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JUDGES' ASSOCIATIONS. THEIR ROLE IN THE WORLDWIDE DEFENSE OF JUDICIAL INDEPENDENCE

"As someone who has personally seen the terrible face of oppressive regimes and felt the pain of this, I try to follow your work as much as I can (…). Your work sheds light on us in these dark days. You give us hope. You give us stamina. You bear our burden. (…). You have brought practice to the concept of solidarity. You are our source of hope."

[Excerpts from a letter sent to the President of the International Association of Judges (IAJ), Mr José Igreja Matos, by Mr Murat Arslan, President of YARSAV, the Turkish association of judges and public prosecutors, dissolved and persecuted by the current Turkish regime]

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1. Introduction. International Judicial Associations in the Stormy Framework of Contemporary World.

I quoted as the *incipit* of my contribution some passages from a letter of a true hero of the independence of the judiciary: Murat Arslan, Turkish judge, founder and president of YARSAV (association of Turkish judges and prosecutors), who has been deprived, by the government of his own country, of his functions as a judge, sent to rot in a prison where he has been for over five years, together with thousands of colleagues, being "guilty" of the mere fact of having defended the idea of an independent judiciary. Murat Arslan, with thousands of his Turkish colleagues, ideally comes to place himself in the wake of that "rebel judiciary," opposing the executive power in the name of the principle of judicial independence. A judiciary that finds its noble fathers in people like the French judge Olivier Le Fèvre d'Ormesson, rapporteur in the court celebrating the trial of the former superintendent of finance of Louis XIV, Nicolas Fouquet ([1]). Or, again, in those famous French judges and legal scholars, such as Michel de l'Hospital, Henri-François D'Aguesseau, Omer Talon and many others who, even before the development of Montesquieu's ideas and the spread of theories of century of the Enlightenment, gave life to epic contrasts with the absolute power of their kings ([2]).

([1]) In response to the repeated requests from the Sun King quickly to reach a death sentence, the judge sent word that "la cour rend des arrêts, non des services!" (The court renders justice, not favours). *See* MULLER, *Voyages à travers l'histoire et le langage*, Paris, 1889, 149. It should be noted that other historical sources refer the sentence to Séguier, first president of the *Cour royale* of Paris, who would thus have responded to the pressure of the Prince of Polignac, Charles X's foreign minister (*see* KIRITHOGLOU, *Un miracle comme on en voit peu*, Amsterdam, Brussels, Paris, 1858, 166).

([2]) All this, moreover, in the context of the recurrent frictions between the crown and the parliaments, which were judicial bodies *lato sensu* comparable to today's courts of appeal (the most relevant text on the history of French parliaments is that of DE LA ROCHE FLAVIN, *Treize livres des Parlemens de France*, Genève, 1621, 6 ff.). The main contrasts were recorded in relation to that of Paris, on issues such as the registration of various royal edicts, or the presentation of *rémontrances* against the king's acts of empire (on these issues *see* ROUSSELET, *Histoire de la magistrature française des origines à nos jours*, I, Paris, 1957, 337 ff.). This, not to mention the *arrêts de règlement*, with which the courts of the time ended up exercising quasi-legislative powers, albeit limited to certain matters. For some examples in this regard see the judgement of the Parliament of Aix-en-Provence dated February 19th, 1685, which not only decreed the nullity of a consensual separation received by a notary, but also prevented all notaries from receiving this kind of deeds for the future (*see* MERLIN, *Dizionario universale ossia repertorio ragionato di giurisprudenza e questioni di*

In 2017 Murat Arslan, thanks to the influence of international judicial associations and, in particular, of the International Association of Judges (IAJ), was awarded the most coveted "Vaclav Havel" award of the Council of Europe. In the meantime he had been sentenced by a court in Ankara to a prison sentence of ten years, with a decision that Prof. Diego García-Sayán, Special Rapporteur of the United Nations on the independence of judges and lawyers, has defined as "not transparent" and non-compliant with the "criteria for judicial proceedings designed to safeguard the legal rights of the individual" ([3]). The letter from Murat Arslan, together with the many that the International Association of Judges receives almost every day from colleagues who themselves and their families are in difficulty, demonstrates better than any abstract consideration the practical importance of international judicial associations.

Without going into the details of the IAJ's work, I can only say that, in the case of Turkey, in addition to the "usual" commitment of our organisation, consisting in issuing resolutions, recommendations, sending letters to international bodies (United Nations, Council of Europe, European Union, etc.), sending delegations on the spot, tasking independent observers in trials against colleagues, and so on ([4]), the International Association of Judges decided, in 2016, to create a special fund for assistance to judges and prosecutors – as well as their families – who are victims of their regime's persecutions ([5]). Here too, without dwelling on aspects that are, as you can very well imagine, confidential, it can be said that up to now the IAJ has paid out sums (donated by judges, judicial associations and judicial bodies from all over the world) for a total amount of about € 215,000.00, intended to help the families of Turkish judges and prosecutors who are persecuted by the regime, deprived of their functions and often imprisoned. A Committee, specially constituted within the European Group of the IAJ, examines the requests for support and approves the disbursement, through a network that operates in a confidential way, but in constant contact with the IAJ.

Over the past few years, the number of European countries (not to mention those of other continents) that have begun showing serious problems in relation to the issue of judicial independence has only increased, even exponentially.

It will be enough to mention, among the most recent cases, the situation of Poland, in relation to which the IAJ launched, in agreement with the local association IUSTITIA, a relevant and very intense number of initiatives ([6]) before and after the highly publicised "March of the 1000 robes," which on January 19th, 2020 gathered a large number of judges from every European country in the streets of Warsaw, to demonstrate their solidarity with their Polish colleagues and their concern for the demolition of the Rule of Law in that country ([7]). The cases I have just mentioned are unfortunately not isolated. Just to mention the events that have shaken the European and world judiciary in the last few years, it will be enough to recall what happened in recent history, for example, in Greece, Montenegro, Romania, Slovakia, Hungary ([8]).

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diritto, Italian ed., III, Venezia, 1835, 766 f.; *see* also BASNAGE, *Commentaires sur la coutume de Normandie*, in *Oeuvres de maître Henri Basnage*, II, Rouen, 1778, 91; OBERTO, *Gli accordi sulle conseguenze patrimoniali della crisi coniugale e dello scioglimento del matrimonio nella prospettiva storica*, note to Cass., March 20th, 1998, n. 2955, in *Foro it.*, 1999, I, c. 1316 ff.). For the decision of the Paris Parliament dated February 14th, 1602, which had previously imposed a similar prohibition on judges, *see* CHENU, *Cent notables et singulières questions de droict*, Paris, 1606, 227.

([3]) *See* https://www.ohchr.org/en/press-releases/2019/02/turkey-must-ensure-fair-appeal-judge-murat-arslan-after-gross-attack?LangID=E&NewsID=24140.

([4]) For a collection of the most relevant initiatives of the IAJ in this field *see* https://www.iaj-uim.org/solidarity-news-and-documents-about-yarsav/, and https://www.iaj-uim.org/platform-for-an-independent-judiciary-in-turkey/.

([5]) *See* https://www.iaj-uim.org/news/bank-account-for-the-provident-fund-of-the-iaj-on-turkey-and-other-emergency-situations-affecting-the-judiciary-in-europe/.

([6]) *See* https://www.iaj-uim.org/solidarity-news-and-documents-about-poland/.

([7]) *See* https://www.iaj-uim.org/news/march-in-warsaw-article-from-the-president-of-the-portuguese-association-of-judges-manuel-ramos-soares/.

([8]) In order to retrieve such topics, the reader has just to fill in the research template, in the official IAJ web site, with the names (in English) of the concerned countries: *see* https://www.iaj-uim.org.

Furthermore, the humanitarian emergency in Turkey has in some way repeated itself, albeit in different (and in some ways even more dramatic) forms, in Afghanistan, where the IAJ has been called to cooperate in a rescue operation, "physically" transferring hundreds of female and male judges and prosecutors out of the country, in a very complex international context, which has required and still requires unprecedented forms of collaboration with governments of different countries, in order to coordinate this commendable activity ([9]). And this was followed, shortly after, by the brutal Russian invasion of Ukraine and the subsequent humanitarian catastrophe, which, for obvious reasons, could not fail to also affect the judiciary ([10]), all the more in a country, whose association of judges is a very active member of the IAJ since 2004.

The real storms that have hit judges and prosecutors in various parts of the world (and in particular in Europe) in recent years have in some way reshaped the traditional vision of international exchanges between judges. The real "trial by fire," through which advocates of the need for an effective separation of state powers have passed and continue to pass in these demanding times, has greatly contributed to shaping new forms of cross-border judicial associations. We have been therefore forced to rethink and reorganize the activity of a body which, like the IAJ, in almost seventy years of life, had acquired considerable experience in the field of exchanges of opinion, the planning of international conferences and meetings, the elaboration of documents, etc., whereas now it has to invent completely new tools and methods of cross-border collaboration between judges from different countries. All this, in a context in which the pandemic that has afflicted the whole of humanity for well over two years seems to want to erase the very reason for associations. The concept of an association, by definition, rests on the idea of reuniting people, first and foremost, physically. On the contrary, the pale technical surrogates we used in this prolonged period—as a form of virtual and even slightly shabby *Ersatz* of a way of meeting that had lasted for millennia—generates curious rejection effects on participants.

Indeed, on closer inspection, this icy wind of repression against the principle of separation of powers, which is blowing for quite some time in Europe and in the rest of the world ([11]), has deep historical causes and finds further nourishment in these times precisely first in the social, economic and legal consequences of the pandemic, and secondly in the war in Ukraine. The general climate of intimidation and fear for the very physical integrity of citizens naturally strengthens the powers of the executive, and this at the expense of judicial independence. All this, then, in a general context in which, despite the expectations of many, the creation and development, in various European systems, of self-governing bodies (High Councils) of the judiciary *à l'italienne*, instead of supporting judges, seems, on the contrary, to frighten and intimidate them ([12]).

2. The Role of the International Association of Judges (IAJ) in the Process of Internationalization of Principles on the Independence of the Judiciary.

In the light of the introductory reflections above, the role of international judicial associations today takes on an all-round significance. This happens in a reality, such as the contemporary one, in which, also, at least on a theoretical level, the supranational principles on the

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([9]) For some details on this topic *see* https://www.iaj-uim.org/solidarity-news-and-statements-about-afghanistan/.

([10]) For some details on this topic *see* https://www.iaj-uim.org/solidarity-news-and-statements-about-ukraine/.

([11]) For some reflections on this topic *see* OBERTO, *La separazione dei poteri e l'ordinamento giudiziario*, available, as of 30th November, 2019, in .pdf format under the following URL: https://www.giacomooberto.com/Oberto_La_separazione_dei_poteri_e_l'ordinamento_giudiziario_versione_originale.pdf.

([12]) As it has been pointed out by some recent analysis, many European judges do not feel protected by their respective judicial self-government bodies: "The Euro-model shields the judiciary from external influence, but it pays little attention to improper pressure on individual judges (…) [It] empowers only a narrow group of judges who in turn may favour their allies and shape the judiciary according to their views. Therefore, a wider range of powers of the Councils should contribute to a reduction in the perception of the institutions as detrimental of judicial independence." *See* CASTILLO ORTIZ, *Councils of the Judiciary and Judges' Perceptions of Respect to Their Independence in Europe*, in *Hague J Rule Law* (2017) 9, 319.

independence of justice are certainly not lacking, as I have tried to demonstrate in various other fora ([13]). A reality, above all, in which, as shown by various concrete examples taken from the so called "living law" and the case-law of international courts, also the elaboration of "simple" soft law rules (by national and international judicial associations, or by international bodies like the Council of Europe or the United Nations) can concretely contribute to implement Rule of Law principles ([14]).

I would like to remind you here that, in the framework of the internationalization of the principles concerning the independence of the judiciary, an increasingly active role is played by the International Association of Judges (IAJ) ([15]). This body, of which I have the honour of being the Secretary-General, was created in 1953, after the end of the Second World War, to establish a better understanding between the judicial systems of the member countries. It currently includes representatives from 94 member countries from all the five Continents. The IAJ is a non-governmental organization that does not admit individuals as members, but has as members national associations of judges. Each country cannot be represented by more than one association: this applies to those States in which (for example, France, Spain, Portugal, etc.) there are several judicial associations. The associations must be associations of judges: which means that in those countries where prosecutors are part of the judiciary (as in Italy, in France and in many French-speaking legal systems) they can participate as well, because of their membership of their respective associations, in the life of the IAJ.

More precisely, IAJ member associations must be associations or representative groups of judges in their respective countries formed freely by their members and not subject to government or outside control. Where several associations exist in a given country, it should be the most representative. The question does not arise in countries like Italy, given that the local association (*Associazione Nazionale Magistrati – A.N.M.*) constitutes the only association of judges (and prosecutors) existing today, although within this body different "wings" or sections express divergent "political" ideas on how to be a judge today.

This very issue is dealt with elsewhere in a different way. For instance, in France, Spain, Portugal, Belgium, Romania, just to mention some cases, ideological divides within the judiciary are played out and vented not through "wings," of an association, but through the setting up different and separate associations. Therefore, in those systems, judges (and prosecutors, where they are part of the same system) are divided into "pro-government" or "anti-government" associations, only to shuffle the cards when the government changes colour. Let us take the example of France, where the historic and proverbial rivalry between the *Union Syndicale des Magistrats* (traditionally close to right-wing governments) and the *Syndicat de la Magistrature* (close to left-wing ideas) for "years and years" has materialized in a real, deep and personal hatred among colleagues, resulting in very unedifying episodes, such as the infamous case of the "mur des cons" ([16]). However, in recent times, the two associations have moved closer, as an effect of the political reshuffling taking place in that country, which has generated the need to make a common front against resurgent neo-fascists and "sovereigntist" movements. On the other hand, we should also mention the beneficial action of the IAJ, which, in agreement with other European associations, has given rise to joint activities, in support of important international initiatives, such as helping Turkish or Polish or Afghan, or Ukrainian colleagues ([17]).

([13]) *See* e.g. OBERTO, *La separazione dei poteri e l'ordinamento giudiziario*, cit., 8 ff.

([14]) For a list of cases and their commentaries *see* OBERTO, *La separazione dei poteri e l'ordinamento giudiziario*, cit., 13 s.

([15]) *See* https://www.iaj-uim.org.

([16]) *See* e.g. https://www.lejdd.fr/Societe/Justice/quest-ce-que-le-mur-des-cons-4009067, https://fr.wikipedia.org/wiki/Affaire_du_%C2%AB_Mur_des_cons_%C2%BB. A book has been written on this *affaire*: *see* BILGER, *Le Mur des cons*, Paris, 2019.

([17]) *See* https://www.iaj-uim.org/solidarity-news-and-documents-about-poland/; https://www.iaj-uim.org/platform-for-an-independent-judiciary-in-turkey/, where information is provided on various initiatives taken together with *MEDEL* (*Magistrats Européens pour la Démocratie et les Libertés*), an international group which gathers some European, traditionally "left-wing oriented," judges and judicial associations.

Just to return to the topic of membership in the IAJ, the member associations must demonstrate (at the time of admission and every three years thereafter, within a special monitoring procedure) that the judicial system in that country ensures a true independence of the judiciary, or that, if this is not the case, that at least the associations in question are fighting for the achievement of such independence. The main purpose of the IAJ is to contribute to strengthening the independence of the judiciary, as an essential attribute of the judicial function, as well as the protection of the constitutional and moral status of the judiciary and of the guarantee of fundamental rights and freedoms ([18]).

In this context, between 1993 and 1995, the various regional components of the IAJ adopted Charters on the statute of the judge:

- the "Judges' Charter in Europe," adopted by the European Association of Judges – European Regional Group of the IAJ in 1993 ([19]);
- the "Statute of the Ibero-American Judge" (*Estatuto del Juez Iberoamericano*), adopted in 1995 by the Ibero-American Group of the IAJ ([20]);
- the "Judges Statute in Africa," adopted in 1995 by the African Group of the IAJ ([21]).

A few years later, in 1999, after a long process of reflection, the Central Council of the IAJ, during its annual meeting, held in Taiwan, adopted a Universal Charter of the Judge, subsequently revised, integrated and updated in Santiago del Chile, in 2017 ([22]).

Starting, therefore, from 1999 and since the adoption of the Universal Charter, the IAJ has conducted long and intense work on the minimum standards for guaranteeing the independence of the judiciary ([23]). In addition, the various Regional Groups and the Central Council of the IAJ have

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([18]) The IAJ is directed by its Central Council, composed of the delegates of member associations, as well as by the Presidency Committee, which is the administrative body, headed by a president elected every two years, flanked by six Vice-Presidents and the last former President (Honorary President) for a period of two years. The Association comprises four Study Commissions, whose task is to study a different subject every year in different sectors: - The first has the task of studying the judiciary, the independence of the judiciary, the judicial organization and protection of individual freedoms. - The second commission deals with civil law and civil procedure. - The third commission studies criminal law and criminal procedure. - The fourth commission deals with public and social law. During IAJ meetings and congresses member associations try to get a better knowledge of the country in which these conferences are held, of its judicial system and of the problems faced by the judges. Petitions and recommendations are issued at the conclusion of each meeting and congress. The IAJ periodically develops multi-year action plans, such as those for the fight against corruption (in connection with the UNODC of the United Nations), or those on environmental law (in collaboration with the Environmental Judicial Global Institute), or the plans for the drafting of guidelines on establishment of associations of judges in countries that do not have them yet. Likewise, it organizes periodic international thematic conferences (as in 2013 in Yalta on the Councils of Justice, in 2014 in Foz do Iguaçu on Environmental law, in 2016 in Mexico City on Corruption issues, in 2017 in Santiago de Chile on the Independence of the judiciary and the self-government of judges, in 2018 in Marrakech on the Independence of the judiciary and the implementation of the Universal Charter of the Judge and in 2019 in Nur-Sultan on the Quality and efficiency of justice, in 2022 in Tel Aviv on "Law, Technology and Social Good"). Within the IAJ there are also four Regional Groups, whose purpose is to closely follow the specific issues concerning the judiciary in different parts of the world: (a) the European Association of Judges - European Regional Group of the IAJ (EAJ); (b) The Ibero-American Regional Group; (c) The African Regional Group; (d) The "ANAO" Regional Group (North America, Asia and Oceania).

([19]) *See* https://www.iaj-uim.org/iuw/wp-content/uploads/2013/01/Statuto-Giudice-EAJ.pdf.

([20]) *See* https://www.iaj-uim.org/iuw/wp-content/uploads/2013/01/Estatuto-del-juez-iberoamericano.pdf.

([21]) *See* https://www.iaj-uim.org/iuw/wp-content/uploads/2013/06/Statuto-Giudice-AFR.pdf.

([22]) *See* https://www.iaj-uim.org/universal-charter-of-the-judges/. For a commentary on this point see OBERTO, U*n nuovo statuto per un nuovo giudice*, since 15th November, 2017, available under the following URL: https://www.giacomooberto.com/Oberto_Un_nuovo_statuto_per_un_nuovo_giudice_2017.htm; .pdf version available under the following URL: http://www.iaj-uim.org/iuw/wp-content/uploads/2017/12/Oberto_Un_nuovo_statuto_per_un_nuovo_giudice_2017.pdf. The article has also been published in *Contratto e impresa / Europa*, 2019, 49 ff. A shortened version of this article has been published under the title *Lo Statuto Universale del Giudice approvato a Santiago del Cile dall'Unione Internazionale Magistrati*, in *La Magistratura*, 2018, 1, Gennaio – Marzo 2018, 18 ff.; this document is also available in .pdf format under the following URL: https://www.giacomooberto.com/Oberto_Lo_statuto_universale_del_giudice.pdf.

([23]) This is true, in particular, for the work done within the First Study Commission of the IAJ, which, as of the year 2000, treated of this particular issue. Related documents are available under following URLs: https://www.iaj-

adopted numerous resolutions that refer to these standards, gradually creating, in this way, a *corpus* of specific rules for this organization. This, obviously, also in the wake of the approval, in the last few decades, of various international documents, many of which promulgated under the aegis of the Council of Europe: from the European Charter on the Statute for Judges, launched in 1998, to the Recommendation N°. R 2010/12, to the various opinions of the Consultative Council of European Judges (CCJE) and the *Magna Carta* issued by that body in 2010, to the reports and works of the European Commission on the Efficiency of Justice (CEPEJ) ([24]).

Let me add, then, a reference of the effective contribution that the IAJ has provided to the Council of Europe since the end of the nineties of the last century, in the activity of assistance to the countries of Central and Eastern Europe, to assist them, with various study and support missions, in the drafting of new regulatory instruments, as well as in launching related initiatives of initial and continuing training of judges, also by effectively contributing to the creation of schools, academies, institutes and training centres for the judiciary in step with the times and compliant with international standards on the independence of the judiciary.

3. **Modus operandi** ***of the International Association of Judges (IAJ) in Critical Situations.***

The first way in which the IAJ operates in crisis situations, and which is typical of the IAJ, is its constant presence, as an observer, at various international organizations. The IAJ enjoys consultative status at the United Nations ("Economic and Social Council" and "International Labour Organization") and has permanent representatives at the UN offices in Geneva, New York and Vienna. It works relentlessly by providing assistance to the Office of the United Nations Special Rapporteur on the independence of judges and lawyers, based in Geneva. The IAJ also has observer status in various Council of Europe bodies (CEPEJ, Venice Commission, and CCJE) and maintains regular contacts with various offices of the EU Commission. Specifically to participate better in the debates concerning justice in the various European offices, the EAJ (European Association of Judges, being the IAJ European Regional Group) has created its own working group, called "Ways to Brussels." Contacts are also being established with the Inter-American Court for Human Rights (where the IAJ Ibero-American Group obtained the status of *amicus curiae*, in relation to such situations as, for example, in Venezuela, where assistance was provided to a colleague unjustly put under process for her ideas). The IAJ also has consultative status with the African Union and the African Court for human rights.

Over the years, the IAJ has developed a series of partnership activities with various international organizations representing different professional groups active in the justice sector, more precisely with the following:

- CMJA-Commonwealth Magistrates and Judges Association;
- International Association of Women Judges;
- *FLAM-Federación Latinoamericana de Magistrados*;
- *UIJLP-União Internacional de Juízes de Língua Portuguesa*;
- *Rechters voor Rechters*-Judges for judges;
- AEAJ-Association of European Administrative Judges;
- *MEDEL-Magistrats Européens pour la Démocratie et les Libertés*;
- IAP-International Association of Prosecutors;
- International Union of Notaries;
- IBA-International bar Association;

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uim.org/general-reports-and-conclusions-by-the-1st-study-commission/ and https://www.iajuim.org/answers-to-the-questionnaires-of-the-1st-study-commission/.

([24]) For a complete list *see* OBERTO, U*n nuovo statuto per un nuovo giudice*, cit., § 3.

- ICJ-International Commission of Jurists.

Beyond this close network of institutional relationships, there is concrete, constant work of support and aid to associations in difficulty. In this context, I can first of all mention the IAJ initiative, which will be discussed below ([25]), aimed at promoting the creation of associations of judges in countries where none of them yet exist. For countries where such associations already exist, and are part of the IAJ, the issues relating to safeguarding the independence of the judiciary are essentially addressed by the four Regional Groups. With regard in particular to the EAJ, European Regional Group ([26]), a special permanent working group was created to monitor the situation of associations that report problems and to coordinate the actions to be taken with them. These initiatives take place on different levels. The first level is what we could define as "denunciation"; in other words the IAJ, through its Regional Groups, "speaks up," issuing declarations and resolutions and contacting other international organizations, in order to focus on a given problem affecting judicial independence. In such cases, contacts are made, debates are conducted within the relevant Regional Group, and possibly within the Central Council of the IAJ, resolutions are adopted, and, if necessary, on-site missions are also arranged ([27]).

Another level is that of lobbying and use of media. Of course, the IAJ and its Regional Groups make use of all modern means of communication: the website—and in particular the "News & Events" section ([28])—Twitter accounts and relations with media and journalists.

In this context, the relationship, already mentioned, with the office of the United Nations Special Rapporteur on the independence of judges and lawyers is particularly close ([29]). The IAJ and its Regional Groups therefore keep in constant contact with this office (as well as, on a continental level, with the Council of Europe, the European Union, the African Union, etc.), in order to report violations of the aforementioned international standards wherever they occur and consequently IAJ requests to the Rapporteur official stands, declarations, reports, on-site visits, etc.

A worrying series of cases concerning judges who have been prosecuted because of their "too independent" attitudes and, starting from 16th July 2016, the explosion of the real tragedy of the Turkish judiciary, have pushed the IAJ to play an even more concrete role of help and relief to the victims of abuses against the independence of the judiciary in the world. Several years ago the IAJ intervened to help the Venezuelan judge Maria Lourdes Afiuni, imprisoned for her critical attitude towards the government of her country, assisting her before and after the trial she suffered ([30]). The same was done in 2015 in relation to the first two Turkish judges (Baser and Öczelik) who were tried and imprisoned for their views against the subjugation of the judiciary to political power. In that case the IAJ ensured, together with the Dutch association "Judges for Judges," a constant attendance at the various hearings of the trial. No one could have imagined that, just a year later, this type of attack

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([25]) *See infra*, § 6.

([26]) *See* https://eaj.iaj-uim.org.

([27]) Just to mention some of the less remote cases, it can be pointed out that, for example, on-site missions were carried out: - in 2013 in Greece, to report to the competent political and administrative authorities the need to intervene, in order to stop the reduction of judicial wages and pay the sums due, which the government refused to give to the judges; - in 2014 and 2016 in Ukraine, to limit, before Parliament and Government, the effects of the law which provided for the lustration of a very high number of judges; - in 2014 in Turkey, to verify the regular conduct of electoral operations for the Council of Justice (which made it possible to verify serious anomalies, which in fact favoured the subsequent deterioration of the situation). For more missions to Turkey, Poland, Hungary and other countries, *see* the site https://www.iaj-uim.org, in the "news" section, simply by putting the name of the concerned country in the query template.

([28]) *See* https://www.iaj-uim.org/news/.

([29]) The Special Rapporteur on the Independence of Judges and Lawyers "is part of what is known as the Special Procedures of the Human Rights Council. Special Procedures, the largest body of independent experts in the UN Human Rights system, is the general name of the Council's independent fact-finding and monitoring mechanisms that address either specific country situations or thematic issues in all parts of the world. Special Procedures' experts work on a voluntary basis; they are not UN staff and do not receive a salary for their work. They are independent from any government or organization and serve in their individual capacity." *See* https://www.ohchr.org/en/special-procedures-human-rights-council.

([30]) *See* documents available under the following URL: https://www.iajuim.org/documents/?post_types=document&s=afiuni.

would be multiplied by several thousand judges and prosecutors, making it impossible to continue this type of attendance. In order to overcome this kind of difficulty, the IAJ created in 2016, as already mentioned ([31]), a special fund, to financially support the Turkish judges detained or otherwise prosecuted and their families, as well as to provide help in the defence, in the context of the proceedings against them.

Again, it will be necessary to recall the case of the aid given to the judiciary of Tunisia, in the face of the freedom-destroying initiatives recently taken by the President of the Republic of that country, who not only abolished, by presidential decree, the local High Council for the Judiciary, but also proceeded, with the same method, to dismiss about fifty "inconvenient judges." Here, too, the IAJ, through the activities of its African Regional Group, proceeded to organize a series of local initiatives, establishing a solid network of contacts with international and national organizations, as well as with the UN Special Rapporteur ([32]).

4. General Principles on International Judicial Associations.

In recent times, the existence of judicial associations, both national and international, has attracted the attention of numerous bodies, which have developed some fundamental principles concerning their composition, activities and governance.

Here it is necessary to start from the consideration of various general basic rules given that judicial associations operate within the broader context of the right of association *tout court*. Thus, the Universal Declaration of Human Rights ([33]), the International Covenant on Civil and Political Rights ([34]) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) ([35]) guarantee to each individual freedom of association, that is, the right to form associations and to join them. Now, like all individuals, judges enjoy these fundamental rights which are guaranteed by the documents mentioned above ([36]). However, in exercising their right to freedom of peaceful assembly, judges must keep in mind also their responsibilities and avoid situations that might be considered incompatible with the authority of their role or with the duty to be independent and impartial and to be perceived as such ([37]).

The freedom of association of judges is expressly guaranteed by the United Nations Fundamental Principles relating to the independence of the judiciary ([38]), by the Bangalore Principles on judicial ethics ([39]) and by the aforementioned Universal Charter of the Judge, in its current version adopted by the IAJ on 14th November 2017 ([40]).

At the European level, freedom of association of judges was specifically recognised in 1998 by the European Charter on the Statute for Judges ([41]) and in 2010 by the Recommendation (2010) 12 of the Committee of Ministers of the Council of Europe, entitled "Judges: independence, efficiency

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([31]) *See supra*, § 1.

([32]) For an overview of the situation and of the solidarity initiatives towards the Tunisian judiciary, *see* https://ag.iaj-uim.org/solidarity-news-and-statement-about-tunisia/.

([33]) *See* the Universal Declaration of Human Rights, adopted on 10th December, 1948 by the General Assembly of the United Nations, art. 20, para. 1.

([34]) International Covenant on Civil and Political Rights, adopted on 16th December, 1966 by the General Assembly of the United Nations, art. 22.

([35]) European Convention on Human Rights (ECHR) of the 4th November, 1950, art. 11, para 1.

([36]) Opinion No. 3 (2002) of the Consultative Council of European Judges (*CCJE*), "On ethics and liability of judges," para. 27.

([37]) *See* the third report of the UN Special Rapporteur on the independence of judges and lawyers, issued on 24th June, 2019, on "the exercise of the rights to freedom of expression, association and peaceful assembly by judges and prosecutors, both offline and online" (*see* https://www.ohchr.org/en/taxonomy/term/1280?page=14).

([38]) *See* the UN Basic Principles on the Independence of the Judiciary, adopted by the General Assembly on 29th November, 1985, art. 9.

([39]) *See* the Bangalore Principles of Judicial Conduct, principles 4-6.

([40]) *See* art. 3.5.

([41]) *See* the European Charter on the Statute for Judges, Principles 1.7 and 1.8.

and responsibilities” ([42]), as well as, again, by the *Magna Carta* of judges (Fundamental Principles) of the CCJE ([43]). The 1998 European Charter highlights the contribution of judicial associations to the defence of the statutory rights of judges, an aspect taken up by Recommendation (2010) 12, which specifies the central point of the statute for judges – namely, independence – and adds an additional dimension: the promotion of the Rule of Law. The *Magna Carta* of judges understands this objective as that of “defending the mission of the judiciary in society.” This tendency towards the widening of the objectives is perceived equally in the analysis of the objectives of the judges’ associations and, increasingly,the attention paid to the statute of judges is now accompanied by an equally strong awareness of the respect for the Rule of Law.

The Consultative Council of European Judges (CCJE)—which also had already affirmed the freedom of association of judges several years ago, in its opinion No. 3 of November 19th, 2002, “On the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behaviour and impartiality” ([44])—decided to dedicate an entire opinion to the theme of judicial associations ([45]), developing a series of interesting principles, conclusions and recommendations, including, for example, the wish (see art. 2) that “there is at least one such association in each judicial system.” The document also underlines the role of these associations “as regards the training and ethics of judges and their contribution to the reforms of the judicial system” (see art. 5). The opinion then states that associations of judges should refrain from “directing their activities according to the interests of political parties or candidates for public functions,” as well as from “getting involved in political matters” (see art. 10), but goes on to say that “judges should not be obliged to disclose their affiliation” as members of political organizations.

The same opinion rightly focuses its attention (see art. 34) on the role of associations in the development of ethical principles of professional conduct, stating that such rules “must be developed by the judges themselves. The fact that judges voluntarily join associations and that there is a forum for exchanges and debate guarantees a strong commitment on the part of the judges to the principles of correct judicial conduct developed by the associations of judges or in any case their contribution to the development of these principles when associations have actively participated in it.” In this regard, it will be interesting to note that the judges’ associations have developed codes of ethics in the following countries: Austria, Bulgaria, Croatia, Denmark, Finland, Iceland, Italy, Malta, Norway, the Netherlands, Slovenia, Spain, Switzerland, while in the following countries they are been involved in different ways in the elaboration of ethical norms: Azerbaijan, Belgium, Estonia, Germany, Ireland, Lithuania, Luxembourg, Macedonia, Montenegro, Romania, United Kingdom, Slovakia, Sweden, Turkey, Ukraine ([46]).

([42]) *See* the already mentioned Recommendation R (2010) 12, of the Committee of Ministers of the Council of Europe to member states on “Judges: independence, efficiency and responsibilities,” art. 25.

([43]) See *Magna Carta* of judges (Fundamental Principles), 17th November 2010, art. 12.

([44]) *See* point No. 34: “However, judges should be allowed to participate in certain debates concerning national judicial policy. They should be able to be consulted and play an active part in the preparation of legislation concerning their statute and, more generally, the functioning of the judicial system. This subject also raises the question of whether judges should be allowed to join trade unions. Under their freedom of expression and opinion, judges may exercise the right to join trade unions (freedom of association), although restrictions may be placed on the right to strike.”

([45]) *See* the Opinion No. 23 of 6th November, 2020, on “The role of associations of judges in supporting judicial independence.”

([46]) On this topic *see* also the contribution by the European Network of the Councils of Justice (ENCJ) (in its report on “Development of Minimum Judicial Standards (2010-2011),” available under the following URL:, https://www.encj.eu/images/stories/pdf/workinggroups/encj_report_project_team_minimum_standards.pdf, 28 ff.), as follows: “Apart from the international instruments, many European countries have adopted their own code or guide in relation to judicial ethics. In some countries these codes or guides have already been adopted by the relevant Council for the Judiciary or Court Administration with the aims of establishing standards for ethical conduct of judges and of providing guidance to judges by setting up a framework for regulating judicial conduct (for instance, Bulgaria, England and Wales, Hungary, Norway, Poland, Romania and Scotland). In other European countries Councils for the Judiciary or Court Administrations are currently working on the development of a code or guide to judicial ethics to be adopted at a later stage (Belgium, Ireland or Sweden). In some countries codes or guides in the field of judicial ethics have been adopted by judges’ associations or unions (for instance, Austria, Czech Republic and Italy) or by judicial conferences or general meetings of judges (Latvia and Lithuania) or are being currently discussed by judges’ associations with a view of

A very wide ambit is contemplated as the transnational and international role of judicial associations, with the recognition that these bodies "facilitate cross-border cooperation and allow comparisons with associations of other Member States. Furthermore, they are associated at European level through some European judicial associations and organizations" (see art. 13), to which "national and international authorities must pay adequate attention" (see art. 14). This with particular reference to the European institutions, which are called to "take into consideration and use the experience and observations that European associations of judges draw from the different Member States and their judicial systems" (see art. 15).

The opinion appears, however, unfortunately, much more reticent on the very delicate issue of relations between associations (or their "wings") and systems of self-government of the judiciary, where it is known that not only in Italy, but also in other countries, the associations of judges play a crucial (and, to tell the truth, not always beneficial) role in elections of members of High Councils for the Judiciary.

5. International Judicial Associations in Common Law Systems.

Within the prism of the Common Law systems, judicial associations have hues and shades which are very different from those that characterize the experience of continental European countries, as well as of those non-European legal systems which have been strongly influenced by European experiences (let us think, among all, of the countries of French-speaking Africa, which are heavily modelled by the experience of their former *métropole*). Moreover, it is evident that, where the achievement of the position of judge is considered as the coveted crowning of a *cursus honorum* of several years (if not decades) in the legal profession, and this as a result of a selection process directly or indirectly influenced by the executive (if not by the electoral body, as happens, for example, for US state judges, or for the judges of some Swiss cantons), the reasons that usually militate for the creation of a professional association of judges seem decidedly less evident than they are in Continental Europe. Therefore, many judges in Common Law systems continue to "feel," so to speak, "more lawyers" than anything else, whereas the reasons for "opposition" to the executive appear less present than in the systems of Civil Law ([47]).

However, the real reason—or at least the predominant one—for which, in Anglo-Saxon systems, judicial associations are not so widespread, lies, in all likelihood, in the very wide, almost boundless powers that judges of those countries have. Thus, the judge who has the possibility of using the "Contempt of Court" against a lawyer or a politician or other person who threatens his or her independence and freedom of judgment (as unfortunately happens more and more frequently in Italy, without any hope of improvement of the situation, also thanks to the complicit passivity of too many careerists colleagues ([48]), will feel much less need—compared to what happens in Civil Law

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its future adoption (Finland and the Netherlands). Finally, there are countries where the relevant Council for the Judiciary or Court Administration has not officially approved or endorsed guides or codes of principles of judicial ethics (Denmark), but indirectly endorsed an international document in this field (such as Spain regarding the Ibero American Model Code of Judicial Ethics)."

([47]) On the systems of selection and recruitment of judges in the USA, *see* GINSBURG and GAROUPA, *The Comparative Law and Economics of Judicial Councils*, in *Berkeley Journal of International Law*, 53 (2008), 67 ff.; for the United Kingdom *see ivi*, 78 ff. On the process of judicial appointment in Commonwealth countries, *see* VAN ZYL SMIT, *The Appointment, Tenure and Removal of Judges under Commonwealth Principles: A Compendium and Analysis of Best Practice (Report of Research Undertaken by Bingham Centre for the Rule of Law)*, British Library Cataloguing in Publication Data, 2015; *see* as well GAROUPA and GINSBURG, *Guarding the Guardians: Judicial Councils and Judicial Independence*, in *The American Journal of Comparative Law*, 2009, Vol. 57, No. 1 (Winter, 2009), 103 ff., available under the following URL: https://www.jstor.org/stable/20454665.

([48]) *See* OBERTO, *Sistemi giudiziari europei a confronto: le criticità italiane*, https://www.giacomooberto.com/Oberto_sistemi_giudiziari_a_confronto.htm, § 9.

systems—to belong to an association that can take action to (try to) protect him/her, given that that formidable tool gives him the ability to defend (effectively!) himself/herself on his/her own.

It should therefore not be too surprising that, in various Anglo-Saxon legal orders, for historical, traditional and cultural reasons, the very idea that judges can join their forces under the umbrella of an association is far from commonplace. It should be noted that the lack of judicial associations in a given country is not necessarily linked to the totalitarian character of the regime. Just think of the case of India, the most populous democracy in the world, where, despite the existence of some associations of magistrates at the district court level (and an association of retired judges), associations of judges at the level of high courts and the Supreme Court simply do not exist.

And it is not too surprising that, where associations of judges actually exist, the scope of these bodies is identified not so much in the need to have an intermediate body, able to dialogue with the executive power, as rather that of having a voice that allows the judiciary to "talk with the people," and make its activities known through the media ([49]). Conversely, the gaze of Common Law scholars towards judicial associations in Continental Europe leads them to focus (erroneously) on the supposed role that associations would have, in Civil Law countries, in allegedly dismantling the "traditional" hierarchical structure of the judiciary ([50]). Indeed, those scholars do not understand that the real purpose pursued by Continental Europe judicial associations is certainly not that of demolishing the (unfortunately) still very persistent hierarchical (or para-hierarchical) structure, dating back to Napoleonic times ([51]) – which course would go to the full advantage of independence of individual judges ([52]) – but, all too often, simply that of ... taking possession of that hierarchical structure!

It will be good to add, at this point, that, precisely the reported lower and less relevant presence and incidence of national associations in the different systems of Anglo-Saxon origin, indirectly favours the significant acquisition of the role played by international judicial associations.

In particular, we should mention here the work carried out by the Commonwealth Magistrates and Judges' Association (CMJA), founded in London in 1970 ([53]). This body, unlike the IAJ, is open, in terms of membership, not only to associations of judges, but also to individual judges. The CMJA has played for years a leading role in some crucial sectors of judicial activity in the Commonwealth countries. Thus, for example, having regard to the insufficient presence of training institutes in some parts of those areas, it has developed a considerable activity of organization of

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([49]) *See* MACK, ROACH ANLEU e TUTTON, *The judiciary and the public: judicial perceptions*, available under the following URL: https://law.adelaide.edu.au/ua/media/365/alr-39-1-ch01-mack-anleu-tutton.pdf, 32. In particular, the Authors remark that "In part because of this concern about the propriety of individual judicial officers speaking to the media, especially in relation to a particular case or controversy, some judicial officers have chosen to communicate with the media through professional associations. For example, one of the explicit objectives of the Judicial Conference of Australia is '[i]nforming the community about the proper role of the judiciary and the significance of an independent judiciary'. To meet this goal, the Judicial Conference of Australia has commissioned and published reports as well as issuing press releases commenting on various controversies involving the judiciary."

([50]) *See* GINSBURG and GAROUPA, *The Comparative Law and Economics of Judicial Councils*, cit., 76: "The Italian story is one in which judges gradually dismantled the classical hierarchical structure of the civil law judiciary. Beginning in the 1960s, judges formed unions, demanding better conditions and freedom from constraints imposed by higher levels of the judiciary. This gradually led to a removal of hierarchical controls. Although in theory the CSM was set up to ensure a certain level of consistency within the judiciary, the quality of judges varied widely. Apparently, the CSM's professional evaluations of the judges were of little significance because they were always positive, and promotions almost never depended on vacancies. (…) The dismantling of the traditional hierarchy was reinforced by several reforms that took place between 1963 and 1979. (…) Between 1979 and 1992, the role of the CSM was consolidated, with the unions assuming an increasingly important role. (…) Judicial investigations into several scandals involving businessmen, politicians, and bureaucrats marked the period from 1992 to 1997, raising questions about the accountability of judicial powers." One wonders why, if the hierarchical system has been "dismanteled," larger and larger numbers of Italian judges fight merciless, bloody and no holds barred wars among themselves, in order to be appointed as heads of courts (or even, much more modestly, as heads of divisions within a court)!

([51]) *See* OBERTO, *La separazione dei poteri e l'ordinamento giudiziario*, cit., 5 f., 22 f.

([52]) In particular this would be true for the internal independence: *see* OBERTO, *La separazione dei poteri e l'ordinamento giudiziario*, cit., 5 f., 22 f.

([53]) *See* https://www.cmja.org/.

judicial education ([54]). On another level, then, the CMJA has provided and continues to provide interesting guidelines in the field of judicial ethics and judicial accountability ([55]).

Again, on the side of judicial independence, some scholars report tensions that arise from the fact that the Chief Justices, traditionally understood there as guarantors of the principle of judicial independence, sometimes have difficulty in guaranteeing it in practice, considering the way in which they themselves (as well as all the judges) are appointed. For this reason, some sectors that are more sensitive to the issue—we can cite, for example, the case of the Australian judiciary—repeatedly underline the role that international judicial associations can play for the protection of judicial independence: both internal and external. In this regard, the CMJA has developed a series of guidelines on how national associations must approach their respective governments when they are asked for opinions and interventions on law bills ([56]).

Additional international associations in the judicial sector that may be mentioned here are the International Association of High Administrative Jurisdictions, the *Association des Cours Constitutionnelles Francophones* (*ACCF*); the *Association des Hautes juridictions de Cassation des pays ayant en partage l'usage du Français* (*AHJUCAF*), and the World Conference on Constitutional Justice.

6. The Influence of International Judicial Associations on the Setting Up and on the Activities of National Associations.

The purpose of international judicial associations is also to help reflect on the existence, role and functioning of national associations, and help in comparing the different organizational experiences. If it is true that in each and every country on the European continent there is at least one association of judges (and often more than one), this is unfortunately not true, as we have just seen ([57]), for other parts of the world.

Precisely for this reason, the International Association of Judges has promoted and has just finished carrying out a study on the task of encouraging the creation of judicial associations in countries where there are not yet any. That work gave rise to a publication, which is also available online ([58]). This is a study that can also be useful in those systems in which one or more organizations of this kind already exist, given that an attempt is made there to identify the minimum requisites necessary for the drafting of an associating constitution. Furthermore, this work also contains model articles of a judicial association, together with a collection of "real" constitutions of judicial associations of various countries, based on both Common Law and Civil Law systems.

It might also be rather interesting to underline that the document contains the statement of all the various purposes for which an association of judges can (and should) be formed. Purposes that,

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([54]) *See* https://www.cmja.org/judicial-education-programme/.

([55]) On the idea of judicial accountability and on the role played by judges' associations in Common Law countries, *see* LOWNDES, *Judicial Independence and Judicial Accountability at the Coalface of the Australian Judiciary*, 2016, 64 (https://localcourt.nt.gov.au/sites/default/files/judicial_independence_and_judicial_accountability_at_the_coalface_of_the_australian_judiciary_.pdf): "Judicial associations are also an important aspect of judicial accountability. As previously mentioned, the judiciary bears a responsibility for emphasising the nature, importance and boundaries of judicial independence and drawing the attention of both the community and government to such matters as well as the importance of the rule of law within a free and democratic society – both in and outside the court room. This is a responsibility that is elevated to a form of accountability – namely explanatory accountability. Judicial associations provide an extra – curial medium for discharging the responsibility that the judiciary as an institution bears and fulfilling the requirements of explanatory accountability. It is through judicial associations like the CMJA, the Judicial Conference of Australia (JCA) and the Association of Australian Magistrates (AAM) that the judiciary is able to draw the attention of the community and government to the importance of judicial independence and rule of law in a modern democracy."

([56]) *See* in particular the "CMJA procedures for dealing with judicial independence issues," mentioned by LOWNDES, *Becoming Stronger and Moving Forward together: The Role of Judicial Associations in the Modern Era*, in *Journal of the Commonwealth Magistrates and Judges Association*, Vol. 24, June 2019, 11 ff., 15 ff.

([57]) *See supra*, § 5.

([58]) *See* https://www.iaj-uim.org/iuw/wp-content/uploads/2022/01/Founding-an-Association-of-Judges-1.pdf.

individually, are exactly superimposable in all European and world legal systems, regardless of the diverse form of legal system and the ways in which judges are recruited and appointed. And so, if it is true for everyone that the first and fundamental purpose for which such a body can be established is that of "promoting and protecting judicial independence and the rule of law," it is no less true that an association of judges "Can also serve as a valuable forum that enables judges to communicate with each other." And not only this: in all Common Law systems, as well as in those of Civil Law, according to what has already been explained, judicial associations play an important role not only in promoting judicial ethics, but also in the fight against corruption within the judiciary. The advantage of the existence of an association, continues the document under examination, is in fact that such a body "may be set up by and consist of outspokenly non-corrupt judges who work together to achieve changes of a corrupt system."

In addition to what has just been said, it is universally recognized that a judicial association can directly promote and organize training activities for judges, which may also include initiatives intended to help the self-training, such as, for example, making it available free of charge (or at facilitated conditions) subscriptions to legal data bases of doctrine and case-law, also providing free or facilitated participation in training initiatives of other bodies. It can also put appropriate pressure on the legislative and executive powers, so that institutional training activities are organized.

A further aspect – often a source of criticism from people not particularly interested in safeguarding the independence of judges – is the fundamental participation of the judiciary, through judicial associations, in the legislative process concerning the justice sector: from judicial system reforms to the discussion on bills concerning civil, criminal and administrative proceedings. Indeed, it seems essential that the experience of those called to operate in those fields be taken into due account, when the very tools of the activity of judges and prosecutors are introduced from scratch or modified in a specific system. Again in this regard, the association is the best vehicle for the transmission, to those who have to make important regulatory choices, of knowledge and experience gained in the field; this is also in order to avoid errors, which, at the end of the day, would be with detriment of all justiciables, in such a delicate sector.

Finally, as already mentioned, it should be noted, in conjunction with the IAJ document under consideration here, that "Creating an association also provides judges with the opportunity to become part of an international network of judges. In a world in which people, countries and companies are connected across borders more than ever in history, and in which the judiciaries worldwide have to cooperate with each other more and more frequently, this aim is worth being considered". Such international networks "provide judges with the ability to address key issues, such as threats to the independence of judges, jointly and with a voice heard on an international level."

Returning, therefore, to the cross-border observation point, it must be said that the internationalization of the debate on judicial associations can serve to develop a series of reflections also within the individual national associations, especially when reflecting on the results. of the comparison between the different systems.

Precisely in this context, IAJ launched a survey on its members in 2016, which at the time were 83 national associations of judges. Some of the results of this survey, published on the IAJ website ([59]), appear extremely illuminating in order to obtain a global picture of the world judiciary.

Thus, out of 63 replies received ([60]), it emerged that 61 of the IAJ members (mainly associations, but also "national representative groups" of judges) have a formal and official statute. In none of the systems, whose associations replied to the questionnaire, are any restrictions on associative activity, although in one case the right of judges to strike is excluded and in another the law prohibits judges from setting up trade unions (but not associations). There is also a country in which the law requires the presence of an association, whereas in others (think of Turkey today) the compulsory existence of a judicial association is obtained *de facto*, through the prohibition of setting up any association, that is not the official one, "keen" to the authoritarian regime in power.

([59]) *See* https://www.iaj-uim.org/news/2016-monitoring-procedure-report-published-in-our-web-site/.

([60]) Out of 83 member States at that time (and 41 out of 44 in the European Group).

About half of the associations that replied to the questionnaire (33 out of 63) indicated that they have regional branches. The associations that responded to the questionnaire all belonging to the International Association of Judges which represents a total number of judges equal to about 120,000, out of a total of 171,000 judges from those countries. 7 associations (out of 63) declared that they play some role in the election and selection of the members of the respective Councils of the Judiciary, where they exist. Also, out of a total of 63 associations that responded to the survey, 37 (about 59%) declared that they were more or less regularly consulted by the governments and 24 (about 38%) by the legislators of their respective countries.

To the crucial question, on whether the situation of judicial independence had improved or worsened in the last 5 years (i.e. from 2011 to 2016), the answers were divided as follows: 23 associations (36.50%) declared that the situation remained unchanged, 23 (36.50%) that it got worse and 17 (26.98) that it had improved. Curiously, in relation to geographical areas, the one that has the greatest number of worsened situations is Europe, whereas in French speaking Africa and in the non-European Common Law systems, judgments about an improvement of the situation prevail.

Asked to indicate what were the most serious problems in the justice sector, most associations reported, in decreasing order of importance: (a) insufficient budget allocations for justice (21 answers), (b) excessive workloads (21 replies), (c) inadequate working conditions (21 replies), (d) insufficient remuneration (salaries and pensions) (17 replies), (e) problems concerning external independence (and undue pressure from politics) (13 answers), (f) problems concerning internal independence (12 answers), (g) lack of trust in the judiciary (negative opinions on judges) (7 answers), (h) problems of communication with civil society (including the media) (7 answers), (i) problems with the management of judicial offices (5 answers), (j) insufficient protection of the personal safety of judges (3 answers).