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Arbitrary Administrative Control Measures In Tunisia



**ENDURING
A SENTENCE
ISSUED BY
NO ONE AND
ENFORCED BY
EVERYONE**

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In the framework of the implementation of the National Strategy, police control over individuals suspected of links to terrorist activities has intensified taking the form of liberticidal control measures. Order No 342/1975 of May 30 1975, fixing the powers and duties of the Ministry of the Interior; Act No.2015-26 of August 7, 2015 on combating terrorism and preventing money-laundering; and Decree No. 78-50 of January 26, 1978 regulating the state of emergency constitute the legal basis for some of these measures. In fact, Tunisia has been under the state of emergency since 2011, a theoretically temporary emergency rule that has continued² almost continuously for almost eight years now.

The World Organization Against Torture (OMCT) is perfectly aware of the security challenges faced by the Tunisian state, particularly since the revolution. The government is responsible for protecting the population against terrorism and has the right and even the duty to take the best suited measures to prevent terrorist attacks and other threats to national security, notably by placing individuals considered dangerous under control and surveillance procedures. However, the State's responsibility to protect and Tunisian citizens' right to security must be exercised in accordance with fundamental rights and freedoms guaranteed by the Tunisian Constitution and the international human rights law.

Thus, restrictions that may be imposed on these rights and freedoms in the context of the necessary prevention of terrorism should be established by law, necessary, proportional and subject to prompt and effective judicial control. These essential, non-derogable conditions intended to ensure the legitimate protection of some, does not entail the arbitrary oppression of others.

In the name of Tunisian state security, today an increasing number of Tunisians are prohibited from leaving the territory and subject to house arrests, repeated summonses to police offices, violent administrative searches, police neighbourhood canvasses, police visits to their homes, and to their workplaces... All these measures are implemented in an opaque manner, without notification, without justification and often without legal basis. These individuals are victims of excesses of the fight against terrorism, which, have taken the form of a real policy of police harassment.

Apparently, thousands of them have their names flagged under control directives and are targeted by restrictive surveillance procedures. According to testimonies collected by OMCT and other human rights NGOs, many victims of such control measures have no idea of the reasons that motivate such treatment. The "filing" process is obscure and seems to be carried out in an abusive and discriminatory manner. Its material and psychological consequences are so dramatic that some listed persons can be considered as victims of ill-treatment. Stigma, isolation, divorce, psychological trauma and loss of employment. In fact, these persons pay the price of a stringent state security policy.

² | The state of emergency proclaimed in January 2011 was lifted in March 2014 and restored in July 2015. Since then, it has only been interrupted for one month in October 2015.

For this report, the OMCT relied on information provided by four lawyers, two administrative judges, and human rights defenders during interviews concerning administrative litigation related to control measures implemented against filed persons.

For security reasons, the names of the beneficiaries interviewed by the OMCT were replaced by pseudonyms in this report. Only the type of control order for which the persons have been notified is mentioned. However, it is not excluded that the mentioned persons are also targeted by other measures listed in table p.20.

Mohamed, 41 years old, lives in Greater Tunis and is placed under the S17 procedure. He has repeatedly been summoned by phone to report to the police station, subjected to interrogations involving mobile phone checks, arrested following roadside checks and visits to his home and his workplace. Police officers continue to exert pressure on his employer.

Aziz, 30, resides in northwest Tunisia and is placed under the S17 procedure. Aziz was subject to violent administrative searches, police neighbourhood canvasses and arrests at roadside checkpoints.

Taoufiq, 30 years old, resides in Tunis and is placed under the S17 and S1 procedures. Taoufiq is banned from leaving Tunis. He has undergone numerous violent administrative searches. He continues to be subject to home visits, summonses to police stations and arrests at roadside checkpoints.

Amal, 29 years old, resides in Greater Tunis. She is placed under the S17 procedure. Amal was subjected to administrative searches. In recent years, she has been checked several times on the street and at her home and interrogated at length at the police office. She also receives frequent home visits and summonses to report to the police office.

Akram, 39, resides in northwest Tunisia. Akram was subjected to several administrative searches and is regularly arrested or summoned to the police station for questioning following roadside checks.

Skander, 29, resides in Tunis and is subjected to the S17 measure. Skander is banned from leaving the country and has already been prevented from travelling inside Tunisia. He is frequently subject to home visits, police neighbourhood canvasses, and arrests at roadside checkpoints. His family and friends are also victims of police pressure.

Rafiq, 37, resides in southern Tunisia and is placed under the S17 procedure. Rafiq is banned from leaving the territory. He frequently receives calls from the police and is subject to police visits and administrative searches. He was harassed by agents in his various workplaces and he is often arrested on the street when accompanied with his wife who wears the niqab.

Khaled, 31, resides in eastern Tunisia and is subject to S17. Khaled was banned from leaving the territory and subject to administrative searches. He is still visited by police agents who exert pressures on his lessor to evict him.

Nejib, 49, resides in Greater Tunis. Subjected to S17 measure. Nejib, too, is deprived of his passport and is placed under house arrest. He has been subjected to several violent administrative searches. Police agents have exerted pressure on his successive lessors. He still receives calls from the police office and he is subjected to police home visits.

Ridha, 45, resides in northern Tunisia. Subjected to the S17 measure and under house arrest.

Noura, 32, resides in southern Tunisia. Placed under the S17 procedure. Noura was led to the police station following a road check and is subjected to administrative searches.

3. CONTROL ORDERS AT THE HEART OF A FEARSOME POLICE CONTROL POLICY

The Ministry of the Interior presents "filing" or "control orders" and all police control measures it entails as necessary and proportionate procedures essential to the prevention of terrorism.

However, the implementation of these measures reveals a reality that is very different from official discourse. The listing process is very opaque with regard to both the criteria used to identify targets and the different types of control order lists. The restrictive measures to which listed persons are subjected are arbitrary and part of police harassment practices that often constitute ill-treatment.

3.1. LISTING: AN OPAQUE TARGETING PROCEDURE

3.1.1. OPACITY OF THE CRITERIA FOR SELECTING TARGETED PERSONS

The application of administrative control measures (listing) is officially justified by the need to prevent terrorism. In June 2019, Minister of the Interior Hichem Fourati stated that listing targets individuals about whom the Ministry acquired “reliable information confirming their connections to terrorist groups”, included “individuals released from prison after having been involved in terrorism cases,” and “persons under house arrest”³.

He was referring to individuals on the S17 list, the best-known type control orders to date, which consists, according to its official definition, in checking targeted persons when leaving Tunisian territory. These criteria for selecting targeted persons seem to apply to all other types of control orders established in the context of preventing and combating terrorism.

The first case mentioned by the Minister refers to persons about whom the Ministry acquired “reliable information confirming their connections to terrorist groups”. Yet, the process would still be questionable even if these two “reliable information” and “connections to terrorist groups” criteria were actually respected in practice by the officers responsible of listing process.

First, these criteria are defined in vague terms. What is reliable information and who is responsible for assessing

its reliability? Can a neighbour’s or a colleague’s denunciation be considered as reliable information? Is it only information obtained by the intelligence services through wiretapping, interrogations of alleged conspirators and infiltration? How much substantiated, so-called reliable information is required for the suspicion to be considered fully supported?

In fact, the same vagueness surrounds the term “connections” to a terrorist group. Is being related to or in contact with a member of a terrorist group sufficient to characterize a problematic relation as defined by the Ministry of the Interior?

Indeed, the criteria mentioned by the Interior Minister call for another essential remark. Connections to a terrorist group may be criminalized under Tunisian Criminal Code. Persons suspected of such a crime should be prosecuted and not be listed and subjected under police control measures. Consequently, these procedures seem to be substitutes for criminal proceedings. Indeed, despite the fact that they may at first seem favourable to listed people as they are spared conviction, these measures have negative consequences. Listing decisions are opaque and not time-bound. They place the individual at the mercy of the police as will be detailed further on. On the other hand, judicial proceedings impose obligations on the judiciary and the public prosecutor’s office, notably in terms of evidence, and provides the accused with the rights of defence, which guarantee - at least in theory - that the person is not convicted without sufficient evidence.

Accordingly, these first two criteria mentioned by Hichem Fourati are so vague and allow an abusive

3 | Answer of the Minister of the Interior, Hichem Fourati, to the question of Deputy Maher Medhioub concerning measure S17, ARP, 14 June 2019.

circumvention of criminal law. Therefore, the listing process would still be open to criticism even if these criteria were respected.

The second profile of persons on the S17 list according to the Minister corresponds to individuals previously convicted in terrorism cases.

Indeed, interviews with lawyers and human rights defenders indicate that the current list of listed persons seems to partially replicate the list of persons convicted of terrorist offences under the former regime who nevertheless benefited from amnesty after the revolution.



Name : Sami

Age :
36 years old

On the S17 list

This is the case of Sami, 36 years old, who was sentenced to 9 months' imprisonment in 2007 before benefiting from an amnesty during the revolution.*

Two years later, he tried to renew his passport. Every time he went to the district police station to follow up his application, he was told that the passport was not ready. At that time, his neighbourhood had recently become a theatre of eventful protests. The very tense security context at that time was considered as a possible reason for the long time taken to process Sami's application and nearly 80 other people were waiting for the issuance of their passports like him.

But over the months, other applicants eventually obtained their passports. Only Sami and nine other people remained unanswered by the administration. One day, during yet another visit to inquire about the progress of the proceedings, an agent informed him orally that he would not obtain his passport. Sami insisted, returning to the station every other day to request the document. Then, the officers started ill-treating him. They kept him in the police station and interrogated him for hours about his religious practices and his acquaintances. Police harassment intensified and involved repeated summonses to the police station, arrests or transportation to the nearest police station following roadside checks, and exerting pressure on his employer, etc. It was during an arrest on the public road in 2015 that Sami learned that he was on the S17 list and that this was the cause of police harassment. He thinks his control order is due to his criminal record.

The names of individuals implicated, though not convicted, in terrorism cases after 2011 have been added to the list of former pre-revolutionary convicts. Indeed, though discharged and acquitted by the court,

individuals who have been in police custody or even in remand in recent years are now listed and subjected to measures restricting their freedom.



Name :
Mohamed

Age :
41 years old

On the S17 list

Suspected of terrorism, Mohamed, 41 years old, was arrested in December 2015, presumably because of his appearance showing external signs of religiosity and his attendance at some mosques placed under surveillance by the authorities. He was subjected to ill-treatment during 15 days in police custody before being released due to lack of evidence against him.

Three months later, following a random identity check on the street on his way to work, Mohamed was arrested by police officers and led to the nearest police station where he was retained for several hours. He was interrogated about his occupation, his prayer practice and the activities of his family. He was asked whether his wife was veiled and what he thought of the latest attacks. During the interrogation, the officers informed him that he was on the S17 list and that he was consequently subject to movement restrictions. Police officers could not explain the reasons why his name was flagged under the S17 control directive and advised him to contact the Ministry of the Interior or the local police district to find out more. Mohamed was released the same day. In the years that followed, police harassment increased considerably without Mohamed ever being informed of the reasons for the S 17 measure he is subjected to. It is most likely linked to his arrest in 2015, which is itself probably due to his appearance and alleged religious practices.

As in the example of Mohammed, five other persons followed by the OMCT learned that they are listed after

being held in police custody or in remand linked to suspicion of terrorist activity.



Name :
Taoufik

Age :
30 years old

On the S1& S17 list

Taoufik, 30 years old, lived in Tunis with his wife and his four-year-old daughter when he was arrested in March 2015 following a terrorist attack. He spent 15 days in police custody in Gorjani before being released. This arrest resulted in his dismissal from the company he used to work for. In December 2015, he was summoned to the police station for interrogation, and it was at that moment that he found out that he was on the S17 list. From then onwards, he has been subjected to intensive police harassment that has traumatized his entire family to the point that his wife left him.

Sofiane was only 17 years old when he was arrested in 2015 following a terrorist attack. He was tortured in police custody and held in remand for three years until he was acquitted and set free in April 2019.


Name :
Sofiane


Age : 21 years old

On the S17 list

Immediately after his release, an anti-terrorist brigade in northwest Tunisia where he resides with his parents, the same brigade where he was tortured in 2015, summoned him. The officers took a DNA sample and informed him that he was on the S17 list and that he must remain within reach. Since then, he has been subject to house visits.

Other persons with no criminal records are probably listed because of their relationship to persons suspected of terrorist activities.

	<p><i>Nora's brother, 32 years old, is serving a 10-year sentence for terrorism. In 2017, Nora was arrested at a roadside checkpoint on her way to visit the prison. She was led to the police station to be searched by a female police officer because she wore a niqab, and at that moment, she found out that she was on the S17 list. She thinks that she is on the S17 list due to her brother's conviction and her wearing a niqab.</i></p>
<p>Name : Nora's brother</p> <p>Age : 32 years old</p> <p>On the S17 list</p>	

	<p><i>Aziz, 30, lives at his parents' house in northwest Tunisia with his sister, brother-in-law and their three children. His brother is suspected of having joined a jihadist group in the mountains in 2014. Since then, the whole family has been subjected to intense police harassment materialized by frequent summonses to the district police station, brutal administrative searches and other measures restricting their freedom. It was during the first search in 2017 that Aziz learned that he was subject to the S17 measure. For him, the fact that his name is flagged under the S17 directive is clearly due to the suspicions weighing on his missing brother.</i></p>
<p>Name : Aziz</p> <p>Age : 30 years old</p> <p>On the S17 list</p>	

In theory, if we refer to the profiles of listed persons mentioned by Hichem Fourati, these individuals who have never been convicted of a terrorist offence are listed because the Ministry acquired "reliable information confirming their links to terrorist groups".

In practice, it turns out that confidentiality of the information on which listing was based does not make it possible to check whether these criteria are taken into account in the selection of targeted persons. All OMCT interviewees deny any relations with a terrorist group and it is very likely that they would have been prosecuted if such relations were suspected. Since the

administration does not justify listing, targeted persons can only try to guess the reason why they are subjected to such a treatment.

Among the OMCT beneficiaries, several people have no criminal records and no close relatives suspected of terrorist activities. They believe that their listing is due to their religious appearance alone (wearing a beard and/or religious clothing), thanks to a discriminatory policy that is deeply rooted in the practices of the Ministry of the Interior.



Name :
Rafiq

Age :
37 years old

On the S17 list

Rafiq, 37, resides in southern Tunisia with his wife and children. He worked in Libya between 2008 and 2013. In 2014 he found a new job there. When he wanted to cross the Libyan border with colleagues coming to work for the same company as him, the police informed him that he was forbidden to leave the territory. One of the officers told him that his trips to Libya now and then during the previous years might be the reason for the ban and advised him to check with the local police district. A few days later, Rafiq was summoned to report to the police station in his neighbourhood. He was asked about his religious practice (how does he pray? in which mosque?), as well as about any trips his friends might make to Syria or Libya. During this interrogation, he was informed orally that he is on the S17 list.

Rafiq believes that his being on a security list may indeed be due to his travels in Libya, but also to an altercation he had with two police officers near his home in October 2014. He was going to the market with the father of a friend of his, an elderly man, when the police wanted to check their identity. The old man continued on his way and officers began to insult and shout at him. Rafiq protested, urging them to be more respectful. In response, one of the officers punched, kicked and insulted him. When he fell to the ground, the second officer handcuffed him and dragged him away from the market entrance until a police vehicle arrived.

In the national security district of his city, both officers charged Rafiq with outrageous conduct towards a public officer. He spent a month under arrest before being released in November 2014 after dismissal of charges. It was only shortly after this incident that he was notified that he was subject to a ban from leaving the country. From then onwards, Rafiq has been subject to police harassment in his various workplaces and at home.



The « S » control orders List

- 01 Notification of movements
- 02 Notification of arrival
- 03 Notification of departure
- 04 Summons
- 05 Passport withdrawal – summons
- 06 Thorough search
- 07 Arrest and handing over
- 08 Exit ban
- 09 Entry ban
- 10 Arrest - search – handing over
- 11 Passport withdrawal – summons – search
- 12 Search – summons
- 13 Passport withdrawal - seizure
- 14 Photocopy of passport
- 15 Consult the administration before granting permission to enter
- 16 Consult with the administration before granting permission to leave
- 17 Consult with the administration before granting permission to pass
- 18 Concern/problem with passport
- 19 Return from conflict areas
- 20 Lost passport
- 21 Special passport
- 22 Diplomatic passport

3.1.2. THE OPAQUE CLASSIFICATION OF CONTROL ORDERS

S1, S17, S18, S18, S19 are denominations that are heard frequently from listed persons and their lawyers. They often refer to different realities depending on the individual case.

In addition to these most well-known control orders because probably the most widespread, according to the information collected by the OMCT, there are about twenty different types of control orders. Not all of them are applicable to persons suspected of activities threatening public order, such as the S22 list concerning diplomatic passports.

On this list which is normally available to police office, the types of control orders are described very briefly. We need to look into the testimonies of victims to get a better idea on which type of control order list corresponds to which restrictive measures. However, it is very likely that listed persons are not informed of all the measures to which they are subject, so that the various police checks they undergo are not necessarily all due to the only listing of which they are aware.

All SANAD programme beneficiaries interviewed for this report are or have been on the S17 list. They most often became aware of the measure during a police check. According to the list of control order measures communicated to OMCT, S17 implies “consulting the administration before granting authorization to pass”.

According to the Ministry of the Interior, the purpose of this measure is to control the crossing of borders by persons suspected of belonging to an armed group.

In practice, a large number of people on the S17 list are not only subjected to control at the border and, to travel bans, for those who want to travel. Indeed, they are also subjected to other control measures within the territory, such as repeated summonses to the local police station

in the neighbourhood, home visits, administrative searches and arrests at roadside checkpoints, etc.

This could mean that they are, without always knowing it, subject to additional measures such as S1, S4, S6 and others. Or, it could be that police officers are interpreting the S17 procedure as involving many other control measures than just consultation at the border.



Name :
Skander

Age :
29 years old

On the S17 list

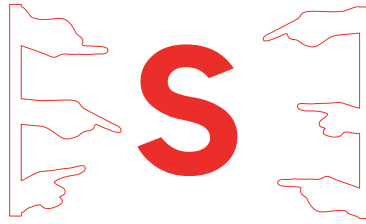
Suspected of being involved in an attack in 2015, Skander was arrested in March of the same year. He was tortured and remanded in custody before being finally acquitted and set free after 15 months in remand. Since then, and despite having been cleared, he has been subjected to police visits to his home and various work-places, police investigations with his neighbours and other measures contributing to his stigmatization.

In August 2018, he tried to go to Algeria but a border police officer informed him, without further details, that he was not allowed to leave the territory. In February 2019, he left Tunis to go and harvest oranges as a day worker. He was checked at a roadblock. The police officer stopped him for a moment on the side of the road before informing him that he was on the S17 list and that he was not allowed to leave the governorate. He ordered him to return to Tunis.

Skander was arrested several times at roadside checks and, in some cases, led to the nearest police station for questioning. However, except during the February 2019 inspection, he was never prohibited to leave Tunis because he is on the S17 list.

The case of Skander and others reveal the fact that some of the police forces do not master the typology of listing measures and give different interpretations of the directive.

In two cases documented by OMCT, people were informed that they were on the S1 list. Here again, the same control measure has led to disparate implementations.



3.2.CONTROL ORDER: A BLANK CHEQUE JUSTIFYING POLICE HARASSMENT PRACTICES

All of the listed individuals whose cases have been documented by OMCT have been or, for the most part, are still subjected to the S17 measure. Some were informed that they were also on the S1, S18, S19 lists or under house arrest.

All of them have in common that they are subject to one or more of the police control measures described below, at regular intervals and with varying intensities over time.

None of them have been informed of the reasons justifying the control directive, its extent, duration, the type of restrictive measures it implies, or the appeal systems at their disposal to contest the decision taken against them and subsequent restrictive measures.



Name:
Sami

Age: 36 years old

On the S17 list

Sami was informed that he was on the S17 list during his arrest on the public road in 2015. He travels a lot between Tunis, where his in-laws live, Kairouan, his hometown and southern Tunisia, where he resides. As a result, he is often subject to roadside checks. Sometimes he is forced to accompany officers to the police station after identity check. In July 2019, on his way to OMCT, Sami was arrested on the road and led to a police station in Tunis. Sami protested, saying that he had heard the Minister of the Interior affirm that people on the S17 list should no longer be arrested. After making a few phone calls, the chief of police told him that he was also on the S8 list and therefore had to provide some information. After an hour of waiting, Sami was questioned about the reason for his trip to Tunis, before being allowed to leave.

No legal justification is ever provided to justify such arrests of a few hours. Consequently, these temporary arrests must be considered arbitrary. Moreover, a person who is subject to this type of arrest may experience traumatic fear enhanced by fear of exposure to torture or detention. This fear is all the more intense if the listed person has already been victim of torture during a previous arrest.

As mentioned above, people were forced to return home after a roadside check, in at least two cases, though they

were not under house arrest but only subjected to an S17 order or placed under both S17 and S1 procedures.

3.2.2. REPEATED SUMMONSES TO THE POLICE STATION

At least nine of the persons assisted by SANAD programme complain that they have been or are still regularly summoned to local police stations for questioning.



Name: Anis

Age: 46 years old

On the S17,
S18 and S19 lists

Some time ago while in bereavement following his father's death, he had begun to associate with members of a religious movement in his neighbourhood who were accustomed to travelling a lot. In 2013, he travelled with them to Malaysia and started wearing a beard and a qamis when he returned home. He was arrested for the first time after an identity check in Jendouba in early 2014, along with other members of the movement. Tetanized by fear, he left the movement shortly after this arrest. That did not prevent him from being arrested a second time with friends in the suburbs of Tunis in April 2014. The officers detained him until 5 a.m., questioning him about his clothing, his wearing of a beard, the mosque he frequents and other issues related to his religious practice.



3.2.3. HOME VISITS

Another control measure that many listed people undergo consists in more or less frequent police visits to inform people that they are under surveillance and to collect information from them about their activities, acquaintances or movements. Home visits are therefore always the occasion for informal police interrogation, which is often very stressful for both concerned persons and relatives living with them.

During home visits, as well as in the case of summonses to the police station, police officers often require the monitored person to give them access to their mobile phone so that they can check SMS messages and calls made and received. They also ask for passwords to access accounts on social networks.



Name: Nizar

Age :
33 years old

On the S17 &S19
lists

Nizar is subjected to S17 and S19 measures due to his trips to Algeria, Libya and Turkey where he married a Syrian woman. He lives with his parents, his second wife and their children. Since 2016, he has been subjected to frequent police home visits. When the visits began, his wife had no papers allowing her to reside in Tunisia. The officers summoned her several times threatening to expel her and separate her from her son (born in 2015) if she did not leave her husband. In 2018, when she gave birth to their second child, she could no longer stand home visits. She left her eldest son with Nizar and went to live three months in a shelter with her new-born child.

Police officers still visit the family house very frequently. Moreover, Nizar regularly receives phone calls from police and visits to his various workplaces to the point that he gave up working for an employer.



Name: Rafiq

Age:
37 years old

On the S17 list

In 2014, Rafiq was informed that he was on the S17 list. Since then, he has been subject to intensive police harassment. He lives with his wife and children aged 5 and 2. All of them are traumatized by the home visits that began in 2015. He frequently receives calls from the police. When he fails to answer the phone, police officers come to his house during the day, and often knock violently on the door and yell. When Rafiq protests against the way they behave, explaining that it terrifies his children and stigmatizes him among his neighbours, police officers argue that they have the right to check if he is present at home when he does not answer their calls.

Once, the police came to his home to check whether he was there. Rafiq protested and officers arrested him in front of his neighbours and led him to the police station. He spent two hours there between waiting and interrogation before he could go home. The family was eventually evicted from their home due to police visits. The inhabitants of the neighbourhood avoided contacting his family and his wife was no longer invited to eat with other women in the neighbourhood café before. Rafiq is concerned about rumours circulating in the neighbourhood café labelling him a terrorist.



3.2.4. BANS ON LEAVING THE TUNISIAN TERRITORY

For many of the persons supported by the OMCT, the S17 measure imposes a ban from leaving the country⁷.

This restrictive measure is not systematically applied to all those placed under to the S17 procedure. As defined

⁷ | See the statement of Interior Minister Hichem Fourati before the Armed Forces Committee concerning the 2019 budget on November 15th 2018: "S17 is an exceptional preventive measure; it is neither a ban on movement nor a ban on entering and leaving Tunisian territory. It consists in consulting the administration before allowing passage and in most cases authorization is granted." http://arp.tn/site/main/AR/activites/fiche_act.jsp?cn=104178&type=null (last accessed November 11, 2019)

by the Ministry of the Interior, the S17 measure involves only a thorough check of the concerned person when he or she wants to cross the border, not a ban on

leaving the country . However, several people reported that they had been prohibited from crossing the border because they are on the S17 list.



This was the case for Rafiq mentioned above. He worked in Libya for five years and found another job there in 2014. However, when he wanted to go there, border police officers informed him that he is subject to a ban from leaving the territory. He realized a few days later when summoned to report to the local police station that the ban was due to the S17 measure.

Name: Rafiq

On the S17 list



On July 23rd, 2016, Faouzi had an altercation with a police officer on a bus on his way back from Tunis to north-eastern Tunisia, where he resides. He thinks he was listed because of that incident. Three days later, he received a phone call from the local police station notifying him that he was under house arrest and that he could no longer leave the territory or travel inside Tunisia without informing the police station.

Name:
Faouzi

On the S17 list

Shortly afterwards, Faouzi concluded a contract with a foreign importer to export fruit and vegetables. He wanted to go to Luxembourg to sign the contract and went to the airport without informing the police. There, border police officers told him he was on the S17 list. They did not notify him of a ban on leaving the territory, but as they immobilized him for several hours, Faouzi eventually missed his flight and had to return home. When he went to the police station in his neighbourhood, officers confirmed that he was S17 and under a travel ban.

He obtained an administrative court order suspending the travel ban and was able to travel to Italy to see his family. He returned to Tunisia and when he wanted to go to Italy again, the police retained him at the airport until he missed his flight, despite the decision of the administrative court. He still suffers today from an uncertain and insecure situation aggravated by the fear that he should no longer be able to see his family.

Here again, the legal basis for the ban on leaving the territory put forward by the Ministry of the Interior is highly doubtful. As will be detailed below, listing, an opaque procedure par excellence, cannot be used as a legal basis to justify restrictions on freedom.

Sometimes, individuals whose names are flagged under the S17 list are not formally prohibited from leaving the territory. Upon arrival at the airport, they are subject to interrogation and are made to wait for such a long period of time that they end up missing their flight.



Name :
Khaled

Age:
31 years old

on the S17 list

This was the case for Khaled, who has been banned from leaving the country since his return to Tunisia after being deported from Germany, where his wife still resides. In November 2018, he obtained an administrative court order lifting the travel ban imposed on him. Since then, he has travelled to Turkey, Morocco and Algeria. When he goes to the airport, during the interrogation required under the S17 directive, Khaled streams live videos of himself to denounce the abuses he is subjected to, and films airport agents knowingly wasting his time to make him miss his flight. This strategy has so far always paid off, but Khaled still runs the risk of being prevented from travelling, as in the case of Faouzi, mentioned above, who missed several flights to Luxembourg where he wanted to go on business, but also to Italy where his family lives.

According to the Ministry of the Interior, 29,450 people were barred from leaving the territory between 2013 and January 2018. It is unknown whether this figure includes cases of persons de facto prevented from leaving the territory after being arrested for several hours until plane's departure or whether it only refers to persons who have been orally notified they were under a travel ban. It is also unknown whether this figure takes into account persons under a court-order travel ban.

In other words, there is no evidence that all persons prohibited from leaving the territory are on the S17 list. As from 2015, border police have been implementing

an unofficial policy requiring that persons under 35 years of age who want to travel to Turkey, Libya and other countries considered as risk areas present a parental travel consent at the border¹¹. According to a lawyer interviewed by the OMCT, this control measure, which has no legal basis, is only enforced against young people with suspicious appearance who are not necessarily listed under a directive. In some cases, persons who presented paternal travel consent were nonetheless prohibited from leaving the country.

¹¹ | Réalités Online, Autorisation parentale pour voyager: "il y a en a marre", 21 November 21st, 2017, <https://www.realites.com.tn/2017/11/autorisation-parentale-voyager-y-a-marre/> (last accessed on November 11st, 2017.)

Four other people supported by the SANAD programme have also been waiting for their passports, some for several years.

According to article 13 of Law No. 75-40 of 1975 on passports and travel documents, “every Tunisian national has the right to obtain or renew a passport” at the Ministry of the Interior. However, there are a few exceptions to this principle. A Tunisian citizen may be refused the issue or renewal of his or her passport, in particular “on grounds of public order and security, or for reasons likely to affect Tunisia’s good reputation”. Accordingly, the Ministry of the Interior can refuse to issue a passport without reference to judicial authorities.

On the other hand, according to Article 15, decisions to revoke a passport - in particular when a person is charged - must be taken by a judicial authority.

A refusal to issue a passport is effectively equivalent to a travel ban.

The Ministry of the Interior may refuse to issue a passport according to article 13 of the 1975 Law, which thus allows an administrative authority to restrict an individual’s freedom of movement on grounds that are not clearly defined. Indeed, “on grounds of public order and security, or for reasons likely to affect Tunisia’s good reputation” is a too vague wording to be used as a basis for limiting a fundamental freedom. In addition, Article 13 does not require the Ministry of the Interior to notify the concerned person of refusal reasons, thus making it all the more difficult to challenge the measure before an administrative court. Finally, unlike travel bans provided for in articles 15(a) to 15(c), which have a maximum duration provided for by law, decisions to refuse issue of passports are not time-bound.



3.2.6. ADMINISTRATIVE SEARCHES

Some of the individuals supported by the OMCT report being victims of very traumatic¹² administrative searches¹³. The scenario is often the same. Dozens of agents burst into the home of the listed person, often in the evening or at night, sometimes by breaking down the door. They insult and threaten those present, ransack the house, make, if necessary, a few seizures

and leave without giving any explanation or providing the minutes of seizure or a warrant to seize. The head of the family is very often violently led by police in front of his children to the police station where he is subjected to a routine questioning before being released within minutes or hours.

¹² | By administrative searches, we mean searches carried out outside any criminal procedure and without the control of a judicial authority.

¹³ | These searches were also denounced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in his report following his visit to Tunisia, 12 December 2018, p. 10

Such searches seem to be based on Decree No. 78-50 of January 26, 1978 regulating the state of emergency. Indeed, article 8 provides that “in areas subject to the application of the state of emergency, the authorities referred to in the previous article may order daytime and night-time home searches. The vague decree does neither set out the precise circumstances that could justify searches, nor the applicable procedure. The judicial authority seems to be completely excluded from the process of authorizing and supervising home searches.

In a letter to Amnesty International in response to an inquiry, the government confirmed that the legal

basis for these searches was Decree 50 of 1978. The Ministry stated that “searches are conducted within the framework of warrants issued by the public prosecutor’s office in accordance with the procedures provided for by applicable legislation, notably the Code of Criminal Procedure and Act No 26 of 2015 dated 7 August 7, 2015) on combating money laundering and terrorism,” and that they “are also subject to judicial supervision.”

However, none of the listed persons was ever informed that searches were part of a legal procedure.



3.2.7. HOUSE ARRESTS

Five persons among individuals supported by the OMCT have been or are still under house arrest. This control measure, which is very prejudicial to freedom of movement, is also based on a summary article of Decree No. 78-50 of January 26, 1978 regulating the state of emergency. Article 5 provides that “the Interior Minister may impose house arrest in a territorial district or a specific locality on any person residing in one of the areas provided for in Article 2 whose activity is dangerous to public safety and order in the mentioned zones.

The administrative authority must take all necessary measures to ensure the subsistence of these persons and their families.”

All persons under house arrest were notified of the measure taken against them orally, sometimes following an identity check, without ever being given any written warrant. The scope of the assignment is not clearly defined, nor are the constraints to which this measure gives rise.

Some people have been prohibited from leaving their homes, whereas Decree No. 78-50 refers to house arrest in a territorial district or a specific locality



3.2.8. INTRUSIVE AND STIGMATIZING POLICE CONTROL METHODS

Several victims reported that police surveillance to which they are subjected has taken the form of a real stigmatization campaign aimed probably at isolating and desocializing them.

Several have been visited on one or more occasions by police officers at their workplace allegedly to check their presence, but more likely with the aim of getting them dismissed.



Name :
Mostafa

On the S17 list

Mostafa lives with his wife and son. They were subjected to home visits and home searches that traumatized the family. They were finally evicted from their homes because of police pressure on the lessor.

Mostafa was also harassed in his various workplaces. In 2015, he was recruited as a coach in a hotel gym. The police came to visit him in the gym and led him to the police station where they ill-treated him. Mostafa's complaint against his attacker was dismissed despite the fact that he lost his job because of this incident.

He was recruited by another gym but lost his job again because of a police visit.

A young man living in the suburbs of Tunis then recruited him as a personal trainer. At the end of 2018, during a training session, police officers came and carted off Mostafa and the young man on board. Police pressured the young man's father to fire Mostafa. He is now unemployed and has given up working as a coach.



2 Kids
Aziz's nephews

Age :
14 & 12 years old

Exposure to stigma prompted Aziz's nephews, aged 14 and 12 today, to attempt suicide after yet another home search during which agents humiliated them. The children wanted to show their despair not only at police violence but also at the continuous police harassment that has totally marginalized them to the point that the other children in the neighbourhood avoid playing with them. Despite this call for help, the police keeps up the pressure and continues to summon Aziz and his parents to question them about their son who is supposed to have joined a jihadist group in the mountains in 2014 and about whom they have not heard for years. Police officers still conduct home searches and neighbourhood canvasses during which they ask the grocer about the family's consumption, the number of loaves of bread they every day, etc.

All control measures mentioned above violate several fundamental rights and freedoms guaranteed by the Tunisian Constitution and the international human rights law, such as freedom of movement, the right not to be subjected to arbitrary detention, the right to privacy and inviolability of the home, and other rights and freedoms, which will be detailed hereunder.

Indeed, these measures are not legal because both the Tunisian Constitution and the International Covenant on Civil and Political Rights (ICCPR) provide for the possibility for the Tunisian authorities to restrict certain rights and freedoms. The ICCPR distinguishes between derogations and restrictions to rights and freedoms. Restrictions are the limits that may be placed on certain rights guaranteed by the Covenant in ordinary times, in order to protect national security, public order, public health or morals, or the rights and freedoms of others. Derogations are the limitations of rights and freedoms authorized by Article 4 of the ICCPR in the event of exceptional danger to the nation.

According to Article 4.2 of the ICCPR, no derogation - let alone restriction - can be made to certain rights such as the right to life or the right not to be subjected to torture or ill-treatment. Apart from the rights and freedoms listed in this article, others may in principle be subject to derogations or restrictions, provided that all restrictive measures adopted are fully compliant with three essential conditions; legality, proportionality/necessity and subjugation to judicial review¹⁴.

Any limitation of rights and freedoms that does not respect these conditions will be arbitrary.

¹⁴ Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report following a visit to Tunisia, 12 December 2018, p. 10: " Even if imposed by an executive or law enforcement decision, restrictions of this right must be legal, reasoned, justified and subject to judicial oversight."

Similarly, house arrest, a measure restricting freedom par excellence, is based on a regulatory text, Decree No. 78-50 of 26 January 1978, regulating the state of emergency. It therefore has no legal basis.

Likewise, orally notified exit bans are based on different legal grounds invoked by the administration, notably in the context of administrative litigation concerning these prohibitions. By invoking Decree No. 75-342 of 30 May 1975 fixing the powers of the Ministry of the Interior or Decree No. 78-50 of 26 January 1978 regulating the state of emergency, the administration bases the prohibition to leave the territory on an administrative text and not on a law, as it should. The administration sometimes invokes Act No. 75-40 of 14 May 1975 on passports and travel documents. However, as detailed above, this law does not authorize the administration to issue prohibitions on leaving the territory.

Thus, the measures restricting freedom of movement are arbitrary as they have no legal basis. They are therefore unconstitutional and contrary to Tunisia's international commitments.

The only exception noted was the travel ban resulting de facto from the administration's refusal to issue a passport to the listed person. The measure in question is based on Article 13 of the 1975 Act on passports and travel documents, which allows the Ministry of the Interior to refuse to issue a passport "on grounds of public policy and security, or for reasons likely to affect Tunisia's good reputation". The question arises as to whether the law is clear and precise enough not to lead to unjustified infringements of freedom of movement.

Not all refusals to issue passports would be legal even if the requirements of legality were met, because restrictive measures must respect the other two principles governing restrictions on rights and freedoms, as will be seen below.

4.1.2. LEGALITY OF CUSTODIAL MEASURES (ARREST AND DETENTION)

If a law is required to regulate the limits placed on freedom of movement, the same is even truer for custodial measures such as arrest and detention. Deprivation of liberty must be provided for by law or will be considered arbitrary.

Article 9 of the ICCPR provides that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

Along the same line, Article 29 of the Constitution states that "No person may be arrested or detained unless apprehended during the commission of a crime or on the basis of a judicial order. The detained person must be immediately informed of their rights and the charges under which they are being held. The detainee has the right to be represented by a lawyer. The periods of arrest and detention are to be defined by law."

Several measures restricting freedom against listed persons may violate the fundamental right not to be arbitrarily detained.

First of all, this is the case of arrests of listed persons on public roads after an identity check, a road check or at their home following home searches or visits. Forcing these persons to go to the police station for interrogation for information purposes may be considered equivalent to an arrest even if it's a short one.

These arrests are simply arbitrary since they have no legal basis, at least none invoked by police officers to justify taking a person to the police station.

The same is true for repeated summonses to police station, which are binding as the person risks retaliation if he or she fails to comply.

House arrest, a restrictive measure, may also be qualified as a measure involving deprivation of liberty if its scope is restricted to the concerned person's home. The arbitrariness of this detention lies in particular in the fact that it is based only on a regulatory text - Decree No. 78-50 of 26 January 1978, regulating the state of emergency - and not on a law as required by ICCPR and Tunisian Constitution.

One of the corollaries of the prohibition of arbitrary detention is the principle of legality in criminal matters guaranteed by Article 15 of the ICCPR, according to which an individual may only be sentenced for an offence and to a penalty prescribed by law at the time of the alleged offences. The principle of legality is non-derogable, even in a state of emergency according to Article 4.2 of the ICCPR. It is also enshrined in Article 65 of the Tunisian Constitution, which states that "laws relating to (...) definition of crimes and offenses and the penalties applicable, in addition to violations resulting in a penalty involving deprivation of freedom are deemed ordinary laws." Article 28 specifies that "punishments are individual and are not to be imposed unless by virtue of a legal provision issued prior to the occurrence of the punishable act, except in the case of a provision more favourable to the defendant."

In breach of the principle of the legality of offences and penalties, Article 9 of the 1978 Decree regulating the state of emergency provides that "offences against the provisions of this Decree shall be punishable by a prison term of six months to two years and a fine of 60 to 2,500 dinars or only by one of these penalties". It is

on this basis that persons accused of violation of house arrest terms are prosecuted. These prosecutions, as well as Article 9 of the decree on which they are based, constitute a clear violation of the ICCPR and the Constitution insofar as the offence and penalty incurred are determined by a decree and not by a law.

4.1.3. LEGALITY OF RESTRICTIONS ON THE RIGHT TO PRIVACY, INVIOABILITY OF THE HOME AND SECRECY OF CORRESPONDENCE

Article 24 of the Constitution provides that "The state protects the right to privacy and the inviolability of the home, and the confidentiality of correspondence, communications, and personal information."

Along the same line, article 17 of the ICCPR notes that "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

This right may only be restricted by law in accordance with Article 17, as well as in accordance with the aforementioned Articles 49 and 65 of Constitution¹⁵.

Police home searches, mobile phone checks, police visits to the home of the listed person and his family as well as to workplaces, police neighbourhood canvasses, pressure on employers, lessors, relatives, etc. are all control measures that seriously violate the right to privacy, inviolability of the home and confidentiality of correspondence.

They also affect the concerned persons honour and reputation by stigmatizing them among neighbours, colleagues and sometimes even families.

Of all these measures, only police home searches are based on a legal text. Yet, once again, the 1978 Decree regulating the state of emergency is a regulatory text, not a law. To our knowledge, the other measures have no legal basis. Accordingly, all these restrictions on the right to privacy, inviolability of the home and secrecy of correspondence constitute arbitrary and unlawful interference within the meaning of Article 17 of the ICCPR, and are also unconstitutional.

4.1.4. LEGALITY OF RESTRICTIONS ON THE RIGHT TO WORK

Finally, certain control measures such as police visits to workplaces, threats to the employer and the refusal to issue administrative documents such as the B3 record, necessary to finding an employment, constitute violations of Articles 40 of the Constitution and 6 of the ICCPR, which establish the right to work.

4.2. NECESSITY AND PROPORTIONALITY PRINCIPLES

The Tunisian Constitution and international law require that restrictions and derogations to rights and freedoms, particularly in a state of emergency, comply with the necessity and proportionality principles.

Article 49 of the Constitution provides that “The limitations that can be imposed on the exercise of the rights and freedoms guaranteed in this Constitution will be established by law, without compromising their essence. Any such limitations can only be put in place for reasons necessary to a civil and democratic state and with the aim of protecting the rights of others, or based on the requirements of public order, national defence, public health or public morals, and provided there is proportionality between these restrictions and the objective sought. Judicial authorities ensure that rights and freedoms are protected from all violations.”

The Human Rights Committee has also endorsed these conditions of necessity and proportionality in its General Comments on Article 4 of the ICCPR, and points out that “any measures derogating from a State party’s obligations under the Covenant must be limited “to the extent strictly required by the exigencies of the situation”. This condition requires that State parties provide careful justification not only for their decision to proclaim a state of emergency but also for any specific measures based on such a proclamation¹⁶.

review may a priori be exercised over all restrictive measures imposed on listed persons. According to Hichem Fourati, until May 2019, 951 cases were submitted to the administrative court¹⁸ which ruled in favour of the Ministry of the Interior in 203 cases and in favour of the applicant in 62 cases. In February 2019, Mohamed Ali Khaldi, Director of Human Rights at the Interior Ministry, reported 800 appeals, 48 of which were decided in favour of the Ministry and 51 in favour of the applicants¹⁹.

In practice, it has to be conceded that judicial supervision has been largely hampered by the administration.

4.3.1. THE DIFFICULT EVIDENCE OF LISTING AND CONTROL MEASURES

The first obstacle is the lack of a written notification of the listing procedure and the control measures to listed persons. In all cases documented by the OMCT, persons were only orally notified of the listing measure and of the fact that they were subsequently subject to a ban on leaving the country, a house arrest, or deprivation from identity documents.” Similarly, no written information was provided to them to justify repeated summonses to the police station, administrative searches, police visits to their homes and workplaces, neighbourhood canvasses, among other numerous control measures.

The absence of a written document complicates recourse to judicial remedy before the administrative court because the applicant must then definitely find some ways to provide the court with proof that he is actually listed and/or subject to a restrictive measure.

This is why Khaled films himself live every time he passes through customs at the airport. In addition to putting pressure on the border police to allow him to travel, filming also makes it possible to document the incident in the event of a ban on leaving the country. Others choose to go to the airport with a bailiff or lawyer.

Regarding proof of house arrest, one of the SANAD programme beneficiaries obtained a copy of the house arrest order by requesting it from the Ministry of the Interior. Most persons placed under house arrest are not as lucky and must find other ways to prove house arrests imposed on them. One of the lawyers interviewed by the OMCT advises his clients to violate their house arrest terms in order to be prosecuted²⁰. The Ministry of the Interior is then required to provide the house arrest order as part of the procedure. According to the lawyer, this strategy has far more advantages than disadvantages for his clients because they really only incur a very small fine, or even very often a dismissal, since their summons has never been officially notified to them.

It is not a priori difficult to establish evidence of refusal to issue documents such as passports, identity cards or B3 records, as long as one can show that an application has been made.

On the other hand, it is much more difficult to provide evidence of all other no less detrimental measures such as repeated summonses to the police station, home visits, administrative searches, investigations with neighbours, exerting pressure on employers and property owners, roadside arrests following an identity check, etc.

Such proof is not impossible, though difficult when it comes to providing testimony because witnesses risk retaliation. This may explain the limited number of administrative appeals against such measures²¹.

18 | Answer of the Minister of the Interior, Hichem Fourati, to the question of Deputy Maher Medhioub concerning the S17 measure, op. cit.

19 | Tunis Afrique Presse (TAP), 800 court cases related to S17 travel ban procedure, op. cit.

20 | Interview with a lawyer, September 30th, 2019.

21 | Interview with a magistrate of the Administrative Court of Appeal, on October 8th 2019.

The Administrative Court's case-law shows that judges have so far been very flexible on the question of proof of the existence of a control measure .

4.3.2. ASSESSMENT OF AN INDIVIDUAL'S DANGEROUSNESS

Once the appeal has been lodged with the administrative court, the applicant is confronted with the Ministry of the Interior's refusal to provide her or him with precise information justifying the listing, under cover of confidentiality. This is a serious and prejudicial breach of the principle of equality of arms, which is the essential guarantee of a fair judicial remedy.

In several judicial decisions consulted by the OMCT, it is stated that the Ministry of the Interior justified listing and restrictive measures taken against the applicant by the fact that he is a "member of Ansar al-Sharia" and is therefore a "terrorist"²².

Other cases show that the Ministry has provided more details that are too vague for the applicant to effectively refute allegations.



Mostafa
on the S17 list

Mostafa was accused of belonging to the "takfiri" group and of being dangerous to national security. Proof of this supposed dangerousness is his three-year prison sentence for terrorism in 2007. In addition, he was allegedly involved in the radicalization of several young people after the revolution, without anyone knowing who, when and in what way. He is now reported to be a member of Ansar al-Sharia and to be in contact with its leaders. The Ministry goes so far as to say that he was involved in the 2012 embassy attack though Mostafa was never prosecuted, let alone convicted in this case.

Allegations made by the administration against people with criminal records are most often so serious as to constitute criminal offences. The question then arises as to why the Ministry of the Interior does not prosecute them rather than having their names flagged under a control order directive. The answer certainly lies in the burden of proof, which differs in administrative litigation and criminal litigation. Criminal proceedings require the prosecutor to prove the facts alleged against the accused and to investigate on behalf of the prosecution and the defence. If prosecuted criminally instead of subjected to restrictive measures, a listed individual because of his or her alleged links with a terrorist enterprise would certainly be sentenced to imprisonment, but he or she would also benefit from the presumption of innocence, the right not to be convicted without evidence, among other rights of defence. On the other hand, administrative litigation may operate in practice as a kind of reversal of the burden of proof. Ultimately, it is up to the victim to prove that he or she did not commit the acts for which he or she is accused, without knowing the allegations made against him, and without having the means of the public prosecutor or an investigating judge to collect exonerating evidence.

Among individuals supported by the SANAD programme, several were arrested after the revolution for their alleged involvement in terrorist activity and were dismissed or acquitted in the absence of sufficient evidence against them. This did not prevent the Ministry of the Interior from maintaining these refuted allegations in criminal court in order to flag the names of concerned persons under a control directive and imposing surveillance measures on them²³.

The administration of evidence is less regulated in administrative litigation than in criminal litigation, but, here again, it seems that, until now, the administrative judge has been quite demanding with regard to the

administration by requiring it to prove the dangerousness of the individual beyond vague allegations of belonging to Ansar al-Sharia²⁴. Several persons supported by the OMCT have had their ban on leaving the country or their house arrest suspended or lifted on the grounds, inter alia, that the Ministry of the Interior did not mention the details and nature of the activity alleged to constitute a danger to the country's security.

It should be noted, however, that nothing prevents the administrative judge from being satisfied with the administration's claims justifying listing and control measures. This risk is particularly heightened after attacks because judges may then be afraid to allow the appeal of a claimant who will then become involved in a terrorism case.

4.3.3. REVIEW OF THE PROPORTIONALITY OF CONTROL MEASURES

The dangerousness of a listed individual is not the only aspect examined by the administrative judge in the context of administrative litigation when ruling over the legality of control measures. The judge also reviews the proportionality of the restriction on the applicant's freedom with regard to the maintenance of public order.

To our knowledge, restrictive measures imposed on listed persons have hardly been subject to review by the administrative judge because the applicants have always favoured other means of illegality in their appeals.

23 | Interview with a lawyer, 30 September 2019.

24 | Interview with a magistrate of the Administrative Court of Appeal, on October 8th 2019 and with a magistrate of the Administrative Court, on 7 October 2019.

4.3.5. AN EMERGENCY DISPUTE NOT ALWAYS DEALT WITH AS A MATTER OF URGENCY

As mentioned previously, any measure restricting freedom must be subject to serious, fair, effective but also prompt judicial review. This requirement of promptness is far from being met.

Listing/control orders and control measures are subject to several types of appeals:

URGENT APPEALS:

1. Referral is indicated to obtain an urgent measure. However, the law does not set time limits for review by administrative court. In practice, the procedure takes time because the court communicates with the administration several times and give it a reasonable time to respond.
2. Suspension of operation is introduced to suspend a measure, the implementation of which could be detrimental to the person, such as bans on leaving the territory. It shall be examined within a maximum period of one month.

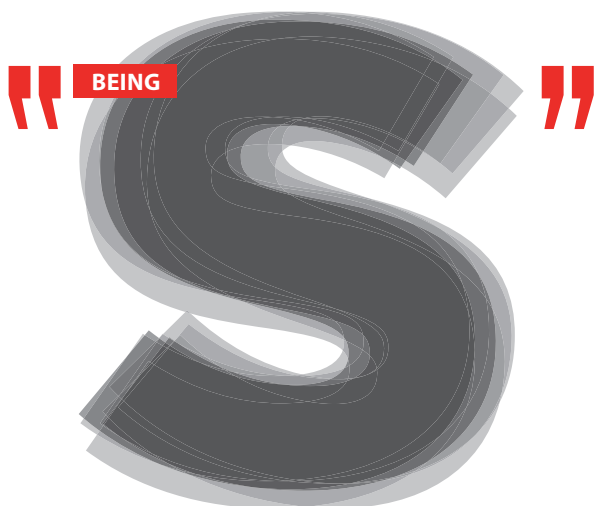
MERITS APPEALS:

1. An action for misuse of power to overrule (and not only to suspend (as in the case of urgent appeals) of a measure deemed unlawful. This procedure usually takes several years

In the vast majority of cases documented by the OMCT or mentioned by interviewed lawyers, the applicants submitted requests for interim measures in addition to their actions for annulment/overuse of the power to obtain a temporary emergency decision.

Lawyers have reported that, in rare cases, referrals have been examined within 48 hours. In most cases, however, submitted applications for interim measures wait for decisions for at least three months and appeals for annulment are not examined two or even three years after referrals to the court.

Three months is an inordinately long time to consider, for example, a request for urgent suspension of a house arrest order. Indeed, house arrest has generally the effect of causing the targeted person to lose his/her job, not to mention the other damage that it causes to his/her personal life, especially when it restricts the perimeter of freedom of movement to the his/her house alone. Such a measure could even be considered a form of detention. A judicial review should be carried out in 24-48 hours to be considered sufficiently prompt.



5. DEVASTATING CONSEQUENCES OF POLICE HARASSMENT

The issue of control orders and measures adopted against concerned persons goes far beyond the simple question of legality. These measures are arbitrary and constitute police harassment. Above all, they have very serious consequences. They cause material and psychological damage for which none of the victims has, to date, obtained compensation.

5.2. PSYCHOLOGICAL ISSUES LINKED TO LISTING



Listed persons targeted by control measures arbitrarily restricting their freedom to a defined space are considered persons deprived of their freedom. With the exception of persons under strict house arrests at their homes, control measures do not amount to a

deprivation of liberty from a legal point of view. They are rather considered as restrictions of liberty. Yet, from a psychological perspective, the arbitrary nature of these measures makes them more damaging than deprivation of liberty when it comes to emotional experience.

“Home confinement may seem more comfortable than confinement in jail but it is not the case”

Restrictions on freedom imposed by control orders cannot be compared with isolation in a prison environment. It is true that prisoners are deprived of their families and environment, and this is not without considerable emotional impact. Yet often, the prison cell becomes from the very first moment a new socialization environment that requires adaptation and another form of socialization takes over. However, listing causes a real breach of social ties from the moment people are arrested for the first time. Indeed, listing is notified at any time to the affected person while walking with friends, family or co-workers, or going to the market at the cinema or coffee shop with friends. From that moment on, police methods of treatment make the close family and friends aware that the affected person is dangerous and that frequenting them means taking risks. Then

arrests multiply and create a climate of insecurity such that affected persons are forced to change their life. As time goes on, they will no longer frequent people who are not aware of their isolation. At any moment of their daily life, the reminder shots telling them that they must remain on the margins of society are there. These arrests are demeaning to human dignity in the sense that they give way to the feeling of not being an ordinary citizen, of being a sub-human... an OTHER. An imprisoned person is not that other, he or she is a detainee among others and feels like a social being forced to adapt like others to the inhuman conditions of places of detention. The punishment consists in being forced to endure and live in the group for a specified period of time.

Listing is therefore experienced and perceived as a measure that undermines the sense of belonging and creates great vulnerability.

While many people describe their daily lives as compartmentalized and restricted to a given

environment authorized by the police, others experience the situation differently:

“Going out on a daily basis has become for me an act of bravery, a militant act enabling me to face society and to exist as a citizen”.

“ Being in prison is being with people who have committed a crime and who potentially can be dangerous to others. Why don’t they put me behind the bars if I have committed a crime? And why am I not in jail or in a psychiatric hospital if I am dangerous to others? ”

Being deprived of liberty in prison has a meaning, that of serving the sentence for which the person has been sentenced. To be subject to these preventive measures is to suffer a sentence without ever having been tried or more precisely, without ever knowing the crime committed, without being able to be heard and have a defence, and especially without knowing the sentence expiry date. When a person commits a crime or an offense, the victim files a complaint and the accused is given the right to be heard and to have a defence. The framework that law is supposed to provide both as a social regulator and also on the psychological level is completely violated by the same officers who are supposed to be the guarantors of the law. Consequently, on the psychological level, these

people lose reference. To give meaning to this measure, it is often the state of emergency that is invoked, namely the dangers facing the nation. In this way, police make them feel that they are a danger to the country and that the complainant is the entire nation. The violent attacks in the neighbourhood, on their families, in front of their children cause such stigmatization that they now perceive themselves as a threat to society as a whole. They become threatening to their lifelong neighbours, threatening to their friends and even family. By avoiding them, people around them become accomplices of the system, plaintiffs not for an act committed by them but out of the fear of seeing them commit an act. This stigmatization is perceived as unfounded and unfair.

Listing is therefore perceived as an unfair measure leading to a loss of psychological and social reference points. These persons who feel persecuted all the time are permeated with anger and the desire to take justice into their own hands.

“The feeling is that of suffering a sentence enforced by no one and executed by almost everyone...”

“ I don’t understand why my family has to suffer the same fate. ”

Being deprived of liberty outside the prison environment places the whole family under daily and permanent observation of the police. The listed person is no longer the only one affected as all those around him/her too become confused by what is going on. The whole family dynamic will be disrupted and two consequences are often observed. The first consists in overprotection (often by parents) and search for meaning. How did their child come to this point? Along with overprotection, there is misunderstanding and gradually hatred towards the system that has put their child at risk and

broken their developing future. Moreover, we see family systems grow together developing a lot of resentment. The second consequence is often family breakdown. We have several cases of couples who do not resist both economic (head of household without income) and psychological (head of household humiliated and losing self-esteem) pressure. Fear, disrupted family dynamics, divorce, domestic violence, school failures are all prejudices that will have an impact on the family as a whole.

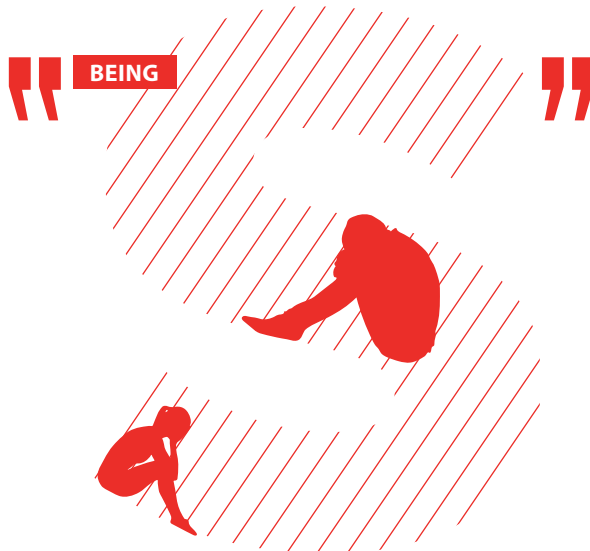
Listing will have a transgenerational impact.

“I hope truth will be out someday, I don’t want my children to think their father was a dangerous person”

“ I’m going crazy ”

Listing generates such psychological disorganization that people often have many psychiatric disorders. The most common issue is depression with often suicidal ideations, but we also often encounter bipolar disorders. The frequency of bipolar disorders leads us to reflect upon the link between this disorder and “being S17” among other listings. Indeed, persecution and harassment place the individual in a state of fragility

that may lead to emotional collapse. We may also wonder in some cases whether the targeted person might have suffered such disorders before being listed and whether this could explain the behaviour that the police considered as deviant. Violent arrests also have a traumatic impact on families that some children found only suicide as a means of expression to show how much they suffered from stigma in their neighbourhood.



6. CONCLUSION

Testimonies collected from listed persons supported by the OMCT indicate that the implications of listing and the arbitrary implementation of administrative control measures can have dire consequences on their lives. These police measures can be qualified as psychological violence when carried out with such recurrence or intensity that they inflict clear psychological harm on listed persons and their relatives.



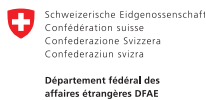
7. RECOMMENDATIONS

All the restrictive control measures mentioned in this report are tainted by arbitrariness since they fail to comply with the requirements of legality, necessity/proportionality and serious, prompt, fair and effective judicial review provided for in the Tunisian Constitution and in international law.

In order to bring police surveillance practices in the fight against terrorism in line with Tunisia's international commitments, the OMCT calls upon the government to:

5. Lift all house arrests based on the 1978 Decree regulating the state of emergency immediately;
6. Put an end to the practices of home visits and administrative searches based on the Decree 1978 regulating the state of emergency and using such measures in the context of judicial proceedings in accordance with the Code of Criminal Procedure;
7. Prohibit police officers from summoning listed persons to police stations or arresting and interrogating persons outside the framework of judicial proceedings in accordance with the Code of Criminal Procedure;
8. Prohibit police officers from adopting any control measures, even for information purposes, that would have the effect of exerting pressure on the entourage (families, friends, neighbours, employers, lessors, etc.) of the targeted persons and/or stigmatizing them;
9. With regard to identify checks carried out on the street, ensure that controlled persons are not detained longer than the time necessary to verify their identities so that such detention does not constitute a restriction on their freedom of movement;
10. Implement without delay any decision taken by the administrative court concerning the listing of persons and related control measures of persons or individuals suspected of being a threat to public policy or national security;
11. Train officers, who are responsible for executing control measures, on national and international human rights law in order to prevent the frequent use of abusive practices or even ill-treatment;
12. Sanction any officer who is guilty of the abuse of power and/or ill-treatment of a listed person or his/her relatives, and who implements an arbitrary control measure, especially if the said measure has been suspended or lifted by the administrative court.

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The content of the report is the sole responsibility of the OMCT and must in no case be interpreted as reflecting the opinion of the institutions supporting it.

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