

**LIGUE TUNISIENNE POUR LA DEFENSE  
DES DROITS DE L'HOMME  
(LTDH)  
(TUNISIAN ORGANISATION FOR THE DEFENSE  
OF HUMAN RIGHTS)**

# **MEDIA UNDER WATCH**

**TUNISIA – May 2004**

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## **PREAMBLE**

On the occasion of the celebration of the International Press Day in 2003, LTDH issued a report entitled "Press in Distress". The report underscored our wish to make of such publication a yearly tradition.

As part of our endeavour to give concrete expression to this wish, we are now proposing to the militants, democratic forces, as well as the authorities, this second report which relates to the situation of information, across the board, from May 2003 to 30 April 2004.

We would like to thank, in particular, Mrs. Souhayr BELHASSAN and Messrs. Larbi CHOUIKHA, Lotfi HAJJI, Rachid KHECHANA and Slah JOURCHI, who had drafted the contents of the report which was then revised and amended by LTDH Executive Committee.

We would also like to thank them for having undertaken to present the report for the year 2003 to the militants of LTDH in the various sections in the inner country.

This action has contributed appreciably in sensitising our militants to the importance of this subject and to the need for further action in order to promote the freedom of expression, of the press and of information.

## INTRODUCTION

With regard to the information and the media, the year 2003 – 2004 has been marked by two opposite attitudes : the attitude of the authorities which is characterised not only by a continual strict control over expression spaces, but also—and above all—by ruthless repression against young Internet users and passing heavy prison sentences against them; and the attitude of civil society and of the leading democratic opposition parties which is marked by an increasingly sustained mobilisation to denounce a takeover by the State of the audiovisual sector and the information channels.

The violations and infringements of the freedom of the press—under various guises—have continued to prevail in the media sector. This report presents only examples and testimonies that have been gathered and checked by ourselves.

The latest development in this regard has been the design of a legislative system which further restricts the exercise by the citizens of the freedom of information and expression and their use of communication technologies. We have sought to collect the various texts and, more particularly, to bring out their impact on our basic freedoms, especially those related to the freedom of information and of expression.

The heavy sentences pronounced in April 2004 against eight young people from the region of Zarzis, under the pretext that they had had access to documents on the Internet, as well as the trial of Zouhaïr YAHYAOUÏ, animator of the site “Tunezine”, are instances that alert us to an extension of censorship to the modern means of communication.

At the same time, the supervision or prohibition of access to Internet sites remains in force, and one is entitled to wonder to what extent the confidentiality of personal communications is still observed. It is precisely in this context marked by several restrictions on the use of the Internet that Tunisia prepares to host the second phase of the World Summit for the Information Society (WSIS) due for 16-17-18 November 2005. The Tunisian human rights militants fear that this “information society” may well turn into a “surveillance society” where freedoms and human rights are particularly endangered. Civil society wishes to take part in these discussions so that the stakes relating to the information sector would not be confined to the mere

technical, security or even economic concerns and, above all, so that the principles of observance of private life, human dignity and individual freedoms, in general, would not end up being sacrificed.

While during recent months, the official authorities claim to have opened up the audio-visual sector to private initiative, the absence of clear and strict provisions and, especially, that of a regulatory body which is independent of the State and credible in the eyes of the citizens, leaves us rather uncertain and doubtful about the nature and scope of state “withdrawal” from this sector.

The monolithic character and the flatness which mark the public radio stations and TV channels are even a greater reason for concern. The main representatives of civil society, as well as part of the opposition, are excluded from them, and the Tunisian spectator has no other choice but to turn to satellite channels. More and more voices are making themselves heard to denounce the takeover by the party-State of all information channels. The mobilisation for free expression thus takes on an unprecedented scope.

## **- I - A Repressive Legal System**

Although the range of repressive laws that curtail the freedom of expression and criminalize opinion offences is already quite well-furnished, the year 2003 has been marked by the promulgation of laws of an unprecedented serious character in terms of their violations of the right to information.

### **- The anti-terrorism law**

Law 75, dated 10 December 2003, and relating to “support to the international efforts in matter of the fight against terrorism and money laundering” is, indeed, without precedent.

The said law violates the fundamental rights of the citizen and the pacific action of civil society, trade unions and political parties. It is seriously at variance with the principles stipulated by Article 8 of the Constitution, the Universal Declaration of Human Rights, the convention on Human Rights Defenders and the International Conventions ratified by the Tunisian State.

- Whoever uses the name, symbol or any other sign likely to contribute in making recognisable the members or the activity of a terrorist organisation is liable, under the terms of the present law, to be sentenced as a terrorist;
- Shall equally be considered as an act constituting a terrorist crime, any agreement between two or more persons, to execute an act considered by the law as a terrorist act, even if this act has not been initiated, and this whatever the means used thereto.

Accordingly, expressing an opinion, using the picture of a person or an acronym, calling a meeting or a demonstration, or publishing an article, would be enough to incur upon a person a sentence under the anti-terrorist law.

Any person, even one that is under the obligation of professional secrecy, such as a lawyer, who would not immediately pass on to the relevant authorities any information related to terrorist acts, which such a person might have gathered cognisance of, is liable to a prison sentence ranging

from one to five years and to a fine ranging from one thousand to five thousand dinars.

The Tunisian Bar has considered this article, in particular, as an unprecedented violation of the principle of professional secrecy without which the exercise of the profession of lawyer would be unimaginable.

In an attempt to prevent the professionals of the information sector from playing their role vis-à-vis public opinion, the law stipulates a prison sentence of five to twenty years and a fine of five to fifty thousand dinars against any person that would deliberately reveal information likely to identify the parties involved in a case considered as of a terrorist nature.

It is worth pointing out that the said law, which has not formed the subject of public discussion before its adoption by the parliament, stipulates a prison sentence of six months to three years and a fine of five to ten thousand dinars against any leaders and representatives of associations, trade unions or parties that would fail to comply with its restrictions.

#### **- The Telecommunications Code**

The Telecommunications Code, issued on 15 January 2004, has come to restrict and control the use of radio frequencies and private communication networks.

The assignment of radio or TV broadcasting frequencies has been entrusted to “Agence Nationale des Fréquences” (National Agency for Frequencies”, under the supervision of the Ministry of Communications (Article 48).

Any unauthorised use of such frequencies incurs a prison sentence of six months to five years and a fine of one thousand to twenty thousand dinars (Article 82).

#### **- The Press Code**

The Press Code has preserved its overriding repressive<sup>1</sup> character, since—in addition to the sentences incurred by printing houses and editorial directors for such “crimes”, considered as minor offences in other legislations—the authorities have transferred certain articles of the Press Code to the Penal Code, considering this amendment as a step forward in liberalising the situation of the press.

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<sup>1</sup> Cf. LTDH Report entitled « Press in Distress », 2003.

Moreover, a new section was added to the Code in 2001 to provide for even more severe press offences relating to inciting murder and looting, as well as to stipulate prison sentences of up to five years, even in the absence of actual acts following from such incitation.

- **The Electoral Code**

As part of this same policy of strict control, the Electoral Code was amended in 2003 in order to include an article stipulating a fine of twenty five thousand dinars against any person making statements on foreign radio or TV channels during the election campaign.

The amendment initially provided a prison sentence which was subsequently changed into a heavy fine, following a strong critical reaction against the draft text.



## **- II – Violations of the Freedom of Expression**

The year 2003 has continued the process started in previous years in matter of repression of the freedom of expression and of the press in Tunisia. The year was, however, marked by the following distinctive features :

- an increasing concern among the professionals, political circles and civil society about the absence of a free press and the persistence of deplorable professional conditions, despite a declared unanimity for a necessary change in the relations of the State with the sector;
- a concern that has been expressed in many reports by the whole range of international organisations defending the freedom of expression, in general, and that of the press, in particular, about the condition of repression and marginalisation experienced by Tunisian journalists. Certain representatives of Western governments have expressed the same concern and have, on their part, recommended a liberalisation of the sector.

Certain positive indicators have, nevertheless, been noted during the year 2003. Of these, we may mention:

- The release on parole of Mr. Zouhaïr YAHYAOUÏ who had served most of his sentence, for the creation of the “Tunezine” website, and who remains deprived of work and of his passport;
- The regular issuing, despite the difficulties (Cf. Chapter on Opposition and Opinion Press), of the newspaper *El Maoukef*, organ of the Progressive Democratic Party (PDP) and of the review *Ettarik El Jedid*, organ of the “Ettajdid” movement. These two periodicals have been marked by their daring stance, thus allowing a certain space for democratic forces and civil society. Also the newspaper *Al Ouihda* (Unity), organ of the Popular Unity Party (PUP) continued to appear, a paper that has, in its turn, sought to reflect certain activities of civil society;
- The announcement to open up the audiovisual space to private initiative, which would mean the end of decades of State monopoly. Though coming in response to a reiterated call by democratic forces, this opening up move is, however, limited and selective. It ignores, in fact, several calls by the private sector and has been introduced in the absence of specifications which would clarify the conditions for obtaining frequencies and would avoid manipulation and, therefore, guard against maintaining that monopoly by indirect means.

## **Calls for a free expression**

In the face of such a situation, more and more calls are being voiced by the various components of civil society for a liberalisation of the press and observance of the freedom of expression. Accordingly, upon an initiative by the Tunisian Organisation for the Defence of Human Rights (LTDH), a group of journalists undertook to circulate in January 2003 among civil society militants a call for freedom of expression. However, certain signatories have had, under pressure, to withdraw their signatures to the call, while others had to go as far as to deny having ever signed it.

Democratic activists also tried to organise a gathering in front of the headquarters of the Tunisian Radio and Television Agency (ERTT) on 13 and on 27 March 2004 in order to claim the right of the citizen to have access to the means of public information; the police, however, dispersed the participants and prevented a delegation from meeting the ERTT executives. Journalists continue to report pressures exerted in the editorial departments of the government and State-party (RCD) newspapers, or even in “independent” papers, each time a journalist tries to express opinion that differs from the directives given.

## **Disinformation**

Instructions issued by the political body continue, in a most irrational way, to prevent the publication of an increasingly large number of information or of subjects. Thus, the floods of the year 2004 which have claimed a heavy toll of human lives and physical damage, as well as led to the outbreak of a disease transmitted by mosquitoes (reported in the region of the Sahel, in particular), were considered as taboo subjects. The Director of Information has, on his part, ordered that no particular mention should be made of the name of the Tunisian citizen, Fakhel SARHAN, one of the alleged perpetrators of the attack of 11 March 2004 in Madrid. The activities and publications of legal organisations, such as LTDH (Tunisian Organisation for the Defence of Human Rights), which continues to undergo selective treatment, the Association of Women Democrats (AFD) or Amnesty International, remain all systematically shunned by the government newspapers or by closely associated publications. Other papers continue to specialise in defamation of militants and opponents.

Censorship and disinformation have not spared high ranking foreign officials, not without causing the embarrassment of the Tunisian authorities. Thus, the American Information Centre has had, via clarifications addressed

to certain newspapers, to point out that the declarations attributed to Mr. Colin Powell, during his visit to Tunis on 2 December 2003, such as reported by local newspapers, were either distorted or truncated. According to this note, Mr. Powell would have never spoken of “the remarkable progress made in the field of human rights”, but has spoken of “achievements made in the fields of woman rights and education”.

He must have actually expressed appreciation for the authorisation to open up a private radio station and for releasing a journalist from jail, but he has also stated that the “world expected from Tunisia progress in political participation and freedom of the press”.

### **Prison sentences and lawsuits against journalists**

In spite of calls by human rights organisations and associations serving in the defence of journalists, the director of the banned newspaper *El Fajr* (Hamadi JEBALI) and his colleague in the same paper (Abdallah ZOUARI) are still in prison. They have been several times, during the past year, on hunger strike, asking to be released and protesting their detention conditions and their imprisonment which has continued, in the case of Hamadi JEBALI, for thirteen years now.

Journalists, as well as Tunisian public opinion, have been surprised at the strange political trial against Mrs. Naziha REJIBA (Om Zied), chief editor of the Internet paper *Kalima*, and the iniquitous decision pronouncing against her a suspended eight-month imprisonment sentence and a fine for “traffic in foreign currency”. “Om Zied” is known for her daring and critical positions against the authorities. Both LTDH and the organisations serving in the defence of human rights have denounced these practices which oppose any opinion that challenges that of the power in place. Journalists and newspapers have incurred various sanctions following published articles.

Khaled HADDAD, from the newspaper *El Moussawar*, was fired following an article on the situation of the UGGT (General Union of Tunisian Workers) after a member of the Executive Board of the said organisation retracted on statements he had made to him. Similarly, the review *Réalités* was deprived of public advertisements for two weeks following an editorial on the freedom of information.

### **Denial of professional card**

The journalist Mohamed FOURATI (*El Maoukif* newspaper) has been denied his right to his professional card, as well as to his passport.

Several journalists, serving for foreign newspapers and magazines, are denied their professional cards (Abdellatif FOURATI, Slaheddine JOURCHI, Hamida HABCHI, Lotfi HAJJI).

The administration may at times prevent certain journalists from doing their work. Thus, the journalist Rachid KHECHANA has not been able to broadcast a TV report for the channel “LBC El Hayet” on the meeting of the council of the Arab ministers of the interior held in Tunis in early January 2004; the administration has also prevented the “El Jazira” channel correspondent, Khaled N’JEH, from broadcasting his reports. Finally, similar pressures have been exerted to prevent the participation of the journalist Slaheddine JOURCHI in a televised debate on the channel “El Arabia” during the meeting of the Arab Foreign Affairs Ministers prior to the postponement of the Arab Summit that was due to be held in late March 2004 in Tunis.

Intervention in the profession has extended beyond the official organs; it has also been made by certain officials that allow themselves to intervene with the paper executives to complain about the critical stance of their journalists.

### **Pressures and sanctions**

Due to their stance, several journalists find themselves exposed to poor working conditions, as well as to pressures and sanctions.

Several journalists of the *Dar Essabeh* Group have been fired for having complained against the “sub-human working conditions” following their transfer to the new headquarters of the firm which they have qualified as “premises that are unfit for the exercise of the profession of journalist”. These are still out of work and their case remains unresolved as yet. The said journalists are Dalenda TOUIL, Malika DAGHFOUS, Najiba HAMROUNI and Salem BOULIFA.

Mohamed BOUSNINA, journalist in the daily *Essahafa*, has had to publish a letter in the newspaper *El Maoukef* to report all the “oppression, marginalisation and injustice” he experiences and to testify to the fact that the editorship of the newspaper for which he served has “violated his freedom in the practice of his profession by preliminary censorship, cut outs and refusal to publish his articles”. He has accused the editorship of his newspaper of prohibiting “the freedom of opinion and of expression necessary to an objective treatment of information”. He affirms that he has been subjected to several sanctions of which “reducing his salary and using

the latter to stifle both his freedoms and rights". All this causes Mohamed BOUSNINA to sink into depression. His situation is not an isolated case since a considerable number of his fellow-journalists in the "La Presse" Group, which includes *La Presse* and *Essahafa*, have issued on 9 March 2004 a letter to government officials, including the Prime Minister, as well as to the representatives of civil society, entitled "We call your attention". They address in their letter the "situation of the newspaper" *La Presse* which they describe as being "totally opaque". Among other things, they say that they "can no longer distinguish between what can and what cannot be published in dealing with national and international issues", and that it was "strange that what the journalist could quite obviously talk about in the past has now become impossible to address as the general directorate and the chief editorship ban several articles without giving, most of the time, any reasons or explanations, and without even informing the author of the article.

Prohibitions and censorship have increased quite considerably in recent months, according to the authors of this letter. They affect all subjects and all disciplines, including those subjects that the "hierarchy" asks the journalists "to address or to cover". The authors of the letter have given examples that illustrate the situation in the press institutions. Censorship has involved several articles and reports in the rubrics "Society" and "National Events", among which the ban on a report related to floods in the region of Ariana, as well as reports on the technological pole in this same region, on private courses, on the secondary school teachers' strike, and on the prices policy, not to speak of a quasi permanent prohibition of the caricatures of the caricaturist Lotfi Ben Sassi, who is almost always required to revisit his drawings. Censorship also affects several articles in the "Sports" rubric or those relating to "Politics and International News". Among the articles prevented from publication, there are : articles on the physical eliminations perpetrated by the Israeli army, on condemnations by the UN General Assembly of the Israeli separation wall, as well as on a coverage of the press conference held at the offices of ATCE (Tunisian External Communication Agency) by Pascal Boniface of IFRSI (French Institute of Strategic and International Relations). Is equally prohibited in headlines, articles or press agency telegrams any reference to losses incurred by the American forces in Iraq, in particular the number of the dead and of the wounded; the editorship contenting itself in general with the title "Escalation of violence in Iraq".

It is explicitly prohibited to publish the photo of John Kerry, the Democratic Party candidate for the American presidential elections.

The journalists of "La Presse" Group conclude their letter by pointing out "a return in force of the policy of censorship and of pressure on their writings";

they also underscore certain common censorship and control practices such as the “distortion of articles and the misrepresentation of their content”. Upon request by the journalists for explanations for such bans and for this aggravation of censorship, the executives stated that they had received instructions from the top which they could not unveil”. The journalists of “La Presse” Group add that “things have come to such a state that certain articles of political analysis and commentary are censored, with the general director of *La Presse* declaring several times that “the journalist has no longer any relationship whatsoever with his/her article once he/she has submitted it to the newspaper officials”.

More and more journalists complain from the rule of the one and only opinion in newspapers, whether the subject under consideration is of a local, Arab or international order. This attitude was confirmed on the occasion of the decision to postpone the Arab Summit of March 2004 when instructions were given not to publish either news or commentary that would not be in line with the official decision. This was all the more the case following comments by certain political parties that expressed different opinion. Besides, it is commonly known that newspapers publish without discussion articles that have been prepared outside of the newspaper editorship.

Towards mid-April 2004, the review *Réalités* declined to publish an article by the journalist Nadia Omrane that was critical of Washington. According to the journalist, the US Embassy in Tunis could not lecture people on journalistic ethics at a seminar organised under the leadership of those who have “executed” journalists in Baghdad.

### **Precarious financial conditions**

Transgressions have, on the other hand, affected the financial conditions of journalists. Several among them complain from failure by their employers to observe the collective agreements governing the sector and accuse them of failure to apply the salary scale or to pay the bonuses provided by such agreements, which leads to an often precarious material situation. The same situation applies to free-lance journalists who see their remunerations dwindle away to the ridiculous amount of three dinars (two Euros) per article.

The case of the journalist Abdellatif Fourati is quite eloquent in this regard. A renowned journalist and editorialist of the daily *Essabah*, for not less than forty years, he had been employed there based on a contract drawn up in due form until the year 2001. In spite of that, he was unfairly fired and the court to which he had complained dismissed his case.

## **Censoring the foreign press**

It has become a common practice to prevent the circulation of a foreign newspaper several times a week, or to delay its circulation two or three days, such as is the case regularly for the newspapers *El Quods Al Arabi* and *El Hayet*, with the latter paper's editorial board having had to suspend its circulation in Tunisia due to the many seizures it had experienced. As for the Editor-in-Chief of *El Quods Arabi*, he has declared to "Al Jazira" in early April 2004 that Tunisia "is the country that puts most obstacles to the circulation" of his newspaper.

## **Creation of new publications denied**

The Administration still keeps silent (which amounts to rejection) as regards applications to publish newspapers that were submitted as far back as ten years ago, if not more. Such is the case of the review *Maqassed*, by the university professor Mohamed TALBI, *Kalima* by Sihem BEN SEDRINE, *Alternative Citoyenne* by Nadia OMRANE, *La Maghrébine* by Noura BOURSALI, and *El Adib* by Abdellatif FOURATI.

Opaqueness continues to mark the attitude of the Administration towards associations : the Observatory of the Freedom of the Press, of Publication and of Creation" (OLPEC) is still denied authorisation and its constitutional committee has lodged a complaint against the Minister of the Interior for abuse of power (Administrative Tribunal case N° 1/10142).

During the 1<sup>st</sup> quarter of 2003, the Association of Tunisian Journalists (AJT) experienced tough times. The holding of the extraordinary assembly, whose proceedings included, *inter alia*, the amendment of the association's by-laws, was met with mixed feelings among journalists. On its part, the International Federation of Journalists (IFJ) has decided to suspend the membership of AJT until a final decision was taken at the coming IFJ congress due to be held on 29 May in Athens. According to IFJ, the Association of Tunisian Journalists (AJT) has not played its role as defender of freedom of the press in Tunisia in conformity with the Federation by-laws. Upon which, AJT held a general extraordinary assembly. Sharp criticism was made to the Board of the Association for failing to play its role in defence of freedom of expression and of journalists. One member of the Board, Lotfi HAJJI, has made public his decision to suspend his membership in the Board of AJT. In a self-critical statement, the Board of AJT announced its intention to undertake missions with a view to defending its cause with a certain number of Arab and European professional associations.

It is worth mentioning that the International Association of Newspaper Directors already dismissed the Tunisian Association of Newspaper Directors in June 1997 for “abdication to defend the freedom of the press”.



### **- III – The Audiovisual Sector : Opacity and a Travesty of Openness**

The political decision to open up the audiovisual sector to private initiative is basically neither a withdrawal by the State nor a liberalisation of information. The public Administration still maintains total control over this sector by granting frequency authorisations to certain persons and refusing them to others. The main conclusion to be derived from the granting or rejection conditions of such authorisations is the absolute opaqueness which marks them. The authority in charge is not required to justify its rejection, and the Tunisian citizen is never informed about the conditions of granting new authorisations to operate a radio station or to broadcast on a new TV channel. Invitations to tender via the press, though stipulated in Article 20 of the Communications Code, have never been brought to the knowledge of the public. Besides, the public radio and TV stations remain hermetically sealed to non official means and, above all, those of the democratic opposition.

The major event of the year 2004 has been the mobilisation of the opposition and the components of civil society to hold a gathering in front of the head office of the Radio and TV agency in Tunis in order to claim access to public radio and TV and to call for freedom of expression.

#### **A tightly controlled openness**

It is a fact that, in the wake of the globalisation of social activities, in general, and of communication, in particular, the opening up of the audiovisual sector to private initiative, as well as the end of State monopoly in this area, seem to be required by economic and political exigencies. Autarky, the establishment of State control, the opaqueness that characterises public life and denying the citizen any participation in the life of the City, are on the decline throughout the world. No country can afford to remain outside of this process of opening up, transparency and active participation on the part of all citizens.

Yet, in Tunisia, in the absence of any transparency, public consultation and, above all, in the absence of any regulatory body that would be truly autonomous vis-à-vis the State, this opening up becomes hypothetical and takes the form of allegiance and State patronage.

The declaration made by the President of the Republic on 7 November 2003, announcing the end of State monopoly over the audiovisual sector raises a whole host of problems.

Indeed, the Head of State announced at the same time the launch of a private radio station, “Radio Mosaïque”, whose owner, a former journalist in the daily *Ech Chourouq* has distinguished himself by his absolute and zealous allegiance to the power in place. On 14 February 2004, Tunisians learn in the press about the establishment of a private TV channel in Tunisia without any clear information to the citizen about the procedure of launching the invitation to tender and based on which specifications. Who are the bidders and how was this particular developer selected as successful bidder?

There again, the right of the Tunisian citizen to a full and honest information is totally ignored.

Within the same context, we learn that several persons who have completed the legal formalities with a view to requesting from the relevant authorities the granting of frequencies to launch a radio station are still awaiting a response. This is the case, among others, of Zied El Héni (Radio Carthage) who has lodged a complaint against the Higher Communication Council (CSC) with the Administrative Tribunal in March 2004 “for abuse of power by the Administration”, a complaint which has not been processed as yet, and of Rachid Kéchana who submitted a similar application to the Ministry of Telecommunications on 17 March 2004 and still awaits an answer from the ministry.

Yet, new provisions were introduced in 2001 in the Telecommunications Code. These provisions set out the criteria of allocation of emission frequencies –being till then under State monopoly—to private developers (Articles 48, 50 and 51), and places any emission, reception or operation of any communication equipment under joint control by the Ministry of Telecommunication, the Ministry of National Defence and the Ministry of the Interior (Articles 52 and 56). A “National Agency for Frequencies” was set up (Article 47), as well as a “National Communications Authority” (Article 63).

Henceforth, the operating of a radio-electric frequency or a telecommunication network—whether private or public—without authorisation by the Agency is liable to a prison sentence of six months to five years (Article 82). In other words, this provision applies not only to the operating of a radio or TV station, but also to connection to a private satellite network . . .

## **Radios and TVs hermetically sealed to non official means**

At a time marked by the proliferation of satellite channels which Tunisian households can receive via dish antennae, many citizens continue to wonder at the opaqueness still marking the ERTT (Tunisian Radio and Television Broadcasting Agency) which is, however, a “Public Institution”.

Neither its earnings which it gets from advertising nor its public following are known to the public at large. More laughable still, the representatives of civil society and those of the democratic opposition are never invited to TV and radio sets. The main leaders of the democratic opposition only appear on the TV screen once in five years and for some ten minutes on average, on the occasion of each presidential and legislative election campaign. The faces and voices of the main representatives of independent civil society remain banned from the radio and TV sets while, at the same time, the 1975 law requires the citizens to pay a ERTT licence fee indexed to the STEG (Electricity and Gas) bill, a provision that has now become absolutely out of place when we know that over a half of Tunisian households watch the national TV only occasionally.

In this regard, public mobilisation for the freedom of expression and the right of the citizen to information has constituted a decisive turning point in recent months and has spread to all walks of Tunisian society : Public gatherings in front of the Tunisian Radio and Television Broadcasting Agency were held on 11 February 2004 and on 27 March 2004. They mobilised militants from civil society and from the parties of the democratic opposition. In the wake of this mobilisation, a coordination “for the freedom of information and of expression” grouping all these components has been set up.

## **Towards the establishment of a public audiovisual authority truly independent of the State**

In democratic countries, the management and organisation of the media sector as a whole cannot belong under such political institutions as the State. The rationale behind this is that, in the name of the separation between State and civil society, it belongs to the public institutions which actually issue from society, i.e. the true representatives of all civil components, to see to a strict and equitable application of the right to an objective and independent information.

The examples abound throughout the world, and can serve as illustration. The Higher Council for the Audiovisual Sector (CSA) in France and other

independent bodies that are beginning to emerge in certain African countries show that it is possible to envision the grouping, within the same body, of the professionals of the sector, the representatives of the public and other distinguished social actors that are recognised for their competence and, above all, their independence.

In Tunisia, the confusion State/party, as well as the management of this sector by a State institution under its current profile and in the guise of a “public service”, is an aberration that is increasingly denounced by Tunisians. Such a confusion is totally antonymous with the freedom of expression and of communication, equality of access by all citizens to full and complete information, the role of information in the development of civil society and the debate on issues of national interest and its role in political alternation.

## **- IV – Opposition Press and Opinion Press**

The year 2003 was marked by continuous pressure and harassment exerted against opposition newspapers that continue to appear under difficult conditions, while certain opinion reviews could not survive such a clampdown on freedoms.

Of the seven opposition weeklies that used to be issued in the early 1990s, namely *El Mostaqbal*, *El Maoukef*, *Ettariq El Jadid*, *El Ouihda*, *El Fajr*, *El Badil* and *El Watan*, only three now continue to be issued and under difficult conditions hampering their role as independent forums.

To give but one example, certain weeklies of the 1980s-1990s have had to reduce their periodicity to become either monthly, such as *Ettariq El Jadid*, or else to appear on an irregular basis.

*El Maoukef*, deprived of public subsidy, has had to thin out from 16 to 4 pages, while *El Ouihda* continues to be issued on a weekly basis.

The difficulties experienced by the opposition papers may be summed up in four major problems :

### **- Subsidies:**

By virtue of the law of 21 July 1997 on the funding of political parties, such as amended on 29 March 1999, public subsidy was limited exclusively to those parties that are represented in the parliament, unlike the approach adopted in democratic countries which, regardless of this criterion, step up their subsidy to opinion papers in order to compensate not only for their reduced sales but also for the low revenue generated by publicity.

The compensation of 60% of the cost of paper is equally reserved for the “parliamentary opposition”.

In this regard, the officials of the newspaper *El Maoukef* launched in 2003 several calls intended to alert public opinion to the risk of disappearance of their publication in the absence of any support.

### **- Censorship:**

The Press Code requires every printing house to submit a certain number of copies of any newspaper to the ministry in charge of information, without this preventing delivery or distribution in newsstands (Articles 4 to 12).

In infringement to this legal framework, the authorities require the printing house of *El Maoukef* and *Ettariq El Jadid* to await approval by the Ministry of the Interior before delivery of the newspapers to their editors.

Moreover, the deposit receipt is issued only after approval by the latter censor. This operation claims on average a full day from *Ettariq El Jadid* and ranges between 24 and 72 hours for *El Maoukef*.

This “dépôt légal” (legal submission of copies intended for publication), which is initially intended for conservation of the heritage, thus turns into a device for content censorship.

The other newspapers are not subjected to this preliminary censorship, although many journalists have complained about the internal censorship practiced by the editorship.

Furthermore, the officials of the monthly *Ettariq El Jadid* have complained about the fact that the issues sent to the subscribers by mail do not reach their addressees. Thus one of the newspaper issues has not reached any of the subscribers.

*El Maoukef*, on its part has denounced pressures exerted on newsstand holders that they do not display the paper in their stands, as well as confiscating several issues to reduce their sale.

**- Advertising:**

Public or private advertising remains the key source of financing of newspapers. The private sector does not entrust any announcement or publicity to opposition papers for fear, according to certain businessmen, of retaliation by the State under various forms, of which—often—tax harassment.

The announcements and advertisements by State or semi-State institutions are, on their part, under monopoly of The Tunisian External Communication Agency (ATCE) which belongs under the authority of the Presidency of the Republic.

Accordingly, throughout 2003, while *Ettariq El Jadid* received certain announcements and advertisements, *El Maoukef* did not receive any.

The so-called “independent” reviews and newspapers enjoy, on their part, certain acts of generosity by ATCE (The Tunisian External Communication Agency which holds, in fact, monopoly over publicity).

This ban on publicity does constitute a major hindrance to the development of an opinion press, in general, and of an opposition press, in particular.

Paradoxically enough, ATCE has extended its generosity to a large number of periodicals and radio or TV channels overseas under the form of publicity or of newspaper/magazine supplements. Ranging from the USA to the Arab world, through Europe and Russia, this godsend has benefited in particular the following publications:

*Afrique Asie, Washington Times, Arabies, Afrique magazine, l'Intelligent, El Arab, El Haouadeth, El Mashhad Essiyassi.*

**- Subscriptions:**

Unlike the other private periodicals that have benefited from the subscription of public companies such as those of ATCE, Tunis Air or of the ministries, in order to balance their finances or even make substantial profit, the opposition press has been denied this advantage.

This other form of exclusion instates an additional means of pressure and a constraint on the freedom of expression by cutting down the resources of the papers of the opposition parties.

At the same time, contrary to Article 23 of the Press Code which prohibits “illegal” publicity and in compliance with the directives of the authorities against the opposition parties and independent organisations, most private newspapers continue, in impunity and with the kindness of the control services, to profit from such a form of prohibited publicity and to publish only that information which is “politically correct”.

Besides the discrimination against and the pressure exerted upon the opposition press, it must be pointed out that a number of independent reviews and newspapers still cannot be published in absence of the freedom of expression. Of these, it is worth mentioning the following:

- *Errai* which has not been issued since December 1987;

- *Le Phare* which has not been issued since the late 1980s;
- *Le Maghreb*, closed down in the late 1990s while its Director Omar SHABOU was sentenced to prison;
- *El Fajr* whose Director Hamadi JEBALI has been in prison since 1991;
- *El Badil*, going out of publication towards 1996 and whose Editor-in-Chief Hamma HAMMAMI received a prison sentence for political reasons;
- *Outrouhat*, going out of publication in the late 1980s;
- *15 – 21*, going out of publication in 1989.



## **- V – Internet Under Watch**

### **A legislative and administrative control system**

It is the Decree of 14 March 1997, relating to the telecommunications Value Added Services (SVA) that organises and regulates the diffusion of Internet in Tunisia.

It lays down the legal system for operation of this service, as well as sets out the statutes of the Internet service suppliers and the procedure of their authorisation. Besides, the rights and duties in their relation with the Administration and their customers are stipulated in the Order of 22 March 1997 which establishes the particular specifications for Internet operating.

The legislative system also regulates the delivery of Internet to the general public and to the economic operators.

Accordingly, the following mechanisms have been set up:

- The Telecommunications Code of 2001;
- A network of public centres for Internet access (cyber-café) whose operating is controlled under the conditions set in the Specifications (1998);
- An amendment of the penal code according to the existence of the Internet network and the computer hardware (Law of 2 August 1999);
- Authentication of electronic signature (Law of 13 July 2000);
- Electronic transfer of stock market values (Law of 21 March 2000);
- Regulation of e-commerce  
National Agency for Electronic Certification and Protection of Personal Data (Law of 9 August 2000);
- The anti-terrorism law (10 December 2003) which also applies to use of the Internet;
- The National Agency for Computer Safety, belonging under the authority of the Ministry of Telecommunications and Transport (MTT), whose purpose is to protect the Tunisian Network against any hacking acts, which holds full control over public and private networks, except those of the Ministry of the Interior and of the Ministry of Defence, and which must be necessarily notified of any hacking or attempted hacking whether this takes place on the public

or private network (Law adopted on 14 January 2004 by the “House of Deputies” (Parliament)).

A national operator, the Tunisian Internet Agency (ATI), sole operator at the start, has given over this activity to 12 operators: 5 private operators, of whom certain affiliates close to the power in place, and 7 public operators.

The Internet administrative control system is, itself, subjected to the public order system (Cf. Table attached herewith).

ATI has the upper hand in matter of authorisation of Internet public centres, which are under its control, and requires that fees must be submitted to its supervision, as well as, on a monthly basis, the list of subscribers. It also gives advice as to the registration or not of the subscriber.

As for the service providers and publinet (public Internet centre/ cyber-café) operators, their operating authorisations are subjected to commissions, with representation of the Ministry of National Defence and the Ministry of the Interior, and it is the Governor of the region concerned that decides, in fine, whether or not to grant the authorisation. (For further information about the network of service providers under ATI authority, cf. [www.ati.tn](http://www.ati.tn)).

The rate of Web users is one of the lowest worldwide: In Latin America, the rate is 1000 users per 10.000 inhabitants, and in South and East Asia it is 2000 per 10.000. In Tunisia, this rate is of 570 per 10.000 inhabitants; excluding the Administration uses, individuals account for a mere 7.5% of the users.

Result : Between 1996 and 2003, the number of subscribers has been multiplied by 5000, thus reaching 570.000 and the number of sites has passed from 5 to 1000. The government objective is to reach 800.000 users by 2005.

The organisation structures are characterised by a strong centralisation on the administrative level and by a monopoly on the economic level, which allows the State to keep strict control over access to the Worldwide Web, to censor messages and to block certain sites.

### **Operating of publinet centres (cyber-cafés)**

The operating of a publinet centre is stringently controlled. A permanent service must be ensured by the manager who must control any registration on diskette. He assumes responsibility over the content of the home pages, a

penal responsibility that extends to the client subscribers, the holders of home pages and the servers that host them “who must cut short any information counter to public order and to proper conduct”. The official in charge must post all prohibitions and the penalties incurred in case of offence, in particular the “content of the services”, which involves a quasi-systematic control over the content of the transmissions and censorship over all that might affect “high-ranking personalities” or address “political issues”.

The manager of the centre is required to keep for a whole year a copy of the pages of the addresses of the consulted sites.

Publignet centres (cyber-café) are subjected to a double control:

- 1 – That of the Ministry of Telecommunications conducted by a team of controllers who undertake site visits;
- 2 – That of the Ministry of the Interior conducted by the political police. The case of the Internet journalist Abdallah ZOUARI is illustrative of the “alertness” of the Net police that has intervened to prevent him from sending an e-mail from a publignet center (cyber-café) in Zarzis. The lady manager of the centre had been coerced into lodging a complaint against him. The case has incurred Mr. ZOUARI a firm four-month prison sentence (18 November 2003).

The publignet centres (cyber-café), which counted 300, had slimmed into 260 following the police campaign triggered after the arrest of the cyber-dissident Zouhaïr YAHYAOUÏ, before rising again to 320. For the sake of comparison, the number of cyber-café in Algeria counts 4800 (February 2004).

In Tunisia, there are 0.3 publignet centres (cyber-café) per 10.000 inhabitants, while in Algeria there are 4 times more, that is 1.3 cyber-café per 10.000 inhabitants.

### **Closing down of sites**

Internet communications go through a central node. The State controls the contents and circulation of information via the Internet by keeping control over telephone lines, Internet accounts and sites, and this by using high-performance screening software. Public authorities have acceded the technical possibility of closing down access to certain sites and they actually undertake to do that for certain sites, of which those of international

organisations (such as IHRF/FIDH, RWF/RSF, WOCT/OMCT, Amnesty International, Human Rights Watch).

The destruction of electronic correspondence by the sending of viruses or of messages to saturate them (LTDH (Tunisian Association for the Defence of Human Rights), ATFD (Tunisian Association of Democrat Women), Tunisnews, Tunisie2000) has become common practice. It remains that electronic mail may be diverted, especially that of political or human rights activists, while e-mail boxes may be blocked by hacking of the password.

The outbound Internet network is subjected to an increased surveillance and several sites are constantly blocked, of which not only those of CNLT (National Council for Freedoms in Tunisia), LTDH (Tunisian Organisation for the Defence of Human Rights), RAID-Attac Tunisie (Rally for an International Alternative to Development), but also those of political parties or information organs (*Libération*, El Jazira, Ezzitouna). Consequences : Many Tunisians cannot access the sites of their choice, including students and researchers.

All those who venture to transgress these interdicts and defy the blocking of the sites on the WWW are subjected to harassment and even legal procedures, and may lay themselves open to a strict application of the repressive system of the Press Code.

### **Offence for Internet use**

While the authorities deploy considerable material and human means for the service of censorship, diversion of e-mails or denial of access, the users deploy on their part a limitless ingenuity in order to bypass control, screening and censorship. They had used *proxy servers*, but the development of control technologies has put an end to this practice. The authorities also resort to the creation of counter-sites with misleading appellations, such as that of Amnesty-tunisia.org.

In such a context, it is superfluous to speak of competition in matter of prices, of necessary confidentiality and of security. The key issue is to know how to reconcile this authoritarianism and this unanimistic discourse with the declared objective of the government to attract foreign investments which need to develop in open spaces.

Not only the economic exigency, but also the large numbers of a youth eager to open unto the world, lead the power in place not to undertake a necessary

regulation of the network, but to put hindrances at all levels of the WWW for purposes of political control.

The latter concern has become a top priority, so much so that what used to be common practice in the 1970s and 1980s with regard to press offences is now reproduced for Internet use offences. Cases are fabricated, with “confessions” wrested out under duress, files devoid of evidence, rights of the defence trampled underfoot, iniquitous trials, scandalous sentences.

If in the case of the Internet user Zouhaïr YAHYAOUI, founder of the site “Tunezine”, the mobilisation of national and international public opinion finally led to his release on 8 November 2003, after a year and a half of imprisonment of an initial 2-year sentence, the case of the young people of Zarzis is “outlaw” pure and simple, in the sense that regardless of the crime perpetrated by a human being, the latter has a right to a fair and equitable trial.

In the year 2003, at least 17 young Internet users were arrested and prosecuted.

The profiles of the Internet users arrested so far illustrate the whole range of the phases of the control exercised by the Net police on the WWW, as they included:

- a webmaster (Zouhaïr YAHYAOUI);
- a e-mail user (Abdallah Zouari);
- Internet surfers (internet users in Ariana and Zarzis).

Most of them are aged between 18 and 26.

### **Case of the young people from Ariana**

These are 9 youth (mostly students) who were arrested on 9 February 2003 and whose arrest was based on their holding documents downloaded via the Internet. They are still awaiting trial.

### **Case of the young people from Zarzis**

Omar Farouk CHLANDI, Hamza MAHROUG, Amor RACHED, Ridha El HADJ BRAHIM, Abdelghaffar GUIZA and Aymen MCHEREK were sentenced to 19 years and 3 months of prison each and to 5 years of administrative control on 6 April 2004 by the Court of First Instance (Magistrates’ Court) of Tunis. Most of them are aged 21.

Abderrazek BOURGUIBA, now 19, was sentenced on 16 April to 25 months of prison. At the time of his arrest, he was aged 17.

Tahar GMIR and Ayoub SFAXI were sentenced in absentia: the former to 19 years and 3 months, the latter to 26 years and 3 months.

The charges:

Constitution of a gang for purposes of preparing and committing attempts on persons and goods, preparation, transport and possession of explosives, devices and materials intended for the making of such explosives, theft, attempted theft and holding of unauthorised meetings.

The “evidence” alleged to have been seized—but which has never been exhibited to the defendants whose files the lawyers have never been able to consult—are:

- A 6-page document on the Kalachnikov machine gun;
- A one-page document on the manufacture of silencer for guns;
- A 9-page document on the manufacture of matches for bombs;
- A one-page document concerning the timer;
- A 9-page document concerning arms and ammunitions;
- A 28-page document on Jihad;
- A 12-page document on Jihad ;
- A 4-page document in French language on fraudulent use of magnetic cards.

All these documents were allegedly downloaded via the Internet.

- A document concerning the simulation of an attack against the HQ of the National Guards of Zarzis by Bazooka;
- A magnetic card for recharge of a mobile phone connected to a plastic part and covered by aluminium foil, held to an electric wire.

### **Falsification of arrest dates**

The defendants were arrested, according to the official version, in Tunis on 26 February 2003; however, news of their arrest had already transpired on 18 February 2003.

On 19 February 2003, their lawyers had already notified the “Procureur de la République” (Public Prosecutor) to the Court of First Instance of Médenine about violation, by the police, of the police custody time-periods of their

clients, as well as their incommunicado detention since 5 – 10 February 2003.

While actually arrested on 5 and 8 February in Zarzis, Southern Tunisia, no official report accounts for the three weeks they had spent in isolation. What has happened to them during those 18 days? The testimonies issued mention the seizure of the students' computers, which seizure does not figure in any report.

### **Territorial non qualification of the court**

During a first hearing on 3 February 2004 (that is, not less than one full year after arrest), the case was deferred to 2 March 2004. The defence lawyers invoked then the territorial non qualification of the Tunis court, since the defendants' arrest had taken place in Zarzis, and what of the Médenine court which has competency in this case? They claim the temporary release of the defendants in view of their age and the absence of a criminal record, in addition to the fact that the files were devoid of evidence. These pleas were all dismissed.

### **Torture and ill-treatment**

The four defendants Abderrazek Bourguiba, Abdelghaffar Ben Guiza, Hamza Mahroug and Omar Rached declared that they were tortured throughout the first ten days following their arrest. They maintain that they were transferred upon their arrest in Tunis to the HQ of the Ministry of the Interior (State Security) where they were held for seventeen days, and that during the first twenty four hours they were kept without food.

They declare having been tortured during the first ten days: beating with batons, punches and kicks all over their bodies, suspending Hamza MAHROUG and Omar RACHED by their hands to the ceiling after they had been stripped naked in freezing cold; suspending and beating with batons on the feet and the arms. Abderrazek BOURGUIBA (17 years) declared that he was so scared that he thought he had gone mad.

Hamza MAHROUG said it occurred to him to commit suicide in order to spare himself further torture. As for Omar RACHED, he went on hunger strike during the first two days of his arrest. He ended his hunger strike when they threatened to bring along his mother and his sister to undergo torture—stark naked—in his presence. The defendants were confined to individual cells for a week, probably for the visible torture marks to disappear. They were moved to Bouchoucha police barracks (located in a

close suburb of Tunis) some time about 25 February 2003 (they could not tell the exact date as a result of the torture and solitary confinement). During the six days they spent in Bouchoucha, they received just one sandwich every twenty four hours. They were fetched about three times from the barracks to be further interrogated in El Gorjani barracks. The four defendants stated they had signed police reports under threat of being returned to the State Security HQ where they had been tortured. Omar RACHED said that he had signed a police report in El Gorjani without having been interrogated.

On 12 March 2003, Abderrazek BOURGUIBA, Abdelghaffar BEN GUIZA, Hamza MAHROUG and Omar RACHED appeared before the examining magistrate to the Court of First Instance of Tunis: the lawyers of the defence withdrew from the hearing in protest against the examining magistrate's refusal to allow them to see the detainees (between 8 and 12 March) and to get copies of the indictment documents. They deemed such a refusal a violation of the rights of the defence and of the right to a fair trial. The detainees abstained from answering the examining magistrate's questions in the absence of their lawyers. The families of the detainees had been denied a visit to them until 3 months after their arrest (that is, until 8 May 2003).

Nothing in the indictment files proves that the defendants have manufactured, assembled, transported or stored explosive matter or that they were in possession of devices and matter with the intention of making explosive devices such as stated in the indictment charges. The criminal court returned the verdict above, which LTDH qualified as "cruel", and was presided by Mr. Adel JRIDI.

In the face of such slippages endangering the freedoms of Tunisian citizens, LTDH has deemed it its duty to assert its claim that all the defendants in this case (N° 6623/2003) be released at once.