

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300

MIDDLE EAST AND NORTH AFRICA DIVISION

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April 21, 2010

Mr. Ridha Khemakhem
General Coordinator of Human Rights
Ministry of Justice and Human Rights
Tunis, Tunisia

Tahar Fellous Refaï
Director General
Ministry of Interior
Tunis, Tunisia

Dear Messrs. Khemakhem and Fellous,

I am writing to thank you for receiving Eric Goldstein and myself in your offices on March 22 and 23 to discuss Human Rights Watch's new report on Tunisia. We were pleased that you read the report and were prepared to discuss our findings.

The purpose of this letter is to further our discussion by focusing on one issue that came up in our meetings with both of you: the obligation imposed on many former prisoners under "administrative control" to sign in regularly at police stations.

Human Rights Watch characterized this practice as "arbitrary" because (1) the authorities impose it on prisoners through oral rather than written orders and because (2) it has no basis in Tunisian law, as far as we could determine. The only provisions of the penal code that deal with administrative control, Articles 23 and 24, speak of designating the affected person's place of residence and his obligation to obtain permission before leaving it.

Both of you contested our characterization of the sign-in requirement, insisting the practice is legal and in no way arbitrary. In fact, your main criticism of our report overall seemed to be that we characterized an ensemble of practices toward former prisoners as arbitrary whereas, in your view, the treatment by authorities of these individuals is based on the scrupulous application of the law. When we asked you to specify the laws that authorize the requirement that persons under "administrative control" sign in regularly with the police, both of you said that the legal basis is a circular ("*circulaire*") that has the force of law. When we asked to see

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that circular, Mr. Khemakhem replied that it had not been published; neither of you showed it to us. When we asked if the affected person receives a copy of the sign-in order, you answered that, ordinarily, the police summons the person, orally instructs him of the sign-in requirement, then has him sign a statement (*procès verbal*) to the effect that he received the oral order, but does not necessarily give him a copy of that statement.

Human Rights Watch does not oppose measures that reasonably infringe on certain of a former prisoner's civil liberties, provided that they are stipulated clearly and publicly in a country's legal codes and are judicially imposed. In contrast, an orally communicated order to sign in at a police station based on unpublished regulations or circulars amounts to a denial of due process since it makes it difficult for the individual to contest the legality of the sign-in order; in fact, it seems a veritable invitation to arbitrary behavior on the part of the authorities.

The police have repeatedly detained former prisoners for failing to heed oral orders to sign in, often justifying the arrests as being for disobeying the terms of the administrative control, an offense under Article 150 of the penal code. For example, on March 23, 2010, police in Bizerte detained Ziad Ferchichi, one day after he met with a delegation from Human Rights Watch. According to our information, the police took the former prisoner to the police station and questioned him about his meeting with Human Rights Watch, then threatened to increase the frequency of his sign-ins from weekly to daily. On March 25, according to our information, the police arrested Ferchichi again for failing to sign in. He was accused of violating the terms of his administrative control until a Bizerte court judge dismissed the charges on April 7 (case 1223).

Tunisian courts have often sided with the defendants who challenge the sign-in requirement. For example, the Court of Cassation, Tunisia's highest court of appeal, ruled in favor of ex-prisoner Qabil an-Nasri, who had been prosecuted for refusing to sign in with the police based on unwritten, orally-communicated orders. The ruling, dated April 11, 2009 (case 33990), held:

Article 24 of the Penal Code stipulate that the convicted person is not authorized to leave without permission the specified place of residence.

As is clear from the provisions of the above-mentioned article, and decision number 17475, the place of residence was specified for the defendant and he was obliged not to leave it without prior authorization until the end of the complementary sentence.

As long as the case file contains no proof that the defendant left the place of residence without prior authorization, his conviction for non-compliance with his administrative control order is without legal basis, given that the daily sign-in was not included in the above-mentioned decision.

Article 7 of the Constitution states, “The citizens exercise the plenitude of their rights in the forms and conditions established by the law. The exercise of these rights cannot be limited except by a law enacted for the protection of others, the respect for the public order, the national defence, the development of the economy, and social progress.”

In view of the Constitution’s article 7, the decision by the Court of Cassation quoted above, and the arguments we have set forth in this letter, we invite you to clarify the legal basis of the sign-in requirement, whether this legal basis is publicly available, and why the affected ex-prisoner is commonly informed of the sign-in requirement via an oral order rather than in writing. In brief, please explain how this measure infringing on civil liberties is imposed and enforced in a manner that is legal and non-arbitrary. We also would like to receive an official explanation for the reported detentions of Ziad Ferchichi by the police in Bizerte on March 23 and 25, 2010.

In the interest of engaging in a dialogue with you on this issue, we will refrain from publicizing this letter before May 14, 2010 so that you will have an opportunity to respond to it. On or shortly after May 14, we intend to publish this letter, along with any relevant information that you have by that date provide to us about this issue.

Thank you once again for receiving us in Tunis. I hope to hear from you soon.

Respectfully yours,

Sarah Leah Whitson
Executive Director
Middle East and North Africa division

Response to the "Human Rights Watch" letter

Your letter dated April 21, 2010 includes comments by *Human Rights Watch* (HRW) concerning administrative control. In this letter, you stated that your organization « does not object to measures that reasonably restrict some of the civil liberties of a former prisoner, provided that these measures are clearly and expressly provided for in the country's criminal law, and are decided by the judiciary». However, you made a number of observations related, in particular, to the legal grounds underlying this sentence which you describe as an « arbitrary practice » that « has no ground in Tunisian law ».

In response to your letter, we would like to make the following observations:

- **First**, administrative control in Tunisia is not an arbitrary practice. It is rather a sentence expressly provided for in the Penal Code and in other legal texts. It takes three forms: either an original sentence, as provided for in article 192 of the Penal Code or in article 26 of the law of December 10, 2003 related to supporting international efforts to combat terrorism and money laundering; or a complementary sentence, as provided for in article 25 of the Penal Code; or a connected punishment, as is the case for obscenity and drug-trafficking crimes (article 26 of the Penal Code).
- **Second**, this sentence, regardless of its various legal frameworks, is decided by the judiciary and enforced under its supervision.
- **Third**, It is not accurate to claim that this sentence is not enforced in an organized manner in Tunisia; the enforcement of administrative control is subject to strict rules as regards the territorial scope of the control and the periodicity of the concerned person's signing before the legally competent authority.
- **Fourth**, the competent authority in charge of enforcing administrative control informs the concerned person, in advance, of the aforementioned rules. The person subjected to administrative control is therefore guaranteed the possibility of filing a complaint before a court of law when necessary, pursuant to article 340 of the Code of Penal Procedures which expressly provides, in Paragraph One, that : « all disputes concerning the enforcement [of the punishment] shall be submitted to the court of law that issued the verdict, without precluding the possibility of filing of complaints to other institutions and bodies, such as the Human Rights Units in ministries, the Citizen Relations Offices and General Inspection offices in the concerned ministries, and the Higher Committee for Human Rights and Fundamental Freedoms.
- **Fifth**, despite the aforementioned elements, which clearly show that administrative control in Tunisia is not an arbitrary practice but rather a sentence provided for by the law, decided by the judiciary, and enforced in accordance with strict rules and guarantees, the Tunisian authorities, keen on ensuring better balance between the protection of human rights and fundamental freedoms, on the one hand, and the requirements of preserving security and public order, on the other hand, will not hesitate to consider, if need be, ensuring further upgrading the enforcement mechanisms of this sentence, based on comparative law.