

Organic Law n° 2013-43 dated 21 October 2013, relating to the national authority for the prevention of torture (1).

In the name of the People,
The National Constituent Assembly having adopted,
The President of the Republic enacts the following organic law:

TITLE ONE

General Provisions

Article one - Is created a public independent authority called "the national authority for the prevention of torture and other pains or cruel, inhuman or degrading treatments " endowed with the legal entity and the administrative and financial autonomy, having its headquarter in Tunis, designated in the organic law herein " the authority ".

Art. 2 - Within the meaning of the organic law herein, is meant by the following terms :

Deprivation of liberty : any form of detention or arrest or imprisonment or placement of a person, on the order of a jurisdictional or administrative authority or any other authority, or at its instigation, or with its express or tacit consent.

Places of detention: This term means any place placed or which can be placed under the jurisdiction of the Tunisian State or its control or established following its approval where persons found deprived of freedom on the order of a public authority or at its instigation, or with its express or tacit consent. Are considered places of detention notably :

- 1-The civil prisons,
- 2 -The rehabilitation centers of the minor delinquents,
- 3 – The shelter or observation centers of the minors,
- 4 – The care centers,
- 5 – The psychotherapy establishments,
- 6 –The accommodation centers for refugees and asylum seekers,
- 7 - The immigrant centers,
- 8 – The trusteeship centers,
- 9 – The transit zones in the airports and the ports,
- 10 – The discipline centers,
- 11 – The means used for the transport of the persons deprived of their liberty.

(1) Preparatory works :

Discussion and adoption by the national constituent assembly during its session held on 9 October 2013.

TITLE 2 Of the authority Chapter one

Missions and attributions of the authority

Art. 3 - The authority ensures essentially the following missions :

1- Conduct periodic and regular visits and other unexpected without notice and at any chosen time to the places of detention where are or may be found persons deprived of liberty,

2- Ensure the existence of specific protection of the persons with disabilities who are in the reception centers mentioned above in article 2 of the organic law herein,

3- Ensure the inexistence of the practice of torture and other pains or cruel, inhuman or degrading treatments in the detention places and control the compatibility of the conditions of detention and the execution of pain with the international standards of the human rights as well as the national legislation,

4 – Receive complaints and notifications concerning possible cases of torture and other pains or cruel, inhuman or degrading treatments in the detention places, ensure the investigation of these cases and transmit them, according to the case, to the relevant administrative or jurisdictional authorities,

5- Give its opinion concerning the texts of draft laws and regulations relating to the prevention of torture and the degrading treatments received from the relevant authorities,

6 - Give recommendations in order to prevent torture and contribute to the follow-up of their implementation,

7- Adopt, in coordination with the concerned parties, the general directives for the prevention of torture and other pains or cruel, inhuman or degrading treatment in the detention places as well as the mechanisms that may detect them,

8- Create a data base while ensuring the statistics and data-gathering in order to exploit them in the realization of the missions which are attributed to it,

9- Contribute to the spread of the social conscience against the risks of torture and other pains or cruel, inhuman or degrading treatments, and this, through public awareness campaigns, organize conferences and seminars, publish publications and guides, organize training courses as well as the supervision of the training programs belonging to its field of competence,

10- Carry out and publish research, studies and reports relating to the prevention of torture and degrading treatments as well as the support of other authorities to realize them,

11- Transmit its annual report to the President of the Republic, to the Head of Government and the President of the Assembly in charge of legislative authority as well as its publication in the Web site and the Official Gazette of the Republic of Tunisia.

Art. 4 - Within the framework of the exercise of its functions, the authority is entitled to:

1- Obtain all the possible and essential administrative facilitations,

2 - Access to all the information relating to the detention places, their numbers and their sites as well as the number of the persons deprived of liberty,

3 - Access to all the information relating to the treatment of the persons deprived of liberty as well their detention conditions,

4 - Access to all the detention places, their installations and equipment,

5 - Proceed to interviews in private with the persons deprived of liberty or any other person who may provide information, without the presence of witnesses either on a purely personal basis or, if necessary, by the intermediary of a sworn interpreter.

Chapter 2

Of the composition of the authority

Art. 5 - The authority is composed of sixteen (16) members as follows :

- Six (6) members representing the organizations and associations of the civil society concerned with the defense of the human rights,

- Two (2) university professors specialized in the social field,

- One (01) member specialist in the child protection,

- Two (2) members representing the lawyers sector,

- Three (3) members representing the doctors, one of whom shall be obligatorily a psychiatrist,

- Two (2) retired judges.

Art. 6 - The required conditions for the candidature to the authority are the following:

1- To have Tunisian nationality,

2- To be 25 years old at least,

3- To be honest, independent and impartial,

4- Not to be condemned for bankruptcy by a final judgment or revoked or erased of his functions for an unspecified reason contrary to honor,

5- Not to be member at the assembly in charge of the legislative authority during the mandate in which the candidature was presented,

6- Do not have assumed any responsibility within the dissolved party of the constitutional democratic rally, neither have called the deposed president of the Republic to stand as a candidate for a new presidential mandate, neither have assumed a responsibility within the Government, nor have served the post of a governor or secretary general of

governorate or delegate during the Government of the deposed president.

Art. 7 - The plenary session of the assembly in charge of the legislative authorities chooses the members of the authority among the candidatures submitted to the specialized commission within the above mentioned assembly in accordance with the following methods and procedures :

- Six (6) members among eighteen (18) candidates chosen by the commission among the candidates who assumed responsibility during two years at least within the organizations and associations which defend the humans rights,

- Two (2) members among six (6) candidates chosen by the commission among the academics specialized in the social field,

- One (1) member among three (3) candidates chosen by the commission among the specialists in the child protection field,

- Two (2) retired judges among six (6) judges candidates chosen by the commission,

- Two (2) lawyers among six (6) lawyers chosen by the commission among the candidates who are not members in the professional order,

- Three (3) doctors one of them (1) shall be obligatorily a psychiatrist among nine (9) doctors chosen by the commission whom three (3) of them shall be obligatorily psychiatrists.

The candidature for the authority is opened by decision of the chairman of the Commission within the assembly in charge of the legislative authority, published in the Official Gazette of the Republic of Tunisia, fixing the deadline and the methods of deposit of the candidatures as well as the conditions to fill.

The commission chooses the candidates in the majority of three-fifth $\frac{3}{5}$ of its members.

The chairman of the commission transmits to the plenary session of the assembly in charge of the legislative authority a list including the names of the candidates classified in alphabetical order on the basis of parity in the selection in accordance with the provisions of the article herein, in order to choose the members of the authority in the majority of the members by uninominal secret vote.

The candidates having obtained the greatest number of votes are selected according to their classification. In the event of equality of votes, the oldest shall be retained.

The office plurality of mandates at the authority and the exercise of a responsibility within a political party or at the assembly in charge of the legislative authority are not allowed.

Is dismissed from his post, any member who proceeded to present erroneous data.

Art. 8 - The elected members meet in first session which shall be chaired by the oldest member to choose the chairman of the authority among them by consensus, and failing this by election, in the absolute majority of the

members and in the event of a tie the oldest member is selected.

Art. 9 - The chairman and members of the authority are appointed by decree for a six (6) years nonrenewable mandate.

Before the performance of their functions, the chairman and members take the following oath in front of the Head of Government: "I swear by God the almighty to achieve my functions with loyalty, honor and independence and to preserve the professional secrecy".

Art. 10 - The renewal of the authority composition is done by half every three (03) years.

The chairman of the authority notifies to the assembly in charge of the legislative authority the list of the members concerned with the renewal and the date of the end of their mandate, and this, three months before the expiry of their mandate.

The members whose mandate is expired continue to exercise their functions within the authority until the taking up of duties of the new members.

Chapter 3

Of the guarantees of the good course of works of the authority

Art. 11 – The members of the authority are considered as being an administrative authority. However, any aggression against one of them is punishable in accordance with the provisions of article 82 of the penal code.

Art. 12 - The members of the authority enjoy immunity.

Neither the chairman nor any member of the authority may be continued or arrested because of opinions or acts referring to the performance of their functions even after the expiry of their mandate.

Neither the chairman nor any member of the authority may be continued or arrested for crime or offence, as long as the authority would not have raised the immunity which covers them in the majority of its members.

However, in the event of obvious offence, it may proceed to his arrest. The authority is informed without delay. Detention is suspended if the authority requires it.

Immunity is lifted following a special deliberation of the authority after the convocation of the interested party to attend his hearing, and this, on the basis of emanating request of the judicial authority accompanied by the case file.

Art. 13 - The concerned authorities cannot make objection to a periodic or unexpected visit of a given place only for pressing and compelling reasons related to the national defense, public security, natural disasters or serious disorders in the place to be visited, which temporarily prevent that the visit takes place, and this, via a justified written decision which shall be immediately transmitted to the chairman of the authority while mentioning obligatorily the duration of the temporary ban.

Any person who transgresses the provisions of the preceding subparagraph of the article herein is liable to the disciplinary proceedings.

Art. 14 - While respecting the legislation relating to the personal data protection, no person may be continued to have communicated information or to have revealed secrets referring to the exercise of torture or inform of its author.

TITLE 3

The operation of the authority

Chapter one

Of resources

Art. 15 - The financial resources of the authority consist of annual funds imputed to the State budget.

The rules of scheduling and keeping the accounts of the authority are not subjected to the public accounts code.

The authority appoints an auditor for a period of four (04) years nonrenewable, selected among the accountants registered in the order of accountants of Tunisia.

The financial accounts of the authority are subjected to the posteriori control of the court of accounts.

Chapter two

Of the attributions of the chairman of the authority

Art. 16 - The chairman of the authority takes care of the course of its works, ensures the chairing of its meetings, represents it at the thirds, safeguards its documents and he is its director.

Within the framework of attributions which are entrusted to him, he exercises the following prerogatives:

1- The administrative and financial supervision of the authority as well as its agents,

2- Supervise the elaboration of the project of the annual budget,

3- Supervise the elaboration of the annual report of the authority,

Based on the deliberation of the council, the chairman of the authority may ask the relevant authorities the taking of adequate protective procedures during a serious violation of the laws and regulations in force in the field of human rights.

The chairman may also delegate, in writing, some of his attributions to his vice chairman or a member of the authority.

Chapter 3

Of the attributions of the authority

Art. 17 - The authority exercises the following prerogatives:

1- Choose a secretary general of the authority among its members who is responsible for reporting its deliberations,

2- Choose a vice chairman of the authority among its members in order to supplement the chairman in the event of prevention or absence by consensus, and failing this, by an absolute majority vote,

3- Present opinions concerning the projects of texts of laws and regulations relating to the authority activities,

4- Set the organization chart of the authority in accordance with the provisions of article 22 of the organic law herein,

5- Approve the authority budget,

6- Approve the internal regulations of the authority,

7- Approve the annual report of the authority.

Chapter 4

Of the course of the authority

Art.18 - The authority meets following a convocation by its chairman or one third (1/3) of its members at least, and this, once a month and whenever needed.

The meetings of the authority are chaired by its chairman or his vice chairman. The chairman may invite any person whose presence at the meetings of the authority is deemed useful having regard to his competence that relates to the issues presented on the agenda, and this, without taking part in the vote.

The chairman of the authority fixes the agenda of the meetings.

The deliberations of the authority proceed in closed session in the presence of half of its members at least.

In the absence of the quorum during the first meeting, the chairman convenes for a second meeting within a limit of one week, and in this case, its proceeding is valid whatever the number of the present members.

The authority makes its decisions by consensus, and failing this, by vote of the majority of the present members and in case of tied votes, that of the president is the casting.

Art. 19 - The chairman of the authority as well as its members cannot take part in its deliberations in a question which concerns a person having with one of them an interest or a family ties or alliance until the fourth degree.

The chairman of the authority as well as its members are required to state, at any time, any conflict of interests or any case where they do not meet a condition or more conditions required to be member in the authority as provided for in the organic law herein.

Any natural person or legal entity having interest may present a challenge against the chairman of the authority or its members, and this, in a justified writing which shall be addressed to the authority.

Art. 20 - The assembly in charge of the legislative authority fills the vacancies due to death, resignation, revocation or absolute prevention following the request of the chairman of the authority or half of its members at least, in accordance with the procedures provided for in the organic law herein.

The authority notes the case of vacancy which should not exceed three months and consigns it in special minutes which shall be transmitted to the president of the assembly in charge of the legislative authorities.

Chapter 5

Various Provisions

Art. 21 - The allowances and privileges of the chairman of the authority as well as those of its members who exercise their functions in full-time are fixed by decree which shall be published in the Official Gazette of the Republic of Tunisia.

The chairman and the secretary general of the authority are obligatorily required to exercise their functions full-time.

Art. 22 - The particular status of the agents of the authority is fixed by decree. This status may derogate from some provisions of the law n° 83-112 dated 12 December 1983 relating to the general status of the personnel of the State, local authorities and public establishments of administrative nature which are not appropriate for the functions nature of the agents of the authority.

The organization chart of the authority is approved by decree.

Art. 23 - Any member of the authority is required to safeguard the professional secrecy in all that is brought to his attention of the documents or data or information concerning the affairs of the authority. Likewise, it is required not to exploit this information at ends other than those required by the attributions which are entrusted to him, even after the expiry of his functions.

Art. 24 - Is repealed the subparagraph 4 new added to article 5 of the penal procedure code as provided for in article 3 of decree-law n° 2011-106 dated 22 October 2011 and replaced by the following provisions:

The public action referring to crimes of torture is imprescriptible.

Art. 25 - Under the terms of the organic law herein, the National Constituent Assembly ratifies the decree-law n° 2011-5 dated 19 February 2011, approving the accession of the Republic of Tunisia to the optional protocol referring to the convention against torture and other cruel, inhuman or degrading.

TITLE 4

Transitional provisions

Art. 26 - Contrary to the provisions of article 10 of the organic law herein, half of the authority is renewed during the first mandate and at the end of the third year of this mandate, and this, by drawing lots in accordance with the method and the conditions provided for in the organic law herein.

The chairman of the authority is not concerned with the renewal by half.

Art. 27 - The commission of the rights, freedoms and the foreign relations within the Constituent National Assembly is regarded as being the Committee within the meaning of the provisions of article 7 of this organic law. The present organic law shall be published in the Official Gazette of the Republic of Tunisia and carried out as a law of the State.

Tunis, 23 October 2013.

The President of the Republic
Mohamed Moncef Marzougui