August 12, 2005.

¹⁸ The Democratic Constitutional Rally or Democratic Constitutional Assembly Rassemblement Constitutionnel Démocratique, sometimes also called Constitutional Democratic Rally in English referred to by its French initials RCD, formerly called Neo Destour then Socialist Destourian Party, was the ruling party in Tunisia from independence in 1956 until it was overthrown and dissolved in the Tunisian revolution in 2011. It was an authoritarian political party.

free election organized since the country's independence in 1956, a National Constituent Assembly of Tunisia. This assembly drafts Tunisia's new constitution, providing Tunisia with a semi - presidential, unicameral democratic republican and multipartite regime. As a result, on January 27, 2014, Tunisia adopted a new Constitution. The development process remains unique in a country emerging from a dictatorship. The Judicial Authority is governed by articles 102 to 117 of the Constitution Text, forming Title II of Chapter V of the Constitution, devoted to the judiciary power and many other laws like. Indeed, the Constitution of 2014 protects the independence of the judiciary, article 102 states: "*The judiciary is independent. It ensures the administration of justice, the supremacy of the constitution, the sovereignty of the law, and the protection of rights and freedoms. Judges are independent with the law the sole authority over them in discharging their functions....*" In addition, the new 2014 Constitution's provisions reference in Title Five a newly crafted independent judicial authority led by the New Council "*the Supreme Judicial Council*" invested with authority to oversee not only the independence of the judicial function in adjudicating cases but, in addition, as set forth in Articles 113 and 114, the independence of the institutional framework that undergirds the judicial and court systems. It's important to highlight the fact that prior to passage of the new 2014 Constitution, the president of the Supreme Judicial Council was the president of the republic and the Vice-President of the council was the Minister of Justice. After the revolution of 2011, the creation of the Supreme Council of the Judiciary was adopted in a completely different way, which consecrates the judicial independence. In fact, the council should be, from now on, independent from the other branches of government. Despite the decline of the influence of the president of republic on the council, he still has some powers. In doing so, the Constitution of 2014 modified the institutional governance of the country's judicial landscape while retaining its basic institutional framework¹⁹.

Part 2: The current organization of the Tunisian judicial system

At the basic level, the Tunisian courts can be seen as organized into; ordinary courts "*ordre judiciaire*", which handle criminal and civil litigation and administrative courts "*ordre administrative*" which supervise the government and handle complaints. This structure was based on the model imposed by the French colonial authority. Moreover, the financial and military jurisdictions are a part of the judicial system.

I- Jurisdictions of the Judiciary Order

As mentioned above, the judicial Jurisdictions are governed by the law No. 67-29 dated 14 July 19, 1967, on the organization of the judiciary, the High Council of the Judiciary and the special status of the judiciary. These courts have jurisdiction to rule on all civil and criminal cases that the law does not entrust to other jurisdictional bodies. The number of those courts is 142 jurisdictions.

1- The Cantonal Courts

The cantonal court is the lowest instance, in the hierarchy Jurisdictional Court of Tunisia. **In civil matters**, the court has jurisdiction to hear claims that the value of which does not exceed TD 7,000 as well as matters relating to nationality, labor issues and occupational

¹⁹ The Assessment of Management and Administration in the Tunisian Court System was conducted in Tunisia from 19 January to 1 February 2015 and it was jointly sponsored by the National Center for State Courts (NCSC) in Williamsburg, Virginia, USA, the International Legal Assistance Consortium (ILAC) in Stockholm, Sweden, and the International Association for Court Administration (IACA) in Arlington, Virginia, USA.

diseases .A single judge hears cases in the Cantonal courts. Appeal of a judgment from a cantonal court is made to the Courts of First Instance The cantonal judge has jurisdiction to hear claims for possessor actions and demands for alimony introduced on a purely principal basis. The judgment rendered in the alimony matters is enforceable notwithstanding appeal.

Nevertheless, the cantonal judge is allowed to take decisions in summary procedure “*référé*” only in the following cases: 1. in the case of preventive seizure “*saisies*”, if the amount of the seizure does not exceed its jurisdiction; 2. In the case of urgent reports; 3. In the case of difficulties arising in the execution of his decisions, even reversed on appeal; 4. In the case of stay of execution of judgments rendered when they are struck by third oppositions. In addition, the cantonal judge is empowered to make the final decision on adoption and tax litigation matters.

In criminal matters, the cantonal judge is responsible in the last resort for the contraventions. The cantonal judge decides as well, in the first instance, offenses punishable by a term of imprisonment not exceeding one year or a fine of not more than one thousand dinars. However, the court of the first instance remains exceptionally competent with regard to the offenses of injury and an unintentional fire. Moreover, the cantonal judge decides on misdemeanours attributed to him by a special text. In the same vein, the cantonal judge is responsible for issuing death and nationality certificates, for receiving the oath of the customs officers and for signing the civil family record book. In Tunisia, the number of cantonal courts is 84. The organizational framework of the courts is simple .A single judge hears cases in the cantonal Court. Prosecutors are not involved either in supervising court clerks and other support staff, and they have no role in administering the courts. The cantonal court does not have prosecutorial offices attached to them. Instead, the court president, in addition to his or her judicial functions, simultaneously performs certain prosecutorial functions in consultation with the public prosecutor. The cantonal court organizational framework doesn't include investigative judges because the minor torts or contraventions that fall within the jurisdiction of the district courts do not merit such formal investigations²⁰.

2- Courts of First Instance

The Courts of First Instance are empowered to hear all civil and criminal cases except those falling under the jurisdiction of cantonal justices. It serves as the appellate courts for the cantonal court of his district as well. Moreover, the Courts of First Instance have jurisdiction to rule on the decisions of Labor Courts “*Conseil de prud'homme*” as well. Furthermore, cases which began in by the courts of first instance may be appealed to the appeal courts. Appeals of cantonal court judgments decided by courts of first instance may not be appealed to the appeal courts, but, rather, relief may be sought from the Supreme Court²¹. Each court of the first instance consists of several chambers. The court shall be composed of a president and two judges when it comes to deciding on a misdemeanor and of a panel of judges: a president, councilors and two magistrates when it came to deciding on a felony²². However, it is important to highlight the fact that, the authority structure in Tunisia's 28 general jurisdiction first instance tribunals is based on a bifurcated management organization which is not common among civil law systems²³. Besides, the court president or chief

²⁰ Ibid. 26

²¹ Code of criminal procedure, approved by Law No. 68-23 of July 24, 1968.

²² Tunisian Code of criminal procedure, art.205

²³ Report Tunisia 2015 Assessment of The Tunisian Court System *op. cit.*23.

magistrate is responsible for oversight all judicial magistrates and all criminal investigative magistrates assigned to the first-instance courts. By contrast, the public prosecutor is responsible for managing and supervising all deputy prosecutors assigned to the first instance tribunal and he is responsible for determining, at the conclusion of all preliminary criminal investigations, whether to dismiss the case, remand it to the Rogatory Commission for further investigation. Each first instance court moreover has a chief clerk or court administrator position that is responsible for the day-to-day coordination of all core court support functions associated with case processing and court hearings.

3- Courts of Appeals:

The Courts of Appeals in Tunisia examine previously judged litigation. **In civil matters**, the Appeals Courts have jurisdiction to hear appeals of decisions rendered by the courts of first instance except where the decision was an appeal from a decision of a Cantonal Court. As already mentioned, cases that were originally heard in the Cantonal Courts and appealed to the Courts of First Instance may be further appealed to the Supreme Court. **In criminal matters**, the Court of Appeals is ultimately empowered to hear appeals, felonies and misdemeanors tried by the Court of the First instance and felonies tried by the Court of the First Instance at the seat of a court of appeal²⁴.

In administrative matters, the Court of Appeal is competent to hear appeals against the decisions of professional bodies such as the Tunisian Order of Lawyers “Tunisian Bar Association”, as well as recourse against the constraints and certain fiscal matters as a first-degree court. The Court of Appeal is composed of several chambers. Each chamber consists of a president and two to four counselors. Moreover, each Court of Appeal includes at least one indictment chamber which has the function of the selection of cases. The chamber examines whether there is a misdemeanor or felony, orders the release of the individual or his deposition, and in the case of a presumption of guilt, it refers the accused to relevant jurisdiction or pronounces the indictment in the Criminal Court²⁵.

Currently, the authority structure in Tunisia’s 12 courts of appeals is similar to that of its First instance Tribunals, also based on a bifurcated management organization but with minor differences. The Appeals Court president is responsible for managing and overseeing all appeals magistrates assigned to the appeals court; also include oversight and supervision of all of the court presidents and magistrates of the First Instance Tribunals located within the geographic jurisdiction of the Court of Appeals²⁶. The general prosecutor attached to each Court of Appeals oversees and supervises all deputy appeals prosecutors assigned to the Court of Appeals prosecutorial office, and the appeals court chief clerk and all appeals court support staff²⁷.

4- The Court of Cassation:

The Court of Cassation or the Tunisian Supreme Court is Tunisia’s court of final appeal. It was established under the name “Tribunal de Cassation” in 1956 by the decree of August 3, 1956, based on the model of the French Court of Cassation²⁸. It has jurisdiction to review the

²⁴ Tunisian Code of criminal procedure, art. 126 amended by Law No. 2000-43 of 17 April 2000 and Article 103 of the Code of Child Protection amended on 22 May 2000.

²⁵ Tunisian Code of criminal procedure, art. 116 and 119

²⁶ Report Tunisia 2015 Assessment Of The Tunisian Court System p. 24

²⁷ Ibid.

²⁸ Serge Guinchard, André Varinard and Thierry Debard : Judicials institutions, (Institutions juridictionnelles), 11th edn., Paris: Dalloz, 2011 (In French).

law, and to certify questions of law and to determine miscarriages of justice and examines decisions appealed from either the Appeals Court or from the Courts of First Instance sitting in its appellate capacity.

The Court has one criminal and three civil divisions and its territorial jurisdiction covers, the entire territory of the Republic.

In civil matters, the remedy of appeal is possible against the decisions rendered last resort only in seven cases determined by Article 175 of the Code of Civil and Commercial Procedure including the violation of the law. **In criminal matters** and according to Article 258 of the Code of Criminal Procedure the Supreme Court does not examine the substantive aspects of the case on appeal, and only points of law may be appealed to it.

It is important to highlight the fact that submitting a lawsuit to the review of the Court of Cassation does not automatically suspend the execution of the original judgment. In case the Court of Cassation voids a lower court judgment, the matter is resubmitted to another judge or panel of judges of the court which rendered the original judgment.

In addition, the court has jurisdiction over the settlement of judges and the dismissal from one court to another. However, the Court does not have jurisdiction over cases involving claims against administrators or public bodies, which fall within the jurisdiction of the Administrative Court, for which the Council of State acts as the Supreme Court of Appeal; nor over cases involving constitutional issues, which fall within the jurisdiction of the Constitutional Council; nor over cases involving disputes about which of these courts has jurisdiction, which are heard by the Jurisdictional Disputes council.

II- Jurisdictions of the Administrative Order

Under the old Tunisian Constitution of 1959, the Administrative Court and the Court of Auditors were within the framework of a state council. Tunisia's new constitution of 2014, with the State's commitment to reinforcing decentralization throughout the country²⁹, restructured the judiciary powers, while leaving the classic function of the administrative branch essentially intact³⁰. Article 116 of the Constitution states that "*the administrative judiciary is composed of the Supreme Administrative Court, administrative courts of appeal, and administrative courts of first instance*". The Administrative Court is organized by Law No. 72-40 of 1 June 1972, supplemented and amended several times³¹ has jurisdiction over any abuse of power by the administration as well as all administrative disputes. The administrative judiciary shall exercise consultative functions, in accordance with the law. However, the new Constitution implements ambitious structural reforms in order to improve the performance of the Tunisian administrative jurisdiction³². In May, 2018, 12 new administrative courts were established. Prior to the creation of these regional chambers, all complaints concerning violations and abuse of power by public authorities were filed with the

²⁹ Tunisian Constitution of 2014 art. 14.

³⁰ Vanessa Szakal. Tunisia's new regional administrative courts: What challenges lie ahead? 2018 available at : <https://nawaat.org/portail/2018/03/21/tunisia-new-regional-administrative-courts-what-challenges-lie-ahead/> [cit. 2018-11-15].

³¹ Organic law n° 2011-2 dated 3 January 2011, amending and completing law n° 72-40 dated 1st June 1972, relating to the Administrative Tribunal.

³² IRZ Conference dealing with Tunisian Administrative Jurisdiction, 2014 .available at: <https://www.irz.de/index.php/en/tunisia/211-irz-conference-dealing-with-tunisian-administrative-jurisdiction/> [cit. 2018-11-15].

administrative judiciary headquartered in the capital Tunis. Thus, the objective of the reform was the decentralization and breaking up centralized decision-making powers, at once, enabling more effective controls of local authorities and rendering recourse to the judiciary more accessible to citizens.

III- Financial Judiciary

Article 117 of the Constitution of 2014 states that “*the Financial Judiciary is composed of the Court of Audit with its different bodies. The Court of Audit oversees the sound management of public funds in accordance with the principles of legality, efficiency and transparency. The Financial Judiciary rules on the accounts of public auditors. It assesses accounting methods and sanctions errors and failings that it discovers. The Financial Judiciary assists the legislative and executive powers in overseeing the execution of the Finance Law and the closure of the budget*”. However, the organization, mandate and procedures of the Court of Audit, as well as the statute of its judges, are regulated by Law No. 1968 - 8 of March 8, 1968, completed and amended several times.

IV- The military judiciary

Concerning military justice, the Constitution of 2014 provides in the article 110 that “*Military courts are competent to deal with military crimes. The law shall regulate the mandate, composition, organization, and procedures of military courts, and the statute of military judges*”. The Tunisian Permanent Military Court has jurisdiction to rule on offenses committed by soldiers under the rules of the Code of Procedures and Military Penalties promulgated by the Decree of 10 January 1957³³. As a matter of fact, the 1967 Military Justice Code, as amended by two decrees, the law adopted on 29 July 2011 assigned to the military courts a jurisdiction that goes beyond that required by the Constitution. The amendment made by Decree-Law No. 2011-69 of 29 July 2011 has not removed the jurisdiction of the military courts over civilians and non-military crimes committed by members of the army. Moreover, the common crimes committed by civilians can be brought before military courts when the victim belongs to the army³⁴. Military courts also have jurisdiction for offences committed to the detriment of the army. Article 91 of the Military Justice Code provides for a penalty of up to 3 years in prison against anyone “*who is guilty [...] of insulting the flag or the army, attacking the dignity, reputation, morale of the army, or acts liable to undermine military discipline, obedience and respect due to superiors, or criticism on the action of the military hierarchy or officers the army, thereby undermining their dignity*”. The Minister of Justice chairs the board of the military judiciary and proposes the appointment and promotion of military judges. However, the decisions of Military Courts cannot be appealed in the Court of Appeal, but are opposable to the Court of Cassation.

³³ Code of Military Justice, enacted by decree of 10 January 1957, all the texts that have amended or supplemented, including Law No. 2000-56 of 13 June 2000.

Decree No. 87-454 of 10 March 1987 amending and supplementing Decree No. 79-735 of 22 August 1979 organizing the Ministry of National Defense.

Decree No. 82-1405 of 30 October 1982, setting up permanent military court in Sfax as amended by Decree No. 2001-1535 of 2 July 2001

Decree N° 93 - 1554 26 July 1993 on the establishment of a permanent military court Kef as amended by Decree N° 2001 - 1536 of 2 July.

³⁴ CIJL. Attacks on Justice. March 1997 – February 1999, Geneva, 1999, p. 271s. FIDH. Judicial observation mission in front of the Military Tribunal of Tunis of 17-19.8.92. Paris, October 1992, p. 24.

Conclusion

Despite all the effort to make the judiciary system independent, there are still challenges to raise. Tunisia needs to make the justice system fully independent from the government, a system in which ministers do not interfere in prosecution decisions or trials. There is also a need to fight against the corruption existed within the circles of judges, lawyers, administrators, police, and security. However, the judicial and court systems remain for the time being subject to the management and administrative oversight of the Interim Council and the Ministry and the fear of the executive interference in the judicial branch still exists.