

AFRICAN UNION		UNION AFRICAINE
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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

Application No. 061/2019

Alyssa

(Applicant)

v.

The Republic of Tunisia

(Respondent State)

Summary of the Application

I. The Parties

1. On 16 October 2019, Counsel (hereinafter referred to as the Applicant) filed an application before the African Court on Human and Peoples' Rights (hereinafter "the Court") against the Republic of Tunisia (hereinafter "the Respondent State").

II. Subject of the Application

A. Facts of the Matter

2. It emerges from the initial application that on 8 November 2014, the Applicant, who requested authorization of anonymity from the Court, to not be disclose her name to the public for reasons stated in the application and to be referred to as "Alyssa" in publicly available documents. She met in Tunis with one Hannibal (pseudonym). They travelled by Hannibal's car to an apartment in Hammamet. On arrival at their destination, the said Hannibal dropped the Applicant at his apartment and left for a conference that had brought him to Tunisia. Returning rather late after the conference, Hannibal proposed to spend the night on the couch in the living room while the Applicant to stay in the bedroom, which was done. However, the Applicant's ex-husband, who had been trailing them since they left Tunis, alerted the police as soon as Hannibal returned to the apartment at night. Following the authorization of the Public Prosecutor of the Court of Grombalia, the police officers raided the apartment. They found no incriminating situation; both the Applicant and Hannibal were clothed and in separate rooms. Nevertheless, they were taken to the police station.
3. At the police station, both the Applicant and Hannibal were forced to undress under threat of violence. Police recorded the seizure of the under wears of the suspects. A specialist physician was appointed to examine the Applicant to determine whether she had recently engaged in sexual intercourse. The Head of the Forensic Laboratory of the Criminal Police authorized an officer to collect samples from Hannibal's underwear as well as from the Applicant, in order to test for semen.

Despite the absence of incriminating evidence, the Applicant was detained on 9 November 2014 with several procedural irregularities, and her detention was unlawfully extended even though a medical report failed to establish adultery.

4. On 12 November 2014, the Public Prosecutor of Grombalia opened a judicial investigation against the Applicant and Hannibal for adultery (Case No. 30943/41070) and transferred the Investigation Report No. 185. On the same day, Mr. Burhan Aziz, the 4th Investigating Judge of Grombalia Court, issued a judicial commission to the Hammamet Judicial Police without hearing the suspects, authorizing their continued detention. On 17 November 2014, the Investigating Judge summoned the appointed physician, Dr. Khaled Ben Bechir, who testified that even if the Applicant had been examined on 8 November 2014, it would not have been possible to establish sexual intercourse if a condom had been used or no ejaculation occurred.
5. On 18 November 2014, the Investigating Judge interrogated the Applicant in the presence of her lawyer. Without prior disclosure to the Applicant or her counsel, the judge relied on forensic results (Report No. 521/BIO dated 14 November 2014 from the Ministry of Interior's Sub-Directorate of Criminal and Scientific Laboratories), which concluded that semen traces consistent with Hannibal's genetic profile were found.
6. At the end of the interrogation, a detention order was issued against the Applicant, committing her to Manouba Civil Prison. On 19 November 2014, the Fourth Investigating Chamber of Grombalia Court concluded the investigation in the case No.30943/4, indicting the Applicant and Hannibal under Article 236 of the Tunisian Penal Code for adultery, and referred them in detention to the Criminal Chamber of Grombalia Court. On 9 December 2014, under Case No. 8210, the Criminal Chamber delivered a judgment convicting both accused, sentencing each to seven months' imprisonment, ordering them to jointly pay the civil claimant TND 5,000 for moral damages and TND 300 for legal costs, and upholding seizure of evidence. On appeal, on 19 January 2015, the Nabeul Court of Appeal upheld the judgment. The Applicant was released on 15 March 2015.

7. To prove her innocence and seek redress after her release, on 10 April 2015 the Applicant lodged a complaint (Case No. 7019636/15) with the Public Prosecutor of Tunis against the two officials who had signed the forensic report No. 152. However, she has never been summoned for hearing since that date -10 April 2015- preventing her from establishing her innocence and protecting her rights. The adultery conviction adversely affected her divorce proceedings, deprived her of custody of her children, damaged her professional and social life, and ultimately forced her to emigrate from Tunisia.

Nature of the Application

8. The application seeks recognition and declaration of human rights violations suffered by the Applicant, reparation for the damage sustained, restitution with regard to the criminal proceedings that violated her rights, and a call upon the Republic of Tunisia to take the necessary legislative and executive measures of non-repetition.

B. Alleged Violations:

1. **Right to equality before the law** – under Article 3(1) of the African Charter and Article 21(1) of the Tunisian Constitution. The Applicant was subjected to exceptional procedures both during investigation and trial. Article 236 of the Penal Code, which vaguely criminalizes adultery without clear definition, creates legal uncertainty and unequal treatment, particularly as prosecution is granted exclusively to the aggrieved spouse.
2. **Right to equal protection of the law** – under Article 3(2) of the African Charter and Article 7 of the Universal Declaration of Human Rights (UDHR), also enshrined in Article 21(2) of the Tunisian Constitution. The investigation was conducted solely with a view to incrimination, ignoring legal guarantees of protection, particularly concerning unlawful detention and tampered forensic evidence.

3. **Right to physical integrity** – under Article 4 of the Charter, Articles 7 and 9(1)-(2) of the International Covenant on Civil and Political Rights (ICCPR), and Article 23 of the Tunisian Constitution. This was violated when the Applicant and Hannibal were forced to undress under threat.
4. **Right to liberty** – under Article 6 of the Charter, Article 3 UDHR, and Article 9 ICCPR, and Article 29 of the Tunisian Constitution. The Applicant's detention was unlawful and lacked legal basis or incriminating evidence.
5. **Right to a fair trial** – under Article 27 of the Tunisian Constitution, encompassing the right to access to justice, presumption of innocence, defense rights, trial within a reasonable time, and the principle of legality of offences.
6. **Right to end a marital relationship** – under Article 12 UDHR and Articles 21 and 24 of the Tunisian Constitution.

III. PRAYERS OF THE APPLICANT

- A declaration that the alleged human rights violations occurred and are well-founded.
- **Order the Respondent State to pay pecuniary and non-pecuniary damages.**
- **To order the Respondent State to initiate judicial proceedings for restitution in accordance with national legal procedures.**
- **Order the Respondent State to take measures to guarantee non-repetition.**