

For Immediate Release

Tunisia: Arbitrary Dismissals A Blow to Judicial Independence

Revoke Decree Granting President Power to Remove Judges

(Tunis, June 8, 2022) -- President Kais Saied dealt a deep blow to judicial independence on June 1, 2022, by granting himself, via decree, absolute power to fire judges summarily, and by promptly dismissing 57 judges, ten rights groups said today.

The president's moves are an assault on the rule of law. He should immediately revoke the decree and reinstate judges he fired under its provisions.

"With this decree, President Saied has removed whatever autonomy the judiciary in Tunisia still was able to exercise," said Salsabil Chellali, Tunisia director at Human Rights Watch. "Judges should be subject to fair, impartial, and appealable disciplinary procedures, not removal at the executive's whim."

The independence of the judiciary is a crucial element of the right to a fair trial. States have an obligation to take specific measures to guarantee the independence of the judiciary and protect judges from any form of political influence.

Decree 2022-35 gives the president the authority to fire judges and prosecutors at will, based on reports by unspecified "relevant bodies" that they are a threat to "the public security" or "the supreme interests of the country," and for acts that "impinge on the reputation, independence or proper functioning of the judiciary." In addition, the president has made his decisions under the decree to fire judges immune from any form of immediate appeal.

Decree 2022-35 states that criminal prosecution is automatically initiated against the judges dismissed under its provisions. Judges may challenge their dismissals only after courts have issued a final judgment in their criminal cases.

Automatically triggering criminal cases against the judges on these grounds conflates administrative and criminal matters. By doing so, the decree departs arbitrarily from Tunisian criminal procedure and violates the the principle of equality before the law and equal protection of the law.

The decree also fails to comply with the principle of legality, which is a core general principle of law and international human rights law. This is because the grounds for which a judge may be subject to criminal prosecution are identified in vague, general terms, making it impossible for individual judges to know what conduct would constitute a criminal offence and allowing for arbitrary action by the executive.

In a videotaped speech on June 1, President Saied announced the dismissals, citing accusations that included obstructing terrorism-related investigations, financial corruption, "moral corruption," adultery, and participation in "alcohol-fueled parties." The names of the 57 judges were published in the Official Gazette on June 1.

The decree is President Saied's latest move to concentrate powers in his own hands. Since July 25, 2021, he has suspended most of Tunisia's constitution, dissolved parliament, and granted himself the power to rule by decree. He has also dismantled a number of national institutions, including an

independent electoral commission and the High Judicial Council, which were created to safeguard against overreach by governing bodies.

“Since last July, President Saied has dismantled almost all institutional checks on his power,” said Wadih Al-Asmar, President of EuroMed Rights. “His new decree-law annihilates what remains of judicial independence and strengthens his authoritarian grip on the country.”

On February 12, 2022, Saied adopted decree 2022-11 in which he dissolved the High Judicial Council, a body of magistrates and legal, financial, tax, and accounting experts elected mostly by their peers that was set up after Tunisia’s 2011 revolution to supervise the judiciary and shield it from interference by the executive branch. Saied replaced the council with a temporary body partly appointed by the president, and granted himself powers in the same decree-law to intervene in the appointment, career tracks, and dismissal of judges and prosecutors.

While decree 2022-11 already allowed the president to request the dismissal of judges on vague grounds, it did not allow the president to fire them summarily. The expansion of the president’s powers to summarily fire judges is a frontal assault on the rule of law, the groups said. Both decree-laws should be revoked and the powers of the High Judicial Council restored, the organizations said.

Over the past months, President Saied has issued repeated rhetorical attacks on the judiciary, which he has accused of corruption, bias, and of failing to respond swiftly to allegations of corruption and terrorism.

“Through these arbitrary dismissals, the President is sending a chilling message to the very judges who should safeguard the rule of law and human rights and serve as a check on his abuses of power,” said Said Benarbia, director of the International Commission of Jurists’ Middle East and North Africa Programme.

President Saied seeks to replace Tunisia’s constitution, adopted by the National Constituent Assembly in 2014. On May 25, 2022, he issued a decree to hold a referendum on a new constitution on July 25.

Under the UN Basic Principles on the independence of the judiciary, “a charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.”

The UN Basic Principles also provide that, “the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.”

The United Nations Human Rights Committee, the body of experts who provide the definitive interpretation of the International Covenant on Civil and Political Rights, in their clarification of the State obligation to ensure the right to a fair trial (General Comment 32) has stressed:

“Judges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law. The dismissal of judges by the executive, e.g., before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective judicial protection being available to contest the dismissal is incompatible with the independence of the judiciary.”

According to the Principles and Guidelines on the Right to a Fair trial and Legal Assistance in Africa,

adopted by The African Commission on Human and Peoples' Rights in 2005, "Judicial officials facing disciplinary, suspension or removal proceedings shall be entitled to guarantees of a fair hearing including the right to be represented by a legal representative of their choice and to an independent review of decisions of disciplinary, suspension, or removal proceedings."

"Decree by decree, Tunisian President has tightened executive control over the judicial affairs, with each new decree another squeeze of his fist around judicial independence," said Amna Guellali, deputy regional director for the Middle East and North Africa at Amnesty International.

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