

JUDGE MUKHTAR YAHYAOUÏ'S OPEN LETTER TO PRESIDENT BEN ALI

July 6th, 2001

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

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

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

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

The Tunisian justice system is subject to the implacable tutelage of a class of opportunists and courtiers who have come to constitute a veritable parallel justice system, one that is located outside all legal norms and that has bought out the National Council of Judges and the majority of sensitive positions in other courts. Ignorant of the very notions of impartiality and objectivity, their harmful actions have come to substitute the idea of independence with that of resignation [the two terms are phonetically similar in Arabic—NDLT]. This has engendered a real feeling of discouragement among the truly impartial judges. Blocked from playing the role to which they aspire, these judges are not able to assume their responsibilities, nor exercise their skills in the service of justice or in the interests of their country.

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

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

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

Sincerely,

Mukthar Yahyaoui

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

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