



## The President

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## Report of the President of the European Association of Judges April 2016-September 2016

### 1 – General

The minutes of the Jerusalem meeting were disseminated to all member associations on August 18, 2016.

The documents prepared during the Jerusalem meeting on the situation in Turkey were sent to the Turkish and European Authorities (see below).

On May 25, I attended the annual meeting of the European Expertise and Expert Institute at the Court of Cassation in Paris, France.

On June 24 and 25, I attended the meeting of the Presidency Committee of the International Association of Judges in Rome.

By a letter dated May 30, 2016, the German association informed me that it volunteered for the organization (probably in Berlin) of the next general meeting of the EAJ in the spring of 2018. The decision will be made in Mexico City. However I wish to thank the German association and its new President for their offer.

### 2 – Participation of the EAJ in the work of the European institutions

#### 2.1. Council of Europe

##### 2.1.1 - European Commission for the Efficiency of Justice (CEPEJ)

The 27<sup>th</sup> plenary session of the CEPEJ took place in Strasbourg. I was held up in Paris for an important meeting of the French High Judicial Council (*Conseil Supérieur de la*

*Magistrature*) and could not attend. The EAJ was represented by the IAJ's Honorary President, Gerhard Reissner, whom I thank for the time dedicated to this function.

As a fringe event and at the request of the European Association of Clerks and Rechtspfleger (EUR), a meeting between representatives of the EUR and of the EAJ had been contemplated. The purpose of the meeting was probably to discuss the work aiming at amending Recommendation R86(12) "*concerning measures to prevent and reduce the excessive workloads in the courts*" and requested by the EUR. The EAJ had informed them that they wanted to be part of the project. Since I was not able to go to Strasbourg, the meeting was postponed till September. Finally it could not be organized due to the urgent necessity to respond to the situation in Turkey, which induced us to set aside certain actions which had been previously contemplated but were less urgent.

On June 27, further to a request from the SATURN Group of the CEPEJ, an email was sent by the secretariat general to the member associations in order to prompt them to answer the CEPEJ's questionnaire on court delays in Europe.

As I mentioned in my two previous reports, the CEPEJ and other bodies of the Council of Europe have become very important forums for debate. Some thought about a more permanent representation of the EAJ in the various working groups, already evoked in Jerusalem, will be included in the agenda of the meeting in Mexico City.

#### 2.1.2 – Conference of INGOs of the Council of Europe

I keep on receiving invitations to attend meetings in Strasbourg. None of the topics mentioned matches our concerns. I have therefore declined all of the invitations. A questionnaire intended to define our status within the conference was sent to us in early September. I answered to it.

#### 2.2 – European Union: "Ways to Brussels" working group

The President of the "Ways to Brussels" working group will come to Mexico City and present the actions undertaken since the Jerusalem meeting.

#### 2.3 – The European Court of Human Rights (ECHR)

The ECHR is contemplating adopting a protocol on the independence of Justice. During the meeting in Mexico City, the working group on the status of member associations will share with us its analysis of the document it has reviewed.

### **3. Working group on the status of member associations**

Since the previous meeting of the EAJ in Jerusalem, I have received two new requests from the Polish and Bulgarian associations.

As far as Poland is concerned, the issue is about the refusal by the President of the Polish Republic to appoint candidates recommended by the Council of Justice.

Regarding Bulgaria, the issue is about a reform which plans to include, for the sake of transparency, the obligation to declare membership of an association of judges.

I referred both cases to the working group on the status of member associations on July 30 and August 9 respectively.

A report of the working group will be presented in Mexico City in order to envisage appropriate actions.

#### **4. Difficulties encountered in various European countries**

##### **- Turkey**

The EAJ has been monitoring the situation in Turkey since 2014. As a result of the missed coup d'état of July 2016, the situation today is disastrous.

Further to the Jerusalem meeting and to the Turkish HCJP's banning of the Yarsav delegate's travel to Israel, the letters validated by the general meeting were sent to the president of the HCJP and to the EU authorities. We have not received any answer apart from that of the Secretary General of the Council of Europe informing us of the communication of said letter to the CCJE.

I also received a reply from the cabinet of the EU Commissioner for Enlargement further to our letters of February 2016 about the situation of judges Baser and Oselik who were being detained.

On July 7, in furtherance of the Swiss association's initiative, letters were sent by several national associations to their national representatives to the parliamentary assembly of the Council of Europe to denounce serious attacks on democracy and the separation of powers in Turkey, and to induce the European authorities to put pressure on the Turkish Government in order that the rule of law be reinstated.

After the missed coup d'état in mid-July 2016, the situation got even worse for our Turkish colleagues.

In the days following the coup d'état, on the basis of an obviously long-established list of almost 3,000 names, thousands of judges and prosecutors were arrested. Many of them are still in jail, including but not limited to our Yarsav friends. They were initially suspended from office, had their assets seized on a provisional basis, and were recently massively removed from the judiciary. At no times were they able to defend themselves. No individualized proceedings were really implemented, the mere listing of their names being apparently sufficient to suppose that they belonged to a terrorist movement. Eventually, the Turkish association was dissolved.

Right from the initial purges, the IAJ and the EAJ firmly responded and communicated about the situation. Many national associations joined them to do the same.

On July 18, a letter was urgently sent to Mr. Elmar Brok, President of the Foreign Affairs Committee at the European Parliament, who had included in the agenda of one of its meetings the situation in Turkey further to the coup d'état. Our objective was to inform the committee of the reality of attacks on democracy by the Turkish government.

On July 25, a second letter was sent to all the European bodies, asking them to stop any form of cooperation with the Turkish authorities in the field of law as long as the standards of an independent justice were not reinstated.

All the positions taken (letters, releases, resolution) were disseminated via the IAJ's website.

On July 22 Cristina Crespo contacted the UN special rapporteur on the independence of judges and lawyers and the international committee of the Red Cross.

Thanks to the work of our Swiss colleagues, to whom I extend my warmest thanks, I will meet the representatives of the international committee of the Red Cross on September 19.

At the end of July I met the French minister of Justice in order to raise his awareness of the situation in Turkey and of the urgency of an intervention with respect to the Turkish government. I also met the diplomatic advisor of the French President for the same purpose.

Finally, I cosigned with the two presidents of the two main French associations of judges, a French member of MEDEL and, in particular, Robert Badinter (former minister of Justice and former President of the Constitutional Council) an opinion article published in the newspaper Le Monde on August 9.

At the initiative of Thomas Stadelmann, a petition to the Council of Europe was launched. Many messages were sent by email and on social networks to disseminate the petition which was signed by thousands of people in just a few weeks.

Finally, the EAJ's Presidency Committee decided to apply to three other associations of judges in Europe (MEDEL, the European association of administrative judges and Judges for Judges) to set up a platform intended for the initiation of joint efforts.

On August 5, an initial joint letter was sent to the representatives of the Council of Europe to denounce the situation once again and ask for the setting-up, within the parliamentary assembly of the Council of Europe in particular, of an independent commission whose mission would consist in going to Turkey.

A second joint letter was sent on August 16 to the President of the HCJP to remind him of international requirements (in particular those of the ECHR) regarding the disciplinary targeting of judges and prosecutors.

The representatives of the 4 associations have been regularly in touch via secured channels. Other actions are contemplated in the next few months.

To preserve the useful purpose of such actions and to protect our colleagues in Turkey, no written report shall be prepared. The issues will be discussed during the meeting in Mexico City on the occasion of which expressions of solidarity with our Turkish colleagues and Yarsav will be extended.

#### - Other countries

Apart from the difficulties encountered in Poland and in Bulgaria, no other problematic issue was notified to me.

## **6. The EAJ budget**

This matter will be discussed during the meeting in Mexico City since we do not have as of the date hereof any updated report on the budget.

I invite the associations who have not settled their situation since May to do it as soon as possible. I remind you that the meeting in Mexico City will be an election meeting and that, pursuant to Article 7, paragraph 5, of the IAJ's constitution: *"If the payment of a member's subscription is in arrears of over one year, that member shall lose its voting rights until the subscription arrears have been paid in full."*

## **7 – The EAJ within the International Association of Judges**

### 7-1. Monitoring procedure

The report of the working group chaired by Vice President Igreja Matos was presented in Jerusalem. At the end of June, three European associations had not completed the required questionnaire. Reminders were sent individually.

The issue of the consequences on these associations of a breach of obligations derived from the revision of the IAJ's constitution in 2012 in Washington D.C. will be dealt with during the meeting in Mexico City.

### 7-2. Updating of the universal charter on the status of judges

In July I kept on compiling at the IAJ international data and internal data (resolutions and work of the study commissions) pertaining to the status of judges, and in late August proposed a first draft of the new charter to the working group. The draft incorporates reformulations of certain articles and many additions.

A work meeting with the members of the ad hoc working group will be organized in Mexico City as a fringe event during the work of the EAJ and IAJ. However, I wish to thank as of now Giacomo Oberto for his substantive proposals but also for the verbatim translation into English in August of the working document in French I had sent him.

The draft of the new charter should be completed by the end of 2016. It should then be sent to the member associations at the beginning of 2017 in order that debates may take place within the regional groups during meetings held in the spring of 2017. After the Presidency Committee's review of the finalized version in June 2017, it will be possible to discuss the text and its adoption during the plenary meeting of the IAJ in the fall of 2017.

Christophe Régnard