National Report on the State of the Judiciary

in the Tunisian Republic

Workshop

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Table of Contents

Annexes

The Judiciary in the Tunisian Republic

Introduction

The organization of the judiciary in Tunisia was originally determined pursuant to Law No. 29 of 1967 on 14 July 1967 concerning "the Court System, Supreme Judicial Council and Special Statute for Judges". The provisions of this law were amended numerous times by subsequent laws in a manner that allowed for the amendment of most of its Chapters (which are essentially Articles). Following are the most important provisions stated therein

SECTION ONE: ORGANIZATION OF THE JUDICIARY

I. Ordinary Judiciary

The Court System

The first Article of the above Law states the following:

The ordinary courts shall include the following:

1. The Court of Cassation located in the Capital
2. Courts of Appeals
3. Courts of First Instance
4. District Courts
5. Real Estate Courts

In addition, Articles 2-5 state the following:

Article 2: The establishment of the courts and determination of their sites, compositions and districts shall be by edict.

Article 3: The jurisdiction of the courts shall be determined by the Codes of Procedure.

Article 4: The president of every court and head of the public prosecution office thereat shall organize the presentation of evidence.

Article 5: In every court there shall be a clerk's office. The authority and responsibilities of the head of the clerk's office shall be under the supervision of the president of the court and head of the public prosecution office respectively. The clerks' offices at the district courts shall be under the direct authority of the district judge. Article 25, as amended, states that "the judicial cadre shall be composed as follows:

- Court of Cassation

- Court of Appeals
- Real Estate Court
- Courts of First Instance set up at the sites of the Courts of Appeals
- Courts of First Instance set up at sites other than the Courts of Appeals
- District Courts set up at the sites of the Courts of First Instance
- District Courts"

Article 38 (amended) states the following:

"Work at the courts shall come to a hiatus during the period from 16 July to 15 September of every year. The judicial year shall begin on 16 September and end on 15 September of the following year."

II. Financial Judiciary

The Audit Court in Tunis

Article 69 of the Constitution of the Tunisian Republic provided for the establishment of an audit court as follows:

"The Council of State shall be composed of two bodies:

1. The administrative court
2. The audit court

The composition of the Council of State and its jurisdiction and procedure shall be established by law. With respect to the audit court a number of laws and regulations have been enacted, among which are the following:

- Law No. 8 of 3/8/1968 concerning the organization of the audit court. It was amended by subsequent laws.
- Decree No. 6 of 26/9/1970 ratified by Law No. 46 of 20/11/1970 as amended by subsequent laws and which is considered "the special statute concerning the members of the audit court".
- Edict No. 218 of 29/5/1971 determining the management of the audit court.
- Edict No. 219 of 29/5/1971 determining the treasurers whose financial statements are subject to review by the audit court.

Following are the most important provisions contained in the above articles and others concerning the audit court.

1. The Audit Court Law

Pursuant to the Tunisian Constitution, the aforementioned Law No. 8 of 1968 states in Article 1 thereof:

"The Council of State shall consist of the following:

- The Audit Court

- The Administrative Court"

In Article 2 thereof, it states:

"The President of the Republic shall be the president of the Council of State, and the Prime Minister shall be the vice-president. The Council of State shall be administratively subordinate to the Prime Ministry."

A. Jurisdiction of the Audit Court

The Court has jurisdiction to review the accounts and dealings of the following:

(i) The State, local public firms and public institutions, whose budgets are listed under the State's general budget.
(ii) Public industrial and commercial institutions, as well as all organizations, whatever their designations, which receive capital support from the State, provinces or municipalities.

For purposes of the aforementioned State, firms and institutions, the Audit Court is considered "the supreme authority for review of their finances, and to this end shall have a judicial and review authority," as follows:

1. It shall make initial and final decisions on the accounts submitted by the public treasurers.
2. It shall perform a general audit of those in charge of public finances.

The Audit Court is tasked with the function of reviewing accounts and economic and financial activities with respect to public projects, as well as the organizations which receive direct or indirect capital support from the State, provinces or municipalities.

The Court evaluates the results of economic or financial aid, whatever it may be, which is particularly in the form of tax exemptions, warranties, concessions, or tariff protections, etc.

In addition to the aforementioned authorities, the Audit Court is also responsible for auditing the funds of political parties pursuant to the Parties' Law, No. 32 of 1988 dated 3/5/1988. "The goal of this audit is to ensure consistency of these parties' financial expenditures with the provisions of the special statute in regard thereto." To this end, the parties are required to submit their annual accounts to the Audit Court in writing by no later than 30 June of the fiscal year following the year for which the accounts were prepared, and to maintain for the benefit of the Court all corroborating documentation regarding revenue and spending operations for a period of ten years at the risk of being fined, prosecuted and punished by virtue of the provisions of the Parties' Law.

B. Structure of the Audit Court

– The Court is structured as follows:

- President of the Audit Court
- Chamber Presidents
- Counsellors
- Assistant Counsellors

It includes the following chambers as provided for in the law:

1. Chamber for the Treasury and State Accounts
2. Chamber for the Activities of State Administrations
3. Chamber for the Local Public Firms
4. Chamber for the Public Administrative Institutions and similar institutions
5. Chamber for the Publicly Held Organizations in the Agricultural and Industrial Sectors
6. Chamber for the Publicly Held Organizations in the Finance and Service Sectors

Every one of the Audit Court's chambers is divided into two or three sections according to the importance of the audited entity.

With respect to the General Assembly, it is composed of the following:

- President of the Audit Court
- Chamber Presidents
- Section Heads
- Counsellors

The secretary-general shall be the session moderator.

The government's general representative and government representatives have the right to attend the sessions of the General Assembly.

The government's general representative exercises the function of the public prosecution, assisted by three government representatives. The public prosecution in particular is required to perform the following functions:

- Ensure that accounts are submitted regularly.
- Proffer remarks, as necessary, on cases brought before the Audit Court.
- Bring appeals on behalf of the State against the decisions of the Court.
- Bring to the attention of the administrative authority the violations that are revealed as a result of account reviews.
- Notify the administrative authority and the public treasurers of the decisions issued by the Court, and coordinate between them for the purpose of enforcement of these rulings.
- Inform the public prosecution offices at the various common rights courts of all the acts over which these courts have injunctive jurisdiction subject to the provisions of section four of Article 26 of this special statute.

This aforementioned section four of Article 26 states that "the initial examinations and observations with regard to the audit of financial accounts of every one of the political parties shall include a classified report to be forwarded by the Audit Court to the President of the Republic and the First-in-Charge at the concerned [political] party."

C. Procedures and Types of Review

In addition to the above concerning the monitoring of funds of political parties, the provisions also state that "the Audit Court shall make its ruling and conduct subsequent examinations, and exercise its authority based on the records presented thereto and its onsite examination." It shall also conduct two types of reviews.

1. The judicial review that is exercised in accordance with the provisions shown below:

    - A review of every public treasurer who is subject to specific filing dates with an indication that these due dates and the methods of submission of accounts shall be determined by Edict issued by the Head of State.
    - The Audit Court shall audit and settle all the accounts submitted *[sic]* thereto and, based on its final rulings, shall either exonerate the public treasurers, declare that their accounts are still pending, or that they are required to satisfy whatever debts are payable. In the first two cases, the Court shall either declare their exoneration decisively and in the third case it shall require them to pay to the treasury whatever debts are payable within the time periods prescribed by law. They may be relieved of such debts by edict.
    - The Court may review the final issued rulings, automatically or at the request of the treasurer provided that such request is corroborated with the necessary documentation retrieved after the ruling was issued, or at the request of the government's general representative for reasons of error, omission, fraud or duplication.
    - If at the time of auditing the accounts the Court discovers violations that may be described as felonies or misdemeanors, such violations shall be communicated to the competent public prosecution to prosecute the violators before the courts of competent jurisdiction.
    - Final rulings can be appealed before the General Assembly of the Audit Court by the concerned treasurer on the grounds of a violation of procedure or law within a period of three months from the date he is notified of the ruling. And for the same reasons and within the same time periods, every minister, with respect to his administration and its institutions, may submit through the government's general representative a "motion for cassation" to the Court's General Assembly.

2. Administrative Review

    It is conducted in accordance with the following procedures:

- Officials in charge at public banks shall submit to the Audit Court periodic statements of the expenses entrusted with the bank within time periods to be determined by edict. Such statements shall show, with respect to every expense item listed in the budget, the amount of open credits and the amounts it was authorized to pay and, as necessary, either the balance of the amounts or reversibly the amounts of overdraft showing the document endorsing such overdraft.

The officials authorized to pay shall maintain other documents that were created authorizing disbursement and settlement, and shall keep these documents at the disposal of the Audit Court. The latter may obtain copies of such documents it deems appropriate for its review process, and may, as necessary, view such documents at the very site where they exist.

- With the exception of documents that are classified and concern national defense, foreign affairs, internal and external State security, as well as all the banks that have a special purpose in the budget, the Audit Court is empowered with the authority to demand all documents, whatever they may be, that concern the handling of public funds or any member of the auditing bodies, and it may seek the assistance of experts who are appointed by it.
- The Audit Court prepares a general annual report on the execution of financial operations in the year just ended, and submits such report to the President of the Republic and the National Assembly [Parliament]. This report shall include all the audits the Court has conducted, as well as its recommendations for the reforms it deems appropriate.

The President of the Republic may authorize the publication of the general report.

2. The Special Statute Concerning the Members of the Audit Court

This special statute contains the provisions concerning the general affairs of the members of the Audit Court, and the rights and obligations thereof, as well as the composition and powers of the Supreme Council, and the disciplinary measures which the Council has the authority to take. Following are the most important provisions contained therein, with reference first of all to the number of members at the Court as set forth in Article 1 as follows:

- President of the Audit Court
- Presidents of the competent departments
- Heads of sections
- Counsellors
- Counsellors extraordinary
- Assistant counsellors

It is to be noted that this number differs somewhat from the number of members set forth in the Court's organizing law.

A. Appointment

- All members of the Audit Court are appointed by edict.
- No person may be appointed as a member of the Audit Court unless such person meets all the following conditions:

  1. He has been of Tunisian nationality for a period not less than five years
  2. He is not less than twenty-five years of age
  3. He enjoys all his civil rights
  4. He is physically fit to carry out his duty
  5. He is of good reputation and moral standing
  6. He is in full compliance with the provisions of the [military] conscription law

The First President of the Court is appointed by selection from among high-ranking civil servants.

The competent section presidents are appointed upon the recommendation of the Prime Minister and proposal of the Court's First President, and a nomination by the Supreme Council. They are selected from among section heads and counsellors who have a certain number of years of service.

Counsellors are appointed on the recommendation of the Prime Minister and proposal of the Court's First President. They are selected from among counsellors and assistant counsellors who meet certain specified conditions.

The assistant counsellors are seconded from among the candidates who have passed the advanced level at the National School of Administration in addition to other specified methods.

Counsellors extraordinary may be designated from among public aides with extensive administrative, financial or technical experience.

The secretary-general of the Audit Court is appointed by edict on the recommendation of the Prime Minister and proposal of the First President of the Court, and a nomination by the Supreme Council. They are selected from among counsellors who have served at least five years as counsellors.

The government's general representative is appointed by edict upon the recommendation of the Prime Minister and proposal of the First President of the Court. He is selected from among a number of members as determined by law.

Government representatives are appointed by edict upon the recommendation of the Prime Minister and proposal of the First President of the Court.

B. Rights and Obligations

The members of the Audit Court enjoy protection from any and all threats or assaults which they may be subjected to while performing their functions or on the occasion thereof, whatever they may be. The State must compensate them for any and all damages they directly incur in all cases not provided for by law.

No member of the Audit Court may be prosecuted for a felony or misdemeanor, or be imprisoned, without an authorization therefor from the Supreme Council. However, any member may be arrested if such member is caught in the act of committing a crime, in which case the Audit Court is immediately notified of such arrest.

Members of the Audit Court are subject to the same rules applied to civil servants, especially those that apply to neglect, nonfeasance, pompousness, threatening with a weapon, and others.

With respect to the members of the Audit Court, the period of time for promotion from one grade to another is set at three years.

Moreover, members of the Audit Court must avoid any and all activities or conduct that infringe upon the dignity of their job duty. They are enjoined from doing any and all planned social activities that would cause a disturbance or disruption of the workflow at the Court.

Members of the Court may not, during the time of their membership on the Court, pursue the following activities:

1. Membership in any government entity

2. Any elected office

3. Any civil service job, or professional or paid activity, except teaching and research jobs.

4. Financial audits and the auditing of accounts at national bureaus and companies, and companies which are directly or indirectly capitally supported by the State or public firms.

C. The Supreme Council of the Audit Court

The Audit Court has a Supreme Council composed as follows:

- Prime Minister:	President
- President of the Audit Court:	Vice-President
- Government's General Representative:	Member
- Presidents of Competent Departments:	Members
- Secretary-General:	Member
- Heads of Sections:	Members
- Two Deputies on behalf of Counsellors:	Members
- Two Deputies on behalf of Assistant Counsellors:	Members

With regard to the deputies of both ranks of counsellor and assistant counsellor, they are elected by the counsellors and assistant counsellors for a period of two years. The election process is regulated by a decision issued by the Prime Minister.

The secretary-general is the member *rapporteur* of the Council, who also assumes the function of preparing its work and maintaining its documents.

- The Council convenes at the invitation of its president or vice-president, as necessary, and issues its decisions by a majority vote. In the event of a tie vote, the president's vote shall prevail.
- The Supreme Council may be consulted on all matters that pertain to the special statute concerning the members of the Audit Court, in addition to whatever else it is entrusted with pursuant to this decree.

E. *[sic]* **Disciplining**

The disciplinary sanctions that may be imposed on members of the Audit Court, who may be found negligent in performing their job duties or in violation of the integrity thereof, irrespective of the warnings that the First President may issue to them, include the following:

1. Censure, to be written down in the subject's file.
2. Delay of promotion for a period of between three months to a year.
3. Temporary lay-off, which results in suspension of salary for a period not to exceed three months.
4. Dismissal without losing the right to pension.

The Supreme Council shall establish all the abovementioned disciplinary sanctions, which shall be authorized pursuant to a decision by the Prime Minister excluding the sanction of dismissal which shall be effected by edict.

The Supreme Council is called to convene by the First President whenever the Audit Court is informed of the existence of activities that may result in the imposition of disciplinary sanctions, and in the event a serious error is committed by any member of the Audit Court, whether a breach of professional duties or a violation of a common right. Such member may be immediately suspended from carrying on his work and have his salary suspended by the First President until a final decision is made with regard to the disciplinary sanction, provided the member has had the opportunity to testify before a judge of equal or higher rank.

In this case, the Supreme Council must be called to convene within a period not to exceed one month from the date the decision to suspend from work comes into force and effect. The Council appoints a member *rapporteur* who is responsible for investigating the case. Thereafter, said *rapporteur* receives information from the concerned party and then conducts whatever investigations he deems appropriate. He then submits his report to the Council, which, in turn, notifies the concerned party of the date of his arraignment before it and grants him a period of fifteen days to examine all the documents that were appended to the file. The concerned party may request the assistance of a person to defend him.

The Supreme Council reviews the case in a closed session after reading the report and hearing the testimony of the concerned party or whoever is acting in his defense as the case may be.

In the event the concerned party, or his defender, fails to appear after being legally notified of the arraignment date, the council may decide the case solely on the merits of the documents attached to the file.

The decision of the Supreme Council must be based on legal grounds and is not subject to appeal.

The decision containing the disciplinary sanction is attached to the personal file of the concerned party.

Thereafter, a settlement of the suspended judge's status is done within a period not to exceed three months from the date the decision to suspend from work came into effect.

If at the end of said three month period the suspended judge is not removed, he has the right to reclaim all the salary that was due him during the suspension period after subtracting therefrom the amount of salary he received during the period of temporary lay-off as the case may be.

SECTION TWO: ADMINISTRATION OF JUSTICE

The Supreme Judicial Council

The Council was provided for in Article 6 of Law No. 29 of 1967. Its composition was amended several times by subsequent laws. The last of such amendments was introduced pursuant to Law No. 14 dated 10 April 1987, which determined its composition as follows:

Article 6 as amended: His Excellency, the President of the Republic, shall preside over the Supreme Judicial Council which is composed as follows:

- Minister of Justice as vice-president
- Director of the Secretary of State for Justice as vice-president
- First Chief Justice of the Court of Cassation as member
- State Public Prosecutor at the Court of Cassation as member
- Attorney General of the Republic as member
- State Public Prosecutor – Director of Justice Departments as member
- Inspector-General at the Ministry of Justice as member
- President of the Real Estate Court as member
- First President of the Court of Appeals in Tunis as member
- Public Prosecutor at the Court of Appeals in Tunis as member
- First Presidents at all Courts of Appeal outside Tunis as members
- Two female judges to be appointed by edict on the recommendation of the Minister of Justice for two years renewable as members

- Two deputies on behalf of the concerned judges to be elected by them for two years as members

The State Public Prosecutor – Director of Justice Departments shall be a member *rapporteur* for the Council, and shall assume the functions of preparing its work and maintaining its files.

The procedures for the election of judges' deputies shall be regulated by a decision.

The amending law itself has determined the composition of the Supreme Council "when it convenes as a disciplinary tribunal" as follows:

Article 55 as amended: The Supreme Judicial Council shall be the disciplinary tribunal for judges.

When convened as a disciplinary tribunal, the Supreme Judicial Council shall be composed as follows:

- First Chief Justice of the Court of Cassation (president)
- State Public Prosecutor at the Court of Cassation (member)
- Attorney General of the Republic (member)
- State Public Prosecutor – Director of Justice Departments (member)
- Inspector-General at the Ministry of Justice (member)
- President of the Real Estate Court, in cases where the judge being referred to the disciplinary tribunal works in this court (member)
- First President of the Court of Appeals of the district within which the judge being referred to the disciplinary tribunal is located (member)
- Two deputies on behalf of judges to be elected by their colleagues of the same rank as the judge being referred to the disciplinary tribunal (two members)

The quorum for the disciplinary tribunal is at least 5 members among whom is one of the elected deputies.

The Supreme Judicial Council convenes at the invitation of its president, or, if necessary, its vice-president, and issues its decisions by a majority vote. In the event of a tie vote, the president's vote shall prevail, or, if necessary, the vice-president's vote shall prevail.

The Council may be consulted on all matters that pertain to the special statute concerning judges, in addition to whatever else is vested in it pursuant to this law.

SECTION THREE: THE STATE OF AFFAIRS OF JUDGES

A. General Provisions

The cadre of judges shall consist of sitting judges, members of the public prosecution, and judges affiliated with the central cadre at the Secretary of State for Justice.

Article 13 as amended: The judicial hierarchy shall consist of three ranks, and the levels of seniority in each rank shall be determined by edict.

The three ranks are as follows:

First Rank:

- Judges of the Courts of First Instance and Real Estate Courts
- Assistant State Solicitor

Second Rank:

- Justice at the Court of Appeals
- Assistant Public Prosecutor at the Court of Appeals

Third Rank:

- Justice at the Court of Cassation
- Public Prosecutor at the Court of Cassation

In case of absence or incapacity of a president of a court, the most senior among the sitting judges shall act on his behalf. Grade promotions in judicial ranks shall be regulated by edict; and the functions performed by the judges of the ranks shown above shall also be regulated by edict.

B. Appointment

The appointments of judges shall be effected pursuant to an edict issued by the President of the Republic upon the nomination by the Supreme Judicial Council.

Article 29 (as amended): Judges shall be appointed from among those who hold a certificate from the Higher Judicial Institute.

The requirements for entering the competition for admission to said Institute, as well as the system and programs of said competition, shall be regulated by virtue of a decision by the Minister of Justice. A person who is studying at the Institute shall be named a ‘judicial attaché’.

Article 30: The system and program of the competition shall be determined by virtue of a decision by the Secretary of State for Justice.

Article 31 (as amended): The Minister of Justice shall present the files of judicial attachés who hold a certificate from the Higher Judicial Institute to the Supreme Judicial Council for its opinion, and then to the President of the Republic for their appointment as judges, at which time they are appointed at the beginner level of the first rank. These judges shall be subject to a training period of six years commencing on the date of actual work as professional judges.

Thereafter, they are appointed upon obtaining the opinion of the Supreme Judicial Council.

At their first appointment and prior to their inauguration to their positions, judges shall take the legal oath before the Court of Appeals in Tunis.

C. Rights and Obligations of Judges

Article 14: The Supreme Judicial Council shall review all matters concerning the transfer of sitting judges prior to the start of the judicial vacation of every year. The Secretary of State for Justice shall have the right during a judicial year to authorize the transfer of a judge in the interest of the work and shall present the matter to the Supreme Council at its first meeting.

The sitting judges shall be under the direction of the president of the court with which they are affiliated.

Article 15: Judges at the Office of Public Prosecution shall be under the direction and control of their immediate supervisors and the authority of the Secretary of State for Justice; however, during sessions they shall be free to speak.

Article 16: Persons working in judicial positions may not pursue any other public employment or any professional or paid activity.

However, the Secretary of State for Justice may grant judges on an individual basis and contrary to this prohibition the authorization to teach courses that are within their specializations or pursue jobs or activities that would not infringe upon the integrity or independence of judges.

Judges may pursue educational, literary or artistic work without the need to obtain an authorization therefor, provided that such work does not infringe upon the integrity or independence of judges.

Article 17: Judges may not combine their jobs as judges with any elected representation work.

Article 18: Members of the judicial cadre are prohibited from pursuing any and all planned social activities that would cause a disturbance or disruption of the workflow at the courts.

Article 19: Irrespective of the Criminal Procedure Code and special laws, judges shall enjoy protection from any and all threats or assaults to which they may be subjected while carrying out their job duties or on the occasion thereof, whatever they may be, and the State must compensate them for any and all damages they directly incur in all cases not provided for in the laws concerning salaries.

Article 20: Judges may not be subjugated to public assignments outside the scope of their jobs except military service.

Article 21: Judges are obligated to reside in the locality of the court with which they are affiliated; however, the Secretary of State for Justice may grant an individual authorization in contradiction thereto.

Article 22: No judge may be prosecuted for a felony or misdemeanor, or imprisonment, without the permission of the Supreme Judicial Council. However, in the event a judge is caught in the act of committing a crime, such judge may be arrested and at such time the Supreme Judicial Council shall be immediately notified.

Article 23: Judges must adjudicate with complete impartiality and without any consideration to the persons or interests. They do not have the right to adjudicate in any case on the basis of their personal work, and may not contend either orally or in writing in any cases other than those that concern them personally, even if in the name of consultation.

Article 24: Judges must avoid any and all work or conduct that would infringe on the integrity of the judiciary.

Article 42 (as amended): The rules of civil service concerning negligence, pompousness, nonfeasance, and total abstinence from work, shall apply to all judges, provided they are not in violation of the provisions of this law.

Article 43 (as amended); Subject to the provisions of the above Article, the maximum age for pursuing the judicial profession is determined as follows:

1. Seventy (70) years with respect to the First Chief Justice of the Court of Cassation and the State Public Prosecutor at the Court of Cassation.

2. Sixty-five (65) years with respect to other judges of the third rank otherwise not mentioned; however, in the interest of the work, they may be asked to remain on active status by virtue of an edict, until they reach the age of seventy (70) years.

3. Sixty-three (63) years with respect to judges of the second rank; however, in the interest of the work, they may be asked to remain on active status by virtue of an edict, until they reach the maximum age of sixty-five (65) years.

4. Sixty (60) years with respect to judges of the first rank.

D. Disciplining

Article 50: Every function performed by a judge that could lead to a breach of job duty, honor or integrity, shall constitute an error that is subject to discipline.

Article 51: Irrespective of any disciplinary sanction, the Secretary of State for Justice shall have the authority to issue warnings to judges.

Article 52 (as amended): The disciplinary sanctions that the disciplinary tribunal may impose are the following:

First: Censure, to be written down in the subject's file

Second: Disciplinary transfer

Third: Removal from the promotion and bonus list

Fourth: One-grade demotion

Fifth: One-rank demotion

Sixth: Suspension from work for a period not to exceed three years

Seventh: Dismissal

Article 55 (as amended): The Supreme Judicial Council shall be the disciplinary tribunal for judges.

The composition of the Supreme Council in this case has already been described above. As for prosecution procedures, they are as follows:

Article 54: When the Secretary of State for Justice receives a complaint or is informed of matters that could have disciplinary consequences for a judge, he may, if the matter is confirmed, prohibit the judge against whom an investigation is being conducted from carrying on his work until a final decision is issued in regard to such prosecution. In such a case, the disciplinary tribunal must undertake the matter in question within a period of one month.

The interim work prohibition may be accompanied with a suspension of some or all of the salary. This decision may not be published to the public.

If no disciplinary sanction was issued against the judge in question, or if the sanction was anything other than suspension or dismissal from work, such judge shall have the right to receive the full amount of the salary that was held back from him.

Article 56: The disciplinary tribunal shall assume the responsibility of reviewing all matters attributed to any judge who is referred to it by the Secretary of State for Justice.

Article 57: The president of the disciplinary tribunal shall appoint a member *rapporteur* from among the members of the tribunal, and hand such *rapporteur* the corroborating documentation related to the matters that are the subject of the disciplinary prosecution.

The member *rapporteur* shall conduct an investigation as necessary; and, in addition, he shall inform the judge under investigation of the prosecution procedures being instigated against him and the actions attributed to him. Moreover, the member *rapporteur* shall receive the judge's response and whatever documentation he has in his own defense. Furthermore, the member *rapporteur* may delegate another judge in his stead to carry out the necessary investigation work, and shall have the right to conduct whatever investigations he deems appropriate.

Thereafter, he shall write a detailed report on everything, which will be submitted to the Council from the subject's file.

Article 58 (as amended): The tribunal to which a judge is turned over shall arraign such judge and grant him a grace period of eight days from the date on which he was served the summons to allow him to examine the investigation file without any right to transfer such file. The judge shall also have the right to view the report written by the member *rapporteur* and, in general, all the supporting documents of the investigation.

A judge who is turned over to the disciplinary tribunal shall have the right to request the assistance of any of the lawyers registered with the Court of Cassation. The latter shall have the same right to examine such documents.

Article 59: On the date specified on the summons, and after the reading of the report, the disciplinary tribunal shall hear the testimony of the judge who is referred to it, as well as the arguments of his lawyer if necessary, and shall hear the case in a closed session. The decision of the tribunal, which must be based on legal grounds, shall not be subject to any form of appeal.

If the judge who is legally summoned fails to appear in person or through his attorney, the disciplinary tribunal may continue the proceedings without interruption and decide the matter on the merits of the file contents.

In the event of a tie vote, the president's vote shall prevail.

Article 60: The decision of the disciplinary tribunal shall be attached to the judge's personal file.

SECTION FOUR: PROVISIONS CONCERNING THE JUDICIARY

1. Ordinary Courts and the Administrative Court

If the theory of separation of powers means the independence of the judiciary from the executive branch, it also means that the executive branch is independent of the judicial branch, and therefore the administration is not subject to the ordinary court system. The Constitution, in Article 69 thereof, provides for the creation of the

Council of State to ensure that the practices of the administration are not predominantly arbitrary and go on unchecked.

The administrative court is the second body that makes up the Council of State. Its creation and organization occurred pursuant to the law issued on the first of June 1972. The administrative court has the jurisdiction of initial and final review of cases concerning any overstepping of authority, which are brought to it for rescission of administrative decisions, whether issued by the central or district authority, or by the local public firms and public institutions that are administrative in nature.

2. Civil Courts and Correctional Courts

The ordinary courts basically have jurisdiction to decide disputes that arise between individuals, in addition to its jurisdiction to hear criminal or penal cases. The correctional courts which assume the function of imposing punishment on criminals are subject to the provisions of Criminal Procedure Code. The correctional courts in general are nothing but specialized divisions of the courts of the ordinary judicial system.

3. Courts of Common Right and Exceptional Courts

The exceptional court is that whose jurisdiction is determined by a special provision which states explicitly that only certain types of cases shall be brought before it, e.g. the conciliation tribunal (the employment division). In terms of the courts of common right, they are those that have ordinary and general jurisdiction, i.e. the jurisdiction to hear all disputes for which there is no special provision that requires them to be brought before an exceptional court. The first-tier court of common right is the court of first instance of which the jurisdiction was determined by Article 30 of M.M.M.T.

Categories of Courts:

Courts are categorized as specialized and non-specialized courts: specialized courts are those whose jurisdiction is restricted to a specific area of specialization as regulated by law; whereas non-specialized courts are those whose jurisdiction is not restricted to a specific area, but rather handle a variety of cases.

1. Specialized Courts

Conciliation Tribunals

The jurisdiction of these tribunals includes the types of disputes that arise between employers, their employees and the existing terms and conditions of the employment contract at the time of execution thereof; however, their jurisdiction does not include all legal actions (cases) involving work accidents and occupational illnesses or involving social security. The judgments of the conciliation tribunals are final if the amount claimed falls within the jurisdiction of the district court (less than 7,000 dinars). If, however, the amount claimed exceeds such amount or there is a jurisdictional dispute, then the judgment of the tribunal is considered initiatory, i.e. appealable before the Court of First Instance. The conciliation tribunal (labor division) is composed of a professional magistrate as president and two elected judges, one of whom represents the employer and the other represents the workers.

Real Estate Court

The headquarters of the real estate court is in the capital, Tunis, with other branches inside the country. Despite this, it is theoretically considered to be one court normally composed of five magistrates or three in cases where there was no objection raised with respect to the registration request. When the real estate court renders a judgment concerning a real estate registration, its judgment shall be final and not subject to either appeal or even cassation. The function of the real estate court is to assess the real estate ownership fees on the owners thereof. The payment of these fees is considered absolute proof of ownership publicly.

2. Non-Specialized Courts

The District Court

The district courts convene with a single judge, who hears all cases of possession and actions involving alimonies, and all cases in which the monetary amounts claimed do not exceed 7,000 dinars (Article 29 of M.M.M.T., as amended). Thus, the district court has jurisdiction to render initiatory judgments in civil personal or real estate cases, or civil cases involving the payment of commercial debts that do not exceed 7,000 dinars.

The Court of First Instance

It is the common right court because it hears all cases except as otherwise excluded by a special provision of law. The court of first instance is composed of a multi-judge panel and hears all cases except as otherwise excluded by law. It also has appellate jurisdiction with respect to all the appealed judgments rendered by district judges who are affiliated therewith or by the conciliation tribunals. When it convenes as an appellate court, its judgments shall be final; but in other cases in which the court acts as a court of first instance, any judgments rendered therein would be subject to the appellate jurisdiction of the Courts of Appeals.

The Court of Appeals

Every court consists of several divisions: civil, commercial and criminal divisions, as well as accusatory divisions.

The Court of Appeals always convenes with a multi-judge panel, and has jurisdiction to review appeals brought against initiatory judgments rendered by the courts of first instance located within its circuit. Its rulings, which are always final, are called decisions.

The Court of Cassation

It is the highest authority in the Tunisian judicial system, composed of a first chief justice, division presidents and justices. The Court of Cassation is divided into several civil, commercial and misdemeanor divisions.

The public prosecution at the Court is represented by the State Public Prosecutor at the Court of Cassation and public prosecutors. The Court of Cassation performs many secondary functions (amendment of rulings, censure of judges, etc.) and a primary function which is establishing a uniform interpretation of the law. It reviews all final judgments brought on appeal, and in principle does not represent a third judicial tier because it neither re-examines the case *de novo* nor all of its facts and elements, but is restricted to the legal aspects thereof. It does not hear the facts of a case, but is limited to the legal merits thereof. This is because the facts of a case fall within the absolute competence of the judges of original jurisdiction (Court of First Instance, District Courts, Courts of Appeals). Moreover, the function of the Court of Cassation is to establish the soundness and validity of the legal conclusions reached in a particular case and the merits thereof, and to ensure a proper interpretation of the law by the courts of original jurisdiction. This s done on the basis of a comparison between two legal rationales, one is to uphold the original final judgment which is the subject of appeal, and the other is to uphold the authorities cited in the appeal.

- If the Court of Cassation rules in favor of upholding and justifying the original final judgment, it will sustain the appealed judgment and issue a decision to deny cassation.

- However, if it rules in favor of the legal analysis and the interpretation of the law cited in the appeal documents, it will issue its decision to sustain the cassation. However, since it does not review the facts, it rules in favor of cassation and turns the case over to a court of the same level as the court of original jurisdiction that rendered the judgment on appeal, with a different composition than the first court.

Remark: An appeal does not have suspending force and effect, and therefore does not stay execution.

The Court of Appeals to which the case has been referred by virtue of the higher court's decision of cassation and referral may support the opinion of the Court of Cassation and adopt it, which is the most likely situation. Conversely, the court of referral may refuse to adopt the position of the Court of Cassation, and give preponderance to the legal position of the first court of appeals. This is based on the fact that the court of referral is composed of judges with absolute freedom of judgment and discretion. At such time, a second appeal may be brought and the case is re-examined once more by the

Court of Cassation that convenes in a broader configuration in a joint session with all the divisions convened by permission from the First Chief Justice of the Court of Cassation under his presidency. It is composed of division presidents and the most senior justice of each division, along with the State Public Prosecutor at the Court of Cassation (Article 192, paragraph 10, of the M.M.M.T.) If the joint division session issues a decision of cassation a second time, the case is then referred anew to the judges of original jurisdiction. However, the court of referral this time is required to adopt the opinion of the Court of Cassation. This means that the second court of referral must follow the decision of the Court of Cassation in its combined division configuration (Article 191, paragraph 30, M.M.M.T.)

- Finally, the Court of Cassation may issue on a rare extraordinary basis a decision of cassation without referral when it sees that the matter does not warrant a re-examination or if the cassation did not leave any room therefor, and as a consequence, it would examine the facts.

The Judicial Framework

A. Judges

In accordance with Article 66 of the Constitution, judges shall be appointed pursuant to an edict by the President of the Republic upon a nomination by the Supreme Judicial Council.

Judges are categorized according to three ranks, the lowest of which is Rank I, the middle is Rank II followed by Rank III.

Promotion from one rank to next highest shall occur after ten years. Judges shall be divided into two categories:

There is the category of judges and the category of public prosecution, with the possibility of professional promotion by transfer from one category to the other.

1. Judges: They are also called tribunal magistrates or sitting judges because they would be sitting during sessions. In principle, judges enjoy protection and appreciation, and their inviolability shall be respected until they can have complete independence in the performance of their lofty duties. This protection that is afforded to them against the executive power is represented in the rules concerning their transfer, promotion and disciplining, which are the jurisdiction of the Supreme Judicial Council.

2. Public Prosecution: The public prosecution is composed of judges who are called standing judges because when they are making their oral arguments they are in a standing position as a show of respect for the court, as is the case with lawyers. The public prosecution is represented in the main well of the courtroom (trial courts, court of cassation, etc.). The public prosecution is a hierarchical organization, whereby the Attorneys for the Republic (representatives of the public prosecution at the Court of First Instance) are answerable to the Public Prosecutors at the Court of

Appeals (who represent the public prosecution at the Court of Appeals; and all of them answer to the Ministry of Justice).

– The public prosecution may intervene before the courts during the prosecution of a case, and as a requirement it must intervene in cases where the matter concerns the interests of a minor. As for the Court of Cassation, the public prosecution thereat always intervenes because the matter concerns a violation of the law. Article 188 of the M.M.M.T. states that "the State Public Prosecutor at the Court of Cassation may appeal at such court any judgment in the interest of the law if such judgment involved a violation of a legal rule and neither party to the dispute challenged such violation at such time." Furthermore, Article 281 of the M.M.M.T. states that "the representative of the public prosecution shall have the right to prosecute cases whenever there is a legitimate concern for public order, as well as the right to attend every hearing and examine every case it deems warranting of its intervention therein."

B. Judicial Assistants

Clerks:

They are the court clerks who are appointed at every court and tasked with the preparation, arrangement and maintenance of the files. In addition, they are responsible for court reporting and scheduling hearing dates. They also keep special books in which the names, titles, locations, etc., of the litigants are registered. Moreover, they are responsible for serving the official copies of the judgment execution papers (Article 250 M.M.M.T.). The records that they record in court are considered official evidence.

Server Notaries:

Server notaries are freelancers who practice a profession regulated by law, which entails their performing a function for the benefit and at the request of their clients, which is necessary for the administration of justice, such as the serving of summonses and the announcement of judgments rendered by the court and the execution thereof, the delivery of movables or real estate in regard to which a peremptory judgment was rendered, and conduct seizures.

Server notaries execute interrogation reports which have the force of an official document.

Notaries Public:

Their tasks are limited to the function of official attestation, as they execute contracts and deeds. They also execute official marriage contracts where the rule is that the two parties to the contract appear together so that the documents they execute are official and legal.

Experts:

The courts may assign any physician, engineer, lawyer or other specialist, to perform a specific task after which each expert presents a technical report thereon related to his area of specialization, bearing in mind that the expert's opinion can be either endorsed by the judge who appointed him or disregarded as being restrictive to the court. In addition, the court by itself has the right to deem what is and what is not fair based on its discretionary authority.

Interpreters:

The sworn interpreters perform the function of translating the documents written in foreign languages into Arabic; and considering the fact that they are sworn, their translations are deemed official. In court hearings where there is a witness or party who does not speak Arabic, the interpreter will orally interpret the proceeding from and into Arabic.

Lawyers:

The law dated 15 March 1958, as amended by the law of 7 September 1989, covered the legal profession, which is providing legal counsel to their clients and representing them in court. The parties to a dispute retain lawyers to represent them in their cases.

Legal representation is mandatory in most cases in first-tier courts, and is always compulsory in the Courts of Appeals and the Court of Cassation.

In order for a person to practice the legal profession, he must have a degree in law, a certificate of professional competence and be a member of the Bar Association which consists of all the lawyers in Tunisia. It is a body elected by the lawyers and presided over by the president of the bar whose function is to regulate the practice of the profession and discipline whoever is not in compliance with the requirements of the profession's regulating law.

Before a lawyer is appointed to a public office, he does not have the right to argue in his own name, but rather in the name of the lawyer supervising his internship (the term of internship is two years).

After appointment, a lawyer may argue in his own name in all cases brought before the courts of first instance and the courts of appeals. There is a special category of lawyers who are those at the Court of Cassation. They may argue before all the courts, including the administrative court.

As a condition for being included in this category, a lawyer must spend at least 10 years in professional practice and his appointment must be approved by the Bar Association.

A Clarification With Respect to the Requested Report on the Judiciary in Tunisia

The documents that were obtained for this report were not sufficient. Copies of the following were obtained:

1. Law No. 29 of 1967 and amendments thereto, which in some articles thereof deals with the judicial system (about 6 articles), the Supreme Judicial Council (its structure and powers in a few articles), and the special statute concerning judges which addresses their various affairs quite comprehensively.

2. A law that concerns the Audit Court and its powers.

3. A law that concerns the members of the Audit Court.

It was not possible to procure the necessary documents that deal with the various points requested in the report guidelines (most of the points, such as the judicial system, the courts and their jurisdiction, their relations with each other and their problems, etc.)

With respect to these points, we were only able to obtain a brief study entitled "A Brief Overview of Some of the Courts in Tunisia", as this is, in fact, the reality on the ground.

Based on the foregoing, we were not able to prepare one comprehensive report as per the guidelines. Logically, there was no way that such a report could not include a comprehensive study on the Audit Court, for example, in 4 or 5 pages, along with a brief idea of not more than ten lines about the Court of Appeals or one page on the Court of Cassation. As a result, we have prepared:

1. A full report on the Audit Court and the judges and members thereof with reference to the fact that they are subject to provisions specific to them and different from the Ordinary Judges Law.

2. A full report on the special statute concerning (ordinary) judges, including the Supreme Judicial Council and a general idea about the judicial system.

3. We have provided whatever was available in the way of brief studies on the courts entitled "A Brief Overview of the Courts" without making any changes to the substance thereof due to the lack of reference materials despite all our efforts to obtain some of them. We are fully prepared to complete whatever we can.

Note:

This report was prepared on the basis of the information that we were able to obtain from our correspondents or sources published in various media.

Therefore, we apologize if there is any incomplete or inaccurate information. We would hope that the reader can provide us with any piece of information that may complete or correct the content of this report or any part thereof.

Annex No. 1

Legal Texts Concerned with the Judiciary

Title of Legal Text	Type of Text	Text No.	Date
Constitution of the Tunisian Republic	Constitution	57	16/1/1959
The Court System, Supreme Judicial Council and Special Statute concerning Judges	Law	29	14/7/1967
Creation of the Center for Legal and Judicial Studies	Law	43	26/4/1993
Amendment to Law No. 29 Concerning the Court System, Supreme Judicial Council and Special Statute concerning Judges	Law	30	5/8/1967
Amendment to Law No. 29 Concerning the Court System, Supreme Judicial Council and Special Statute concerning Judges	Law	5	24/1/1969
Amendment to Law No. 29 Concerning the Court System, Supreme Judicial Council and Special Statute concerning Judges	Law	19	3/5/1971
Amendment to Law No. 29 Concerning the Court System, Supreme Judicial Council and Special Statute concerning Judges	Law	48	2/8/1973
Amendment to Law No. 29 Concerning the Court System, Supreme Judicial Council and Special Statute concerning Judges	Law	1	7/3/1977
Amendment to Law No. 29 Concerning the Court System, Supreme Judicial Council and Special Statute concerning Judges	Law	79	11/8/1985
Creation of the Center for Legal and Judicial Studies	Law	80	11/8/1985
Amendment to Law No. 29 Concerning the Court System, Supreme Judicial Council and Special Statute concerning Judges	Law	72	28/7/1986
Amendment to Law No. 29 Concerning the Court System, Supreme Judicial Council and Special Statute concerning Judges	Law	14	10/4/1987
Amendment to Law No. 29 Concerning the Court System, Supreme Judicial Council and Special Statute concerning Judges	Law	73	2/7/1988
Supreme Council	Law	48	15/1/1996
Judicial Assistance Law	Law	0052	3/6/2002
Honoraires des Huissiers de Justice	Decision	39	14/5/2002
Labor Law as amended	Law	29	21/2/1994
Criminal Procedure Code as amended	Law	43	17/4/2000
Special Statute concerning the Members of the Audit Court	Decree	6	9/26/1970

Annex No. 2 - Diagram of the Judicial Structure and Administration of Justice in the Tunisian Republic