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Co-operation between the EU and the Mediterranean referring to  
Tunisia

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**Which instruments can the EU use to influence the freedom of  
expression and the transparency of the public administration in  
Tunisia?**

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## 0. Summary

“This Europe is the one in which I believe, the one of which I am proud, the one where I belong. I hope you as Europeans can share this vision, and I call on our partners in developing countries to keep up the common effort, for the common good.”<sup>1</sup>

The role of the European Union has become more important in the last years. With the enlargements in 2004 and 2007, its tasks and responsibilities have become also more and thus, the challenges and obstacles in front of the Member States have doubled. But the European Union has been developing and has achieved a lot since 1992. The numerous declarations, regulations, agreements and soon, the European Constitution, which the Union signed and ratified, are a clear proof for that, they represent the instruments through which the EU handle internally and externally, with third countries.

Nowadays, development policy is at the heart of the EU’s relations with all developing countries, like Tunisia. The development cooperation is a shared competence between the European Community and the Member States.<sup>2</sup> Although the development policy is from great importance for the European Union, the prime responsibility for their own development remains by the developing countries themselves. The EU is the most important economic and trade partner for developing countries. This is also the case with Tunisia, which is one of the most developed African countries, at least economically, because there are still many problems in the area of human rights protection, especially the lack of freedom of expression and transparency in the public administration of the country. Respect for human rights is one of the main aspects of sustainable development and the right of freedom of opinion is obligatory for every state, which considers itself for democratic.

Officially, there is no lack of freedom of expression in Tunisia, because the government controls the main information providers, therefore, internally, in the country, there can not be find any political critics towards the President or the authorities and in the press, every article has been proved and read before publishing. The most journalists in Tunisia developed a self-censorship, because they are aware of the consequences which could come after a critical article about the government. In the constitution of Tunisia, there are

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<sup>1</sup> Louis, Michel, European Commissioner for Development and Humanitarian Aid, in: The European Consensus on Development, June 2006, available at:  
[http://ec.europa.eu/development/body/publications/docs/consensus\\_en\\_total.pdf](http://ec.europa.eu/development/body/publications/docs/consensus_en_total.pdf)

<sup>2</sup> Community development cooperation is based on Articles 177 to 181 of the Treaty of the European Community.

articles, which are supposed to guarantee the right of freedom of expression, but in practice, the government does not respect them.

Tunisia is also a Member of the United Nations and in the last 5 years its role in the security area and in the fight against the international terrorism has become very important. But, although it has signed the Charter of the United Nations and the Universal Declaration of Human Rights, where the freedom of expression is central, the facts show that it continues not to respect this fundamental right. Tunisia has very good diplomatic relations in the UN and peace and security are central for its policy, but one should not neglect the lack of freedom of opinion in the country, because it is crucial for the transparency of the public administration in the country and thus, for a real democratic governance.

The EU is the most important trade partner of Tunisia, and Tunisia is also the first Mediterranean country, which signed an Association Agreement with the Union. Their relations are very good, especially between Tunisia and the South EU-Member countries, like Italy, Spain and Portugal. There exists an intensive political dialogue between the EU and Tunisia and it is an important way in which to further development objectives, like respect for human rights, democratic principles and the rule of law. For achieving these goals, the EU supports the broad participation of the civil society through trade unions, NGOs and other non-state actors. The Union has developed different kinds of financial instruments, like the MEDA I and II Programs, EIDHR and recently the ENPI, which could be very helpful for realizing these projects, but this can not happen without the participation and agreement of the government and it is the actor, that hinders all these projects and blocks the funds of the European Commission for non-governmental organizations.

The human rights topic has become very important for the EU in the last decade. Therefore, there is almost in every regulation and agreement a human rights clause, which guarantees the respect of fundamental rights like the freedom of expression. Such clauses exist in the Association Agreement between the Union and Tunisia, in the Barcelona Declaration, in the legal basis of the European Neighborhood Policy and in the regulation of every financial instrument of the EU. Despite that, there are still many facts that prove the lack of freedom of expression and transparency in the public administration of Tunisia.

The European Union is on his way to “promote democracy, human rights, good governance and respect for international law, with special attention govern to transparency and anti-corruption. The Commission’s experience on democracy promotion, human rights

and nation-building is positive and will be further developed”<sup>3</sup>, which is exactly what Tunisia needs. But whether the instruments that the EU has to influence the freedom of expression in Tunisia and the transparency of the public administration in the country, are effective enough and which are the reasons for that, remains a question which is about to be answered until the end of this thesis.

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<sup>3</sup> European Commission: The European Consensus on Development, DE 129, June 2006

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## List of acronyms / abbreviations

- AAs – Association Agreements
- CBC – Cross-Border Cooperation
- CNLT - National Court for Freedom of Tunisia
- CSPs – Country Strategy Papers
- EC – European Commission
- EIDHR – European Initiative for Democracy and Human Rights
- ENP – European Neighborhood Policy
- ENPI – European Neighborhood and Partnership Instrument
- EU - European Union
- EMP – Euro-Mediterranean Partnership
- FEMIP – Facility for Euro-Mediterranean Investment and Partnership
- HRinfo – Arabic Network for Human Rights Information
- ICCPR – International Covenant on Civil and Political Rights
- IFEX – International Freedom of Expression Exchange
- IPI - International Press Institute
- LTDH – Tunisian Human Rights League
- Maghreb – a common word for the five northern African countries: Morocco, Algeria, Tunisia, Egypt and Libya.
- MDP – MEDA Democracy Programme
- NGO – Non-governmental organisation
- TEU – Treaty of the European Union
- TMG - Tunisia Monitoring Group
- U.N – United Nations
- WSIS – World Summit on the Information Society

## Acknowledgements / preface

I am happy and very thankful first to the University of Twente, the Netherlands, that it gave me the opportunity to do a field study in a country, fully different from Western Europe. It is from great importance for me to express my sincere thankfulness to all my professors and supervisors (especially to Prof. Ramses Wessel and to Dr. Peter Hofman) for their support during the researching and writing of my BA-thesis.

I would like also to thank the whole staff of the Embassy of Bulgaria in Tunis, Tunisia, who accepted me like one of them and gave me the opportunity to work together with them and to learn much for the work in the international relations sphere. I had the time, that I needed to do my research and nobody was against it, they were always ready to help me and give me more information for my research. At the beginning it was really difficult to find the right information, which I needed because protection of human rights in Tunisia is a very sensitive subject and nobody wants to speak openly about it.

Fortunately, I had the opportunity to meet with diplomats and representatives from other embassies and organizations in Tunis. Here is also the right place to express my honest thankfulness to the representatives and diplomats from the Embassies of Germany, The Netherlands and Great Britain, who supported me with materials during my research and who were so kind to agree to speak with me about the relations between the EU and Tunisia and their future. I should thank also the Delegation of the European Commission in Tunis, whose experts in the area of the human rights were also accepted to help me. The conversations with all these people gave me a whole new impression of the situation in Tunisia, referring to the human rights, because the press in Tunisia is under a strong control of the government and of the President himself and you never know, if that what you read, is the authentic truth or only a part of it, which the President wants to be read from the people.

And last but not least, I would like to thank also all the people outside the embassies and the organizations, who showed me other aspects of the Tunisian life, different from the political ones.

The thesis is structured clearly and is easy to be understood. I would be happy, if everybody who reads it receives at least some idea of the real human rights' situation in Tunisia referring to the freedom of expression and the possible instruments that the European Union can use to influence it positively in order to achieve more transparency of the public administration in the country.

## 1. Introduction

### **Problem definition**

“Freedom of speech and expression means nothing to a largely illiterate and ignorant society and similarly, the right to life has no relevance to a man who has no means to livelihood.”<sup>4</sup> But Tunisia is not like the most African countries; even many would say that it is more European, than African already. Freedom of speech and expression in this country are urgent issues, which the people need in order to develop themselves further.

When somebody thinks of the North African country Tunisia, a few things come into mind: desert, sun and camels. This is a very nice vision of this country, which is much more than those views that probably most people have. Tunisia is a country rich in culture, tradition and trade. It is a constitutional republic, dominated by a single political party, the Democratic Constitutional Rally (RCD). The chairmanship of the country belongs to the president Zine El Abidine Ben Ali since 1987, after winning the last elections in 2004, as he won 94% of the votes. A second legislative body, the Chamber of Advisors was created in 2002 after a referendum amending the constitution. The government continued to demonstrate respect for the religious freedom of minorities, as well as the human rights of women and children. Tunisia is one of the most developed countries in Africa, not only referring the economical situation, but also referring the respect for human rights, especially of the women. In many aspects it can not be compared to its neighbors, like Libya or Algeria for example, where the rights of the women are far away from the European visions. However, there are still some human rights problems remaining, such as the torture and abuse of political prisoners, policy impunity and infringement of citizens’ privacy rights and restrictions of speech, press, assembly and association.

The freedom of expression and opinion is one of the main human rights at all and also one of the main signs of real and fair democracy, which already exists in the most of the European countries. It is mentioned in the Preamble and stated in Art.19 of the Universal Declaration of Human Rights adopted on 10 December 1948, which Tunisia also had signed as a Member of the U.N.<sup>5</sup> The right of freedom of opinion is stated also in Art.8 of the Tunisian constitution,

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<sup>4</sup> Falana, Femi, quoted in Babatunde Ojudu, “Nigeria”: Morning yet on Human Rights Day”, *African Concord* (June 9, 1987), pp. 6-7

<sup>5</sup> Article 19:

Everybody has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

insuring more transparency in a country, which pretends to be democratic, like Tunisia.<sup>6</sup> Nevertheless, the government's human rights record remained poor and consequently, the government persisted in committing numerous human rights abuses, without respecting some of the rules, written in the constitution of Tunisia.

The freedom of Tunisia's media is the focus of much attention nowadays, because there are numerous cases in the last years of imprisonment of journalists, lawyers or advocates, who said, wrote or mentioned some critics against the President of the country or the leaders in the government. The law provides for freedom of speech and expression in the media "exercised within the conditions defined by the law", however, the government often does not respect all these rights. There have been many cases by which closely monitored press activity and controlled the articles, which were about to be published. The government also pressured journalists and the media in a variety of ways such as control over licensing, journalist accreditation and directing the placement of government advertising. There is a big control also over the internet media and many internet sites have been censored or even prohibited by the government and the access to these sites is impossible in the country.

The European Union (EU) has been among the first of any Western state or international organization to write human rights, democracy and the rule of law into its agreements with external partners. Democracy promotion has become a centerpiece of the EU's foreign policy and it is backed up by considerable financial and personal resources.<sup>7</sup> "The ambition of Europe in the Mediterranean is to turn its former power into positive influence, to help build trust among all countries, to share our experience of consolidating peace through economic cooperation. These are the same instruments that shaped the European continent."<sup>8</sup> Therefore, it can be assumed that the influence of the EU on the Mediterranean region could be significant in many areas. Tunisia is getting closer to the European Union and its principles, and this can lead to a quicker and better development of the country towards the general democratization norms, especially the freedom of expression. The Union possesses already some instruments through which it is possible to make a difference in the internal and external regulations and visions of Tunisia.

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<sup>6</sup> Art. 8 (Expression, Unions)

(1) The liberties of opinion, expression, the press publication, assembly, and association are guaranteed and exercised within the conditions defined by the law. (...)

<sup>7</sup> See: Boerzel, Tanja/ Risse, Thomas: One Size fits All! EU policies for the Promotion of Human Rights, Democracy and the Rule of Law, 30.09.2004, p. 3

<sup>8</sup> Papandreou, George/ Patten, Chris: We Will Not Astonish You, available at: [www.haaretz.com/hasen/pages](http://www.haaretz.com/hasen/pages), 2003, p 2

### **Main research question**

The main task of the thesis is to show the instruments through which the EU can influence the freedom of expression in Tunisia and their effectiveness and thus, to be achieved more transparency in the public administration in the country. It can be said that the European Union has stable foreign policy towards the Mediterranean and its efforts to stabilize and reach a respectful human rights atmosphere in the region are obvious. Tunisia has very strong relations with the EU, mostly economically, because the EU is the strongest trade partner of Tunisia and therefore there is a significant European presence in Tunisia. The EU strategy centers on the Euro-Mediterranean partnership launched in Barcelona in November 1995, which brings together the EU and twelve non-EU partners, inclusively Tunisia. The Barcelona declaration and the EU-Tunisia Association Agreement play a significant role in the bilateral relations between Tunisia and the Union and serve as a basis for further deepening of their joint interests and co-operation. Later has been developed also the European Neighborhood Policy and an action plan for the future steps in the Euro-Mediterranean relations. After discussing the most important issues of the thesis it must become clear not only which are the instruments of the EU in order to be able to influence the freedom of expression and the transparency of the public administration in Tunisia, but it should be answered of the main research question, which is: how effective these instruments in relation to Tunisia are, and which are the main explanations for this?

The conclusions made at the end of this report are a logical consequence of the facts which are going to be described. The freedom of expression in Tunisia is very limited. The Western World plays a very important rule in the development of Tunisia, but are the instruments of the EU really influential enough to make a difference in such a sensitive sphere like the freedom of expression and the transparency of the public administration of a country like Tunisia and why?

### **1.3. Methodology**

In this thesis it will be presented the real human rights situation in Tunisia and with the help of some main examples and cases, like the ones already mentioned above, will be discovered the possibility for the European Union through different instruments to influence this situation and to make the public administration in the country more liberal, transparent, democratic and fair for the nation. Some empirical and desk research have been made locally and internationally to prove all statements and conclusions, which are about to be done at the end of the thesis. The position of representatives in Tunisia of some of the leading countries in

the European Union like Germany (The country which had the Presidency at this moment until June 2007), Great Britain and the Netherlands (Leading countries in EU) and the Delegation of the European Commission in Tunis, Tunisia, will present the policy of the EU towards the problem of the freedom of expression and lack of transparency in Tunisia. It will be helpful to make some comparisons with neighbor and western countries in order to determine where exactly Tunisia stays nowadays. But the main emphasis remains by the desk research and the empirical part of the research (interviews, observations, visiting of different kinds of organizations and conferences etc.).

The main research question will be answered through four sub-questions, referring to different instruments, which can influence the freedom of expression in the country and to their effectiveness. What is the human rights situation, referring specially to the freedom of expression, in Tunisia formally and in practice and which are the national human rights instruments is the first sub-question. Thus, it will be formed a good basis to go further, from the national to the European instruments and to see whether they are compatible with each other, in order later to be able to see why the instruments of the EU are effective or are not. What kind of human rights policy has the EU in its international relations and what are its main instruments is the second sub-question. It is important to have a short look on the overall human rights' policy of the EU, that later the special instruments, used towards Tunisia could be better understood and evaluated. The third and fourth sub-questions are related to the question: What type of policies and instruments related to EU principles and human rights are utilized in its relations to Tunisia? All sub-questions refer specially to the lack of freedom of expression and transparency in Tunisia.

It is important to show the interconnection between all these sub-questions and how they complete each other in order to give an answer of the main research question at the end of the thesis. The national Tunisian and European human rights regulations regarding the freedom of expression are a basis for the further research about the influence of the bilateral agreements between EU and Tunisia, like the Association Agreement, Euro-Mediterranean Partnership and European Neighborhood Policy.

After answering all the sub-questions and describing the main instruments, which the Union can use in order to influence the political situation in Tunisia positively, it would be possible to answer also the main research question: how effective are these instruments and which are the main explanations for this?

## 2. The Tunisian Constitution, Judiciary and U.N. Relations

In order to be able to see whether the instruments, which the EU possesses for influencing the freedom of expression and transparency in Tunisia, are effective or not, one should first know the national instruments in this area. What is the human rights situation in Tunisia referring to the freedom of expression and transparency of the public administration of the country formally and in practice, is the question, which at the end of this chapter should become clear.

### **2.1. Lack of freedom of opinion and transparency in the public administration**

The Constitution of Tunisia provides freedom of expression, but in certain limits. Article 8 says: “The liberties of opinion, expression, the press, publication, assembly, and association are guaranteed and exercised within the conditions defined by the law.” Nevertheless, there are numerous cases and examples which show that it is very arguable whether the Tunisian Government is actually acting according to the Constitution.

After the enlargement in 2007 the European Union has already 27 member countries. Its role on the world scene has become even more important and crucial. The relations between the EU and Tunisia are strong and it looks like that Tunisia is orientated more in the direction of the European Union as in Africa and its neighbor countries from Maghreb.

Thanks to the economic reform program undertaken since 1986 with the support of the European Commission, the World Bank and the International Monetary Fund, good results have been achieved in terms of GDP growth, inflation and the current account deficit. But there are still some main challenges facing the Tunisian economy like job creation and strengthening the private sector. Tunisia is a partner in many international agreements and associations. Very important for the role of Tunisia in the international relations was its performance as a member of the Security Council of the UN in 2002. Tunisia has contributed effectively to the Council’s discussions, working to reinforce the international peace and security. The country is also an important member of UNESCO, of the International Migration Organization, in the World Trade Organization etc.

There are enough statistics and proofs for the positive economic development of Tunisia. But the problem with the respect for the human rights in this country remains as one of the main concerns. Over the last decade there have been heard many political pronouncements and commitments to empower women and promote gender equality. And there is some progress as a result. This is the area of the human rights where Tunisia has achieved great

improvements and the situation of the women in the country is the best in comparison to all other neighbor countries, like Libya or Egypt for instance.<sup>9</sup> Gender equality is one of the main drivers for development. There are enormous challenges to achieving women's empowerment in the Mediterranean region. Tunisia is progressing in this very important area of the human development and human rights and gender equality, but there is still a big gap between policy and practice in relation to another very important aspect of the human rights: the freedom of expression, which enables also transparency in the public administration in a country.

Although there are thousands of official, established non-governmental organizations, the civil society in Tunisia remains weak, because the citizens do not enjoy political freedom. The government imposes restrictions on freedom of speech and does not allow a free press.<sup>10</sup> Foreign media have criticized the Tunisian Government for the lack of freedom of press and media. In spite of the fact, that in many spheres Tunisia had being developing very well, it is ranked as 148 out of 167 countries in the 2006 Reporters Without Borders list of World Press Freedom rankings.<sup>11</sup> There are frequent reports of different organizations of widespread torture and abuse of prisoners, especially political ones. Therefore, Tunisia is famous for its lack of public political discourse. There is a strong level of silence and lack of transparency in the political situation of the country, which is maintained by the government. There are public evidences that dissidents are arrested for minor crimes, such as viewing banned web sites in internet. The Committee to Protect Journalists presented in its country report on Tunisia for 2005, a persistent record of harassment, persecution, imprisonment and physical harm of journalists as a critic to the Tunisian government.<sup>12</sup> There are numerous reports of other independent non-governmental organizations, which present clear evidences of limiting the press and overall media freedom.

Also the different Embassies of the countries from the EU in Tunisia prepare regularly reports on this topic and this problem is always present on their agenda of the weekly meetings. This is broadly discussed in Tunisia, but only in a limited cycle of people, mostly by people defended from their government, with immunity like the diplomats from the embassies or also from some international organizations. The events, described in all these reports show that if a normal person, without some special immunity, says or writes something against the government or the President, the consequences after that can be really

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<sup>9</sup> See: Marks, Jon: The European Challenge to North African Economies: The Downside to Euro-Med Policy, in: Joffe, George: Perspective on Development. The Euro-Mediterranean Partnership, London 1999, p.48

<sup>10</sup> See: The official website of the U.S. Department of State at: [www.state.gov/r/pa/ei/bgn/5439.htm](http://www.state.gov/r/pa/ei/bgn/5439.htm)

<sup>11</sup> See: Reporters Without Borders for Press Freedom: Freedom of the Press Worldwide in 2007, 2007 Annual Report, available at: [www.rsf.org/IMG/pdf/rapport\\_en\\_bd-4.pdf](http://www.rsf.org/IMG/pdf/rapport_en_bd-4.pdf), p. 151

<sup>12</sup> See: Committee to Protect Journalists: Country Report 2005, available at: [www.cpj.org/](http://www.cpj.org/)

serious. For instance, the Tunisian Human Rights League (LTDH) is the first human rights organization in Africa and the Arab world and it operates under restrictions and suffers from internal divisions. For the past few years a series of legal obstacles has prevented the LTDH from holding its sixth Congress and from working normally. With a court order, the LTDH Executive tried to convene its congress in May 2006, but was once again prevented by force from doing so by the police. It happens that the authorities block often the funds for the LTDH from international organizations like the European Commission, which funds for the LTDH have been blocked since 2003.<sup>13</sup> There is also an official explanation from the authorities for acting like that and it is that the LTDH contravened the 1959 law on associations by not applying for a prior administrative authorization to receive funds from a foreign organization. The LTDH, like other independent NGOs dispute the existence of such an obligation under this law and, while accepting to inform the authorities later, have refused to request prior authorization.<sup>14</sup>

There are numerous human rights organizations and advocacy groups that were denied a legal status from the Tunisian Government. The President of the Republic, Ben Ali, express numerous times in front of the media his intention and wish for more reforms in the country, in order to be achieved such a level of living and development as in the developed countries, which responds to the requirements of the Tunisian nation. According to the words of the Head of the State, in the last years there have been made efforts for more development, modernization and promotion of the political life and the erection of one coherent society on the basis of the principles of liberty, democracy, pluralism, respect for the human rights and solidarity.<sup>15</sup>

In the history of Tunisia there are several cases of stopping newspapers from selling like the case with the French newspaper “Le Monde”, which had been prohibited for distributing several times. In the last years there have been made some steps for more freedom of expression and freedom of the media, but it must be admitted that the Tunisian people are not still fully satisfied with the situation of gaining and getting information in their country and they often criticize that.<sup>16</sup> The people often do not read the official press in Tunisia, because

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<sup>13</sup> This information is taken from a report in 2007 of a European mission in Tunis, Tunisia.

<sup>14</sup> See: EU Human Rights Fact Sheet on Tunisia, March 2007. This report is for internal use of the European missions in Tunisia.

<sup>15</sup> See: Magazine: “Realites”, No 1081, 14/09/06, p. 10; The used literature has been originally written in French. The mentioned lines are translated in English and I will continue to do so with other literature in French that I use in this thesis.

<sup>16</sup> See: Zahar, Taleb: What do the media expect from its minister, in Magazine: “Realites”, No 1030, 22-28/9/05, p. 8

they do not believe in its independence and often the information there does not match with the truth.

The problem with the freedom of the press and media should be discussed in more political democratic debates, referring to the respect of the values of full freedom of expression, modernity and openness.<sup>17</sup> It has been much said, but in practice it has not been done a lot in this direction. After the critics in the mentioned article in “Realites” comes a commentary about the new Minister of the Media and Communication, referring to his qualities and personality of openness and readiness for dialogue, in order to solve the mentioned problems with the limited freedom of the media, which according to the magazine are “numerous, various and complicated.” “The freedom of expression should not suffer from taboos and should not know any other limits than the one of the law and the professional ethics.”<sup>18</sup> In words everything sounds very easy and simple, but actually, in practice, the Tunisian government often does not respect this freedom and the limits, that it states, are much more than the limits of the law and the professional ethics.

The lack of freedom of opinion and transparency in the public administration of Tunisia becomes obvious from numerous sources and reports of NGOs and other independent institutions. The facts speak for themselves. Although there is an article in the Tunisian constitution, dedicated to the freedom of expression and opinion, its role in the public administration as an instrument of the Tunisian government to protect this human right is very arguable.

## **2.2. Articles: 8 and 65 – just on paper or also in practice?**

Many critics have called for clearer, effective distinctions between executive, legislative, and judicial powers in Tunisia. The Tunisian constitution is adopted on 1 June 1959 and is based on Islamic legal principles. It divides legislative power between the president and the bicameral legislature, with an upper house, the Chamber of Councilors, and a lower house, the Chamber of Deputies. The president is elected by popular vote for five years and is the guarantor of national independence, of territorial integrity, and of respect for the constitution and the laws as the execution of the laws and the treaties. He watches over the regular functioning of the constitutional powers and assures the continuity of the state.<sup>19</sup>

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<sup>17</sup> Also there

<sup>18</sup> Also there: p. 9

<sup>19</sup> Visit: Programme on Governance in the Arab Region, at United Nations Development Programme, constitution country profiles at: [www.pogar.org/countries/constitution.asp?cid=20](http://www.pogar.org/countries/constitution.asp?cid=20)

Tunisia is a republic with strong presidential system, dominated by a single political party. The President Zine El Abidine Ben Ali has been in office since 1987. The ruling party is the Democratic Constitutional Rally (RCD) and it has been the legal party for 25 years and it still dominates the political life in Tunisia. The date of the election of the president Ben Ali on 7th November 1987 is the beginning of new era for Tunisia, often referred to as the Change. There were major reforms in the area of democracy and enlarging political participation. Reforms did away with “presidency-for-life” and made easier the political competition for the presidency. There were also several electoral reforms, which made it possible for the opposition in 1994 to enter Parliament for the first time. They possessed 20% of the seats during 1999 and 2004 elections and this percentage remains a minimum for the minority candidates in municipal councils after the local elections of 2000 and 2005.<sup>20</sup>

Article 8 of the Tunisian Constitution insures “the liberties of opinion, expression, the press, publication, assembly and association” and Article 65 guarantees the independence of the judiciary. It says: “The judiciary is independent; the magistrates in the exercise of their functions are not subjected to any authority other than the law.”<sup>21</sup> If Tunisia was acting according these two articles, there would not be any concern about the human rights’ situation in the country according to the freedom of expression and transparency of the public administration because they assure freedom of opinion which is important for the transparency of the political system in a country. An independent judiciary guarantees also fair treatment and transparency in the decision making process.

An example for the judiciary system in Tunisia is the case of Judge Mukhtar Yahyaoui. He is known as “le juge rebelle” in the francophone press, because he is one of the Arab worlds’ leading voices for an independent judiciary and for the rule of law.<sup>22</sup> In 2001 he wrote an official letter to the President Ben Ali, in which the judge directly criticized the government’s constant tampering with judicial process (See: Annex A). The constant political interference in the judicial system makes it impossible for the judges to decide properly and fairly on cases. “Things have come to such a point that judicial authority and judges have been stripped of their constitutional prerogatives and are no longer performing their

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<sup>20</sup> Country Reports on Human Rights Practices for 2000, Report submitted to the Committee on Foreign Relations U.S. Senate and the Committee on International Relations House of Representatives by the Department of State, Tunisia, February 27, 2001.

<sup>21</sup> See: Constitution of Republic of Tunisia

<sup>22</sup> See: “Tunisian Judge Blows Whistle on Judicial Tampering; Ben Ali government steps up harassment of high-court judge” at the official website of the Human rights organization: human rights first: [www.humanrightsfirst.org/middle\\_east/tunisia/hrd\\_tun\\_1.htm](http://www.humanrightsfirst.org/middle_east/tunisia/hrd_tun_1.htm).

responsibilities in the service of justice as an independent institution of the Republic.”<sup>23</sup> Until this moment many NGOs and GOs have mentioned in their reports the problem with the dependant judiciary in Tunisia but the letter from the judge Yahyaoui is the first step, taken from high-ranking judge against the lack of judicial independence in Tunisia. After the publication of the letter, according to an investigate report, written by the organizations “Lawyers without borders? Belgium” and “The international federation of the league of the human rights”, the judge has been not only harassed and followed by the government but he has been also physically threatened into signing retractions of his statements to the global press.<sup>24</sup>

Moreover, the Tunisian organic law no. 67-29 of July 14, 1967 defines the status of magistrates and organizes their independence. Article 23 of this law states that: “Magistrates must administer justice impartially, without consideration as to persons or interests.”<sup>25</sup> Article 24 from the same law says that the magistrates must avoid every action that could harm the dignity of the profession.<sup>26</sup> Thus, judge Yahyaoui acted according to the Tunisian constitution and to the laws of the country, but present events in Tunisia prove that the President, Ben Ali, and the government are acting more according to their own interests as according to the constitution.

The political situation in Tunisia is stable, but human rights organizations and already also a judge from the Tunisian judiciary system criticize a failure to respect the rule of law and fundamental freedoms, including the freedom of expression and the freedom of association.<sup>27</sup> In the resolution on Tunisia, adopted in 2005, the European Parliament expresses its concern on several popular cases of human rights abuse in the sphere of lack of freedom of expression like the case of the lawyer Mohammed Abbou<sup>28</sup> or the one of the LTDH. The Commission’s Communication of May 2001 placed the promotion of democracy,

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<sup>23</sup> See: Judge Mukhtar Yahyaoui’s Open Letter to President Ben Ali, July 6<sup>th</sup>, 2001, translated from Arabic, available at: [www.humanrightsfirst.org/middle\\_east/tunisia/open\\_letter.pdf](http://www.humanrightsfirst.org/middle_east/tunisia/open_letter.pdf)

<sup>24</sup> See: Rapport Mission internationale, Tunisie: l’affaire Yahyaoui. Le combat d’un homme pour l’indépendance de la justice. By Lawyers without Borders, Belgium. The information from the investigate report is translated in English. It is available officially in pdf file only in French at: [www.fidh.org/magmoyen/rapport/2002/tnobs04f.pdf](http://www.fidh.org/magmoyen/rapport/2002/tnobs04f.pdf)

<sup>25</sup> Article 23 of the law of Tunisia no. 67-29

<sup>26</sup> Article 24 of the law of Tunisia no. 67-29

<sup>27</sup> See: Resolution on Tunisia, adopted by the European Parliament on 29 September 2005, in which it approved positively the economic and social progress achieved by the Tunisian government, but expressed its concern regarding the human rights situation, as also justice issues, ref. P6 TA(2005)0368; OJ L 97, 30.3.1998

<sup>28</sup> A lawyer arrested in 2005, because of publishing articles, in which he criticized the Tunisian authorities and the President, Ben Ali.

the rule of law and respect for human rights in the context of the Commission's overall strategic approach to external relations.<sup>29</sup>

In 2001, the President announced some further democratic reforms like the constitutional sanction of human rights, creation of a second legislative body to reinforce legislative power and thus, giving the Constitutional Council more powers to ascertain the regularity of presidential and legislative elections. As general, the government presents itself as Western-friendly.<sup>30</sup> Even there is a belief that the Tunisian government has maintained power not from the support of its citizens but by the support of many Western companies and corporations with locations in Tunisia, where on the first place are the economic interests of both sides. The countries from the European Union are the most important partner of Tunisia and their influence on the economic development of the country is very strong but the human rights' topic in the Tunisian governance is a very sensitive one and often some countries like Italy and Portugal, for instance, are more interested in economical relations with Tunisia and do not want to worsen these relations with interferences in the internal policy and public administration in Tunisia.<sup>31</sup>

Cases like the one of the LTDH or of the numerous lawyers like Mohammed Abbou who have been arrested because of using their right of freedom of expression, stated in Art. 8 of the Constitution of Tunisia show that Art. 8 remain for now only on a paper for the Tunisian Government. The situation is similar also for the independence of the judiciary, guaranteed by Art.65 of the Tunisian Constitution. These two articles are the most important instruments of the Tunisian authorities to protect the freedom of expression and the independence of the judiciary and thus, to reassure transparency in the public administration of Tunisia. There are also some additional laws like law no67-29, which guarantees an independent judiciary. But the facts show, that the Tunisian Government not always acts according to these laws and to the articles in the constitution. Therefore, the role of the European Union and the instruments which it can use in order to influence the freedom of expression and the transparency of the public administration of Tunisia are from significant importance for the further democratic development of the country. The national instruments are not respected enough from the Government in Tunisia and thus, they get dispensable.

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<sup>29</sup> Communication from the Commission of 8 May 2001, Brussels, on the European Union's Role in Promoting Human Rights and Democratization in Third Countries, COM (2001) 252, available at: [http://ec.europa.eu/external\\_relations/human\\_rights/doc/com\\_01\\_252\\_de.pdf](http://ec.europa.eu/external_relations/human_rights/doc/com_01_252_de.pdf)

<sup>30</sup> King, Stephen (1998): *Economic reform and Tunisia's hegemonic party: the end of the administrative elite-Beyond Colonialism and Nationalism in North Africa*, Arab Studies Quarterly (ASQ).

<sup>31</sup> Conversation with a representative from the mission of the Netherlands in Tunis, Tunisia. On 12. 04. 2007

### **2.3. The role of the international law and the United Nations Declarations**

In the Tunisian Constitution it is stated in Article 32 that “Treaties do not have the force of law until after their ratification. Treaties duly ratified have an authority superior to laws”.<sup>32</sup> Does the Tunisian government act according to this Article or it rests just on paper like Article 8 and Article 65 from the Tunisian constitution?

There are 192 countries, which are members of the United Nations Organization (UNO) and Tunisia is one of them, joining the organization on 12. November 1956.<sup>33</sup> The diplomatic activity of Tunisia within the UN system has intensified since the political change of November 7<sup>th</sup>, 1987, as the President Zine El Abidine Ben Ali took the power. The country has played until now a particularly active part in the activities of major UN bodies as well as those of international forums and conferences. According to Chapter II of the Charter of the United Nations, Tunisia is a full member of the organization and accepts the obligations contained in the present Charter and, in the judgment of the Organization, is able and willing to carry out these obligations.<sup>34</sup> This means that with signing the Charter of UN, Tunisia must act according to the rules, described in it, because “a Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.”<sup>35</sup>

Already in the Preamble of the Charter it is stated that: “The peoples of the United Nations determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom...”<sup>36</sup> Tunisia, as a Member of the UN must respect these rules and thus, respect human rights and the dignity and worth of the human person. But the cases of the lawyer Mohammed Abbou and judge Yahyaoui, already described in the last chapter show that this is not always the reality in Tunisia. It had ratified most of the international human rights treaties and continuously is reporting on measures taken to

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<sup>32</sup> Article 32 of the Constitution of Tunisia

<sup>33</sup> See: United Nations Member States, Department of Public Information, Press Release ORG/1469, available at: [www.un.org/News/Press/docs/2006/org1469.doc.htm](http://www.un.org/News/Press/docs/2006/org1469.doc.htm)

<sup>34</sup> See: Charter of the United Nations, Chapter II, Art. 4

<sup>35</sup> Also there, Chapter II, Art. 6

<sup>36</sup> Preamble of the Charter of the United Nations.

strengthen all kinds of human rights protection, inclusive the equal right to justice.<sup>37</sup> Some of the most important international obligations, accepted by Tunisia include the Convention against Torture, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, and Tunisia has as well ratified the African Charter on Human and Peoples' Rights, which guarantees that every person has the right to information.<sup>38</sup> Moreover, under Article 32 of the Tunisian Constitution, international conventions that have been duly ratified are granted legal precedence over domestic laws.<sup>39</sup> As a result of this principle, in cases where there is a contradiction between a treaty and domestic legislation, the treaty has the force of law. Likewise, treaties may be applied directly in domestic legislation by the magistrates and authorities responsible for their application.<sup>40</sup> Despite of that there are still problems in the human rights protection in Tunisia, especially with the freedom of expression and the transparency of the public administration in the country and the government does not pay any attention to its international obligations.

Tunisia signed, as Member of the United Nations, the Universal Declaration of Human Rights, which is part of the International Bill of Human rights. The International Bill of Human Rights consists also from the International Covenant on Economic, Social and Cultural rights and the International Covenant on Civil and Political Rights, and its two Optional Protocols, the first relating to the right of individuals to submit complaints to the Human Rights Committee and the second aiming at the abolition of the death penalty.<sup>41</sup> Tunisia has signed all three instruments for protection of the human rights, without the two Optional Protocols, and thus, it obligates itself to act according to them. The Universal Declaration of Human Rights stood alone as an international "standard of achievement for all peoples and all nations"<sup>42</sup> and despite of the existence of the other two Covenants, it remains the basis for international human rights standard everywhere on earth.<sup>43</sup> The Universal Declaration of Human Rights has been the cornerstone of UN activity and has had a marked

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<sup>37</sup>See: Office of the High Commissioner for Human Rights. Concluding observations of the Committee on the Elimination of Racial Discrimination: Tunisia. 02/03/94. A/49/18, paras.160-180.

<sup>38</sup> Art. 9, African Charter on Human and Peoples' Rights.

<sup>39</sup> See: Art. 32, The Constitution of Republic of Tunisia.

<sup>40</sup> See: United Nations: Commission on Human Rights: Civil and Political Rights, including the question of freedom of expression. Report on the mission to Tunisia, E/CN.4/2000/63/Add.4, 23 February 2000, available at: [www.hri.ca](http://www.hri.ca)

<sup>41</sup> See: The International Bill of Human Rights in: Fact Sheet No.2 (Rev.1), available at: [www.ohchr.org/english/about/publications/docs/fs2.htm#background](http://www.ohchr.org/english/about/publications/docs/fs2.htm#background)

<sup>42</sup> Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, Preamble.

<sup>43</sup> See: e.g. Oppenheim's International Law, eds. Jennings and Watts, 9 Edition, London. 1992, p. 1001

influence upon the constitutions of many states and upon the formulation of subsequent human rights treaties and resolutions.<sup>44</sup>

Already in the Preamble of the Declaration it is stated that the rules in it must be applied “whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear...”<sup>45</sup> The freedom of speech and expression is obviously one of the basic freedoms, on which depends not only the overall human development, but also the economic development of a country. The former World Bank President, James Wolfensohn, says that: “Freedom of expression and freedom of the press are surely essential elements in the development process...transparency, openness and accountability mesh perfectly with the conditions that promote a free press: open access to economic information and public meetings, freedom of expression and protection of official harassment.”<sup>46</sup> Article 19 of the Universal Declaration of Human Rights provides that: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>47</sup> In Tunisia there are numerous web-sites, books and publications that are blocked from the government (See: Annexes B, C).

In the concluding observations of the Committee on Economic, Social and Cultural Rights in Tunisia in 1999, there are still some principal subjects of concern. “The Committee notes that, despite constitutional guarantees, the State organs for the promotion and protection of human rights are concentrated within executive branch of government and that none of them are empowered to review complaints of violations of the rights provided for in the Covenant. The Committee is concerned that this compromises the independence of these institutions, including that of the judiciary, and the justifiability of economic, social and cultural rights.”<sup>48</sup> There are also concerns directly to the freedom of association, which is stated in the Tunisian constitution right next to the freedom of expression in Article 8 and also about the censorship, which should be made transparent, in law and practice. The instrument, which the Committee uses in order to influence the lack of some human rights in Tunisia and

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<sup>44</sup> See: Schwelb: Influence; J. Humphrey: The International Bill of Rights: Scope and Implementation, 17 William and Mary Law Review, 1975, p. 527.

<sup>45</sup> Also there.

<sup>46</sup> See: *A new approach to development: The Role of the Press*, A WAN/World Bank Conference, held on 13 June 1999 in Zuerich, Switzerland. p.7, available at: [www.wan-press.org/downloads/files/worldbank.pdf](http://www.wan-press.org/downloads/files/worldbank.pdf)

<sup>47</sup> Art. 19, Universal Declaration of Human Rights.

<sup>48</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights: Tunisia. 14/05/99. E/C.12.1/Add.36, Economic and Social Council, 20<sup>th</sup> session Geneva, No. 12, available at: [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.36.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.36.En?Opendocument)

to improve the political and judicial situation in the country, is through numerous suggestions and recommendations to the government in order to insure independent judiciary, no discrimination between women, children and men etc.

In Tunisia there have been often reported different kinds of harassments and attacks against human rights defenders to prevent them from pursuing their activities and to make it impossible to express publicly their opinion or to meet and cooperate with other international human rights groups. These are serious violations of the U.N. Declaration on Human Rights Defenders, which was adopted by the General Assembly in 1998.<sup>49</sup> The Declaration is not a legally bounding instrument, but it contains rules and rights which are based on human rights standards, included in other international instruments that are legally binding, like the International Covenant on Civil and Political Rights, which Tunisia has already signed. Article 5 of the Declaration states: “for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others...to form, join and participate in non-governmental organizations, associations or groups”.<sup>50</sup> Article 8 of the Declaration of the Human Rights Defenders provides that: “the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms”.<sup>51</sup> Thus, it is given the right of freedom of expression and criticism, individually or in groups.

Article 12 of the same Declaration says: “everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.” In spite of all these regulations, The Tunisian government is still trying to prevent the normal functioning of human rights organizations like the LTDH and of peaceful human rights activists like the case with the lawyer Mohammed Abbou. Tunisia, since being an elected member of the newly-created United Nations Human Rights Council, has an additional obligation to respect its international commitments in the field of freedom of expression. It should behave as a model in its support for human rights defenders and their

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<sup>49</sup> Declaration on Human Rights Defenders, General Assembly Resolution A/RES/53/144, 8 March, 1999, available at: [www.un.org/Depts/dhl/resguide/r53.htm](http://www.un.org/Depts/dhl/resguide/r53.htm)

<sup>50</sup> Article 5 of the Declaration on Human Rights Defenders

<sup>51</sup> Art. 8, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/53/625/Add.2, 8.03. 1999, available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>

activities. Instead, Tunisia has a very poor record with respect to its treatment of independent human rights defenders, lawyers and judges. The numerous incidents and cases that have occurred around organizations like the LTDH and Human Rights First are emblematic of this situation of lack of freedom of expression and thus, transparency in the public administration of Tunisia, because of not acting according to the signed Declarations and Covenants of the U.N.<sup>52</sup>

But then “Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.”<sup>53</sup> And although the Members of the United Nations have signed the Charter and agreed to act according to it, “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”<sup>54</sup>

But the case of the human rights protection and the freedom of expression is not one of the ones under Chapter VII and it can be accepted that the case of the freedom of expression and transparency of the public administration in Tunisia is a domestic jurisdiction and the U.N. cannot always intervene. But still, Tunisia is a Member of the U.N. and should respect the treaties, which it signed and ratified, with all the regulations and rights included.

Therefore, the U.N. Universal Declaration of Human Rights and the Declaration on Human Rights Defender can play a very serious role in the development of Tunisia, as instrument for achieving more freedom of expression and thus, more transparency in the public administration of Tunisia. But that can occur only with the agreement of Tunisia and a desire from the side of the government to change something and to act according to the declarations and treaties signed already. The question of consistency in view of the increasing number of human rights bodies within the UN system has been partially addressed by the establishment of an annual system of meetings between the chairpersons of the treaty bodies.<sup>55</sup> The need to encourage states to ratify all human rights treaties, concern about

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<sup>52</sup> See: Hicks, Neil, Director Human Rights Defenders Program: *Official letter to the President of the Republic*, June 2007

<sup>53</sup> Article 20, the Declaration on Human Rights Defenders

<sup>54</sup> Art. 2, Chapter I of the Charter of the United Nations

<sup>55</sup> See: General Assembly resolution 49/178, 1994 for: Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights, available at: [www.un.org/documents/ga/res/49/a49r178.htm](http://www.un.org/documents/ga/res/49/a49r178.htm). Note also that the first inter-committee meeting of the human rights treaty bodies took place in 2002, HRI/ICM/2002/3.

reservations made to human rights treaties,<sup>56</sup> attempts to establish that successor states are automatically bound by obligations under international human rights treaties from the date of independence irrespective of confirmation,<sup>57</sup> the formulation of new norms and instruments and the promotion of human rights education, to consideration of the continuing problem of overdue reports<sup>58</sup> and the role of non-governmental organizations.

The fact that Tunisia was the host country of the World Summit on Information Society (WSIS) in November 2005, organized by the United Nations, had to be positive for Tunisia. During the conclusion of the first phase of the WSIS in Geneva 2003, a Declaration of Principles was adopted, in which respect for human rights and freedom of opinion were reiterated as fundamental elements to the building of an information society, in which access to information and knowledge across the globe is guaranteed without restrictions. However, in disregard to these principles, the violations of these rights continue in Tunisia, even during and after the WSIS.<sup>59</sup> Two days after the opening ceremony of WSIS, Swiss president Samuel Schmid said: “It is, quite frankly, unacceptable for the United Nations to continue to include among its members states which imprison citizens for the sole reason that they have criticized their government on the Internet or in the press.” He was clearly referring to Tunisia, and Tunisian television reacted by cutting away to another speaker just before he uttered those words.<sup>60</sup> The words of the Secretary General of the Norwegian PEN, and Chair of the IFEX-TMG, Carl Morten Iversen describe shortly the present situation in Tunisia: “Sadly, the state of freedom of expression in Tunisia is as poor, if not poorer, in early 2007 as it was in late 2005 when the WSIS was held in Tunis”.<sup>61</sup> Since the early 1990s, freedom of expression and association has been markedly restricted in the country.<sup>62</sup>

In addition to treaties and other ratified agreements that form the international law and bind different countries, a primary source of the international law is also the customary international law. The essence of custom is described in article 38(1)(b) of the Statute of the

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<sup>56</sup> See: Shaw, Malcolm: International Law, Fifth Edition, Cambridge University Press, 2003, Chapter 15, p. 829

<sup>57</sup> Also there: Chapter 16, p. 885

<sup>58</sup> Also there: The Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination have established procedures enabling them to examine the situation in the state concerned. pp. 233 – 286

<sup>59</sup> See: Beckedahl, Markus: UN World Summit on the Information Society Review – Hacking a Dictatorship, 2005, available at: [http://events.ccc.de/congress/2005/fahrplan/attachments/580-paper\\_WsisReviewHackingADictatorship.pdf](http://events.ccc.de/congress/2005/fahrplan/attachments/580-paper_WsisReviewHackingADictatorship.pdf).

<sup>60</sup> See: Stern, Mick: Night in Tunisia – Even in the glare of world attention, Ben Ali resorts to strong-arm tactics, 5 December, 2005, available at: [www.cpj.org/Briefings/2005/tunisia\\_wsis\\_05/tunisia\\_wsis\\_05.html](http://www.cpj.org/Briefings/2005/tunisia_wsis_05/tunisia_wsis_05.html)

<sup>61</sup> International Press Institute: Freedom of Expression Remains Under Siege in Tunisia Over One Year After WSIS, Press Release, 19 January, 2007, available at: [www.freemedia.at](http://www.freemedia.at);

<sup>62</sup> Amnesty International: Tunisia: Preparing for the World Summit on Information Society starts with violence and arrests of human rights defenders and peaceful demonstrators. Public Statement, AI Index: MDE 30/002/2005 (Public), 8 March 2005.

International Court of Justice, incorporated into the UN Charter by article 92 thereof. It states that: “The Court, whose function is do decide in accordance with international law such disputes as are submitted to it, shall apply...international custom as an evidence of a general practice accepted as law”.<sup>63</sup> There are a lot of different opinions about customary law and its importance nowadays in the national legal systems, but in the international law it is a dynamic source of law in the light of the nature of the international system and its lack of centralized government organs.<sup>64</sup> A particular category of customary international law, jus cogens refers to a principle of international law so fundamental that no state may opt out. Jus cogens include for example the prohibition of genocide, crimes against humanity and unlawful use of force. According to that, Tunisia is acting against the customary international law through using force against journalists and human rights defenders, who use their fundamental right of freedom of opinion. Consequently, Tunisia is not respecting the international legal system, and the UN, thus also, the EU, has the full right to confront the government in Tunisia with human rights standards indifferent ways. For instance, according to the International Covenant on Civil and Political Rights, the States Parties to the Covenant, like Tunisia, are supposed to submit reports on the measures, which they undertook and the progress, which they made in achieving more respect for these human rights, included in the Covenant.<sup>65</sup> The UN can make observations, communications, recommendations, and if they are not enough, economic sanctions can occur or severance of diplomatic relations.

But, according to Article 41 of the Covenant, “A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant.” There are countries, also in Europe which have very different visions about the human rights protection and their influence in Tunisia is very strong because of the international and economic relations that the country is having with the European Union. For instance, the human rights problem in Tunisia for Germany or the Netherlands is much more important, than for Portugal, Spain or Italy, because the South Members of the Union are mostly interested in the trade relations with the Mediterranean countries. And, from international vision, nowadays the fight against terrorism, where Tunisia cooperates fully, is more important than the respect of any human right.

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<sup>63</sup> See: Shaw, Malcolm: International Law, Fifth Edition, Cambridge, p. 70.

<sup>64</sup> Also there: p. 68

<sup>65</sup> See: Article 40, Covenant on Civil and Political Rights.

According to Chapter VII of the Charter there can not be used force and the human rights area is not obligatory an area, which presents a threat to the peace or an act of aggression. The UN has no right to intervene in the internal governance of Tunisia and it is hard to combat the human rights violation in Tunisia, because it is a sensitive area, where the national government has the main control and power.

Obviously, the instruments which exist in the national constitution in Tunisia and the agreements and restrictions between the United Nations and Tunisia referring to the freedom of expression are not respected from the Tunisian Government and the authorities there can still act unlawfully and according to their own interests, without respecting the international conventions and declarations, which have been adopted and ratified. Therefore, the relations between Tunisia and the European Union are very important. The EU is the most important trade partner of Tunisia and the Union has more direct influence on the development of the country.

#### **2.4. Sub-conclusion**

Tunisia is one of the most developed countries in Africa and in comparison to its neighbors; the human rights of the women and children are respected and protected from the government. It became obvious in the last decade that Tunisia is moving more in the direction to the European Union than to the one of its neighbor countries. Formally, the human rights situation in the country looks very well, because the government controls all institutions, national media and internet providers and thus, can determine what should become public and what not. Nevertheless, in practice, the overall human rights situation in the country remains poor and the government imposes restriction on freedom of speech and does not allow a free press. There is still a strong level of silence and lack of transparency in the political situation of the country, which is maintained by the authorities.

Examples like the cases of the lawyer Mohammed Abbou, the LTDH or the judge Mukhtar Yahyaoui have become international and prove that the national instruments for protection of the freedom of opinion and expression are ineffective. Article 8 and Article 65 of the Tunisian constitution, which guarantee respectively, freedom of expression and independent judiciary in the country, have been often disregarded from the authorities and this leads to lack of transparency in the public administration of Tunisia. The Tunisian government disrespects also the international rules, obligations and regulations, which it signed, also as a Member of the United Nations and consequently comes the question, how the Tunisian authorities are acting towards the EU, with which the country has so strong

economical relations. The national and international legal instruments for protection of freedom of expression have proved to be ineffective in the case of Tunisia, because in the both cases the government can act independently and according the law, there can not be real foreign interference in its internal affairs referring the freedom of opinion.

### 3. The Human Rights Topic in the European Union's External Relations

After describing the human rights' situation in Tunisia in practice and giving some real examples of true cases there, it is logical to ask the question, what kind of human rights policy developed the EU in its international relations and what are its main instruments, which is the main sub-question of this chapter. Looking at the general instruments of the Union for protection of freedom of expression can help later for better estimating the instruments which the EU uses only in relation to Tunisia and why they have been effective or not.

#### **3.1. Development of the Human Rights topic in EU**

The words of Benita Ferrero-Waldner can be significant for the policy of the EU with regard to the human rights. On 10 December, 2005, she said: "Respect for human rights is one of the most fundamental and universal values of our world. All of us, in our official capacity and in our private lives, have a responsibility to promote and protect the rights of our fellow members of the human family, be that at home or elsewhere in the world...Be it in the political dialogues the EU holds with third countries, in the international agreements it concludes, in its development cooperation or its action in multilateral fora such as the United Nations, The European Union seeks to uphold the universality and indivisibility of human rights..."<sup>66</sup> Generally, the human rights topic for the EU is from great importance. But some different visions of views can occur between the single EU Member countries, because of their different private interests.<sup>67</sup> Economic problems have played a large role in the countries from the Third World in focusing on general developmental issues. Accordingly, the

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<sup>66</sup> Benita Ferrero-Waldner is European Commissioner for External Relations and European Neighborhood Policy. The quoted words are from the International Human Rights Day on 10 December, 2005

<sup>67</sup> Opinion of a diplomat, responsible for the political and cultural affairs from the Mission of The Netherlands in Tunis, Tunisia. 12. 04. 2007

traditional civil and political rights have tended to lose their priority in the concerns of Third World states.<sup>68</sup>

The European Communities have been established in 1957 with the signing of the Treaty of Rome and since then the European Integration has been defined by universal principles of liberty and democracy, respect for the rule of law, human rights and fundamental freedoms.<sup>69</sup> The EU took a considerable step in integrating human rights first with the Treaty on European Union (TEU) in 1993, where the development and consolidation of “democracy and the rule of law, and respect for human rights and fundamental freedoms”<sup>70</sup> is stated as an objective in the Common Foreign and Security Policy of the Union. Article 6 of the TEU states that: “(1)The Union is founded on the principle of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common for the Member States.(2) The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.”<sup>71</sup> Member states violating these principles in a “serious and persistent” manner risk the suspension of certain of their rights deriving from the application of the Union Treaty.”<sup>72</sup> Together with eleven Protocols, the European Convention on Human Rights covers a wide variety of primarily civil and political rights.<sup>73</sup> The rights covered in the Convention itself include the freedom of expression in Article 10 and the freedom of thought in Article 9.<sup>74</sup> But, the right of freedom of expression in Article 10 is not absolute: “(1)Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises”.<sup>75</sup> Interferences with the right to freedom of expression may be permitted if they are prescribed by law, pursue a legitimate aim and are necessary in a democratic society, that

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<sup>68</sup> See: T.Van Boven: *Some Remarks on Special Problems Relating to Human Rights in Developing Countries*. 3 *Revue des Droit de l’Homme*, 1970, p. 383. also p. 363, on the Banjul Charter on Human and Peoples’ Rights.

<sup>69</sup> See: Lampe, Kirsten: *Human Rights in the Context of EU Foreign Policy and Enlargement*, *Nomos*, Band 488, 2005, p. 40

<sup>70</sup> Article 11, Chapter V, TEU

<sup>71</sup> Article 6, Chapter I, TEU

<sup>72</sup> Article 7, TEU. See also amendments introduced by the Nice Treaty, 2001.

<sup>73</sup> See: Blackburn, Robert/ Polakiewicz (ed.): *Fundamental Rights in Europe, the ECHR and its Member States, 1950-2000*, Oxford 2001, p. 8

<sup>74</sup> See: Articles 9, 10, *The European Convention of Human Rights*

<sup>75</sup> Article 10, *European Convention on Human Rights*.

is, satisfy a pressing social need.<sup>76</sup> The nature of the “expression” protected by Article 10 is not always self-evident and in particular problems may be expected to arise in distinguishing expression from action, which is associated with communication of a viewpoint.<sup>77</sup> Therefore, it can be supposed that expression cannot be protected absolutely.<sup>78</sup>

“Unlike international treaties of the classic kind, the Convention comprises more than mere reciprocal engagements between contracting states. It creates, over and above a network of mutual and bilateral undertakings, objective obligations, which in the words of the preamble, benefit from a “collective enforcement”.<sup>79</sup>

The Treaty of Amsterdam and the Treaty of Nice further reinforced the importance of the protection of human rights. The Treaty of Nice also stipulated that the objectives of developing and stimulating democracy and the rule of law and of respecting human rights and fundamental freedoms are pursued not only in the political and social dimension, but also in economic, financial and technical cooperation with Third countries.<sup>80</sup> Consequently, the respect of human rights has become a main aim of all of EU’s external activities.

In December 2000, the Charter of Fundamental Rights of the European Union was proclaimed, where the whole range of civil, economic, political and social rights of European citizens is described. “Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.”<sup>81</sup> According to Article 11 of the Charter: “(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. (2) The freedom and pluralism of the media shall be respected.”<sup>82</sup> Thus, the actions of the Commission and of the other institutions of the European Union in the field of external relations and neighborhood policy are guided by compliance with these rights and principles, contained in the Charter. The Union, more generally, seeks in some measure to pay regard to

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<sup>76</sup> See: Article 10, European Convention on Human Rights; visit also: [www.yourrights.org.uk/your-rights/chapters/right-of-free-expression/the-european-convention-on-human-rights/article-10-right-of-free-expression.shtml](http://www.yourrights.org.uk/your-rights/chapters/right-of-free-expression/the-european-convention-on-human-rights/article-10-right-of-free-expression.shtml)

<sup>77</sup> See: Ely, John: Flag Desecration: A Case Study in the Roles of Categorization and Balancing in First Amendment Analysis, 88 Harv. L. Rev. 1482, 1975

<sup>78</sup> See: Janis, M./Kay, R./Bradley, A.: European Human Rights Law, Second Edition, Oxford, 2000, p. 141

<sup>79</sup> Also there, Article I.

<sup>80</sup> See: Article 181a from the Treaty of Nice 2002

<sup>81</sup> Preamble, Charter of Fundamental Rights of the European Union, (2000/C 364/01)

<sup>82</sup> Article 11, Chapter II, Charter of Fundamental Rights of the European Union, (2000/C 364/01)

human rights as internationally defined, in its activities.<sup>83</sup> The European Parliament is also very active in the human rights issues.<sup>84</sup>

Therefore, it can be said that the human rights policies of the European Union are beset by a paradox.<sup>85</sup> On the one hand, the Union is obviously a defender of human rights in both its internal and external affairs. On the other, despite the frequency of statements underlining the importance of human rights and the existence of a variety of significant policy initiatives like all the Conventions, Charters and Treaties for protection of the human rights, the European Union lacks a comprehensive or coherent policy at both level and fundamental doubts persist whether the institutions of the Union possess adequate legal competence in relation to a wide range of human rights issues arising within the framework of Community policies.<sup>86</sup>

The EU is a key player in the world affairs. The Union strongly supports UN measures to persuade governments to establish national human rights institutions, but it does not have such an institution itself, nor has it encouraged its own Member States to establish them.

The EU adopted in 1998 a “A Common Position on Human Rights, Democratic Principles, the Rule of Law and Good Governance in Africa”, which showed its objective of working “in partnership with African countries to promote respect for human rights”.<sup>87</sup> Europe is playing a major role in world politics and its commitment to human rights will acquire not only a great urgency but a much more coherent and consistent policy towards other countries.<sup>88</sup> Such a policy can have a great impact on the human rights situation in Tunisia, mostly on the freedom of expression and more transparency in the public administration of the country, because the countries from the EU form the most important trade partner for Tunisia and there a lot agreements and treaties, signed by Tunisia and EU, which can be used as instruments to improve the freedom of opinion and transparency in the country.

### **3.2. Main EU Human Rights Instruments**

“Human rights violations occur time and again and call for urgent action. No country has a spotless human rights record, but it is only through our common efforts that we can make

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<sup>83</sup> See: e.g. The Commission report on Implementation of Actions to Promote Human Rights and Democracy, 1994, COM 9(5) 191, 1995.

<sup>84</sup> See: e.g. Annual Reports of the Parliament on Respect on Human Rights in the European Community, 14 HRLJ, 1993, p. 292.

<sup>85</sup> See: Daus, M.: The Protection of Fundamental Rights in the Community Legal Order, 1985, 10 European LR 398.

<sup>86</sup> See: Alston, P./ Weiler, J.: An “Ever Closer Union” in Need of a Human Rights Policy: The European Union and Human Rights, in Alston, P./ Bustelo, M./ Heenan, J. (1999): The EU and Human Rights, Oxford, p. 6

<sup>87</sup> See: Common Position of 25 May 1998 defined by the Council on the basis of Art. J.2. TEU, concerning human rights, democratic principles, the rule of law and good governance in Africa: (1998) OJ CL. 158/1.

<sup>88</sup> See: Hancock, Linda/O’Brien Carolyn: Rewriting Rights in Europe, Ashgate, 2000, pp. 1-9;

lasting improvements in the world-wide human rights situation. Sometimes it may seem we are facing an uphill battle, but promoting and protecting human rights is a cause worth fighting for.”<sup>89</sup>

The EU Human Rights Instruments for protecting human rights play a significant role for the whole development of the human rights situation not only in Europe, but also in its neighbor countries. Common strategies aim to set objectives and increase the effectiveness of EU actions through enhancing the overall coherence of the Union’s policy and are a main instrument of the common foreign and security policy, introduced by the Treaty of Amsterdam.<sup>90</sup> Common positions, on the other hand, define the approach of the Union to a particular matter of general interest of a geographic or thematic nature. The Member States are required to give a full effect and must ensure that their national policies conform.<sup>91</sup> Joint actions are also an important instrument of the EU, which means coordinated action by the Member States, whereby all kinds of resources are mobilized in order to attain specific objections.<sup>92</sup> Other important instruments for the EU to protect the human rights, which EU uses also in the case of Tunisia, are through conflict prevention and crisis management operations, dialogue and consultation with Third countries, Human Rights Clause in Agreements with Third countries and different Guidelines on EU policy towards Third countries on specific human rights themes.<sup>93</sup> Moreover, the EU is acting at the international arena through organizations like the U.N., the Council of Europe and the Organization for Security and Co-operation in Europe and it funds a lot of projects in Third countries, which can help for the improvement of the Human rights situations in these countries. The EU partnership and dialogue with third countries will promote common values of: respect for human rights, fundamental freedoms, peace, democracy, good governance, gender equality, the rule of law, solidarity and justice.<sup>94</sup>

Generally, Europe stands for the West and “the perception of human rights in a western philosophy reduced to nothing more than bare positivist and historicist rationalism increases

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<sup>89</sup> Bot, Bernard, Minister of Foreign Affairs of the Netherlands, in: EU Guidelines on Human Rights, “If you consider international human rights laws to be universal, then you cannot think only of your own security and comfort”, 10 December, 2004.

<sup>90</sup> See: Article 13, EU Treaty, CFSP

<sup>91</sup> See: Title VI, EU Treaty

<sup>92</sup> See: Title V, EU Treaty; example: 13 May 2004: The EU adopted a Joint Action, providing EU support to the Democratic Republic of Congo.

<sup>93</sup> See: Promotion of Human Rights and Democratization in the European Union’s External Relations at the official website of the EU: [http://ec.europa.eu/external\\_relations/human\\_rights/intro/index.htm](http://ec.europa.eu/external_relations/human_rights/intro/index.htm)

<sup>94</sup> See: European Commission: Michel, Louis (European Commissioner for Development and Humanitarian Aid): The European Consensus on Development, DE 129, June 2006, available at: [http://ec.europa.eu/development/body/publications/docs/consensus\\_en\\_total.pdf](http://ec.europa.eu/development/body/publications/docs/consensus_en_total.pdf)

the misunderstanding with Islam, which conceives the human rights in the wider context of God's law."<sup>95</sup> Therefore, it is a big challenge for Europe to convince countries like Tunisia in its visions towards human rights protection. European/Western consciousness encounters a serious problem here as to the legitimacy of promoting and extending a model of human rights which is the product of its own history.<sup>96</sup> It is clear that there are a lot of differences between the European and the Islamic visions of human rights. However, Europe is the largest export partner of Tunisia and there are many common interests between them. Tunisia pretends to be the most developed country in North Africa, but "under conditions where free thought and expression initiative and creativity, are stifled, there is little room for growth and progress".<sup>97</sup> The lack of freedom of expression in Tunisia and consequently, the lack of transparency in the public administration of the country can hinder the further development of the country.

In the Vienna Declaration and Action Program, Article 8 states: "Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and on their full participation in all aspects of their lives."<sup>98</sup> And Article 9 states also that: "The World Conference on Human Rights reaffirms that least developed countries committed to the process of democratization and economic reforms, many of which are in Africa, should be supported by the international community in order to succeed in their transition to democracy and economic development."<sup>99</sup> Thus, Europe is engaged in the human rights protection not only on its territory, but global. It may therefore be considered that what was once only one of the requirements of the European concept of human rights is at present being transformed into a universal concept.

The European Union maintains human rights dialogues with a number of countries, among which, is also Tunisia. Those dialogues are one of the most important instruments of the Union's external policy. The communication and cooperation between the European Union and Tunisia is getting very much importance in diplomatic dialogues. That instrument is one of a range of measures which the EU may use to implement its policy on human rights,

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<sup>95</sup> Wachsmann, P. (1995): *Les Droits de l'homme*, p.43.

<sup>96</sup> Leben, Charles (1999): *The West and the Rest: Europe and the Question of the Universality of Human Rights, Is there a European Approach to human rights?*, in: Alston (ed.): *The EU and Human Rights*, p. 72.

<sup>97</sup> Daw Aung San Suu Kyi (leader of the nonviolent movement for human rights and democracy in Burma (Myanmar), and Nobel laureate).

<sup>98</sup> Article 8, Vienna Declaration and Action Plan, 14-25 June, 1993

<sup>99</sup> Article 9, Vienna Declaration and Action Plan, 14-25 June, 1993

and constitutes an essential part of the European Union's overall strategy aimed at promoting sustainable development, peace and stability.<sup>100</sup> There can be no real sustainable development without freedom of expression in the society. There are also EU Guidelines on the Death Penalty, on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, EU Guidelines on Children and Armed Conflict and EU Guidelines on Human Rights Defenders.

In the last decade, the European Commission has adopted numerous Communications relating to human rights and democratization initiatives. The basis for European Union action towards the human rights present situation is clear: The European Union seeks to uphold the universality and indivisibility of human rights – civil, political, economic, social and cultural – reaffirmed by the 1993 World Conference on Human Rights in Vienna.<sup>101</sup> To promote human rights and democratization objectives in external relations, The EU has a wide-range of instruments. These derive themselves from the EU's commitment to protect fundamental rights. Some constitute traditional diplomacy and dialogue in foreign policy, such as for instance interventions in UN fora and sanctions. Others include financial cooperation instruments and the bilateral dialogue and agreements, which complements them.<sup>102</sup>

The freedom of expression plays a significant role in the democratic development of a country. It concerns each citizen: it does not begin and end with independent media. Thus, projects receiving funding from the European Union have ranged from comparative analyses of legislation concerning freedom of expression to original initiatives aimed at ensuring the protection of persecuted writers.<sup>103</sup> Journalists and other media professionals have a special role in the democratization process. That is why, in June 2004 EU Guidelines on Human rights Defenders were adopted, in order to be able to assure better protection for the civil society, willing to use its human rights, including the right of full freedom of opinion. With these guidelines the EU has shown that it is looking for practical ways and means to enhance EU action on the issue of human rights defenders.<sup>104</sup> (for instance the case of the lawyer Mohammed Abbou).

The EU can handle in numerous ways the human rights problems not only internal, but also external, in third countries. Nevertheless, the EU is subject to frequent criticism of its human rights policy concerning the developing world, and the institutions themselves have

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<sup>100</sup> EU Guidelines on Human Rights Dialogues, in: EU Guidelines on Human Rights, Human Rights Department, Ministry of Foreign Affairs, the Netherlands, , 10 December, 2004, p. 9

<sup>101</sup> European Commission: The European Union's role in promoting human rights and democratization in third countries Communication from the Commission to the Council and the European Parliament, p. 3

<sup>102</sup> Also there, p. 6

<sup>103</sup> See: Report on the implementation of measures intended to promote observance of human rights and democratic principles (1995), p. 14

<sup>104</sup> Manual for the EU Guidelines on Human Rights Defenders, 2006, p. 5

acknowledged a need for greater consistency.<sup>105</sup> The most important instruments to influence the development of the country remain the bilateral agreements and treaties which can directly make an impact on the situation of the country. The European Union will ensure that the issue of human rights, democracy and the rule of law is incorporated into all meetings and discussions it has with third countries, at every level.<sup>106</sup>

### **3.3. Sub-Conclusion**

The human rights topic has been always from a great importance for the European Union and its foreign policy. This is a sensitive subject, which has been observed differently from the single European member countries, because of their different geographical situation and interests. For countries like Spain and Portugal, the economic relations with Tunisia are on first place and the human rights situation in the country has been less mentioned in their relations. But for Germany or the Netherlands, the human rights situation in Tunisia remains a problem which hinders the country to develop democratically, with freedom of expression and transparency in the public administration.

According to the Treaty of Rome, the EU has been founded on the basis of universal principles of liberty and democracy, respect for the rule of law, human rights and fundamental freedoms. With the Treaty of the European Union, the human rights' topic developed further and became an objective for the Common Foreign and Security Policy of the Union. The European Convention for the Protection of Human Rights and Fundamental Freedoms includes also the right of freedom of expression, but does not describe it as absolute. With the Treaty of Nice the respect of human rights does not remain only in the political and social dimension, but its importance is recognized also in the economic and technical cooperation between the countries, which actually exists between the EU and Tunisia. The Charter of Fundamental Rights of the EU expresses further the importance of the freedom of expression in Article 11 of the Charter.

Common strategies, common positions and joint actions are the main human rights instruments of the Union. Conflict prevention, consultation and dialogue with Third countries are also from significant importance for the external relations of the EU. The human rights clauses in bilateral agreements and general guidelines on European policy towards Third countries, like Tunisia, can have more direct impact on the development of the partner

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<sup>105</sup> Sanchez, Irene: The European Union's Human Rights Policy towards Developing Countries: A Constitutional and Legal Analysis, in: Carol Cosgrove-Sacks (ed.): "Europe, Diplomacy and Development, New Issues in EU Relations with Developing Countries", Palgrave, 2001, p. 75

<sup>106</sup> European Union Guidelines on Human rights dialogues, Council of the EU – 13 December 2001

country. The EU is acting also through other international organizations like the U.N. and thus, it has a stronger and brighter vision on the problems.

Therefore, the EU has a lot of human rights' instruments and this topic becomes more important for the foreign policy of the Union. But there are still many critics that underline the lack of comprehensive, coherent and consistent policy. The Member countries should have a common opinion about such important questions from the foreign policy of the Union like the human rights topic. The Human Rights' policy of the EU is very multilateral, but the effectiveness of its numerous instruments in this area proves to be suspicious.

#### 4. Euro-Mediterranean Partnership \ Barcelona Process

After describing the Tunisian and European human rights' instruments separately, comes the question what type of policies and instruments related to EU principles and human rights are utilized in its relations to Tunisia? In this and next chapter the human rights' instruments of the EU, referring to the freedom of expression in Tunisia, will become clear. The effectiveness of these instruments depends on the both sides and their common interests.

The relations between the European Union and Tunisia have already deepened after the 1985s. The Euro-Mediterranean Conference of Ministers of Foreign Affairs, held in Barcelona on 27-28 November 1995, marked the starting point of the Euro-Mediterranean Partnership or Barcelona Process, a wide framework of political, economic and social relations between the Member States of the EU and countries of the Southern Mediterranean. The Barcelona Process is a unique and ambitious initiative, which laid the foundations of a new regional relationship and which represents a turning point in Euro-Mediterranean relations.<sup>107</sup> It is meant to be a more comprehensive region-wide strategy aiming at fostering "peace, stability and prosperity" in the Mediterranean region through the "gradual creation of a Euro-Mediterranean free-trade area by the year 2010".<sup>108</sup>

Tunisia was the first of the Mediterranean partners to sign a Euro-Mediterranean Association Agreement in 1995. Important economic and social achievements were acknowledged from the European Commission after signing the Agreement, but questions of

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<sup>107</sup> See: Euro-Mediterranean Partnership/ Barcelona Process at: [http://ec.europa.eu/external\\_relations/euromed/index.htm](http://ec.europa.eu/external_relations/euromed/index.htm).

<sup>108</sup> See: Khader, Bichara: The Economic, Social and Political Impact of the Euro-Mediterranean Partnership, in: Maresceau, Marc/Lannon, Erwan (eds.): The EU's Enlargement and Mediterranean Strategies, A Comparative Analyses, Palgrave, 2002, p. 269

human rights and civil freedoms were raised and the importance of dialogues in these areas was stressed.<sup>109</sup> The impact of the Barcelona Declaration, the Association Agreement and the financial help from the EU to Tunisia through the MEDA democracy program are main instruments for the Union for making a difference in the political situation in Tunisia.

#### **4.1. Barcelona Declaration**

Two of the main objectives of the Euro-Mediterranean partnership are: “The creation of an area of peace and stability based on the principles of human rights and democracy” and “The improvement of mutual understanding among the peoples of the region and the development of a free and flourishing civil society by means of exchange, development of human resources, and the support of civil societies and social development“.<sup>110</sup> In a wide-ranging survey on the security aspects of European integration in 1991 Jacques Delors, then President of the European Commission, defined Europe’s “Southern flank” as encompassing the Maghreb, the Mashrek and the Middle East and the requirement for economic development by the states of the region as a pre-requisite for the peace and stability of the region.<sup>111</sup>

The Euro-Mediterranean conference in Barcelona brought together the EU and twelve Mediterranean countries.<sup>112</sup> The conference illustrated differences between the EU and the Mediterranean non-Members with the latter preferring a greater stress on the economic, rather than the political issues.<sup>113</sup> The two main elements, proposed by the EU were the achieving of political and security partnership, described as establishing a common area of peace and stability and founded upon the adoption of a declaration of principles by all the partners setting objectives for internal and external security in human rights, democracy and the rule of law and the second element considers the economic and financial partnership.<sup>114</sup> The both of the objectives are still to be achieved.

Therefore, the Barcelona Declaration is very important for the development of the relations between all the Mediterranean partners and the EU. It is one of the main instruments, through which the EU can have an impact on the political situation of Tunisia, because

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<sup>109</sup> European Commission: The Barcelona Process, 2001 Review; Second Edition, p. 12

<sup>110</sup> The Barcelona Process, five years on 1995-2000, Euro-Mediterranean Partnership, Euro-Mediterranean Partnership objectives; European Communities, 2000, p. 7

<sup>111</sup> Delors, J.: European Integration and security”, Survival vol. XXXIII, no. 2, March/April 1991, pp.99-109.

<sup>112</sup> Morocco, Algeria, Tunisia, Malta, Egypt, Israel, West Bank & Gaza, Jordan, Lebanon, Syria, Turkey and Cyprus.

<sup>113</sup> Whitman, Richard: Five years of the EU’s Euro-Mediterranean Partnership, in: Riemer, A./Stivachtis, Y.(eds.): Understanding EU’s Mediterranean Enlargement, Peter Lang, 2002, p. 34

<sup>114</sup> “Conclusions of Cannes, June 26-27 Summit”, Reuters Euro Community Report, 28 June, 1995

Tunisia is one of the main partners of the EU and like every other country, signing the Declaration, it is obliged to respect the rules and the laws in it. The 26 pages Declaration comprised chapters and an annex which set out the priorities for the work programme. The Declaration has three chapters of activity that have guided the subsequent activities of the multilateral process: The Political and Security Partnership, the Economic and Financial Partnership and Partnership in Social, Cultural and Human Affairs.

Already in the first chapter of the Barcelona Declaration the right of freedom of expression is included as one of the most important objectives. The participants must act “in accordance with the United Nations Charter and the Universal Declaration of Human Rights as well as other obligations under international law, in particular those, arising out of regional and international instruments to which they are party”<sup>115</sup>, which means that Tunisia, according also to these Declaration, should respect all treaties and agreements that it had signed. The participants in the Euro-Mediterranean Partnership are also expected according the Barcelona Declaration, to “develop the rule of law and democracy in their political systems, while recognizing in this framework the right of each of them to choose and freely develop its own political, socio-cultural, economic and judicial system; respect human rights and fundamental freedoms and guarantee the effective legitimate exercise of such rights and freedoms, including freedom of expression, freedom of association for peaceful purposes and freedom of thought, conscious and religion, both individually and together with other members of the same group” without any discrimination.<sup>116</sup>

The Third partnership chapter aims at fostering mutual understanding among the people of the region and cover also a diverse range of issues. One of these issues is also the promotion of human rights and democracy.<sup>117</sup> Cooperation among civil societies is considered to be very important for the maintaining of respect of human rights and achieving democratic reform. Through the Barcelona Process, the civil society has been involved in the EMP through series of civil forums and on the other hand, the EU has been funding NGOs, groups and initiatives which promote democratic values, respect for human rights and the rule of law in the Mediterranean partner countries, including Tunisia. Thus, the third chapter of the Barcelona Declaration complements the political dialogue and cooperation in the first chapter on respect for democracy and human rights. The Euro-Mediterranean Partnership encouraged

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<sup>115</sup> See: Barcelona Declaration, Political and Security Partnership: Establishing a common area of peace and stability.27-28/11/1995

<sup>116</sup> Also there

<sup>117</sup> The Barcelona Process, five years on 1995-2000, Euro-Mediterranean Partnership, Euro-Mediterranean Partnership objectives; European Communities, 2000, p. 13

parliamentary dialogue in which the European Parliament is intended to play a major role, as well as regular contacts among European organs and their counterparts in the Mediterranean countries.<sup>118</sup>

The Barcelona Declaration is the basis document for the coordination of the internal and external policy and for the development of a permanent multilateral political dialogue there have been periodically organized meetings between the Foreign ministers of the EU and the 12 Mediterranean partners.<sup>119</sup> Despite the continuation of the time-tabled meetings of the Barcelona Process a wide-spread view prevailed that the process required “reinvigoration”.<sup>120</sup> Therefore, the multilateral structures of the Barcelona Process have been a mixed success. Considering the fact, that this process is the only multilateral forum, outside the United Nations, where the parties in conflict in the Middle East meet, the perpetuation of the process is, itself, an achievement and a contribution to the Middle East development and peace process.<sup>121</sup>

The Barcelona Process is based on the recognition of the importance of mutual dialogue, exchanges and partnership, as well as on the essential contribution civil society can make to the process of more transparency in the public administration in Tunisia and of the development of the region. In Stuttgart, 1999, the Partners confirmed the goals set out in the Barcelona Declaration, and stressed that NGOs should be more closely allied to the process.<sup>122</sup> And this cannot happen without using the right of freedom of expression.

The importance of freedom of expression and opinion is included in the Barcelona Declaration and is stated at the beginning of the first chapter. The respect towards other important Declarations like the Universal Declaration of Human Rights and the United Nation Charter is also expected from Tunisia, as an EMP-Partner country. Thus, the Barcelona Declaration is one of the main instruments of the European Union for influencing the human rights situation in Tunisia, especially towards the lack of freedom of expression and transparency in the public administration in the country. The Barcelona Declaration as signed by all Mediterranean Partners is the basis for developing of further deeper relations between

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<sup>118</sup> Raya, Francisco: A Review of the Barcelona Conference and a Summary of EU Policy Objectives, in: Carol Cosgrove-Sacks (eds.): *The European Union and Developing Countries, The Challenges of Globalization*, Mamillan Press, 1999, p. 200

<sup>119</sup> See: European Commission (eds.): *Euro-Mediterranean partnership*, Brussels 1998, p. 7

<sup>120</sup> A view that the European Commission echoed in a Communication from the Commission to the Council and the European Parliament in September 2000: *To Prepare the Fourth Meeting of Euro-Mediterranean Foreign Ministers: Reinvigorating the Barcelona Process* Brussels, 6.9.2000.COM (2000) 497 final.

<sup>121</sup> Whitman, Richard: *Five years of the EU's Euro-Mediterranean Partnership*, in: Riemer, A./Stivachtis, Y.(eds.): *Understanding EU's Mediterranean Enlargement*, Peter Lang, 2002, p. 39

<sup>122</sup> See: *Chairman's Formal Conclusions from the third Euro-Mediterranean Conference of Foreign Ministers in Stuttgart, 15-16 April 1999*

the EU and its Neighbours. It can be also defined as a very ambitious try to develop a catalogue with principles, which can help for measuring the behaviour of the separate Non-EU Mediterranean Members.

However, the relationship between the EU and its partners in this process is not one of partnership. Rather, the “attractive” power of the EU’s trade and aid offerings sustain the process as illustrated in bilateral strands. Such a further development of relations presents the Association Agreement between the EU and Tunisia which enhance the bilateral relations between the Member States the Republic of Tunisia.

#### **4.2. The EU-Tunisia Association Agreement**

Euro-Mediterranean association agreements form the main contractual arrangements governing relations between the European Community and its partners in the Mediterranean. The agreements cover the three main areas included in the Barcelona Declaration – political dialogue, establishment of a free trade area, and economic, financial, social and cultural cooperation. All agreements contain a clause defining respect for democratic principles and fundamental human rights as “an essential element” of the agreement.<sup>123</sup> Tunisia was the first Mediterranean country to sign an Association Agreement with the EU on 17 July 1995. The Euro-Med Association Agreement between the European Community and its Member States, on the one part, and the Tunisian Republic, on the other, came into force on March 1, 1998.

<sup>124</sup>

The foreign policy of Tunisia was in the past mostly orientated to external trade and the problematic neighbourhood relations with Libya and Algeria and less to internal aspects. Tunisia had the double strategy of being an independent and cooperative actor towards the Western countries and at the same time wanted to have a great impact on the Arabic region, especially in Maghreb. Therefore, it was necessary for Tunisia to become a multinational player in the international and regional institutions. The basis for such a development of the state was its strong engagement in the United Nations, by involving itself in peacekeeping actions in Congo, Cambodia, Somalia, Rwanda and in Ex-Yugoslavia.<sup>125</sup>

European countries were interested in the Mediterranean countries during the colonial period due to the Mediterranean’s position at the crossroads of three continents, where much world trade meets. Tunisia, for example, already launched efforts towards promoting the

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<sup>123</sup> Leffler, Christian, in: Euro-Med Association Agreements, Implementation Guide, Relex F, Brussels, 30 July, 2004; Guide prepared by: Inigo de Prada Leal and Joanna Deka;

<sup>124</sup> Visit: [http://ec.europa.eu/external\\_relations/tunisia/intro/index.htm](http://ec.europa.eu/external_relations/tunisia/intro/index.htm)

<sup>125</sup> See: N.N.: Tunisia is looking for connection with the European Union, in: FAZ from 14.11.1996, p. 6; translated from German.

growth strategy based on exports on investments in 1986.<sup>126</sup> Political reforms have lagged behind the economic reforms and it appears that they have also fallen behind political reforms in other regions of the world.<sup>127</sup> A stable and secure Mediterranean region would be for the best not only for the Maghreb countries, but also for Europe, because conflicts in the Mediterranean have a great impact also on the political and social situation in Europe. Among the most important requirements for stability in a region, is the respect for human rights. Tunisia, together with Jordan, is the only Mediterranean country, which is not involved in neighbouring conflicts but on the contrary is trying to enhance interregional cooperation. Its active participation in the U.N. and also the in the relations with the EU, Tunisia shows will to cooperate and handle according to the agreements, that it had signed.

Although the political situation in Tunisia is stable, national and international human rights organizations and groups have been criticising a failure to respect the rule of law and fundamental freedoms in Tunisia, including the freedom of expression.<sup>128</sup> In a single case in relation with human rights protection it was stated that: “The right to fully and openly express one’s views on social and political issues is fundamental to our democracy and hence to all the other rights and freedoms guaranteed by the Charter. Without free expression, the vigorous debate on policies and values that underlies participatory government is lacking. Without free expression, rights may be trammelled with no recourse in the court of public opinion. Some restrictions on free expression may be necessary and justified and entirely compatible with a free and democratic society. But restrictions which touch the critical core of social and political debate require particularly close consideration because of the dangers inherent in state censorship of such debate...”<sup>129</sup>

In the case of Tunisia, the right of freedom of expression is very restricted and there can not be a transparent public administration because of the lack of free political debates and critics. The Association Agreement between the EU and Tunisia contains in its beginning a human rights clause legally binding the parties. Article 2 of the Agreement states that: “Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles which guide their domestic and

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<sup>126</sup> Pieters, Karolien: *The Mediterranean Countries (Morocco, Algeria, Tunisia, Libya, Egypt, Jordan, Syria and Lebanon)*, in Blockmans, Steven/Lazowski, Adam (eds.): *The EU and its neighbors – A legal appraisal of the EU’s policies of stabilization, partnership and integration*, by: T.M.C. Asser Press, 2006, p. 393

<sup>127</sup> Pace, R.: “Democracy, Economic Development and Regional Stability in the Mediterranean region”, in P.G. Xuereb, ed.: *Euro-Med Integration and the “Ring of Friends”: The Mediterranean’s European Challenge*, Vol. IV (Malta, University of Malta, European Documentation and Research Centre 2003) pp. 101-134;

<sup>128</sup> Resolution on Tunisia by the European Parliament on 29 September, 2005, P6 TA(2005)0368;

<sup>129</sup> See: *R. v. Keegstra* (1990) 3 S.C.R. 697, 849-50, in: Janis, M./Kay R./Bradley, A.: *European Human Rights Law*, Second Edition, Oxford, 2000, p. 171

international policies and constitute an essential element of the Agreement.”<sup>130</sup> The importance of this clause was reiterated by the Commission in its communication of 8<sup>th</sup> May, 2001, concerning the role of the European Union in promoting human rights and democratisation in non-EU countries, as well by the conclusions of the General Affairs Council of 25<sup>th</sup> June, 2001. On 11<sup>th</sup> March, 2003, the Commission published a communication on “Wider Europe – Neighbourhood: A New Framework for Relations With our Eastern and Southern Neighbours”, which proposes ways of strengthening relations with neighbouring countries, including Tunisia and according which “The EU should contribute to the development of a flourish civil society to promote basic liberties such as freedom of expression and association.”<sup>131</sup> Some of the proposals are for more EU programmes and activities in research, education, culture and bilateral visitor programmes.

In an open letter to the Foreign Ministers of the Member States of the European Union and to Javier Solana, The High Representative of the European Union for the CFSP, The European Union-Tunisia Association Council explains some of the main problematic points in the development of Tunisia. In the letter it is called for strengthening guarantees for the independence of the judiciary and the legal system and for lifting all restrictions on freedom of expression, communication and information as well as the free dissemination of both foreign and Tunisian periodicals; putting an end to all forms of censorship, direct or indirect, and removing the pressures restricting the freedom of journalists and the liberty to edit newspapers freely: repealing laws authorising the interception of e-mail and Internet censorship; no longer putting people in prison for having exercised their right to freedom of expression and opinion.<sup>132</sup> The main recommendation of the Council to the EU is to ask the Tunisian government to respect its international human rights commitments, including the commitments under the heading of the Association Agreement.

The AAs are first and foremost a tool for reforming the economic systems of the Mediterranean countries and aim to create a Euro-Med free trade area by 2010, but they still all state that respect for democracy and human rights is “an essential element” of all AAs.<sup>133</sup>

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<sup>130</sup> See: Euro-Mediterranean Association Agreement (AAs), in: Official Journal of the European Communities, available at: [http://eur-lex.europa.eu/pri/en/oj/dat/1998/l\\_097/l\\_09719980330en00020174.pdf](http://eur-lex.europa.eu/pri/en/oj/dat/1998/l_097/l_09719980330en00020174.pdf)

<sup>131</sup> COM (2003) 104 final, Brussels, 11.3.2003, available at: [http://eur-lex.europa.eu/LexUriServ/site/en/com/2003/com2003\\_0104en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2003/com2003_0104en01.pdf)

<sup>132</sup> See: EU-Tunisia Association Council, Open Letter for the Attention of: Foreign Ministers of the Member States of the European Union, The High Representative of the European Union for the CFSP, Javier Solana and Commissioner Christopher Patten, 26.09.2003, available at: [www.euromedrights.net/pages/306/news/focus/10197](http://www.euromedrights.net/pages/306/news/focus/10197)

<sup>133</sup> Ward, A. (1998): “Frameworks for Cooperation between the European Union and Third States: A Viable Matrix for Uniform Human Rights Standards?”, 3 EFA Rev. p.506

The Commission published numerous communications, in which it placed the promotion of democracy, the rule of law and respect for human rights in the context of the Commission's overall strategic approach to external relations with Third countries.<sup>134</sup> In 2005 the Commission also proposed to hold a Euro-Med Conference at sub-regional level on human rights and democratisation in 2006.<sup>135</sup>

In the Association Agreement between the EU and Tunisia, the political dialogue is appointed as a very important instrument for further improvement of the bilateral relations and for achieving the goals, stated in the agreement. "A regular political dialogue shall be established between the Parties. It shall help build lasting links of solidarity between the partners which will contribute to the prosperity, stability and security of the Mediterranean region and bring about a climate of understanding and tolerance between cultures."<sup>136</sup> It shall be established at regular intervals and on ministerial level, generally within the Association Council and at the level of senior officials representing Tunisia, on the one hand, and the Council Presidency and the Commission on the other. Article 85 of the AA between the EU and Tunisia states that: "The Association Council shall take all appropriate measures to facilitate cooperation and contacts between the European Parliament and the Chamber of Deputies of the Republic of Tunisia, and between the Economic and Social Committee of the Community and the Economic and Social Council of the Republic of Tunisia."<sup>137</sup>

Therefore, the human rights dialogue through AAs with third countries is a very important instrument of the EU for implementing its policy on human rights and it constitutes an essential part of the European Union's overall strategy aimed at promoting sustainable development, peace and stability. The dialogue between the EU and Tunisia is of a rather general nature based on the bilateral Association Agreement. The priority issues which should be included on the agenda for every dialogue are signing, ratification and implementation of international human rights instruments, like the Association Agreement, cooperation with international human rights procedures and mechanisms, combating the death penalty, torture, freedom of expression etc.<sup>138</sup>

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<sup>134</sup> COM (2001) 252 final; COM (2003) 294 final; COM (2003) 104 final

<sup>135</sup> Communication from the Commission to the Council and the European Parliament, 10<sup>th</sup> Anniversary of the Euro-Mediterranean Partnership: A work program to meet the challenges of the next five years, COM (2005) 139/5.

<sup>136</sup> Article 3, See: Euro-Mediterranean Association Agreement (AAs) OJ 1998 L 97/2, in: Official Journal of the European Communities, available at: [http://eur-lex.europa.eu/pri/en/oj/dat/1998/l\\_097/l\\_09719980330en00020174.pdf](http://eur-lex.europa.eu/pri/en/oj/dat/1998/l_097/l_09719980330en00020174.pdf)

<sup>137</sup> Also there, Article 85.

<sup>138</sup> European Union Guidelines on Human Rights Dialogues, 2001, p. 4.

Drawing on the UN Declaration on *the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms* of 1998, the EU adopted also Guidelines on Human Rights Defenders in June 2004.<sup>139</sup> The Guidelines acknowledge the important role of the individuals and groups in advancing human rights, because they commit the EU to monitoring the situation of human rights defenders through regular reporting and contacts with defenders by EU Heads of Mission in embassies in third countries, like Tunisia, promotion of respect for human rights defenders in political and diplomatic relations with third countries, support for relevant UN mechanisms such as the Special Representative on Human Rights Defenders and practical support through development policy, including EU funding.

The Association Agreement is the basis for further deepening of the bilateral relations between the EU and Tunisia. It provides for extensive trade liberalization and enhanced cooperation in many areas.<sup>140</sup> The economy progress and the improving of the trade relations are the main aims of the agreement, but the AA sets also a very important clause about the respect of human rights and democratic principles in Article 2 of the AA, which constitute an essential element of the Agreement. A regular political dialogue is the main instrument in the AA for improving and maintaining the respect of human rights in the Parties. The EU has various types of political dialogues with third countries and most of these dialogues contain human rights components, creating another means to pursue human rights objectives as put forward in other EU Guidelines on human rights issues.<sup>141</sup> The freedom of expression is included as one of the most important human rights in the European Union Guidelines on Human Rights Dialogues and Tunisia should respect it, according to the Association Agreement with the EU.

But the facts show the opposite behaviour, because according to an open letter from the EU-Tunisia Association Council, the freedom of expression in Tunisia has worsened noticeably until 2003.<sup>142</sup> On 26<sup>th</sup> June, 2003, a new provision of the electoral code also forbids any Tunisian from expressing himself through foreign audiovisual media in favour of or against a candidate in the presidential elections and this during the electoral campaign.

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<sup>139</sup> See: EU Annual Report on Human Rights, Council of the European Union, General Secretariat, 3 October, 2005 p. 48

<sup>140</sup> Jbili, Abdelali/ Enders, Klaus: The Association Agreement between Tunisia and the European Union, in: *Finance and Development/September 1996*, p. 18

<sup>141</sup> See: EU Guidelines on Human Rights, published on 10 December, 2004, or also available at: <http://ue.eu.int>

<sup>142</sup> See: EU-Tunisia Association Council, Open Letter for the Attention of: Foreign Ministers of the Member States of the European Union, The High Representative of the European Union for the CFSP, Javier Solana and Commissioner Christopher Patten, 26.09.2003, available at: [www.euromedrights.net/pages/306/news/focus/10197](http://www.euromedrights.net/pages/306/news/focus/10197)

There are regular attacks on freedom of expression and information in line with the general framework of censure, persecution and harassment of people who denounce human rights violations in Tunisia and express a critical opinion against the President or the authorities. Thus, human rights defenders in Tunisia, like lawyers, journalists and magistrates, together with their families are subject to harassment and repression.<sup>143</sup>

In general, the Association Agreement between the EU and Tunisia provides for a political dialogue including human rights issues. There have been additionally created special Sub-Committees which are responsible for different issues, and there is also a Committee for Human rights. Violations of human rights by either party constitute a material breach of the agreement and entitle the other party to take range of appropriate measures including the suspension of cooperation.<sup>144</sup>

The Association Agreement represents a good basis for stronger cooperation between the two Partners, but it is not enough for handle with the lack of freedom of expression in Tunisia and thus, the lack of transparency in the public administration of the country, because of the disrespect of the Tunisian government. But in contrast to the Barcelona Declaration, these agreements are binding international treaties on a bilateral level between the EU and each Partner country. Thus, the human rights clause in the Association Agreement constitutes an internationally valid legal commitment by Tunisia to respect human rights, inclusive the freedom of expression.

### **4.3. EU financial co-operation (MEDA Programme and EIDHR)**

There are also great concerns about the budget and the funding from the European Union for different Programs in Tunisia. In a resolution on Tunisia in 2005, the European Parliament expresses its concern at the lack of progress towards the release of Community funds intended to provide financial support for different kinds of human rights projects and “calls on the Tunisian Government to take immediate action to release those funds and to reach agreement on the modernisation plan for the justice system.”<sup>145</sup> The European Union’s funding program is a significant instrument, which can make a difference in the development of Tunisia and through which the EU can have a positive impact on more freedom of expression in the country and thus, more transparent public administration.

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<sup>143</sup> Also there, see also some examples in the Annexes.

<sup>144</sup> See: Karkutli, Nadim/ Buetzler, Dirk (1999): Evaluation of the MEDA Democracy Programme, 1996-1998, Brussels, available at: <http://ec.europa.eu/europeaid/evaluation/reports/med/951460.pdf>

<sup>145</sup> Resolution of the European Parliament on Tunisia, adopted on 29 September 2005, in which concerns regarding the lack of progress on projects related to human rights and lack of freedom of expression and independent justice are present. P6 TA92005)0368, available at: [www.europarl.europa.eu](http://www.europarl.europa.eu)

The MEDA programme was created in 1995 and is the main financial instrument of the Euro-Mediterranean Partnership.<sup>146</sup> Most activities undertaken within the framework of the Euro-Med Partnership are financed by this program, which covers both bilateral and regional cooperation.<sup>147</sup> The legal basis of the MEDA Programme is the 1996 MEDA Regulation (MEDA I), which was amended in 2002 (MEDA II).<sup>148</sup> It enables the EU to provide financial and technical assistance to the countries in the southern Mediterranean, including Tunisia. Actions under the MEDA Programme aim to fulfil the objectives of the three sectors of the Euro-Mediterranean Partnership: reinforcing political stability and democracy, creating a Euro-Mediterranean free trade area and the development of economic and social cooperation and taking due account of the human and cultural dimension.<sup>149</sup> The political part of the Barcelona Declaration obliges the parties to respect human rights, in the case of Tunisia, mostly the right of freedom of expression, and the rule of law.

To further this development, the MEDA Democracy Programme (MDP) started in 1996 granting subsidies to non-profit-making associations, universities and research centres as well as public bodies to implement operations which aim to promote democracy, the rule of law, freedom of expression, freedom of assembly and freedom of association, to protect vulnerable groups and to increase awareness of socio-economic rights and contribute to conflict resolution.<sup>150</sup> The MEDA Democracy Programme was established as an instrument of the EU to promote civil society, human rights and democracy in the South Mediterranean. That the major part of funds is allocated to South based NGOs should therefore be ensured.

In the case of Tunisia, government interference has stopped funding the projects that were eligible and approved within the framework of the MEDA Democracy Programme. The EU should make it clear within the framework of bilateral talks that such vetoes run counter to the commitments embedded in the Barcelona Declaration.<sup>151</sup> As an instrument for the promotion of civil society activities in the field of human rights and democracy, the role of the MDP is crucial. It is an important part of the EU's Mediterranean policy and a key funding source for different NGOs and independent groups in Tunisia.

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<sup>146</sup> MEDA comes from French and means "mesures d'accompagnement", in English "accompanying measures".

<sup>147</sup> See: Annual Report on the Implementation of the European Commission's External Assistance (2000), Mediterranean, V. South Mediterranean, Near and Middle East, p. 70

<sup>148</sup> Council Regulation No. EC/148/96;

<sup>149</sup> See: Activities of the European Union, Summaries of Legislation, available at: <http://europa.eu/scadplus/leg/en/lvb/r15006.htm>

<sup>150</sup> See: Karkutli, Nadim/ Buetzler, Dirk (1999): Evaluation of the MEDA Democracy Programme, 1996-1998, Brussels, available at: <http://ec.europa.eu/europeaid/evaluation/reports/med/951460.pdf>

<sup>151</sup> See: The MEDA Democracy Programme, Recommendations by the Euro-Mediterranean Human Rights Network (EMHRN) to the European Commission, the European Parliament and the EU member states regarding the MEDA Democracy Programme, February 2000;

The legal basis of the MEDA Programme is the 1996 MEDA Regulation (Council Regulation No.EC/1488/96). This regulation was amended in November 2000 and is usually referred to as MEDA II.<sup>152</sup> It states that “This Regulation is based on respect for democratic principles and the rule of law and also for human rights and fundamental freedoms, which constitute an essential element thereof, the violation of which element will justify the adoption of appropriate measures.”<sup>153</sup> It states also that: “Strategy papers covering the period 2000 to 2006 shall be established at national and regional level, in liaison with the Bank. These strategy papers shall have the purpose of defining the long-term objectives of cooperation and of identifying priority areas of intervention. To this end, due account shall be taken of all relevant evaluations, a problem-orientated analysis shall be used and cross-cutting issues shall be integrated.”<sup>154</sup> Country strategy papers (CSPs) are intended as an instrument for guiding, managing and reviewing EU’s assistance programmes. They are important management tools to ensure that external assistance reflects the EU’s policy objectives and priorities.

In May 2001, the European Commission adopted a landmark Communication on the European Union’s role in promoting human rights and democratization in third countries.<sup>155</sup> This Communication identifies the areas, where the Commission could act more effectively to implement the European Union’s policy in the fields of human rights and democratization. The main aims are the promotion of coherent and consistent policies in support of human rights and democratization, placing higher priority of human rights and democratization of the EU’s relations with third countries and taking a more pro-active approach by using the opportunities offered by political dialogue, trade and external assistance, which also Tunisia has with the EU. The policy approach laid down in the Communication places the European Initiative for Democracy and Human Rights (EIDHR) in the wider framework of the EU’s policy on human rights and democratization in the world.<sup>156</sup> EIDHR is the financial and policy instrument which underpins and compliments the European Union’s human rights and democratisation policy. For the period 2002-2004, Tunisia was a target country of the EIDHR. The main aim of the EIDHR is to promote human rights, democracy and conflict prevention

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<sup>152</sup> See: Euro-Mediterranean Partnership, EU-Syria Co-operation, Annual Report 2005, Chapter 1, p.5, available at: [www.delsyr.ec.europa.eu/en/eu\\_and\\_syria/annual\\_report/2005/chapter1](http://www.delsyr.ec.europa.eu/en/eu_and_syria/annual_report/2005/chapter1)

<sup>153</sup> Article 3, Council Regulation (EC) on 1488/96 of 23 July, 1996;

<sup>154</sup> Article 5, Also there.

<sup>155</sup> See: COM (2001) 252 final;

<sup>156</sup> European Initiative for Democracy and Human Rights (EIDHR), Programming for 2005 and 2006, 06. 12. 2004, p.5

in third countries by providing financial support for activities supporting these goals.<sup>157</sup> Topics which are priority are strengthening civil society, human rights education, freedom of expression and independent media, rule of law and institutions, governance and conflict prevention and conflict resolution.<sup>158</sup> For the period 2002-2004, the EIDHR gave 20 635 422 Euro for supporting the freedom of expression and the media. This is an important issue for EIDHR and is aimed at the elimination of legal and technical obstacles to the freedom of press and undue censorship, the promotion of adequate communication/media legislation as well as legitimate unimpeded access to the internet. There is also a need to assist and encourage media organizations, which are committed to enhancing their role in assuring accountability and more transparency of government.<sup>159</sup>

The MEDA Democracy Programme forms part of the EIDHR. Civil society is the prime beneficiary, which is a factor of complementarity with MEDA (assistance generally goes through government departments). The EIDHR also helps to foster contacts with the Tunisian authorities in this specific area.<sup>160</sup> In Tunisia, exactly the contact with the civil society is very difficult, because everybody is scared to speak about the freedom of expression and the lack of transparency of the actions of the authorities.

For the period between 1995 and 2001 Tunisia became totally 593, 7 million euros from the MEDA Programme.<sup>161</sup> The programmes and projects financed through grants from the MEDA programme and the investment projects financed through loans by the European Investment Bank make an important contribution to the economic transition of the Mediterranean Partner countries, in parallel to the bilateral programmes run by the EU Member States.<sup>162</sup> In Tunisia, there were already several programmes supported by the MEDA programme in the spheres of economic transition, structural/sectoral adjustment facilities and socio-economic balance support.<sup>163</sup>

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<sup>157</sup> EIDHR is based on Council Regulations EC No. 975/1999 and EC No. 976/1999 of 29<sup>th</sup> April 1999 – Official Journal L 120/8 of 8<sup>th</sup> May, 1999;

<sup>158</sup> See: European Commission: European Initiative for Democracy and Human Rights, Support of Democratization, Good Governance and the Rule of Law, Guidelines for grant applicants responding to the restricted call for proposals for 2004, Budget line 19.04.03, p. 2

<sup>159</sup> European Initiative for Democracy and Human Rights (EIDHR), Programming for 2005 and 2006, 06. 12. 2004, p. 18

<sup>160</sup> See: Euro-Med Partnership, Tunisia, National Indicative Program, 2005-2006, (Strategic paper). p. 2

<sup>161</sup> See: European Commission: The Euro-Mediterranean Partnership and the MEDA Regional Activities, Euromed Information Notes, June 2002, p. 11

<sup>162</sup> See: Commission of the European Communities: Annual Report of the MEDA Programme 1999, Brussels, 20.12.2000, COM(2000) 472 final, p. 17

<sup>163</sup> See: Commission of the European Communities: Annual Report of the MEDA Rprogram 2000, Brussels COM (2001), p. 49;

Of all the MEDA countries, Tunisia remains the most integrated into the European economy and the free trade agreement should further strengthen links with the EU. Nevertheless, the government is still acting only in its own interests and often, without regarding the regulations, which it signed with the EU and is part from. The freedom of expression is still very often subject to restrictions with harsh consequences as noticed in the imprisonment of more opposition leaders, journalists and lawyers. There is until now no project, financed by the MEDA Programme which could do something against the lack of freedom of expression and transparency in the country. Only two projects were implemented in Tunisia by the MDP: 96/MAG 11: on human rights and its social and economic dimensions; 97/MAG 41: on women human rights and some other regional projects included Tunisian, but abroad. Therefore with only these two projects in Tunisia it is difficult to make any useful assessment in more detail.<sup>164</sup>

Under the current Press Code copies of all national and international publications have to be provided to the Minister of Information prior to distribution. Without a receipt of deposit, distribution is not legal. Articles 73 and 62 of the Press Code give power to the Minister of Interior to block the publication of national and foreign newspapers that disregard public order.<sup>165</sup> Moreover, the Press Code contains provisions about defamation that allow censorship of press articles.<sup>166</sup>

The European Commission faces severe difficulties to implement MDP projects because of the Government's opposition to any such intervention. Nevertheless, Tunisia should be included in a future MDP strategy and efforts must be made to change the current inactivity of the programme in a country whose human rights record is among the worst in the Mediterranean.<sup>167</sup> In its resolution on Tunisia in 2005, the European Parliament called "on the Council and Commission to work to improve the management of projects under the MEDA programme and the European Initiative for Democracy and Human Rights and urges the Commission to determine the measures to be taken if no progress is made towards the release of blocked funds."<sup>168</sup>

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<sup>164</sup> See: Karkutli, Nadim/ Buetzler, Dirk (1999): Evaluation of the MEDA Democracy Programme, 1996-1998, Brussels, p. 110, available at: <http://ec.europa.eu/europeaid/evaluation/reports/med/951460.pdf>

<sup>165</sup> Press Code of Tunisia

<sup>166</sup> See: Karkutli, Nadim/ Buetzler, Dirk (1999): Evaluation of the MEDA Democracy Programme, 1996-1998, Brussels, p. 109, available at: <http://ec.europa.eu/europeaid/evaluation/reports/med/951460.pdf>.

<sup>167</sup> Also there, p. 111

<sup>168</sup> Resolution of the European Parliament on Tunisia, adopted on 29 September 2005, in which concerns regarding the lack of progress on projects related to human rights and lack of freedom of expression and independent justice are present. P6 TA92005)0368, available at: [www.europarl.europa.eu](http://www.europarl.europa.eu)

After the MEDA I Council Regulation, there came a second face of the MEDA Programme, called MEDA II. The new Regulation was meant to be much more programme-orientated and strategic than its predecessor. It has been much done through the MEDA I Programme, but the efforts had been spread too thin and it is now necessary to strengthen the link between the MEDA Programme and the implementation of reforms initiated by the Mediterranean Partners under the Association Agreements. The MEDA II Programme contributed to strengthening the bilateral dialogue between the Commission and beneficiary Partners<sup>169</sup>, which helped to concentrate on the biggest problems in every single country and in the case of Tunisia, the lack of freedom of expression and transparency in the public administration of the country will have priority. There are also other opinions, that MEDA II represents a financial decline and will most probably prove insufficient after the entry in force of all the Association Agreements.<sup>170</sup>

With an amount of 118 million Euros, Tunisia was one of the most important beneficiaries of the MEDA Programme in 2005. The improvement of the environment for business, reforming the financial sector and reinforcing the macro-economic framework were the three components of the joint programme between the MEDA Programme, the World Bank and the African Development Bank.<sup>171</sup> But this is the case, when the financial aid is for economic development. At the moment, the Tunisian Government has blocked all programmes in the area of human rights, which were supposed to be financed by the European Commission. Bank accounts of different NGOs have been also blocked by the Tunisian authorities and thus, it becomes impossible to finance directly through the EU any kind of programmes. The European Commission does not close its eyes, but there is a difference what it can say and what it can do, because the EU does not want to finance NGOs which are connected to the government, and the government makes it impossible to finance independent organisations.<sup>172</sup> Similarly, progress on a MEDA-funded project to modernise the judiciary is slow and is implemented in a context which does not allow full participation of professional organisations (advocates in particular) due to the reluctance of the administration to engage.<sup>173</sup> The

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<sup>169</sup> See: Euromed Special Feature: From “MEDA I” to “MEDA II”: What’s new?, Produced by MEDA-Team Information – On Behalf of the European Commission, Issue No. 21, 3 May 2001, p.2

<sup>170</sup> See: Philippart, E.: The MEDA Programme: Evaluation of the new design of EU assistance to the Mediterranean, in: Attina, F. and Stavridis, S. (eds.): *The Barcelona Process and Euro-Mediterranean Issues from Stuttgart to Marseille*, Milano, Giuffrè 2001, pp. 121-169;

<sup>171</sup> See: Mediterranean Partners to benefit over 850 million Euro in EU grant support in 2005, Brussels, 24 November 2005, IP/05/1464;

<sup>172</sup> This information has been gathered during an interview with a specialist, working in the Delegation of the European Commission in Tunis, Tunisia, on 04.04.2007.

<sup>173</sup> EU Human Rights fact sheet on Tunisia, 12 December 2006. An information, prepared by a mission of European country in Tunisia.

countries Press Code, most recently amended in 2001, makes defamation of a public official of a criminal offence, subjecting a reporter to potential penalties of a minimum of one year in prison and a fine of 120 dinars (approximately 90US\$).<sup>174</sup> Publication of false reports that “upset public order” can result in up to three years in prison and a fine of about 1,500\$.<sup>175</sup>

In preparations as a host country of the United Nations World Summit on the Information Society (WSIS) meeting, human rights and media organizations in Tunisia and in Europe have increased their criticism of Tunisia’s wide spread censorship practices and internet controls.<sup>176</sup> The WSIS is committed to a vision where “everyone can create, access, utilize and share information and knowledge”, where each person has the right “to seek, receive and impart information and ideas through any media”.<sup>177</sup> But there is a great gap between what should happen and what actually happens in Tunisia. There is a need to fulfil numerous projects, dedicated to the subject of freedom of expression and opinion, because the lack of transparency in the public administration of Tunisia causes a lot of difficulties for the further development of the country. Blocking of MEDA projects and financial support from the EC makes it very difficult for the EU to make a positive impact in the political situation in Tunisia. In Tunisia, citizens, maybe theoretically free to receive and share information, but they are practically prevented from doing so on a number of vital topics by a state that combines sophisticated American technology, harsh laws, and informal pressures to limit access.<sup>178</sup>

Through the MEDA Programme the EU can influence a lot the Tunisian government, because until 2007, this has been the main financial source for projects in the Mediterranean Partner countries. But this could happen, only if the Tunisian Government allow it and at the time, it makes it very difficult not only for the EC to finance various independent organizations and projects, but it is also impossible for the single missions of Member countries of the European Union to sponsor such NGOs directly. Through the MEDA Programme the EU is able to interfere in the internal affairs of Tunisia, but only superficially and in specific areas, the freedom of expression and human rights area is not available and accessible for the Union to influence through the MEDA Programme or through EIDHR.

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<sup>174</sup> See: Article 51, Code de la Presse (Tunisia) (ONI translation).

<sup>175</sup> Also there;

<sup>176</sup> International Freedom of Expression Exchange (IFEX), The IFEX Tunisia Monitoring Group, at: <http://campaigns.ifex.org>; IFEX, Tunisia: Freedom of Expression under Siege, Feb. 2005, available at: [www.ifex.org/download/en/FreedomofExpressionunderSiege.doc](http://www.ifex.org/download/en/FreedomofExpressionunderSiege.doc).

<sup>177</sup> World Summit on the Information Society, Declaration of Principles, 12. December, 2003, available at: [www.itu.int/wsis/docs/geneva/official/dop.html](http://www.itu.int/wsis/docs/geneva/official/dop.html).

<sup>178</sup> OpenNet Initiative: Internet filtering in Tunisia in 2005: A Country Study, November 2005, p. 20, available at: [www.opennetinitiative.net/tunisia](http://www.opennetinitiative.net/tunisia)

#### **4.4. Sub-Conclusion**

The main instrument of the Barcelona Process or the Euro-Mediterranean Partnership is the Barcelona Declaration. The right of freedom of expression is included in the Political and Security Partnership chapter of the Declaration and every country which signed it, should respect this right, also Tunisia. Thus, the participants oblige themselves to respect also other international regulations and treaties in the human rights' sphere, like the United Nations Charter, for instance. Although, the Barcelona Process and the Barcelona Declaration are an important step in the relations between the EU and Tunisia, the success of the Process remains overall doubtful and there is a wide-spread opinion that it needs to be renewed and reformed. The actual power of the EU to influence Tunisia, is in the bilateral relations, presented in the Associated Agreement, which Tunisia signed in 1995 with the EU as the first Mediterranean country to do so.

The Association Agreement between the EU and Tunisia contains a human rights clause, which legally binds the parties. In various Communications, the Commission stresses on this clause and on the fact that it is an essential element of the Agreement and through political dialogue on human rights it could be made a lot of progress in this area. But the Association Agreement remains foremost a tool for reforming the economic system of Tunisia, aiming to create a Euro-Med free trade area by 2010. It is a very effective instrument of the EU, because it is a binding international treaty on a bilateral level and Tunisia obliged itself to respect human rights and consequently, freedom of expression. But in practice, the Tunisian authorities are concentrating more on their economic and security relations with the EU and do not pay much attention on the human rights clauses. They even block Community funds, which are supposed to provide financial support for human rights projects.

The MEDA Program and the EIDHR are the most important financial cooperation tools between the EU and Tunisia. The MEDA Democracy Program plays a crucial role in the protection of human rights, but in Tunisia its funding is blocked and can not finance NGOs or other independent institutions, which are engaged in human rights issues. The main aim of EIDHR is also to promote human rights and democracy and the lack of freedom of opinion is one of its main concerns. Tunisia got a lot of support from these two programs in the last years, but until the Tunisian Government does not unblock the Community funds, there will not be a big progress in the human rights situation in the country and in its public administration.

Thus, the European Union can not make a great difference in the political situation and human rights' protection, referring to the freedom of expression in Tunisia, not because of

lack of instruments, but because of the unwillingness of the national government to act according to the treaties it signed. There are missing real serious sanctions, which could bring the Tunisian authorities to considering their policy.

## 5. European Neighborhood Policy (ENP)

This chapter presents a continuation of the last one, because here will be further answered the question what type of policies and instruments the EU uses towards Tunisia in the human rights sphere, especially freedom of expression. Thus, it could become clear how the EU is trying to make its human rights' instruments more effective.

In December, 2002, Romano Prodi said: "I want to see "a ring of friends" surrounding the Union and its closest European neighbours, from Morocco to Russia and the Black Sea. This encircling band of friendly countries will be diverse. The quality of our relations with them will largely depend on their performance and the political will on either side. Of course, geography will play a role too. It is the Commission's responsibility to come up with a way of improving relations with all these countries."<sup>179</sup>

After the Barcelona Declaration there are more human rights instruments in place, such as the human rights clause in the concluded and ratified Association Agreements, the EU support on human rights programmes and projects in the region, like those financed by MEDA Programme, a range of Communications of the EC, referring to human rights protection, including the freedom of expression and the chapters of human rights and democratization in the Action Plans under the New EU Neighbourhood Policy.<sup>180</sup>

The European Neighborhood Policy is the result of the European Union's changed composition in view of its enlargement of May 2004. A few days after the enlargement, the EC adopted a "strategy paper" regarding the ENP.<sup>181</sup> This strategy paper continues an idea, developed already in 2003, as the EC adopted a Communication to the Council and the European Parliament, referring to Neighborhood Policy.<sup>182</sup> ENP offers a mean to strengthen

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<sup>179</sup> Romano Prodi, Ex-President of the European Commission, quotation from the speech: A wider Europe – A Proximity Policy as the key to stability, Brussels, 5-6 December, 2002

<sup>180</sup> See: Euro-Mediterranean Human Rights Network, Promotion and Protection of Human Rights in the Euro-Mediterranean Region, at the 10<sup>th</sup> Anniversary of the Barcelona Declaration, 2005, p. 1

<sup>181</sup> See: European Neighborhood Policy Strategy Paper, COM (2004) 373 final, available at: [http://europa.eu.int/comm/world/enp/pdf/strategy/Strategy\\_Paper\\_EN.pdf](http://europa.eu.int/comm/world/enp/pdf/strategy/Strategy_Paper_EN.pdf)

<sup>182</sup> Wider Europe-Neighborhood: a New Framework for our Relations with our Eastern and Southern Partners (COM (2003) 104 final of March 11, 2003).

relations between the EU and its partners, which is distinct from the possibilities available to European countries under Article 49<sup>183</sup> of the Treaty on European Union. It is addressed to partners neighboring the Union which are not involved in the present accession or pre-accession process.<sup>184</sup> The preparation of jointly agreed Action Plans with seven neighbors, (among which is also Tunisia), was envisaged within the term of the Prodi Commission. But already in December 2004, The EU had substantial problems with its neighborhood approach.

The Action Plans of the seven EU- neighbors, including Tunisia had been passed from the Prodi on the Barosso Commission.<sup>185</sup> One of the major innovations of the Union's relations with neighboring countries consists in the establishment of a unique financial instrument for ENP as a whole, which is called the European Neighborhood and Partnership Instrument (ENPI).<sup>186</sup> It should be looked closer to all these instruments, in order to understand, whether they are really effective in the case of Tunisia.

### **5.1. The ENP legal basis**

The legal foundation envisaged for the ENP is more exclusive than for its predecessors.<sup>187</sup> The Euro-Mediterranean Partnership – as one of the policies translated into the ENP – is based on Title V EC (CSFP) and particularly on Art. 133 TEC (trade and tariffs), Art. 310 TEC (Association Agreements), and Article 308 TEC (MEDA).<sup>188</sup>

Human rights and fundamental freedoms form an integral and essential part of the framework governing relations between the EU and its Mediterranean Partners, both within the regional context of the Euro-Mediterranean Partnership/Barcelona process, and through the bilateral Association Agreements concluded or under negotiation with all the Mediterranean partner countries.<sup>189</sup> At the Barcelona + 10 Conference in November 2005 the main emphasis was put on security issues, under which was the fight against terrorism and

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<sup>183</sup> See: Article 49, Treaty on the European Union

<sup>184</sup> Commission of the European Communities: Communication from the Commission to the Council on the Commission proposals for Action Plans under the European Neighborhood Policy (ENP), Brussels, 9. 12. 2004, COM(2004) 795 final, p. 2

<sup>185</sup> See: Primatarova, Antoinette (2005): In Search of To Distinct Tracks for Non-EU Europe and the European Neighborhood, in: Hayoz, N./Jesien, L./ van Meurs, W. (eds.): Enlarged EU – Enlarged Neighborhood, Perspectives of the European Neighborhood Policy, p. 20, Peter Lang, 2005

<sup>186</sup> See: Marchetti, Andreas: The European Neighborhood Policy, Foreign Policy at the EU's Periphery, ZEI, C158, 2006, p. 10

<sup>187</sup> Also there, p. 11

<sup>188</sup> See: Council Regulation (EC), No 2698/2000, OJ L 311, 27. 11. 2000

<sup>189</sup> Commission of the European Communities: Communication from the Commission to the Council and the European Parliament "Reinvigorating EU actions on Human Rights and Democratisation with Mediterranean partners", Strategic Guidelines, Brussels, 21.05.2003, COM (2003) 294 final, p.2

control of migration flows and very little on human rights and democratization aspects.<sup>190</sup> Which is also understandable, but the threat of terrorist attacks should not be an excuse for the Tunisian Government to violate human rights. Nowadays, the main efforts of the EU in the area of human rights focus on the European Neighborhood Policy (ENP) where NGOs will find possibilities for engaging in human rights and democracy dialogues with the EU and Tunisia. Before the ENP, EU developed other instruments towards human rights protection, like numerous Communications from the Commission and strategy papers.

The launched in 2003, New Neighborhood Policy of the Union, aimed at preventing “the emergence of new dividing lines between the enlarged EU and its neighbors and to offer them the chance to participate in various EU activities, through greater political, security, economic and cultural cooperation ...”.<sup>191</sup> Also “The ENP aims at increased stability, security and prosperity for the EU and its neighbors and it will build on a mutual commitment to common values, including democracy, the rule of law, good governance and respect for human rights”.<sup>192</sup> Although the ENP was introduced at the beginning as a supplement to existing policies such as the EMP, it introduced new facts and possibilities. Like Romano Prodi said, the ENP aims to create a “ring of friends” around the EU and to strengthen “stability, security and well being for all concerned”.<sup>193</sup> This policy is very ambitious because it offers Mediterranean Countries and Eastern European Countries, which are not members of the EU, the possibility of sharing “the benefits of the EU’s 2004 enlargement”.<sup>194</sup>

The respect of human rights, media freedom and social justice are second place objectives of the ENP, but with the time they get much more importance on the agenda of the EU-meetings. The civil society in the Mediterranean countries, also in Tunisia, is getting interested in Europe, because Tunisia has strong relations with the EU and the impact that the EU makes on Tunisia cannot remain hidden. According to the freedom of expression in the country and to the media “The growing numbers of satellite dishes in the Maghreb testify to the peoples’ distrust of government-controlled channels”.<sup>195</sup> The Tunisian Government controlled the satellite transmissions of local correspondents reporting for foreign television

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<sup>190</sup> See: Euro-Mediterranean Human Rights Network: Human Rights Instruments in Euro-Mediterranean Relations, Training Guide, 2007, p. 15

<sup>191</sup> See: EU Commission Communication: European Neighborhood Policy-Strategy Paper, 12 May, 2004, COM (2004) 373 final, p. 3

<sup>192</sup> Council of the European Union, External Relations, Conclusions, Brussels, 13-14 December 2004, p. 9

<sup>193</sup> See: EU Commission Communication: Wider Europe\_Neighborhood Policy, a New Framework for Relations with our Eastern and Southern Neighbors”, 11 March 2003, COM (2003) 104 final, p. 4

<sup>194</sup> See: EU Commission Communication: European Neighborhood Policy-Strategy Paper, 12 May, 2004, COM (2004) 373 final, p. 3

<sup>195</sup> Ferhat, Halima, University Mohamed V, Morocco, analyzing media, in: Mediterranean Partnerships, The Philip Morris Institute for Public Policy Research, 1995, p. 45

stations by refusing to license correspondents and insisting all correspondents use government-owned facilities for satellite uplinks.<sup>196</sup> Democracy, respect for human rights and the rule of law are all essential prerequisites for political stability, as well as for peaceful and sustained social and economic development. Nearly all countries of the Mediterranean, including Tunisia, have a history of autocratic and non-democratic governance and poor records in protecting human rights and freedom of the individual.<sup>197</sup> Yet political reform in the majority of the countries of the Mediterranean has not progressed as quickly as desired and the lack of transparency in the public administration of Tunisia proves that. A functioning legal system, implemented by strong regulatory authorities and effective and independent judiciaries equipped with the powers to protect property rights are also required to maximize economic activity and production, and accelerate economic growth.<sup>198</sup> Therefore, the independent judiciary and the respect of freedom of expression of everybody are important not only for the internal development of Tunisia, but also for its trade relations and economic prosperity. Without freedom of expression there can not be a transparent political system, and the negative effects of conflict in the political development should not be under-estimated, especially when they are sustained over a long period, because there can be a spill-over effect and it is not only in the interest of the single country, like Tunisia, to sustain respect of freedom of expression and thus, transparent political system, but that is also in interest of the EU Member countries and bilateral relations between the two partners.

In its Neighborhood Policy, like it can be seen in the Commission Communications,<sup>199</sup> it is obvious that the economic issues are often on first place for the bilateral relations between the EU and Tunisia. But the human rights subjects are also from great importance for the cooperation between the partners. Greater EU political involvement in conflict prevention and crisis management and greater efforts to promote human rights are also one of the aims of ENP. It includes shared values,<sup>200</sup> deeper political relations, enhanced cooperation, strong democratic institutions and a common understanding of the need to institutionalize respect for human rights. “The importance of dialogue between civilizations and free exchange of ideas between cultures, religions, traditions and human links can not be over-emphasized. The EU should contribute to the development of a flourishing civil society to promote basic liberties

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<sup>196</sup> See: Country Report on Human Rights Practices on Tunisia (2006), released by the Bureau of Democracy, Human Rights, and Labor, March 6, 2007

<sup>197</sup> See: EU Commission Communication: Wider Europe\_Neighborhood Policy, a New Framework for Relations with our Eastern and Southern Neighbors”, 11 March 2003, COM (2003) 104 final, p. 7

<sup>198</sup> Also there, p. 9

<sup>199</sup> See: COM (2003) 104 final; COM (2004) 373 final; etc.

<sup>200</sup> Notably democracy, respect for human rights and the rule of law, as set out within the EU in the Charter of Fundamental Rights

such as freedom of expression and association”.<sup>201</sup> Exchanges on a regional level regarding governance and human rights training issues have proven beneficial and should be explored further. The Tunisian government should be more open and respect the freedom of opinion and the free access to internet in order to be able to fully benefit from the cooperation with the EU.

The overall goal of the EU is to work with partner countries to foster the political and economic reform process, promote closer economic integration and sustainable development and provide political support and assistance. The European Union should start from the premise that the institutions of state need to be capable of delivering full transition to comply with international political, legal and human rights standards and obligations.<sup>202</sup> The ENP, itself, will be implemented through the Barcelona process and the Association Agreements with each partner country like Tunisia.<sup>203</sup> Therefore, the regulations included also in the Barcelona Declaration and in the Association Agreement between the EU and Tunisia, which concern the protection and respect of human rights and specially, the freedom of expression, remain from significant importance for the further development of Tunisia and its cooperation with the Union.

Tunisia has demonstrated its intention to participate fully in the ENP and in the working methods which the policy will require. The country sees the new neighborhood policy as a means of establishing its relations with the EU on more individual basis and has stated its willingness to discuss all subjects in this context, without going back to the regulations stated in the Association Agreement from 1998.<sup>204</sup> Despite this assurance, at the forth meeting of the EU-Tunisia Association Council, the EU considered in a joint statement “that efforts should be stepped up to ensure respect for human rights, in particular the freedom of expression and the freedom of association. Those freedoms determine the democratic process and are conducive to economic and social development”.<sup>205</sup> International observers and NGOs have regularly denounced harassments of human rights activists, and highlighted in particular the need to guarantee respect for the freedoms of opinion and expression in the context of

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<sup>201</sup> EU Commission Communication: Wider Europe\_Neighborhood Policy, a New Framework for Relations with our Eastern and Southern Neighbors”, 11 March 2003, COM (2003) 104 final, p. 12

<sup>202</sup> Also there, p. 16

<sup>203</sup> See: Commission of the European Communities: Communication from the Commission: European Neighborhood Policy, Strategy Paper {SEC(2004)564, 565, 566, 567, 568, 569, 570}, Brussels, 12.05.2004, COM (2004) 373 final, p.6

<sup>204</sup> See: Commission of the European Communities: Commission Staff Working Paper: European Neighborhood Policy, Country Report, Tunisia, Brussels, 12.05.2004, SEC (2004) 570 {COM(2004)373 final}, p. 5

<sup>205</sup> Also there, p. 10

combating terrorism. There is also a wide censorship of the media, newspapers and foreign publications on the basis of the Tunisian Press Code.

The most important ENP instruments are the Country Reports and the Action Plans. With the help of these instruments, the EU – intending “to prevent the emergence of new dividing lines between the enlarged EU and its neighbors”<sup>206</sup> – also seems determined to decrease the divide between Southern and Eastern neighbors, until recently treated separately.<sup>207</sup>

Tunisia agreed an Action Plan with the EU in 2005, where the first two priorities are in the area of political dialogue and reforms and human rights. According to the Council “action plans should be comprehensive but at the same time identify clearly a limited number of key priorities and offer real incentives for reform”.<sup>208</sup> It remains only the will of the Tunisian authorities to do these reforms, referring to the human rights situation in the country and the lack of freedom of expression and real transparency of the public administration there.

## **5.2. EU - Tunisia ENP Action Plan**

The Action Plans under the ENP-regime are tailored along a set of central lines: based on a commitment to shared values, they contain specific political, economic and cultural provisions, drawing on all three pillars of the EU.<sup>209</sup> But the partner countries have also a substantial say in the conclusions of the Action Plans and thus, they are guaranteed an opportunity to address particular national priorities, despite the general framework put in place.<sup>210</sup> The ENP thereby harmonizes to a certain extent and avoid simultaneously being too rigid by flexibly responding to partners’ individual priorities and needs. Each Action Plan covers a timeframe from 3 to 5 years.

The Action Plan, which was adopted in July 2005 and became operational in 2006, is now a coherent framework for dialogue between the European Union and Tunisia. “The Parties intend to agree on an EU-Tunisia Action Plan, which will support the implementation of the Euro-Mediterranean Agreement through the elaboration and agreement of concrete steps towards attainment of its objectives.”<sup>211</sup> The Action Plan builds on Association Agreement

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<sup>206</sup> See: Commission of the European Communities: European Neighborhood Policy Strategy Paper, p. 3

<sup>207</sup> Marchetti, Andreas: The European Neighborhood Policy, Foreign Policy at the EU’s Periphery, ZEI, C158, 2006, p. 8

<sup>208</sup> General Affairs and External Relations Council (2004): European Neighborhood Policy – Council conclusions, June 14, press release 10189/04 (press 195)

<sup>209</sup> See: Commission of the European Communities: European Neighborhood Policy Strategy Paper, pp. 12-20

<sup>210</sup> See: Commission of the European Communities: Implementing and promoting the European Neighborhood Policy, SEC(2005) 1521, p. 4, available at:

[http://europa.eu.int/comm/world/enp/documents/sec\\_2005\\_1521\\_en.pdf](http://europa.eu.int/comm/world/enp/documents/sec_2005_1521_en.pdf).

<sup>211</sup> Commission of the European Communities: Proposal for a Council Decision, Brussels, 09.12.2004, COM (2004)792 final, p. 4

and covers the same areas. The method applied in the Action Plan is that the EU, together with Tunisia, defines a set of priorities, whose fulfillment will bring Tunisia closer to the EU.<sup>212</sup> “The Action Plan serves the dual purpose of setting out concrete steps in bringing the fulfillment of the Parties’ obligations set out in the Euro-Mediterranean Agreement, and of providing a broader framework for further strengthening EU-Tunisia relations to involve a significant measure of economic integration and a deepening of political cooperation, in accordance with the overall objectives of the Euro-Mediterranean Agreements.”<sup>213</sup>

The lack of freedom of expression is one of the most important and an obvious issue which is still a gap between the EU and Tunisia. The ENP sets very ambitious goals based on the mutually recognized acceptance of numerous issues, under which are also the rule of law, democracy and respect for human rights. The first two priorities in the EU-Tunisia Action Plan are: “the pursuit and consolidation of reforms which guarantee democracy and the rule of law” and “enhancing political dialogue and cooperation in areas such as democracy and human rights, foreign and security policy, cooperation in the fight against terrorism, whilst promoting respect for human rights.”<sup>214</sup> The freedom of expression in Tunisia is very limited and the most often explanation from the authorities is that it is because of the fight against terrorism. It is difficult to set the exact limits in such a case.

The further actions, planned by the Action Plan between the EU and Tunisia in connection with democracy, rule of law and the respect of human rights are referring often to freedom of expression. Some of the reforms in short term are: “further increase participation by all sections of Tunisian society in political life and further develop the rule of civil society”. In medium term it is planned to “support the efforts of the Tunisian authorities in the area of administrative reform, with a view in particular to greater transparency.”<sup>215</sup> This cannot happen without giving full right of freedom of opinion. To consolidate the independence and efficiency of the judiciary is also a goal of the EU-Tunisian Actions Plan.

There is a special chapter, which refers only to human rights and the freedom of expression as main goal of the Action Plan: The respect for human rights and fundamental freedoms pursuant to international conventions and respect for the freedom of association, freedom of expression and for media pluralism in accordance with the UN International

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<sup>212</sup> See: Euro-Mediterranean Human Rights Network: Human Rights Instruments in Euro-Mediterranean Relations, Training Guide, 2007, p. 24

<sup>213</sup> Commission of the European Communities: Proposal for a Council Decision, Brussels, 09.12.2004, COM (2004)792 final, p. 6; On this basis and having regard to Art. 80 of the Euro-Mediterranean Agreement between the EU and Tunisia, the EU/Tunisia Association Council has adopted its further recommendations.

<sup>214</sup> EU/Tunisia ENP Action Plan, 2006, p. 9, available at: [http://trade.ec.europa.eu/doclib/docs/2006/march/tradoc\\_127990.pdf](http://trade.ec.europa.eu/doclib/docs/2006/march/tradoc_127990.pdf)

<sup>215</sup> Also there, Actions, p. 10

Covenant on Civil and Political Rights. Consequently, Tunisia should respect not only the goals of the Action Plan, but every other international convention or treatment which it had signed. The Action Plan states that it should “(1)continue to promote the right to associate and to assemble and the freedom of expression and opinion on the basis of relevant recommendations by the UN’s International Covenant on Civil and Political Rights (ICCPR) Committee, including in relation to the rule of NGOs; (2)strengthen legislation on private data protection; (3)continue the process of liberalizing the information industry, including the distribution of foreign media; (4)develop information and communication media and further promote the use of and access to the internet; (5)foster exchanges and cooperation between the Tunisian and EU voluntary sectors; (6)encourage cooperation initiatives in the Association Agreement framework designed to promote human rights and civil society.”<sup>216</sup>

All these goals and intentions from the side of the EU can influence a lot the freedom of expression in Tunisia and thus, to achieve more transparency in the public administration and political situation in the country. Good progress has been made on most of the economic and social reforms and the sector-specific measures, indicated in the Action Plan, including in the transport, energy and scientific research fields.<sup>217</sup> It can be said that, on a general note, there is a high degree of cohesion between the Action Plan and Tunisia’s own priorities. But there has been less progress on the freedom of expression. The activities of independent civil society (NGOs, political movements, trade associations) have also been obstructed. The obligation for daily newspapers and magazines to deposit a number of copies with the authorities prior to publication was abolished in 2006 under the organic law but remains in force for the foreign press. In practice journalists continue to face various obstacles.<sup>218</sup>

Nevertheless, the EU/Tunisia ENP Action Plan remains a good basis for further cooperation between the Partners and at the moment this is may be the most important instrument of the EU for influencing the freedom of expression in Tunisia and thus, giving opportunity for more transparent public administration in the country, which is, on the other hand, important for the Tunisian democratic development.

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<sup>216</sup> Also there, p. 11

<sup>217</sup> See: European Neighborhood Policy – State of Play, MEMO/06/460, Brussels, 4 December 2006, available at: [http://ec.europa.eu/world/enp/index\\_en.htm](http://ec.europa.eu/world/enp/index_en.htm)

<sup>218</sup> See: Commission of the European Communities: Communication on strengthening the European Neighborhood Policy, ENP Progress Report, Tunisia, {COM (2006) 726 final}, p. 3

### 5.3. European Neighborhood and Partnership Instrument (ENPI)

The partnership with the civil society in Tunisia is problematic. Cooperation with civil society is beset by difficulties, and most of the projects funded by the EC as part of the EIDHR and NGO co-financing thematic lines have been blocked by the Tunisian authorities.<sup>219</sup> There are more than one opportunities for EU financing.

Under the umbrella of the ENP, the Commission proposed other budgetary means than the MEDA I and MEDA II Programme.<sup>220</sup> Until 2007, MEDA will provide support for the ENP, in general, and for the implementation of the action plans, in particular. Starting from 2007, another financial instrument is launched, namely the European Neighborhood and Partnership Instrument (ENPI).<sup>221</sup> The ENPI will support cross-border cooperation as well as regional cooperation projects involving both EU Member States and all the ENP partner countries, including Tunisia.<sup>222</sup> The ENPI is directly linked to the effective implementation of the Action Plans. The main objective of this instrument is to substantially enhance the coordination of existing instruments in relations to the European Neighborhood Policy.

The Human Rights topic is present also in the regulation of the ENPI. Already in the beginning of the regulation, in the preamble it is stated that “the privileged relationship between the European Union and its neighbors should be built on commitments to common values, including democracy, the rule of law, good governance and respect for human rights [...]”<sup>223</sup> Article 1 (3) guarantees further that “The European Union is founded on the values of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law and seeks to promote commitment to these values in partner countries through dialogue and cooperation.”<sup>224</sup> The ENPI regulation does not include a “human rights” clause, but in Article 28 of the regulation is stated that: “[...] where a partner country fails to observe the principles referred to in Article 1, the Council, acting by a qualified majority on a proposal from the Commission, may take appropriate steps in respect of any community assistance granted to

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<sup>219</sup> See: Also there, p. 10

<sup>220</sup> Proposal of the Commission for a Regulation of the European Parliament and of the Council laying down general provisions establishing a European Neighborhood and Partnership Instrument, COM (2004) 628 final.

<sup>221</sup> See: Commission of the European Communities: On the Instruments of External Assistance under the Future Financial Perspective 2007-2013, COM(2004) 626 final, pp. 7-10

<sup>222</sup> Pieters, Karolien: *The Mediterranean Countries (Morocco, Algeria, Tunisia, Libya, Egypt, Jordan, Syria and Lebanon)*, in Blockmans, Steven/Lazowski, Adam (eds.): *The EU and its neighbors – A legal appraisal of the EU’s policies of stabilization, partnership and integration*, by: T.M.C. Asser Press, 2006, p. 427

<sup>223</sup> Preamble of the Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October, 2006, laying down general provisions establishing a European Neighborhood and Partnership Instrument, OJ L 310/1

<sup>224</sup> Also there, Article 1

the partner country under this regulation.”<sup>225</sup> Article 2(d) of the Regulation states that “promoting the rule of law and good governance, including strengthening of public administration and the impartiality and effectiveness of the judiciary [...]”<sup>226</sup> is also a goal of the Community assistance. The assurance of more transparent public administration is from major importance not only for the social, but also for the economic development of every country like Tunisia. Article 7(6) of the Regulation for ENPI says that “In the event of crisis of threats to democracy, the rule of law, human rights and fundamental freedoms, [...] an emergency procedure may be used to conduct an ad hoc review of strategy papers.”<sup>227</sup>

There is nowhere specially mentioned in the Regulation the freedom of expression, but considering that this is one of the most important human rights and fundamental freedoms, it can be concluded that the guaranteed in these articles is referring also to the freedom of expression and opinion. In response to the increased political debate in the Arab world, and in some cases effective steps towards democratisation, the dialogue within the Mediterranean Partnership has emphasised the defence of basic human rights including freedom of expression, opinion and association in the Arab region.<sup>228</sup>

In the period between the 2007 and 2010 Tunisia will get 300 million Euro from the ENPI for country programmes.<sup>229</sup> The cross-border cooperation (CBC) programmes to be funded under the ENPI will play an important role, but broader EU wide exchanges will also be necessary, in order to achieve more respect for human rights and transparent public administration in Tunisia.<sup>230</sup> One of the main issues of the ENPI CBC is to promote local governance and democracy through actions in the social, educational, cultural and media fields, as well as enhanced cross-border contacts between civil society groups and NGOs, which can contribute a lot to more freedom of expression and opinion and more transparency in the political situation of Tunisia.<sup>231</sup>

There are a lot of expectations and hopes for the progress of the ENPI Programme but there are also some basic risks. Building on past experience with CBC activities, there are

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<sup>225</sup> Also there, Article 28

<sup>226</sup> Also there, Article 2

<sup>227</sup> Also there, Art. 7

<sup>228</sup> EuroMed, European Neighborhood and Partnership Instrument (ENPI), Regional Strategy Paper (2007-2013) and Regional Indicative Programme (2007-2010) for Euro-Mediterranean Partnership, p. 7

<sup>229</sup> See: EU Funding in brief - An overall summary of the EU funds/programmes available in 2006 and in the next financial period (2007-2013), European Neighborhood and Partnership Instrument (ENPI), Funding 2007-2013; April 2006, Europa Media, 2007

<sup>230</sup> See: Commission of the European Communities: Communication from the Commission to the Council and the European Parliament on Strengthening the European Neighborhood Policy, Brussels, 4 December, 2006, COM(2006)726 final, p. 10

<sup>231</sup> See: European Neighborhood and Partnership Instrument, Cross-Border Cooperation, Strategy Paper 2007-2013, Indicative Program 2007-2010, Executive Summary, 2007, p.5

risks associated with: “1.the partners’ capacity and preparedness to enter into a programme partnership (political commitment)’ 2.the partners’ willingness and capacity to manage the programme, and notably to establish a system of joint management responsibility; 3.the nationals’ level support to the establishment and management of the programme by local partners.”<sup>232</sup>

These risks are proved to be real for Tunisia, because the experience until now shows that the lack of willingness of the government to manage with the problem of freedom of expression and transparency in the political situation in the country is the biggest obstacle for the EU to make a difference in Tunisia and to influence positively the freedom of expression and the transparency of the public administration there. The ENPI Programme is from significant importance for the development of the European Mediterranean Partners and its legal basis contains a lot of regulations, referring to the human rights protection, but the EU cannot use it, unless the national government does not allow that. The case of Tunisia is an example for a country which can achieve a lot, but is not allowed to from its own government.

#### **5.4. Sub-conclusion**

The European Neighborhood Policy was created by the EU to fill the gaps where the EMP failed and to further strengthening the Euro-Med relations. The EMP is considered to be too weak to manage with all the problems in the Mediterranean region and the ENP seems to be too ambitious to solve all the political and economic problems. The economic issues remain on first place for the relations between the EU and Tunisia, but the bilateral relations have become stronger. ENP emphasizes the importance of an individual approach towards each Mediterranean country, based on Country Reports and Action Plans. The level of effectiveness of these instruments is high, because they criticize directly the most vulnerable issues in each country, which is in Tunisia the lack of freedom of expression and transparency in the public administration of the country.

Priorities in the EU-Tunisia Action Plan are the guaranteeing of democracy and enhancing political dialogue in areas such as human rights. There is a special chapter devoted to the human rights and the freedom of expression in Tunisia and thus, by mentioning the problems directly and publicly, it can be expected that the end effect would be also better. Therefore, Action Plans represents a very effective instrument for giving advices and

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<sup>232</sup> Also there, p. 7

proposals for further development of the political system of Tunisia and for positively influencing the freedom of expression and transparency in the country.

Moreover, the ENPI is directly connected to the effective implementation of the Action Plans and can assure the financing of different important projects between the EU and Tunisia. The human rights' topic presents several times in the regulation of the ENPI and the assurance of more transparent public administration and independent judiciary is of major importance for the overall development of Tunisia.

ENP, The Action Plans and ENPI present very effective instruments of the EU in relation to the human rights' situation in Tunisia, because in comparison with the EMP and the MEDA Program, they refer already directly to every country separately, and concentrate on the most problematic issues. Thus, in Tunisia, it is already possible to influence the freedom of expression and the transparency of the public administration. It is not yet simple, because the willingness of the government is from crucial importance, but through such a direct approach and critics, it could be made a strong impact on the authorities and their policy.

## 6. Main Conclusions

The International Covenant on Civil and Political Rights states that everyone has the right to freedom of expression and to share information through the media.<sup>233</sup> The European Parliament has been a particularly forthright defender of such freedoms, as emphasised in their annual reports on Human Rights, which identifies the protection of freedom of speech and the media as a global theme for attention, because it is: “One of the most basic human rights, and typical of democracies. In many countries all over the world, individuals are sentenced to jail...for expressing their views”.<sup>234</sup> One of the specific target countries in the campaign of the EU on Freedom of Expression is Tunisia.<sup>235</sup> This issue is one of the most problematic in the country and nobody likes to talk about it. Through the instruments, which the EU has, it has been searching for solutions of the problems in the Mediterranean partners, but however, the main impulse for political reforms has naturally come from within the countries concerned.<sup>236</sup>

The freedom of expression is stated in the Tunisian Constitution as a basic regulation, but the government often does not pay attention to it. Although Tunisia is a Member of the United Nations and acts very actively in the last past years, there are often violations against the rules, contained in the Universal Declaration of Human Rights. The national and the United Nations’ instruments have proved to be ineffective in relation to Tunisia.

The countries of the European Union are the most important trade partners of Tunisia and the relations between Tunisia and the EU are from significant importance for the Arab country. Therefore, the EU has the possibility to influence the political situation in the country through several instruments. The human right’s topic is very important for the EU, although there are many critics that its human rights’ policy not coherent and consistent is. The Union has helped to maintain and step up the domestic political reform momentum, not through external pressures but through political dialogue and strengthening of the underlying domestic political institutions. The EU Charter of Fundamental Rights provides that freedom of expression is a universal right regardless of frontiers, and that the freedom and pluralism of

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<sup>233</sup> International Covenant on Civil and Political Rights, Article 19 (2)

<sup>234</sup> See: European Parliament Annual Report on Human Rights, *ibid*, at 35

<sup>235</sup> EC: EU Annual Report on Human Rights, 2006, p. 32, available at: [http://ec.europa.eu/external\\_relations/human\\_rights/doc/report\\_06\\_en.pdf](http://ec.europa.eu/external_relations/human_rights/doc/report_06_en.pdf).

<sup>236</sup> EuroMed, European Neighborhood and Partnership Instrument (ENPI), Regional Strategy Paper (2007-2013) and Regional Indicative Program (2007-2010) for Euro-Mediterranean Partnership, p. 12

the media shall be respected.<sup>237</sup> Sharing common values with neighbouring countries could simplify relations and pave the way toward agreements as it brings cultures closer together.<sup>238</sup>

At the Barcelona Conference, the European Union established an instrument known as EMP, which had to deal with economic, political and cultural issues. The Association Agreement, which had been signed in 1995 between the European Union and Tunisia brought the two sides closer, but there are still many differences, mostly in the visions of the Tunisian government about the freedom of expression and the transparency in the public administration of the country. The main aspect falls on the economic issues, although the respect of human rights is an essential part of the agreement and therefore, the EMP was neither an effective human rights' instrument in relation to Tunisia.

The MEDA Programme and EIDHR are considered to support financially Human Rights projects and the better development of Tunisia as part of the EMP. They are very important instruments of the EU for supporting different kinds of human rights programs, but they were not so effective in the case of Tunisia, because the Tunisian government blocked the funds.

Until now the EC published numerous Communications that include proposals for the use of EU policy instruments to promote basic political reforms, including setting up bilateral democracy and human rights committees. But it did not bring the expected result for the Mediterranean partners and in 2002 the EU established the ENP, which aims at strengthening the relations with all neighbour countries, also with the Euro-Med partners. Action Plans of the ENP, negotiated from 2004 onwards, contain chapters with specific and agreed reform objectives on basic human rights and fundamental freedoms, the rule of law and political democracy.<sup>239</sup> Therefore, the Action Plans and Country Reports of every country separately is one of the most effective instruments of the EU in relation to the freedom of expression and lack of transparency in the country, because in these plans, the EU can concentrate its critics and proposals on the most vulnerable topics, depending on the separate country.

Moreover, there was developed a special instrument, the ENPI, through which the EU can realize its action plans, because ENPI, like also stated in its regulation, concentrates a lot on the human rights' topic and especially on the need of freedom of expression and thus, of transparent public administration in Tunisia.

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<sup>237</sup> Article 11, Charter of Fundamental Rights of the European Union

<sup>238</sup> See: European Commission: The European Union and its Neighbors, Fieldwork May-June 2006, Eurobarometer, p. 37

<sup>239</sup> European Neighborhood and Partnership Instrument (ENPI), Regional Strategy Paper (2007-2013) and Regional Indicative Programme (2007-2010) for Euro-Mediterranean Partnership, EuroMed, p. 12

The European Union is capable, through its political instruments, like the EMP, ENP, the bilateral Association Agreement, the Action Plans and various financial instruments, to influence the freedom of expression in Tunisia, but only in the limits of these treaties and agreements and in different spheres. The freedom of expression is a very sensitive issue in Tunisia and the government controls all the media and information sources. Therefore the most of the national and international instruments proved to be ineffective. But there is a progress and the EU has been developing better human rights' instruments, which could make a difference in the next years.

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- Stern, Mick: Night in Tunisia – Even in the glare of world attention, Ben Ali resorts to strong-arm tactics, 5 December, 2005, available at: [www.cpi.org/Briefings/2005/tunisia\\_wsis\\_05/tunisia\\_wsis\\_05.html](http://www.cpi.org/Briefings/2005/tunisia_wsis_05/tunisia_wsis_05.html)
- United Nations Member States, Department of Public Information, Press Release ORG/1469, available at: [www.un.org/News/Press/docs/2006/org1469.doc.htm](http://www.un.org/News/Press/docs/2006/org1469.doc.htm);
- World Summit on the Information Society, Declaration of Principles, 12. December, 2003, available at: [www.itu.int/wsis/docs/geneva/official/dop.html](http://www.itu.int/wsis/docs/geneva/official/dop.html);

Note: All websites were last visited on 20. 08. 2007!

## 8. Annexes:

### **Annex A:**

#### JUDGE MUKHTAR YAHYAOUI'S OPEN LETTER TO PRESIDENT BEN ALI

July 6th, 2001

To the President of the Republic and of the High Council of the Judiciary,

I send you this letter to inform you of my condemnation of the catastrophic state which the Tunisian justice system has reached. Things have come to such a point that judicial authority and judges have been stripped of their constitutional prerogatives and are no longer performing their responsibilities in the service of justice as an independent institution of the Republic. It is precisely this independence that lets the judiciary contribute to building the future of their nation and to the fulfillment of their appropriate role in the protection of Rights and Liberties.

Tunisian judges at all levels are frustrated and exasperated by their forced duty to deliver verdicts which are dictated to them by the political authorities and which are not open to impartial thought or criticism. This practice results in judicial decisions which, more often than not, reflect nothing but the interpretation of law that political authority wishes to impart.

Subject to interference and harassment, Tunisian judges no longer have any room to perform their duties. Treated with arrogance and working in a milieu of fear, suspicion and paid informants, members of the judiciary are confronted with means of intimidation and coercion that shackle their will and prevent them from voicing their true convictions. Their dignity is insulted daily and their negative image in the heart of public opinion is mixed with fear, arbitrariness and injustice, to the point that the sole fact of belonging to our profession is degrading in the eyes of the oppressed and people of honor.

The Tunisian justice system is subject to the implacable tutelage of a class of opportunists and courtiers who have come to constitute a veritable parallel justice system, one that is located outside all legal norms and that has bought out the National Council of Judges and the majority of sensitive positions in other courts. Ignorant of the very notions of impartiality and objectivity, their harmful actions have come to substitute the idea of independence with that of resignation [the two terms are phonetically similar in Arabic—NDLT]. This has engendered a real feeling of discouragement among the truly impartial judges. Blocked from playing the role to which they aspire, these judges are not able to

assume their responsibilities, nor exercise their skills in the service of justice or in the interests of their country.

Meanwhile, the class of bought judges does a brisk trade with its allegiances, imposing a spirit of dependence and submission, running against all ideas of change and creative adaptation, and zealously identifying itself with the regime currently in power. Their objective is to systematize the conflation of the current regime and the State, corrupting all institutions. This behavior, which breeds discord and confrontation, constitutes in reality the true danger to order, security and stability.

The daily practice of our profession has allowed us to appreciate the true reality lived by judges and this has incited us to forego the duty of silent reserve to which we are held. In a situation where all the possibilities of dialogue, however stormy or unstable, have been shut down, silence can no longer be an option, and the cry of our consciences rings out like a necessity which I can ignore no longer, even if it is our prisons which should paradoxically be the place for us to find dignity, freedom and a clear conscience.

Mr. President, your constitutional responsibilities make it your duty to take decisions that require the removal of all interference with justice and with the institutions of the State, in such a way as to permit, to all citizens, the effective exercise of the liberties guaranteed by the Constitution. It is this condition which will make possible the true changes which our people desire; it will be in the true interests of our country.

Sincerely,

Mukthar Yahyaoui

President, Chambre au Tribunal de Première Instance, Palais de Justice, Tunis.

*[Note: This is a translation of a French translation of Yahyaoui's letter, which was written in Arabic—LCHR.]*

## **Annex B:**

### **List of blocked websites, which provide news, politics and information on Tunisia From 28 February 2007**

1. <http://www.tunisnews.net>  
- Tunisian oppositional news and politics
2. <http://www.albadil.org>  
- Online newspaper of the banned Tunisian Communist Workers Party
3. <http://www.cprtunisie.com>  
- "official" website of the Tunisian CPR (Congress for the Republic, unrecognized)
4. <http://www.nawaat.org>  
- Tunisian oppositional news and politics
5. <http://www.maghreb-ddh.sgdg.org>  
- Tunisian oppositional news and politics
6. <http://www.nahdha.net>  
- website of banned Tunisian Islamist An-Nahdha movement
7. <http://www.reveiltunisien.org>  
- Tunisian oppositional politics, news, satire
8. <http://www.kalimatunisie.com>  
- "the Word", independent Tunisian news and politics
9. <http://www.hrinfo.net>  
- Website of the Arabic network for Human Rights Information (IFEX-TMG Member)
10. <http://www.rsf.fr>  
- Website of international NGO campaigning for press freedom
11. <http://www.omct.org>  
- Website of international NGO campaigning against torture
12. <http://www.amnesty.org>  
- Website of international NGO campaigning for Human Rights
13. <http://www.cnlt98.org>  
- Website of non-approved Tunisian NGO campaigning for Human Rights in Tunisia
14. <http://www.observatoire-olpec.org>

- Website of non-approved Tunisian NGO campaigning for freedom of expression in Tunisia
- 15. <http://www.ifex.org>
  - Website of international freedom of expression network
- 16. <http://www.euromedrights.net>
  - Website of umbrella organisation of human rights group of the Euromed region
- 17. <http://www.verite-action.org>
  - Website of Swiss NGO campaigning for human rights in Tunisia
- 18. <http://www.alarabiya.net>
  - Website of the Al Arabiya News Channel (Dubai-based)
- 19. <http://www.fdtl.org>
  - Website of Tunisian political party (approved)
- 20. <http://www.pdpinfo.org>
  - Website of Tunisian political party
- 21. <http://www.etunisie.net>
  - Website of Etunisie

Source: Report : Freedom of Expression in Tunisia : The Siege Holds, April 2007

**Annex C:****List of banned books – 2006 Tunis Book Fair**

Books confiscated from the 2006 Tunis book fair:

No.	Title	Writer	Publishing House	Country
1	Lowering the gaze	Hilal ben Saleh Al Hashemi	Aljil Al Waed	Oman
2	The role of the mosque	Saleh ben Salim AL Rabkhi		
3	The successful Mission	Hamad ben Mohammed Al Othmani		
4	Reformation of the Nation	Ahmed El Khalili		
5	How to make your family Happy	Om El Warith Al Jamiyya		
6	The cups of the straight way (part1)	Abul Rabi'		
7	Tears in the Mihrab of repentance (poetry)	Om El Warith Al Jamiyya		
8	The inspirations of the Mihrab	Ahmed EL Khalili		
9	Dualism in the Islamic personality	Ahme El Khalili		
10	Discover your position	Ruqayya El Khrousiyya		
11	Word	Hamad El Miwali		
12	How to find a wife who can make you happy	Nourel Din Ben Ahmed		
13	Hymns on the two (river) banks (poetry)	Khamis EL Mikdami		
14	Al Imam Jaber Ben Zaid and the fundamentals of the Ibadhi thought	Zianah El Harthiyya		
15	Ibadhi role in the unification of the nation	Jamila El Rabkhi		
16	Signs of the hour of Resurrection	Khalid AL Wahibi		
17	The efforts of the lessened	Zahran El Barashdi		
18	Justice	Ali EL Hijri		
19	The messages of God	Aziz Mash-hour	Dar El Farqad	Syria
20	Ayman El Zawahiri	Jamal Abdul Rahim		
21	The New Face of	Tawfiq Al	Arab Writers	Syria

	Capitalism	Madini	Union	
22	Criticising the established	Raja' ben Salamah	Darul Talia'	Lebanon
23	Partial secularism and Comprehensive secularism (two parts)	Abdul Wahab El Misiri	Darul Shorouq	Egypt
24	The Sheppard of Souls	Ibnul Qayyim Al Jouziyyah	All publishers and bookshops	
25	The Soul	Ibnul Qayyim Al Jouziyyah	All publishers and bookshops	
26	Dictatorship in the modern governing systems	Ali Khalifa El kwari	Wihda studies centre	Lebanon
27	Prophet- Khalifa style in modern Arabic political leadership	Bashir Mohammed El Khadra	Wihda Studies Centre	Lebanon
28	Arab Islamic Fundamentalism	Hussain Saad		
29	Islamic movements encyclopaedia	Ahmed EL Mousili		
30	Corruption and Good Governance	Debate		
31	Fatwa's of Abdul Halim Mahmoud		Darul Maarif	Egypt
32	Arms possession Low		Legal books House	Egypt
33	Consensus and will in their unifying dimension	Rafiq El Ajam	Arabic book House	Lebanon
34	Views of Fundamentalist Mutazelah	Ali El Thwaihi	Al Rushd House	Saudi Arabia
35	Nation, Society and State	Radhwa El Sayyed		Lebanon

Books examined and allowed:

1	Perpetual Conflicts	Zakaria El Mahrami	Promising generation Publishing House	Oman
2	Security and Social Thoughts	Said El Hitali	same	
3	The Quraan and modern challenges	Mohammed El Rashid	The Pioneers House	
4	The Rise of Philosophical Thinking in Islam	Sami El Nash-shar	Daarul Maarif	Egypt
5	Religious Freedom in Islam	Abdul Mitaal Al Seidi	Daarul Maarif	Egypt

Forbidden Books and Writers in Tunis Book Fair:

Books:

1	The Position of the Quraan from its rivals	Omar Abdul Rahman	Dar masr el Mahrousa	Egypt
2	Changes in the Islamic Movement	Kamal Habib	same	
3	Islamic movements-view from inside	Montaser El Zayyat	same	
4	Ayman el Zawahiri, as I knew him	Montaser El Zayyat	same	
5	Islam and Politics	Abdul Elah Belqziz	Arabic Cultural Center	Morocco
6	The first civilisation war	Mahdi El Manjara	same	
7	The Future of Political Islam, American point views	Ahmed Yousef	same	
8	Islam and Politics	Hasan El Turabi	Daarul Saqi	London
9	Political terminology Dictionary	Hasan El Turabi	Daarul Saqi	London
10	Ibno Taymiyya (all titles)		All publishers	
11	Ibno El Qayyem Al Jowziyyah (all titles)		All publishers	

Banned Writers:

Mohammed Said Al Bouti  
 Hasan Al Turabi  
 Tawfiq Al Madini  
 Sayyed Qutb  
 Hasan Hanafi  
 Ibno Taymiyya  
 Ibno El Qayyem Al Jowziyyah

Source: OLPEC