

REPORT ON BHRC TUNISIAN TRIAL OBSERVATION (17/11/03-19/11/03)

Trial of Neziha Rejiba (aka Om Zied) (18/11/03)

Case 1

The defendant, Om Zeid, plays a leading part on the editorial board of the unauthorised Tunisian Human Rights publication, Kalima. She had been charged with possession of foreign currency, namely 170 Euros pursuant to Articles 6, 22, 35, 36 and 37 of the Tunisian Penal Code. She was tried, convicted and sentenced to a suspended 8 month prison sentence and fined 1200 Tunisian Dinars.

Facts

Having returned from France, Om Zied retained 170 Euros. The next day she spoke to a friend on the telephone and offered him the money. The friend duly arrived at Om Zied's house to collect the money. Upon his leaving the property, the friend got into a car as a passenger. The car had travelled no further than the end of the road when it was flagged down by a police officer. The officer asked to see the driver's driving licence and then immediately asked to see the passenger's wallet, in which the 170 Euros was found. Om Zied was subsequently charged with the illegal possession of foreign currency. If convicted the court could impose a maximum sentence of 5 years custody and a 300,000 Dinar fine (approx. 220,000 Euros).

At trial defence counsel argued that case rested on inadmissible evidence as clearly it resulted from an unlawful search which was founded on information which could only have been obtained by way of telephone tapping. In the alternative, the defence argued that Om Zied had not been arrested in possession of the money and, or the applicable Articles were ambiguous and could not properly be regarded as being interpretable so as to criminalise this sort of minor transaction i.e. the possession of such a small amount could hardly be regarded as a threat to the national economic interests. Defence counsel sought to expand the parameters of the defence to embrace a political slant i.e. Om Zied is known to the authorities as an activist as is her husband, who is a practicing lawyer and an opposition member of the Chamber of Deputies. (Indeed, Om Zied's husband was the sole politician not to be invited to this years annual Presidential reception for all members of the Chamber). Their phone is permanently tapped and often cut-off mid-conversation by the authorities; the same applies to their email communications. The trial Judge did not entertain the move to introduce a political argument to the case.

After a 3 hour hearing during which defence counsel made as full representations as permitted to, the Judge(s) deliberated. The Tribunal convicted and sentenced Om Zied. However, it is to be noted that the case when reported by the authorities to the Press Agency revealed the verdict to have been an acquittal.

At a meeting of defence counsel on the eve of the trial, all were agreed that the judge's verdict and sentence would have already been handed to him prior to trial and that the actual trial itself would prove to be little more than window dressing.

**** CONFIDENTIALITY ISSUE **** (After the trial, I was informed by Om Zied's son, one of whose professional peers is a Minister's son that his father had been aware

in advance of what the trial result would be. This came as no surprise to Om Zeid or her defence team.)

At the pre-trial meeting of Counsel, who numbered about 9, I was informed that 7 of those present had served time in prison for political offences - one of whom included the present head of the Tunisian Bar Association. Also present were a number of former judges who, due to their political history, had been removed from office.

Om Zied is adamant that the prospect of further arrest, charge and possible conviction will not deter her in her political activism rather she states that she will double her activities.

I was informed that the Government has changed its policy of charging individuals for political offences rather it now preferred to charge activists with general criminal infringements and thereafter impose a suspended sentence to first, portray political tolerance in the wider international political community and second, to avert future domestic political activism.

Case 2

On the 19/11/03 I visited Zouhair Yahyaoui who had been the first Tunisian sentenced for having disseminated politically corruptive information by running a human rights website. He had been sentenced to a 2 year sentence and had been released from prison the day before, having served 17 months. Others have since been sentenced on similar charges. He stated that the website which he had managed was currently operated from abroad and that most human right websites are now based abroad.

I was told that he had been tortured and beaten in prison (Bors El Amb) without subsequent recourse to any medical treatment, that the cell was under a 24 hour lockdown, that the cell was so overcrowded (15m x 5m to house 140 prisoners), that the inmates had to adopt a shift pattern for sleeping arrangements, that there was no access to a water tap rather the guards provided bottled water on an ad hoc basis, that guards acted as commissioned conduits for incarcerated drug dealers, that the daily diet consisted of soup and that guards regularly stole from food parcels.

Without a trace of irony, Zouhair Yahyaoui told me that political prisoners enjoy better conditions than criminal convicts in as much as the former, unlike the latter, were allowed to go on hunger strike without risk of punishment. The gentleman in question himself had been on hunger strike for some 17 days.

Having spoken to other former political prisoners, it appears that such an account is not unique.

Myles Jackson
20.11.03