



PREPARING THE 59TH ANNUAL MEETING IN MEXICO CITY



The 59th Annual Meeting of the I.A.J. will take place in Mexico City, under the organisation of the *Comisión Nacional de Tribunales Superiores de Justicia de los Estados Unidos Mexicanos (CONATRIJ)*, from 15th to 20th October 2016. The event will be located in the meeting halls of the [Camino Real Polanco Hotel](#). A web site for the meeting in Mexico City has been set up by the Mexican Association, in English, French and Spanish. In this web page you may find the forms for hotel reservations, as well as thorough information on the event which will take place in Mexico City. See: [link](#)

The Central Council will meet on three separate days, making important decisions. These decisions will affect firstly, the usual administration of our

Association (budget, reports from the President, Secretary-General, Vice-Presidents responsible of the Regional Groups, representatives at the U.N., Foundation "Justice in the World," approval of the conclusions and reports by the four Study Commissions and the selection of the new subjects, choice of date and venue of the 60th Annual Meeting, etc.); special issues, such as the admission of new members (see on this topic the next edition of this newsletter); discussions on the "Monitoring Procedure."

Elections for the I.A.J. officials will also take place this year. In the next weeks the Secretariat-General will spread a letter on this issue, pointing out requirements and deadlines for the submission of candidatures and providing information on how the voting process will be dealt with in Mexico City.

The Presidency Committee shall be meeting at the end of the month of June in Rome. Information on this event will be provided in the next issue of our newsletter. In the meantime the four Regional Group held their springtime meetings: you can read in this issue about the main topics which have been dealt with.

In Mexico City the Study Commissions will discuss the following subjects: 1st SC: "Best practices within the judicial system for ensuring transparency and integrity and preventing corruption"; 2nd SC: "Class actions"; 3rd SC: "The Sentencing of Criminal Offenders"; 4th SC: "Social networks and labour relations". The Secretariat-General is gathering national reports and spreading them among National Association. Pls. do comply with the deadlines set by the Presidents of the Study Commissions.

The 2016 (so far sent) national reports are already available in our web site (<http://www.iaj-uim.org/study-commissions/>): please log in the private area with the password provided to your Association. Reports of previous years are located in the "open" area of the said page. The conclusions to be reached in Mexico City will be distributed among the various National Associations after the October meeting and will be published in the above mentioned web page. (Accessible by clicking on "conclusions", of each respective Study Commission).

The I.A.J. Secretariat-General

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**A Way of Solution for Extremism and Migration:
Extinguishing the Fires at the Origin
by Promoting Rule of Law and Humanistic Conscience**

by Mehmet Tank, Vice President of the 1st Study Commission of the I.A.J.
Judge (Turkey)



An interesting contribution has been provided by our Turkish colleague Mehmet Tank. We publish his article as an annex to this issue of our newsletter. Here you are the relevant topics of this work:

- Turkey, As a Bridge Country Between Western and Eastern Societies
- Important Role of Turkish Judiciary for Sustaining Secularist Tradition which is Being Undermined by Radicalism
- An Apology to uncultivated people
- Expansion of Radicalism, Extremism, Hostility and Devastating Outcome: TERRORISM
- War of Contemporary & Backward Civilizations and Nature of the Universe
- Western World and It's Solidarity to Modern Values are being tested!
- Extinguishing the Fire at the Origin by Closing the Western Borders for Asylum Seekers before the Wars-Conflicts but not AFTER!
- Self-Cultivated Individuals Against Tyrants or Hopeless Immigrants
- SOLUTION: Silencing the Voice of Authoritarians by Escalating International Cooperation for Self-Cultivated Individuals
- Obsessively Continue Defending Rule of law, Liberty, Equality, Fraternity and democracy for All.

MEETING OF THE EUROPEAN ASSOCIATION OF JUDGES – JERUSALEM

The European Association of Judges – Regional Group of the I.A.J. met in Jerusalem on 21st-24th May, 2016: 37 of its 44 members were present. Several topics were dealt with by the Assembly; we give here a short summary of the main points.

1. Report of the President

President Régnard informed the Group that he addressed a letter to the authorities of Montenegro but did not receive an answer so far. On the contrary, he received an answer from the Vice-President of the European Commission, to whom he wrote a letter concerning the salary of judges in Croatia. This reply was forwarded to the Croatian Association. President Régnard then pointed out that Mr. Durmaz, delegate of the Turkish Association YARSAV, was not authorized by the Turkish Council of the Judiciary, to leave the Country to attend the EAJ meeting in Israel. On this issue the Assembly unanimously approved a letter to be sent by President Régnard to the Turkish High Council for the Judiciary, in order to protest against this attack to the freedom of Judges to set up Associations and to freely participate in debates on the judiciary both inland and abroad. President Régnard added that EAJ would answer to the European Committee on Legal Co-operation (CDCJ) explaining that the EAJ will participate in the drafting of the Turkish Code of Ethics, only if Yarsav is consulted too.

2. Working Group “Ways to Brussels”

The President of the Working Group, Mr. Schneiderhan, pointed out that among the recent activities of the European Union, Mr. Schneiderhan mentioned the introduction of legal instruments to fight terrorism. Mr. Schneiderhan mentioned also a major topic in Germany and some other European Countries, that is the TTIP negotiates. The WG might debate also this theme and possibly have some papers ready in summer, to be presented in Mexico City. Mr. Schneiderhan then referred to the high-level conference of Justice Ministers of the Council of Europe (CoE) member states held in Sofia (Bulgaria) in April, where an action plan was discussed on strengthening judicial independence and impartiality.

3. Working Group on the Situation of the EAJ’s Member Associations

Mr. Gass, Chairman of the Working Group, referred to his written report. The Group received a letter from the Greek Association saying that the austerity measures imposed by the EU would cause infringements to judicial independence in the country. The request could not be dealt properly by the WG because it was too general and it was not clearly specified what the WG was supposed to be in its respect. Therefore, the WG sent a letter to the Greek Association asking a more detailed report and a more precise request. The Group received no answer up to the date of the meeting in Jerusalem. Mr. Gass asked to add the WG’s letter to the minutes and President Régnard agreed.

Mr. Gass then referred to the high level Conference of Justice Ministers in Sofia and to the Plan of action approved there, which contains a complete set of instruments. It must be noted that only members of the Government and officials and no judges composed some delegations. The Council of Europe has hardly worked on instruments to enforce judicial independence, but in the EAJ experience, it is well known that there are still several infringements. This gave the idea to look for a better instrument, that could be (out of resolutions, recommendations, etc.) creating a binding law (a new convention or an additional protocol to European Convention on Human Rights) concerning the independence of the judiciary. The Swiss Association made a request to the WG to

consider this problem and start working on a draft text of a binding law. Hopefully, the draft prepared by the WG could be presented to the Assembly of the EAJ. The Assembly approved the proposal to approve a resolution to endorse the position of the WG, to give it a clear mandate regarding the draft proposal. President Régnard charged the WG on Associations to work on the draft resolution that will be later approved by mail.

The Assembly also discussed the situation of the judiciary in Turkey, Poland, Hungary, Austria and Iceland.

4. Monitoring procedure of the members associations

I.A.J. Vice-President Mr. Igreja Matos, Chairman of the *ad hoc* Commission, thanked the European members of the group, Mr. Almpouras and Mr. Zuccarelli, and then summarized the major outcomes. 40 European Associations out of 44 answered the questionnaire. The main problems underlined by the majority of them were: insufficient budget, excessive workload, bad working conditions, external and internal judicial independence, lack of confidence in the judiciary by the population. Little relevance had the concerns about salaries and pensions. As to the question whether in the opinion of the associations the situation improved or worsened in the last years, while the African associations are optimistic and IBA and ANAO also quite confident, the EAJ members are not: more than 45% of them think that the situation worsened with the elapsing of time.



5. Debates on "EAJ intervention concept"

President Régnard explained the Assembly that the document is the outcome of the debate in Barcelona. Mr. Stadelmann (Switzerland) was in charge to draft the text. He then gave the floor to Mr. Gass, because Mr. Stadelmann was not attending the meeting and Mr. Gass said that the document and its annexes were distributed to the European associations and no one sent any remark. President Régnard took note that the Assembly had no comments and established the papers as approved.

MEETING OF THE IBERO-AMERICAN GROUP – LIMA



The Ibero American Group of the I.A.J. held its springtime meeting on 20th April 2016 in Lima (Peru). Out of its 17 members 14 attended the event. President Rafel de Menezes informed the Assembly about the last news on the following points.

1 – Guatemala: this Central American country is member of the IBA Group, but it's been years they are not paying the annual fees, and they are not in contact with us anymore, they don't answer our emails, and they don't come to our regional meetings either. We've been trying to be in touch with them, but unsuccessfully. Conclusion is that during the next meeting in Mexico City the Central Council will have to take notice of the fact that Guatemala is no longer a member of the I.A.J.

2 – New countries: President de Menezes is in touch with judges from new countries, who are not members yet I.A.J. members such as Bolivia and Honduras, and also judges from CAJO (Caribbean Association of Judicial Officers – English speaking judges from Caribe). About CAJO, we sent a

representative to their biennial conference a few months ago, Mrs. Elizabeth Linares, from Porto Rico, who was invited to their meeting at Jamaica, on behalf of the president of IBA Group.

3 – Corruption: working together with I.A.J. Vice-President Jose Igreja Matos, the IBA group organized a three-day academic conference at Recife, Brazil, where they discussed, together with forty judges from eight countries, the international problems of corruption. As President de Menezes pointed out, the fight against corruption is one of the main priorities of I.A.J. for the years ahead. We had at Recife judges from Africa and Europe, among judges of course from IBA Group. The conference was a success, with the support of the regional press. We had an official letter from this meeting, with fourteen points as conclusions available for the files of the Presidency Committee.

4 – Universal Charter of Judges: this is another main priority of IAJ, and IBA group is available to help the Presidency Committee: two judges were appointed to work in this task: Mr Mario Morales from Porto Rico and Mr Walter Barone from Brazil.

5 – IOJT: I.A.J. President Crespo and IBA Group President de Menezes attended last November the world assembly of International Organization for Judicial Training – IOJT, which took place in Brazil. IOJT has national schools members from countries whose national judges associations are not our members, so working with IOJT is important also to be in contact with new countries eventually interested in joining IAJ.

6 – Environmental conference: as environmental representative of IAJ, appointed by Mrs Crespo last year, President de Menezes was invited to an international environmental conference, which took place at Rio de Janeiro in April; a hundred professors, scholars, lawyers and biologists attended from all over the world, on the main concern of climatic changes, the loss of biodiversity and the lack of water. In the end of the three day seminar, an environmental global law institute exclusive for judges was founded.

MEETING OF THE AFRICAN GROUP – KINSHASA



21 ème Réunion annuelle du Groupe Africain de L'Union Internationale des Magistrats Kinshasa 2016

André K Photo 099886:

The meeting of the African Group took place in Kinshasa (Dem. Rep. of the Congo) on 1st-4th June, 2016. In attendance were 7 countries, out of the 16 belonging to the Group, plus two observers (Liberia and Mauritania). Unfortunately three delegations could not reach Kinshasa, due to problems in the air transportations. In attendance were also representatives of the Belgian Association of Judges, Mr. Pol Van Iseghem and Mr. Max Carette, as well as the I.A.J. Secretary-General Mr. Giacomo Oberto.

1. Opening and Welcome. African Group's Conference

The opening ceremony took place on 1st June, 2016, with the attendance of the Minister of Justice. During the whole day, as well as during the morning of 2nd June, 2016, the African Group debated the following issue "The fight against impunity in sexual assaults cases." Presentations were made on the topic by Mr Kuku-Kiese Nzalabar, Secretary-General of the Congolese Association *SYNAMAC*, as well as by Mr. Giacomo Oberto, Secretary-General of the I.A.J. (on the following subject, in French language: *Les abus sexuels contre les mineurs en droit italien*) and by Colonel Muntazini. Thorough debates within all delegates of the African Group followed such presentations.

The President of the African Group, Mr. Cagney Musi, opened the Group meeting on 2nd June, 2016, at 14:30, by thanking all the delegates in attendance and the President of the *Syndicat National des Magistrats de la République Démocratique du Congo* for the perfect organisation of the meeting and for the cordial reception.

2. President's report

President Musi took the floor in order to explain his activity during the period following the meeting in Barcelona. First of all he presented the apologies from President Cristina Crespo, who could not attend the meeting, and thanked for their presence Belgian delegates Pol van Iseghem and Max Carette, as well as the Secretary-General Giacomo Oberto, for his commitment to the African Group. Mr Musi also thanked Mr. Isofa Nkanga, asking him to convey to President Nsambayi Mutenda Lukusa the best wishes of the African Group for a speedy recovery. President Musi then explained that at the time *SYNAMAC* submitted its candidature to become member there was a competition between *SYNAMAC* and *SYMCO*. *SYMCO* again wrote in recent time to the Secretariat-General asking to become I.A.J. member. The request was rejected, pointing out that only *SYNAMAC* is the official R.D.C. member association. The President assured they will get the same response each time they are going to apply.

Mr. Musi also welcomed the two observers from Liberia and Mauritania. He explained that rapporteurs had already been appointed for Liberia on their application. The same was true for Guinea Bissau. Reports on the applications of Mauritania and Sao Tomé e Principe were ready and the Presidency Committee would express its opinion on them. The President said that the African Group is growing slowly, but steadily. He therefore exhorted colleagues meeting other judges representing associations which are not yet I.A.J. members, to provide them with our contact details and persuade them to apply.

The President added that, as many will remember, in the past I.A.J. had two different categories of members: extraordinary and ordinary members. The African Group felt very strongly that this distinction had to be abolished. It was agreed within the Central Council that countries should complete a questionnaire every five years and for the first time in 2015. Unfortunately, many African countries have not completed the questionnaire and this subject has been discussed in Barcelona. He therefore invited associations to fill in the questionnaire and send it to the Secretariat-General. The risk that associations not complying with this requirement are running is that of being expelled from the I.A.J.

Mr. Musi insisted that African associations have to communicate more among them and to the exterior. Actually, in the I.A.J. web site there is a space dedicated to the African Regional Group, where national associations could post information on their activities. He pointed out that the Presidency Committee is working most of the time through e-mail and internet and many of its decisions are available in the web site. As far as annual fees are concerned, the President mentioned the situation of Benin and Cameroon, which risk to be expelled for not compliance with the rules on payment of inscription fees. These associations are no longer attending our meetings either. He invited therefore all colleagues who might have links to such associations to provide contact details of the new board members. Actually, they have not been replying to our messages either.

3. African Group member associations' reports and Choice of the candidate of the African Group for the elections in Mexico City

Delegations attending the meeting explained the situation of the judiciary in their respective countries. After this, all the delegates attending the meeting proposed the candidature of Mr. Cagney Musi as candidate of the African Group for the elections to be held in Mexico City. No other candidatures were submitted. Therefore the Assembly unanimously proposed Mr. Musi as Group's candidate for election to the Presidency Committee in Mexico City. Mr. Musi took then the floor in order to thank the Assembly for the confidence shown towards him and pledged to continue to work for the Group, as he had been doing so far.

4. Venue of the next meeting

President Musi asked whether there were associations ready to host the meeting in 2017. Mr Isofa pointed out that last year the delegate from Mali had pledged to organise the springtime meeting in 2017. Unfortunately the Malian delegate (as well as the colleagues from Guinea and Niger) were blocked in Abidjan airport, as the flight to Kinshasa had been cancelled. The delegate from Tunisia also said his association was ready to host the event. President Musi charged the Secretariat-General to ask the Malian colleagues whether they would be available to host next meeting. The Assembly decided, upon proposal by the President, that, in case Mali showed its availability, that would be the Country chosen. Otherwise the choice would fall on Tunisia.

5. Miscellaneous.

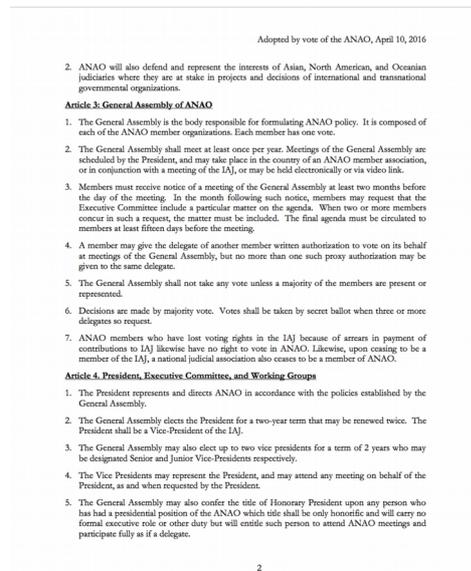
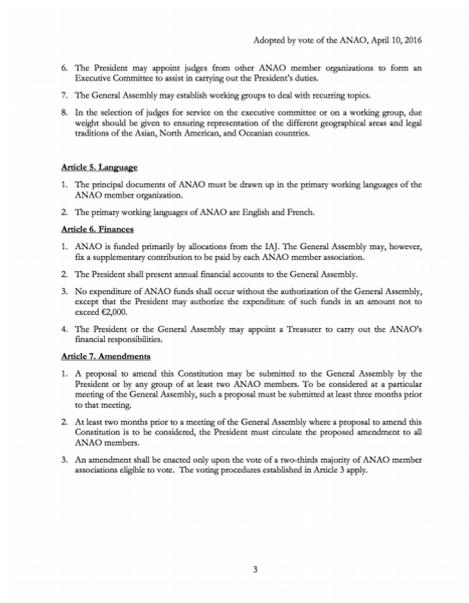
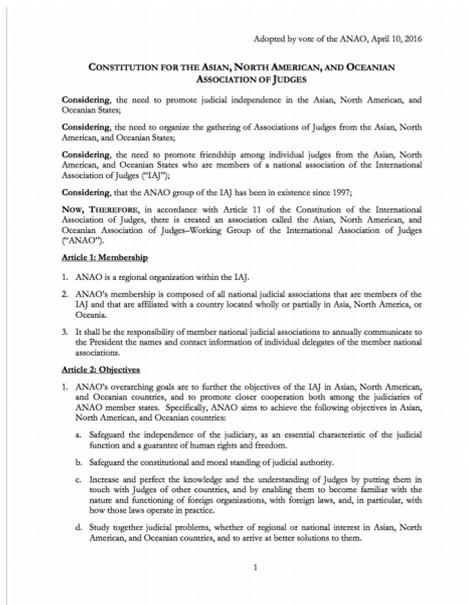
The delegate from Algeria took the floor to propose that the African Group submit and endorse the candidature of Mr. Musi as President of the I.A.J. In the future it will be important to restructure the Group, by setting up a committee charged of helping the President in his work. The Group could also reflect to change its name into "Association of African Judges," or "Union of African Judges." President Musi assured this issue will be put on the agenda of the meeting in Mexico City.



WEB-BASED MEETING OF THE ANAO GROUP

A web-based meeting was held by the ANAO Group on 10 April, 2016, under the co-ordination of the Group's President, Mr Tony Pagone. A constitution for the Group was adopted, similar to that of the other Regional Groups. The constitution provides for office bearers to hold office for two years. Judge Allyson Duncan (U.S.A.) was elected Senior Vice President and Judge Tsogt Tsend (Mongolia) was elected as Junior Vice President.

We publish here the new constitution of the Group ([also available in the I.A.J. web site](#)):



ANNEX

A Way of Solution for Extremism and Migration: Extinguishing the Fires at the Origin by Promoting Rule of Law and Humanistic Conscience¹

As a Turkish jurist fighting for justice, I would like to start my words with the declaration of my commitment to the idea of having a more peaceful and fairer world. Considering that one of the main goals of the EU is to enable and foster the exchange of experiences among the institutions of the EU countries, this article aims to present my thoughts regarding radicalism and current migration problem to the relevant institutions, intellectuals and all global thinkers as well as Europeans.

With respect to the raising concerns over asylum seekers, there is a need to rethink about what does western society mean for immigrants; what could judges and representatives of judicial institutions offer for creation of a more peaceful World with secured institutions, and how the jurists or intellectuals can take responsibility on the issue of global extremism in order to protect principles of rule of law and free society.

Immigration and extremism related issues eventually touch deeply upon the use of fundamental rights and the principles of rule of law. By this article, the author aimed to draw the attentions to the issues, which put the civic values in danger, which creates new undesired rules and legislations to be implemented by every civilized person².

Turkey, As a Bridge Country Between Western and Eastern Societies

First of all, I would like to say that we stand with all European jurists and thinkers who created or consolidated the values like supremacy of law and the rule of law. As the defenders of independent judiciary and the secular democratic system established by our founding leader Mustafa Kemal Atatürk, whenever Turkish intellectuals and jurists get involved in defending our hard-acquired democratic system, which was working for good or ill until the beginning of 2010s, we always find EU institutions and their representatives as real supporters³. Turkish intelligentsia led by Atatürk sought secularism as a modernizing principle as well as a progressive idea covering not only the political life but a whole social life which was, in its very nature, dominated by superstitions, dogmas and ignorance. Turkish experience has proven that secularism⁴ plays a significant role in a complex society like Turkey which has to maintain its religion, religious culture while simultaneously embracing democracy and individual freedoms.

However, there have been several reasons that prevent Turkey from joining the EU. Turkey mainly has to do with the balance of power in Europe, and more importantly, a series of obligations that new member nations must satisfy, known as the “Copenhagen Criteria”. The first criterion states that candidate countries must have achieved “stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities”. Turkey already has had some difficulties with several parts of this criterion, beginning with rule of law⁵. In this regard, Turkish judiciary had improved its infrastructure in some ways thanks to the harmonization process with EU. Turkey had voluntarily been developing itself until 2010 and benefiting from the experiences that EU created by approximating its institutions.

- 1 Some paragraphs of this article were written after the Charlie Hebdo attack in January 2015. Unfortunately the article has been completed after the second –more devastating- Paris terrorist attacks. Main purpose of this article is to call for standing as a united front against terrorism in these dark times. And, by transmitting my deepest sympathy and condolence I dedicate this article to all victims of the both Paris Massacres of 2015 and all French jurists. I would also extend my sincere wishes for all victims suffering from both extremism/terrorism and it’s guardians: totalitarian regimes.
- 2 Even though leaving the floor to the sociologists or politicians regarding this kind of issues may be defended the jurists and judges also need to handle this kind of issues by expressing their points of view in advance since they have to struggle with the results of this problems. It is one of the tasks of judicial associations to defend the fundamental rights of the citizens as well as independence of the judiciary when they are under serious-certain pressure, when their essentials are being targeted by any individual or institution. Regarding this point, look: Report on the Freedom of Expression of Judges, adopted by the Venice Commission at its 103rd Plenary Session (Venice, 19-20 June 2015). From the report: “the ECtHR ...considered that as President of the National Council of Justice, the applicant has not only the right to, but also the duty to express his opinion on legislative reforms affecting the judiciary, after having gathered the opinions of different courts”. Relevant decisions: Saygılı and Seyman v. Turkey, 51041/99, 27 June 2006, paras. 24 and 25; Kudeshkina v. Russia, para. 96”.
- 3 Resolution of International Association of Judges (IAJ) “On the Situation of the Judiciary In Turkey” Barcelona on 8 Oct. 2015; (Accessed) 20 November 2015. <http://www.iaj-uim.org/iuw/wp-content/uploads/2015/10/ResTurkey2015IAJEN.pdf>.
- 4 Bülent Daver, “Secularism in Turkey”, 1988, <http://dergiler.ankara.edu.tr/dergiler/42/451/5082.pdf> . (Accessed) 20.09.2015. “Secularism was first introduced with the 1928 amendment of the [Constitution of 1924](#), which removed the provision declaring that the "Religion of the State is Islam", and with the later reforms of Turkey's first president [Mustafa Kemal Atatürk](#), which set the administrative and political requirements to create a modern, democratic, secular state.” https://en.wikipedia.org/wiki/Secularism_in_Turkey
- 5 Chase Cavanaugh, “[Turkey’s Difficult Entry into the European Union](#)” (Accessed) 10 Feb. 2015. <http://www.thewashingtonreview.org/articles/turkeys-difficult-entry-into-the-european-union.html>

Important Role of Turkish Judiciary for Sustaining Secularist Tradition which is Being Undermined by Radicalism

Taking into the consideration the upheaval of the islamist political approach which has capitalized on religious issues for the last several decades, Turkish political leaders as well as the intellectuals and elites must courageously defend the dynamic and healthy principles of modernism, which aims to establish a modern and prosperous society which is also based on the principle of separation of powers. There is no doubt that independent judiciary plays a significant role for such democratic system where the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is an inevitable obligation of all governmental and other institutions to respect and observe the independence of the judiciary⁶.

Supreme judicial council (HCJP), is central to the administration of law and justice in Turkey. It oversees the admissions into the legal profession, as well as the appointments, promotions and disciplining of judges and prosecutors. HCJP's control over the selection of judges grants it *de facto* sway over the administration of justice. Its independence is a central component of Turkey's system of checks and balances.

However, judicial independence has been threatened and undermined by HCJP itself since Constitutional amendments in 2010. Since that time, the judiciary's administrative body, the HCJP, has been reorganized, such that both it and the executive have infringed directly upon the independence of the judiciary⁷. The executive has sought to justify this greater degree of control by virtue of having increased the number of judges appointed in their ruling term⁸. According to some international critics⁹, during 2010-2015, the judiciary has been subordinated by the executive¹⁰ according to the Prime Minister's will¹¹. Neither HCJP nor supreme courts, but Turkish Judges Association (YARSAV) has been the only judicial organization speaking out against the infringements of the executive.

Since then, the regime has become more authoritarian and "one-man rule"¹² has been created through repressive laws enacted in Turkey. All state bodies and supervisory institutions have been rendered dysfunctional¹³, including judiciary which has been turned into a tool to silence dissidents¹⁴. This administrative approach is apparently inspired and originated from the same mentality that the leaders of the totalitarian countries or extremist organizations originated from the mentality of "**All oppositions must be wiped out**".

6 Reichters Voor Reichters, "**Matters Of Principle Codes on the Independence and Impartiality of the Judiciary**", 2015, The Netherlands, p. 18. http://www.reichtersvoorreichters.nl/media/matters_of_principle/Reichters-voor-Reichters_Matters-of-Principles.pdf, (Accessed) 20 December 2015.

7 [http://www.coe.int/t/DGHL/cooperation/ccje/textes/SGInf\(2016\)3rev%20Challenges%20for%20judicial%20independence%20and%20impartiality.asp#P548_78771](http://www.coe.int/t/DGHL/cooperation/ccje/textes/SGInf(2016)3rev%20Challenges%20for%20judicial%20independence%20and%20impartiality.asp#P548_78771) "...The executive promised benefits like a pay rise and promotions. Candidates declared that if elected, they would work in harmony with the executive. According to the information received by the CCJE, the executive put considerable pressure on the elections, stating they would not accept the result if their preferred candidates were not elected. According to information received from former non-governmental candidates, candidates who ran without government support were threatened. The executive's candidates were elected."

8 It was written at the national papers that after the government backed list won 15 seats total out of 22 in the High Council of Judges and Prosecutors in 2014 election, there is nothing to stop unchecked and unbalanced legislative and executive power controlled by Erdogan.

9 http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_turkey.pdf,

- <http://venice.coe.int/files/turkish%20declaration%20June%202015.pdf>
- <http://www.state.gov/documents/organization/236798.pdf>
- http://www.coe.int/t/dghl/cooperation/ccje/Cooperation/Comments%20of%20the%20CCJE%20Bureau%20on%20Turkey_2015.pdf
- <http://www.iaj-uim.org/iuw/wp-content/uploads/2015/05/press-release-imprisoned-Turkish-judges1.pdf>
- http://www.reichtersvoorreichters.nl/media/medel/201505_medel_athens_eng.pdf
- <https://www.opendemocracy.net/emma-sinclairwebb/for-judges-who-defy-turkey%E2%80%99s-leaders-short-road-to-jail>
- http://www.bostonherald.com/news_opinion/opinion/op_ed/2015/06/cordy_turkish_democracy_on_razor_s_edge
- http://www.onebrickcourt.com/files/REPORT_ON_THE_RULE_OF_LAW_FINAL_FINAL_240815_27622.pdf

"In fact, in the last three months, Turkey's democratic progress has been reversed. Recently, several laws either submitted to or pushed through Turkey's parliament by Prime Minister Recep Tayyip Erdoğan and his ruling Justice and Development Party (AKP) undermine central pillars of democracy—separation of powers, checks and balances, government accountability to voters, freedom of speech—and have put Turkey on the road to authoritarianism. If left unchecked, which they very well might following the AKP's victory in the March 30 local elections, these structural changes could prove more dangerous to Turkish democracy than the abuses of power in which Erdoğan has engaged thus far" Legislating Autocracy? Recent Legal Developments In Turkey, <http://bipartisanpolicy.org/wp-content/uploads/sites/default/files/BPC%20Turkey%20Legislating%20Autocracy.pdf>

10 http://www.magistraturademocratica.it/mdem/qg/doc/turkish_judges_ok.pdf, (Accessed) 10 September 2015.

11 http://www.todayszaman.com/anasayfa_hsyk-election-results-raise-fears-of-govt-control-over-judiciary_361394.html

12 <http://www.newsunited.com/yarsav-chairman-arslan-news/17831821/>

13 "Venice Commission Declaration on Interference with Judicial Independence in Turkey" <http://venice.coe.int/files/turkish%20declaration%20June%202015.pdf>.

14 Consultative Council of European Judges/Prosecutors-CCJE- CCPE, "Challenges for Judicial Independence and Impartiality in the Member States of the Council of Europe", March 24, 2016. [http://www.coe.int/t/DGHL/cooperation/ccje/textes/SGInf\(2016\)3rev%20Challenges%20for%20judicial%20independence%20and%20impartiality.asp#P548_78771](http://www.coe.int/t/DGHL/cooperation/ccje/textes/SGInf(2016)3rev%20Challenges%20for%20judicial%20independence%20and%20impartiality.asp#P548_78771).

It may be interesting that if Turkey, so far, has not become a state which is officially governed by tribalistic rules, it is partially due to the efforts of Western countries in particular EU¹⁵, as well as brave Turkish intellectuals, journalist, judges, prosecutors and other bureaucrats. However, it should be admitted that these efforts and cooperation with the international institutions¹⁶, unfortunately, **did not measure up to prevent the invasion of the extremist philosophies prevalent in our region**. If we cannot achieve measures to stop this influential, sick philosophy spreading across this region or alleged cooperation between those who act according to extremist mentality and the leading figures of extremist –radical terrorist organizations in this region, this current de facto legal! mentality will officially get into force. There is reasonable evidence for concerns because both of them exhibit the desire to wipe off all dissidents.

It may be noted here that one of the President's public statement "*Obey State or Perish*"¹⁷. Would it be this kind of mentality that has given rise to extremism and authoritarian tendency around this region? Repeatedly, if Turkey has not become a state which is officially governed by a Constitution that is full of authoritarian rulers, it is thanks to the International Community¹⁸ as well as brave Turkish intellectuals. However the situation is about to change and de facto situation would soon become a de jure! probably due to the double- dealing approach of Western decision-makers¹⁹ as well as other reasons.

An Apology to uncultivated people

On the other hand, it must be noted here that secular and well educated people in Turkey owe an apology to those people, who did not receive sufficient education so as to appreciate democratic values. It has been realized that we could not teach these people real meaning of supremacy of the law and importance of the fundamental rights, so now they are taking revenge by using majoritarian democracy against pluralistic democracy itself. Despite the fact that we receive same educations at regular schools, they act differently and do not appreciate the benefits of real participatory democracy and the rule of law. Probably, it is because they grew up in families or districts where modern attitudes or civic values are not appreciated sufficiently to be observed as a role model. These attitudes can only be admired if the people have a chance to see true examples and true role models.

Expansion of Radicalism, Extremism, Hostility and Devastating Outcome: TERRORISM

As brave jurists, journalist and intellectuals, we have to analyze and think about why some people living in the same neighborhood with us are stuck in the "Middle Ages"; in conditions mired with despair, belligerency and ignorance. **Today, expansion of radicalism, extremism, hostility, hatefulness and their devastating and inevitable result: terrorism (and today's migration), are our main concerning issues that I wish raise. Frankly speaking, we could not find a way to approach their depravedness or immaturity and we could not react properly so we are now suffering due to them. Before global extremism and its mentality invaded the borders of EU like a virus, we should take necessary steps to stop this expansion so as to protect the said values and reflect the best characteristics of Western World.**

It should be noted here that, today, there is a major war in the field of values. Contemporary values are in conflict with the uncultivated ones. We have to eradicate the sources of unjustness and ignorance by fighting the source, by struggling with those who use all their means to create disproportionateness for their own benefit.

15 EAJ Working Group on the Situation of Member Associations Progress Report "...activities of national associations (in particular associations of Norway, Croatia, Austria, France and Switzerland) which were addressing **their respective governments in order to make them aware of the ongoing reprisals on judges in Turkey and the attempts on "demolishing" the independent judiciary**; the national associations were urging their respective governments to take measures against such attacks on the judiciary and judges on an international level.

16 Norwegian Judges Association's Letter to Norwegian Government: <http://www.newsinenglish.no/2016/02/18/legal-community-condemns-turkey/>

17 <http://www.voanews.com/content/turkey-detains-policemen-probing-jihadist-activity/2742899.html>

18 "Australian judges condemn suspension and prosecution of Turkey's judges", http://www.jca.asn.au/wp-content/uploads/2013/10/P18_01_38-Sacking-of-Turkish-judges-17-Mar-2016.pdf.

19 "EU and Turkey agree on €3 billion refugee deal", <http://www.euractiv.com/sections/global-europe/eu-and-turkey-agree-eu3-billion-refugee-deal-319929>.

War of Contemporary & Backward Civilizations and Nature of the Universe

Instead of regenerating nightmares persisting from the Middle Ages, which are apparently trying to pull our world into their influence on a step by step basis, we should focus on to transmitting Western values to those who are attracted to them. As a citizen of the country that is at the middle of both Contemporary and backward civilizations, we are very aware of what is approaching to the West by manifestly threatening the contemporary values and institutions. And now, Turkey has exactly gotten stuck at the fence! Some desire to have a really westernized democratic country but the others, by calling out, express their intention to have a Hitleresque administration.

As the nature of the universe; love, wisdom and leniency produces more-intensive love, wisdom and leniency. On the other hand, hate and ignorance create more- intensive hate and ignorance and **they give birth to extremism. Sociological evolution proves that stronger prevail over the weaker. Thus with all means, we get to fight with ignorance, hate, extremism, radicalism and darkness but initially, we should conduct this fight at the sources. We get to vitalize more desirable values and export them to those who need to them.**

I believe, sooner or later, we can prove that values like democracy, rule of law, respect for fundamental human rights and all kind of freedoms will prevail over the undesirable customs and attitudes persisting from the dark ages.

Western World and It's Solidarity to Modern Values are being tested!

In today's world if there is danger or threat in the distance for ordinary people, these threats will eventually put the other people's peace and tranquility in danger. It is obvious that **Western World and Europe specifically is being tested with this kind of incidents as it was never before.** I believe that **civilization, developed by the criticism of contemporary thinkers, will substantiate and consolidate itself, and its values will never be suppressed by the expansion of radicalism, extremism, hostility, hatefulness and their other outcomes=terror (migration).**

Extinguishing the Fire at the Origin by Closing the Western Borders for Asylum Seekers before the Wars-Conflicts but not AFTER!

It needs to be recognized that today's Middle East and North Africa exports what they have on their surface. We are being surrounded by their outcomes such as radicalism, hate and crime. The fact that they are not able to solve their social and political problems in a peaceful way makes them more aggressive and oppressive. **We have to extinguish this expanding extremism fires at the origin and then let them be aware of what they carry on at the depths of their hearts and minds as humankind.** I think we have to develop our cooperation in order first to stop these fires at the origin and then plant new sprouts and spread seeds that make that region more livable for everyone.

Self-Cultivated Individuals Against Tyrants or Hopeless Immigrants

We seriously evaluate whether or not the West has been able to export what it domestically has, such as rule of law, civil society, real democracy and the most important one, their input or output: **"self-cultivated individuals"**. Western World began to develop desirable values after it got rid of authoritarian regimes and Tyrants and then Europe become a Union so as to effectively establish said values by giving importance to the supremacy of law.

On the other hand, there are increasing number of such regimes in this region suppressing their societies and intellectuals and this situation leads to the expansion of radicalism.

Since the brightest members of those communities are mostly victims (including Turkey), they are obliged to find a place in Europe or the USA where they can live and speak out without fear. **While these intellectual people turn into hopeless immigrant, their societies remain obedient slaves who look at only benefaction of Tyrants. As a result, the hopeless masses who suffer from lack of predictable legal system, democratic values and brave intellectuals or institutions, can easily be abused and mis-directed by ill-wishers.** Then these uncultivated individuals or social groups could pose a threat for the minorities or other nations.

SOLUTION: Silencing the Voice of Authoritarians by Escalating International Cooperation for Self-Cultivated Individuals
In order to be able to extinguish the fire at the origin, the West should close the borders for educated asylum seekers before the Wars-Conflicts occur. To find sustainable and livable environments for these self-cultivated individuals, we should initially focus on silencing the voice of authoritarian politicians who promote the radicalism-extremism. After that, International communities and leaders, by avoiding double-dealing, should raise their voice to encourage democratic intellectuals, journalists²⁰, independent judges, bureaucrats and NGOs²¹ and put serious pressure on the governments to protect them²².

And then we must handhold the most vulnerable individuals or social groups that defend fundamental rights and democratic values in their countries. This solidarity and cooperation that will be evaluated by international institutions like UN, EU institutions, Venice Commission, The European Commission for the Efficiency of Justice (CEPEJ) as well as the associations like International Association of Judges (IAJ), International Bar Association etc., will positively influence people's courage and belief in democracy and supremacy of the law by rising their conscious about the felicity of the modern civilization.

20 As an example; President Erdoğan has threatened the editor-in-chief of a daily Cumhuriyet, Can Dündar, who recently published pictures of ... carried by Syria-bound trucks run by Turkey's ...), **saying the editor-in-chief will pay heavily for the report, accusing him of spying.** http://www.todayszaman.com/anasayfa_erdogan-vows-dailys-editor-in-chief-to-pay-price-for-mi-t-truck-report_382272.html "On the report, Turkish gendarmerie officials in the southern province of Adana discovering large quantities of ... on civilian trucks reportedly belonging to ... in January 2014." Erdoğan's lawyer has **reportedly demanded two life sentences for Dündar** in this latest criminal complaint and has accused him of: 'forming an illegal organisation, crimes against the state, obtaining confidential information pertaining to national security, political and military espionage, unlawfully making confidential information public and attempting to influence a trial' <http://www.penninternational.org/newsitems/turkey-criminal-complaint-against-journalist-can-dundar-must-be-dropped/?print=print>. However Erdoğan stated those trucks were carrying humanitarian aid.

- **On Nov. 26, Dündar and Gül were arrested on charges of aiding** an armed terrorist organization and committing political or military espionage over reports in Cumhuriyet on the interception of trucks belonging to the National Intelligence Organization (MİT). The articles claimed that the trucks intercepted in January 2014 were shipping weapons to jihadist groups fighting across the border in Syria. <http://www.hurriyetdailynews.com/istanbul-court-refuses-to-release-two-prominent-journalists---.aspx?pageID=238&nID=92393&NewsCatID=339>;
- Letters from Can Dündar: "**Tenderfoot in the espionage world**", <http://www.hurriyetdailynews.com/letter-from-can-dundar-tenderfoot-in-the-espionage-world.aspx?pageID=449&nID=91955&NewsCatID=396>, (Accessed) 25 December 2015.
- "**I revealed the truth about President Erdogan and Syria. For that, he had me jailed**", <http://www.theguardian.com/commentisfree/2015/dec/28/truth-president-erdogan-jailed-turkey-regime-state-security-crime>. (Accessed) 29 December 2015.

21 Some examples may be given from Turkey. After investigations between 17 and 25 December 2013 into corruption;

- Almost half of the judiciary (in total 6,809 judges and prosecutors) have been reassigned by HCJP's 19 decrees proclaimed between 2014 January- 2015 June and 47% of them have been transferred without their request or consent, or any disciplinary process (according to a survey filled by in total 1.751 Judges & Prosecutors at web forum: adalet.org).
- The President of the biggest judges association YARSAV, Murat Arslan, was removed from his court (was working 10 years.)
- 69 judges and prosecutors, who were working on politically sensitive cases including said investigations, were suspended and then most of them dismissed.
- Four prosecutors and two judges have been put behind bars for their judgements and they are still being held in prison pending trial. (The prosecutors had ordered to stop the abovementioned Syria-bound trucks).
- Thousands of high profile bureaucrats and security officers have dismissed from the occupation; 1.800 of them have been detained; 439 of them have been taken into custody and currently 278 of them are still pending trial. <http://www.rotahaber.com/gundem/paralel-yapi-iddialarinayonelik-2-yilda-1800-kisi-gozaltina-alindi-h577331.html>
- Tens of thousands of bureaucrats, most of whom from the police, have been exiled multiple times.
- Hundreds of journalist are being investigated for their occupational activities & many of whom were sent to jail
- 13 TV Channels belonged to private companies have been closed down by the government without any court decision because of their stance against the government.

22 In its Communication 'Enlargement Strategy and Main Challenges 2014-15, the Commission put forward the following conclusions and recommendations on Turkey "...On the other hand, **the government's response to allegations of corruption targeting high-level personalities, including members of the government and their families, raised serious concerns over the independence of judiciary and the rule of law. This response consisted in particular in amendments to the Law on the High Council of Judges and Prosecutors and subsequent numerous reassignments and dismissals of judges and prosecutors, as well as reassignments, dismissals, or even detention, of a large number of police officers. This raised concerns with regard to the operational capabilities of the judiciary and the police and cast serious doubts on their ability to conduct the investigations into corruption allegations in a non-discriminatory, transparent and impartial manner**". http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf

Obsessively Continue Defending Rule of law, Liberty, Equality, Fraternity and democracy for All.

I believe the current expanding threats may influence, but will never be able to prevail the European-Western people's belief, leniency, and peace-loving characteristics. As the delegates of one of the most important judicial association of this Global Village, as judges, as the brightest and the most responsible members of our societies, we have to do more for the world-wide justice by protecting, promoting and consolidating those long-awaited values and free societies. If somebody dreams of rebuilding high barriers like Berlin wall in order to exterminate the spirit of free society, we should not let them do so, since nothing can stop a flood of people! except humanistic conscience.

Turkey is a country where both sides are in confrontation with each other²³, where the [struggle of both values](#) are on the surface and where each of the conflicting parties are being represented by well-equipped and determined representatives. Modern and educated side with self-cultivated individuals is pulling the rope towards a civilized world while representatives of radicalism with totalitarian-narcist leaders are dropping anchor to the depths of darkest backward civilization.

The result of this conflict will be determined by the most committed party's efforts. Considering the current communication means which intertwine strictly both civilizations each other, breaking of the rope appears no longer to be an option. There will be only one to prevail in this global village. We may see in the future of melting pot of civilizations, what our children will be; honorable members of well harmonized civil and free society or slaves of Tolkien's Sauron's caste system! surrounded by wars, conflicts, hatreds or fear. As a last note; neither the West nor the East would be considered ascendant, but only preeminent are the civic values which can be found more or less within each society and which must be promoted.

Let's do our best for the rest.

17 November 2015

Kind Regards

Dr. Mehmet Tank
Vice President of International Association of Judges
First Study Commission (Status of the Judiciary)
Judge (Turkey)

23 United States Turkey 2014 Human Rights Report, <http://www.state.gov/documents/organization/236798.pdf> "...The judiciary and law enforcement agencies were politicized, giving the appearance of impropriety and bias. The government reassigned thousands of police and prosecutors in response to an anticorruption investigation they were conducting of a number of senior government officials and their families, and the prosecutors who initiated the investigation were suspended. The government closed the investigation and destroyed evidence that was gathered; many police officers involved in the investigation were accused publicly of a conspiracy to overthrow the government. ... The executive branch took greater control over the bodies responsible for judicial appointments and discipline and created a new set of courts in which single judges wield extraordinary powers and to which it assigned politically sensitive cases, which had a chilling effect on potential future investigations of politically connected persons."