

## **O. Tunisia**

### **1. Background**

Tunisia is in a transitional phase towards democracy. One of the most important moments on this path was the election of a constitutional assembly on 23 October 2011. The main task of this assembly is drafting a new constitution. The constitutional assembly (*Assemblée Constituante/Constituent Assembly*) plays a key role in creating a new political order in Tunisia. There are a number of themes that dominate the lively public debate on the constitution. One of which is the fundamental decision on the political system. Because the autocratic regime of Ben Ali was formally conceived as a presidential system, sceptical and dismissive attitudes dominate the discussion on this model. Interest is therefore directed towards the parliamentary systems of Germany, Spain, Italy and Portugal. The structure of the new state is also unclear, with the matter of the structure of parliament being a key part of the discussion. Additional questions include the matter of decentralisation, the role of the army and security services in constitutional structures and the role of Sharia in the state system, which is currently an issue in all Arab transition processes.

### **2. Projects**

In the context of the aforementioned issues, the Tunisia Team is carrying out support measures in Tunisia. In September 2011, staff from the Global Knowledge Transfer working group visited Tunisia to collect information regarding the constitutional situation in the country and to hold discussions with people connected to the constitutional process. Further discussions were held in Tunis in March 2012, and the Max Planck team was received by the president of the Constituent Assembly who promised to support the project activities planned by the working group. In the context of this visit, the group agreed upon close cooperation with the *Association Tunésienne de Droit Constitutionnel* (Tunisian Association of Constitutional Law).

The aim of the project is, first and foremost, to educate the members of the Constituent Assembly on important constitutional topics and raise awareness about the far-reaching decisions they will make when developing the new constitution. However, the project also aims to consolidate the principles of democracy, rule of law, human rights and compliance with international law in the emerging state institutions. Thus, a positive contribution to Tunisia's transition into a democratic constitutional state should be made.

The working group's legal expertise in matters of comparative constitutional law in particular will be made available to the new Tunisian Assemblée Constituante in various forms. Legal support will take the form of conferences, seminars and study visits for Tunisian lawyers and members of the Assemblée Constituante.

One of the working group's conferences took place from 4 to 6 June in Tunis. The participants and target group were members of the Assemblée Constituante. International experts gave presentations on matters related to state structure during the three-day event. Here, particular importance was attached to a comparative perspective, which illustrated the various options of state formation to the members of the Assemblée Constituante. The conference was carried out in cooperation with the *Association Tunésienne de Droit Constitutionnel*, which also provided its own experts.

Additional seminars in Tunis deal with issues related to the development of new constitutional norms e.g. system of government, decentralisation, federalism and the role of the military in a democratic state. Furthermore, consultation visits to Germany by Tunisian participants and visits to Tunisia from German and international experts form part of the project. At these visits, specific legal questions can be covered by small groups of experts, such as individual matters of constitutional law, electoral law, parliamentary law or the regulation of the inner workings of individual constitutional bodies using laws or rules of procedure.

The Tunisia Team implements the seminars and study visits together with the *Association Tunésienne de Droit Constitutionnel* (administratively rooted

in the Université Tunis II). The Association was asked by many party leaders to organise further training and requested the MPI for this. The Association has an excellent reputation for the scope and level of its research work and has many years of experience of international cooperation in constitutional development. Moreover, it builds bridges with other important players such as the *Académie Internationale de Droit Constitutionnel*.

Furthermore, the Tunisia Team remains in close contact with other influential lawyers and the information exchange with them helps the Max Planck researchers form a comprehensive picture of the constitutional developments. The necessary advice can only partially be given by Tunisian lawyers, though; a broader approach based on comparative law is both necessary and desirable. Designated constitutional experts from other Arab countries, as well as international experts from countries such as France, Switzerland and Germany took part in the conference.

### **3. Further planning**

The project is part of a regional strategy that includes the “Constitutional Reform in Arab Countries” project and other national projects and aims to promote the constitutional dialogue in the region.

Because of its importance as the most successful and stable transition country to date, project staff will continue to deal with Tunisia after the end of 2012. Decisions regarding topics and approaches will be made in autumn 2012.

### **4. Academic works and publications**

Project worker Omar Hamady wrote the following article:

- The Process of Legal Transformation in Tunisia, in H. Elliesie and T. Marauhn, *Legal Transformation in Northern Africa and South Sudan*, 2013 (forthcoming).