International Journal For Court Administration

IJCA is an electronic journal published on the IACA website (www.iaca.ws). As its name suggests, IJCA focuses on contemporary court administration and management. Its scope is international, and the Editors welcome submissions from court officials, judges, justice ministry officials, academics and others whose professional work and interests lie in the practical aspects of the effective administration of justice.

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mbzimmer_acc@iaca.ws

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managing_editor@iaca.ws

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The *International Journal For Court Administration* is an initiative of IACA's Executive Board and its diverse membership. The Journal is an effective communications vehicle for the international exchange of experiences, ideas and information on court management, and contributes to improving the administration of justice in all countries. The collective international experience of its Executive Board and Editors has been that every judicial system, even in countries in the earlier stages of transition, has elements to it that may be of interest to others. The variations in practice and procedure from one region of the world to another, from one court system to another, also reveal major similarities across all systems. IJCA serves as a resource for justice system professionals interested in learning about new and innovative practices in court and justice system administration and management, in common law, continental, and Shari'ah-based legal systems throughout the world. The Editors publish two issues per year.

The Editors welcome submissions from court officials, judges, justice ministry officials, academics and others whose professional work and interests lie in the practical aspects of the effective administration of justice. To view the Editorial Policy and Procedures for Submission of Manuscript and Guidelines for Authors, visit the IACA website (www.iaca.ws) and chose IACA Journal.

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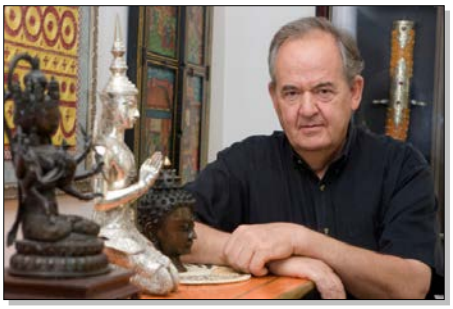
From the Executive Editor:

Acknowledging Our Court System Colleagues In Tunisia

By Markus Zimmer



The cover of this IJCA issue features an 1899 photograph of the Tribunal Chamber in the Bardo Palace in Tunis, the capitol of Tunisia, a small country in North Africa positioned on the southern Mediterranean coast between Libya and Algeria. The chamber was utilized by Tunisia's Ottoman Era rulers or *beys* to hear important cases.

Tunisia's history spans centuries, beginning with indigenous Berber tribes and including Phoenicians, Romans, Byzantine Christians, Ottoman Turks, and Europeans. The spread of Islam into North Africa introduced justice administered by forums in which disputes were adjudicated by clerics schooled in the application of Sharia law based on the Hadith or teachings of the Prophet Muhammad. Predating even these was the jurisprudence of customary law administered by Tunisia's tribal elder forums. By 1881, French military forces had invaded and reduced Tunisia's quasi-independent status as a province of the Ottoman Empire to that of a French protectorate. French colonial administrators superimposed on Tunisian justice a new and unfamiliar framework of courts, confounded Tunisia's legal pluralism by imposing an unfamiliar system, and unilaterally established French sovereign appellate jurisdiction over the country's indigenous justice framework. Proceedings were conducted in French by magistrates schooled in French law and procedure to the disadvantage of indigenous litigants accustomed to Arabic proceedings and the homegrown legal framework.

In 1896, the French occupiers created a new courts' administrative oversight service, the Directorate of Judicial Services (Directorate), and appointed a French magistrate to direct and manage it. They then notified local judicial officials that their forums were henceforth under the control of the new Directorate. Within the next few years, Directorate officials organized six new regional tribunals in Tunisia's larger cities. The Directorate also embarked on an effort to draft civil procedure, contracts and penal codes. The ensuing source documents were largely framed by drawing on existing French law and procedure. Colonial courts were staffed by French-trained magistrates who, unfamiliar with Tunisia's pluralist jurisprudence and Sharia law, relied on their training in French law, procedure and jurisprudence. All criminal cases were progressively reserved for French courts. Decisions of the religious-based courts and the first-instance French courts in Tunisia were appealable initially to the French Court of Appeal in neighboring Algiers and ultimately to the Court of Cassation in Paris.

By the mid-1900s, the French colonial regime was battling armed resistance in Tunisia, Algeria, Morocco and its African and Southeast Asian colonies, resistance that took an increasing toll on French resources in a world weary of colonialism and inclining toward independence and self-government. In June 1954, the new French Prime Minister, Pierre Mendès France, initiated a policy of withdrawal policy from Tunisia. By late 1955, France started to forfeit its claims to Morocco as a protectorate and granted it independence the following year. In 1956, under the leadership of Habib Bourguiba who would rule the country for the next 31 years, Tunisia declared its independence and achieved the status of a sovereign state.

As Tunisia's first post-independence president, Bourguiba initiated significant political and economic reforms but deployed an authoritarian regime to govern the country. The regime of his successor, Zine El Abidine Ben Ali (1987-2011), fostered a culture of economic corruption and intensifying political repression. Popular resistance mounted and erupted in late 2010 in events that quickly captured the attention of the international community, focusing global attention on this small and habitually overlooked Arab country. Mohammed Bouazizi, a 26-year-old fresh produce seller in a local Sīdī Bū Zayd market, had been the main provider for his family since the age of 10. Habitually bullied and harassed by local police, Mohammed persisted, supporting the family and paying school costs for his younger siblings.

Continued…

On 17 December 2010, a female officer confronted him, returning later to demand he turn over his scales. When he refused, she slapped him and, helped by other officers, wrestled him down onto the street, seizing his scales and produce. He went to the local municipality to demand to meet with an official but was rebuffed. Purchasing paint thinner, he returned to the municipal building to douse and set himself on fire. He died on 14 January, igniting a firestorm of festering indignation against an abusive government that soon engulfed the country and deposed the sitting President who fled with his family into exile in Saudi Arabia. The incident was heralded as the stimulus for similar political eruptions in the region collectively termed the Arab Spring, all of which, apart from Tunisia, have thus far failed to successfully implement democratic rule; some, instead, have fallen into political chaos and violent civil war. Tunisia's 2012 revolution, by contrast, spawned creation of a transitional government that introduced fundamental democratic reforms, including elections, and created the conditions that led, in early 2014, to the passage of the new Constitution that was acclaimed in most sectors of the international community.

The 2014 Constitution's provisions establish an independent judicial authority. Articles 113 and 114 provide authority for the independence of the institutional framework that undergirds the judicial and court systems. Precisely how these provisions will be fleshed out in the laws currently being drafted remains to be determined.

In mid-January 2015, I traveled to Tunisia to lead a small team tasked with assessing its court and judicial systems. We were sobered by the difficult conditions under which judges and administrators manage to process enormous caseloads, challenged by severe budget constraints as the government wrestles with a fragile economy, shifting political winds and threats to domestic security posed by militant Salafist jihadists already implicated in two cowardly terrorist attacks on tourists in Tunis and Sousse in 2015, transnational criminal enterprises, and the chaotic civil disorder in neighboring Libya. We salute their courage and determination to persist in the administration of justice under dire circumstances that dwarf those of most systems with which I have had the privilege of working. Various agencies of the United Nations along with the European Union and the Council of Europe are currently engaged in assisting our Tunisian colleagues, and the U.S. government just recently solicited proposals for a project there to improve how courts are managed and administered.