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Tunisia: Parliament Member Prosecuted for Insulting Army

Military Courts Shouldn't Try Civilians
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(Tunis, January 23, 2018) – A Tunisian blogger who recently won election to parliament is facing two military court trials for criticizing the army and its top brass on social media, Human Rights Watch said today.

The prosecutor filed the cases against Yassine Ayari, after his election victory as an independent candidate, in December 2017. Ayari was prosecuted twice in military courts, in 2015 and 2016, for insulting the military and spent four and-a-half months in prison.

“Time and again, the military prosecutor has gone after Yassine Ayari for his nonviolent criticism of the army,” said Amna Guellali, Tunisia director at Human Rights Watch. “Seven years after the ouster of President Zine el-Abidine Ben Ali, Tunisian authorities should repeal all laws that criminalize defamation of state institutions or officials and end military court jurisdiction over civilians.”

Ayari won a parliamentary seat by-election in December to replace a member who represents Tunisians who live in Germany. When he heard informally of new cases being filed against him, Ayari, who lives in France, sent a lawyer, Malek Ben Amor, to make inquiries. On January 8, he discovered by going to the Military Court of First Instance in Tunis that Ayari faced two pending cases, including one scheduled to be heard that day, Ben Amor told Human Rights Watch. The other case opened on January 2 and was postponed to March 6.



Tunisian protesters stand outside a military court in Tunis as they demonstrate in support of blogger Yassine Ayari during his appeal hearing on March 3, 2015.

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Ayari said that he had received no formal notification of either case or a summons to appear. Ben Amor said he attended the January 8 session, at which the trial judge postponed the case until March 26.

Ben Amor said that in the case that opened on January 2, the lawyers were able to see only the accusations, but not review the case file or the basis for the charges. He said the charges relate to article 91 of the code of military justice, which criminalizes insulting the military and article 67 of the penal code criminalizing “offending the president of the republic.”

Human Rights Watch reviewed the court files of the case that opened January 8. A letter dated January 4 from the prosecutor’s office of the First Instance Military Court to the military attorney general states that the prosecutor decided to charge Ayari under article 91 of the military code. That article punishes with up to three years in prison anyone who “commits ... outrages against the flag or the army, offenses against the dignity, reputation or morale of the army, or acts to undermine military discipline, obedience and due respect to superiors or criticizes the action of military hierarchy or the military officers, offending their dignity.”

The same day, the prosecutor issued an arrest and detention order against Ayari. The file contains a screenshot of a February 27, 2017, Facebook post as a basis for the charges. The post, which Human Rights Watch reviewed, comments on the appointment of the Brig. Gen. Ismail Fathalli, a military commander, as chief of staff for the land forces. In the post, Ayari alludes to his own military court trial in 2015 and writes, “Fathalli at that time declared before the military court that my writings undermined his morale and the morale of the army. Since he is such a sensitive man, he might die of happiness now that he has been promoted to such a position.”

On March 2, 2015, the military appeals court sentenced Ayari to six months in prison under article 91 for insulting the military high command in a Facebook post. In that case, he was initially convicted *in absentia* and sentenced to three years in prison, on November 18, 2014, while he was still in France, then received a one-year sentence when retried in person on January 8, 2015. Ayari served four and-a-half months in prison and was released on April 16, 2015.

Ayari left Tunisia in July 2015 after learning that the military court had opened a new investigation against him for “high treason,” a capital offense under article 61 of the penal code. On April 29, 2016, an investigative judge of the First Instance military court dropped the case.

Prosecutions for defaming the army or other state institutions are incompatible with Tunisia’s obligations under article 19 of the International Covenant on Civil and Political Rights (ICCPR). In 2011 the United Nations Human Rights Committee (HRC) issued guidance to states parties on their free speech obligations under article 19 that emphasized the high value that the ICCPR places upon uninhibited expression “in circumstances of public debate concerning public figures in the political domain and public institutions,” adding that “State parties should not prohibit criticism of institutions, such as the army or the administration.”

Tunisia's 2014 constitution in article 31 protects the right to free speech. Moreover, article 49 of the constitution states that any restrictions imposed on the human rights that the constitution guarantees "must not compromise the essence of such rights; must not be imposed except where necessary in a civil and democratic society to protect the rights of others, public order, national defense, public health, or public morals; and that such restrictions must be proportionate to the intended objective."

Moreover, trying Ayari, a civilian, before a military tribunal violates the norm of international law that military courts should not have jurisdiction over civilians, Human Rights Watch said. The African Commission on Human and Peoples' Rights, Principles and Guidelines on the right to fair trial and legal assistance in Africa state that military courts should not "in any circumstances whatsoever have jurisdiction over civilians."

Region / Country

- Middle East/North Africa
- Tunisia

Topic

- Free Speech

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