

Urgent Action Office 3-1992 Yonge Street Toronto ON M4S 1Z7 Phone: (416) 363-9933 Fax: (416) 363-3103 urgentaction@amnesty.ca

UA 97/21, **Update 1**, AI Index MDE 30/5203/2022 of 2 February 2022
The original index number is MDE 30/4718/2021 of 14 September 2021

TUNISIA PARLIAMENTARIAN FACING TRIAL BY MILITARY COURT

Tunisian parliamentarian Yassine Ayari's trial is set to begin on 14 February before the Military Court of First Instance in Tunis. He is being prosecuted in relation to Facebook posts in which he described President Saied's concentration of exceptional powers as a "coup." In July 2021 he was arrested and spent two months in Mornaguia prison for a case dating back to 2018, after the President's decision on 25 July 2021 to suspend parliament and lift parliamentary immunity for its members. Amnesty International calls for the charges against Yassine Ayari to be dropped and for an end to the prosecution of civilians before military courts.

Write to the President urging him to:

- ensure that the charges against Yassine Ayari are dropped
- end his military prosecution, which stems from his peaceful expression online
- end the prosecution of civilians before military courts.

Write to:

President of the Republic,
Kais Saied
Route de la Goulette
Site archéologique de Carthage
Tunisie
Email: contact@carthage.tn
Twitter: @TnPresidency
Salutation: Your Excellency:

And copy:

His Excellency Mohamed Imed Torjemane
Ambassador
Embassy of the Republic of Tunisia
515 O'Connor Street
Ottawa, ON K1S 3P8
Phone: 613 237 0330
Fax: 613 237 7939
Email: ambtun13@bellnet.ca

Additional Information:

Yassine Ayari was arrested on 30 July 2021, three days after the suspension of parliament and ordered the lifting of parliamentary immunity, to serve a two-month sentence issued by a military court in 2018 for his Facebook posts criticizing the army. He was released on 22 September 2021 but is now facing a new trial, due to start on 14 February, in a case brought against him by the same military court for Facebook posts he wrote on 25, 26, 27 and 28 July 2021. In those posts Yassine Ayari criticized Your Excellency's assumption of exceptional powers, calling it a "coup".

He is being prosecuted under Articles 67 and 128 of the Penal Code, which mandate prison terms and fines for "offense against the head of state" and for "accusing a state official of illegal acts in the course of carrying their duty without offering proof", respectively. He is also being prosecuted under Article 91 of the Military Code of Justice, which mandates up to three years of imprisonment for acts that "insult the army, harm military discipline or morale, or criticize the decisions of military leadership or undermine its dignity, and for the unauthorized disclosure of information on military affairs".

Yassine Ayari is being tried and may be imprisoned for exercising his right to freedom of expression and expressing his opinions online. His political criticism is protected under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which Tunisia has ratified. Amnesty International is concerned that at least nine other civilians are being investigated or prosecuted by military courts in Tunisia for a range of offences, including four -Yassine Ayari among them - who are facing the military justice system for expressing views critical of the President.

Yassine Ayari, a 40-year-old engineer who opposed President Ben Ali's rule, was elected as a member of parliament in the 2018 partial elections representing Tunisians living in Germany. He was re-elected in 2019 under his political party, Hope and Work, this time representing Tunisians living in France. After leaving Tunisia in 2010, Yassine Ayari spent eight years in exile working as an engineer in Belgium and France. In 2017, he published a Facebook post in which he criticized former President Beji Caid Essebsi and his use of the army to "repress the population". In 2018, a military court found him guilty of "defaming the army" and sentenced him to two months imprisonment.

On 25 July 2021, after President Kais Saied announced the freezing of parliament and the lifting of parliamentary immunity, Yassine Ayari published several Facebook posts where he strongly criticized the President. In his online posts, which Amnesty International reviewed, Yassine Ayari fiercely criticized what he considered an abuse of power by the President, calling the 25 July 2021 decision to suspend the parliament "a military coup with foreign planning and coordination," and using words such as "Pharaoh" and "silly" to characterize the President. On 30 July 2021, at least 30 police officers in civilian clothes raided Yassine Ayari's home without showing an arrest warrant and took him to an unknown destination. His brother told Amnesty International that the family later learned that he had been taken to serve the 2018 two-month sentence pronounced by the Tunis military court for a Facebook post considered as defamatory of the army. The military court ordered his arrest after the lifting of immunity of all members of parliament, ordered by President Saied on 25 July 2021, at the same time as the suspension of parliament.

Since President Saïed assumed new powers on 25 July 2021, there has been an increasing pattern of referral of civilians, including a journalist, a blogger and opposition politicians, before military courts. The military justice system has begun investigating or prosecuting at least 10 other civilians. Prosecutions for “insulting” the army, the President or other state institutions are not recognizable crimes under international law and therefore 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, which monitors implementation of the covenant, issued guidance on the free speech obligations of governments 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.”

Allowing the prosecution of a civilian before a military tribunal is a violation of the right to a fair trial and due process guarantees. Guidance in 2003 on fair trials according to the African Charter on Human and Peoples’ Rights states that “[t]he purpose of Military Courts shall be to determine offenses of a purely military nature committed by military personnel.”

Military courts played a key role in the repressive apparatus of the state under the presidencies of Habib Bourguiba, 1957-1987, and Zine El Abidine Ben Ali, 1987-2011. Under both presidents, persons were convicted in blatantly unfair trials before military courts for political crimes. While they underwent a partial reform following Tunisia's uprising, military courts remain under the undue control of the executive branch as the President of the Republic has ultimate control over the appointment of judges in these courts. In addition, both the general prosecutor who heads the military justice system, as well as all prosecutors in the military courts, who play a pivotal role in initiating proceedings, are serving members of the military, subject to military discipline, which places them under the direct orders of the executive branch.