

Ms Esther de ROOIJ, a member of the Management Board at Foundation Judges for Judges:

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Ms Esther de ROOIJ, an Amsterdam judge and a member of the Management Board at Foundation Judges for Judges, was among the attendees at the Abuse of Rights in Tax Legal Relationships International Conference in Kyiv. Law & Business has taken this opportunity to ask Ms de ROOIJ to tell about the activities of the Foundation, which information may be of help to the Ukrainian servants of Themis who have been, or will be, experiencing lustration waves.

'The judges who ask for our support come from different countries, from Ukraine to Venezuela'

— *Esther, could you please tell about who, when and how has decided to create Foundation Judges for Judges?*

— The foundation was founded in 1999 by Bert van Delden, former president of the court of The Hague. He considered it a good idea for Dutch judges to take up the cause of foreign colleagues in need. He had become inspired by the successful foundation *Lawyers for Lawyers*, which since 1986 has actively promoted that lawyers should be allowed to practice in freedom. The same applies for judges.

Since then, the foundation supported judges in many countries including Russia, Georgia, Philippines, Venezuela, Serbia, Ecuador, Swaziland, Bulgaria, Honduras, Tunisia, and Ukraine, who were dismissed on arguable grounds, arrested and detained or were seriously threatened, and even murdered.

— *What kind of support does the Foundation offer? Is it legal, financial, material, moral or any other support?*

— In close liaison with the judge concerned it is decided what action the foundation can take to help to improve his/her situation.

In some cases the foundation will contact the authorities in the country involved, or national or European parliamentary bodies. In other cases, we cooperate with other associations or organisations such as the International Commission of Jurists (ICJ) or the UN Special Rapporteur on the Independence of the Judges and Lawyers. Sometimes, media attention is sought. On other occasions, silent diplomacy is required.

— *Which of the two statements is correct: (1) it is judges who contact the Foundation themselves, or (2) it is the Foundation's representatives who search information about judges that need support and offer their services to such judges?*

— Both statements are correct—the Foundation contacts judges and judges contact the Foundation. But mostly it is judges who contact the Foundation themselves.

— *Where do judges who enjoy such support come from? Are there any restrictions? What is meant here is whether the Foundation is willing to support any judge from any country?*

— We do not make a geographical distinction. The judges who ask for our support come from different countries, from Ukraine to Venezuela'

— *Could you specify countries which judges have got support from the Foundation in addressing their issues? What are the most common tight situations that judges find themselves in?*

— Judges from Turkey, Bulgaria, Serbia, Ukraine, Venezuela, Lesotho, Poland and so on. Please look on our [website](#).

The most occurring situations the foundation deals with are dismissal and detainment of judges, sometimes on large scale.

At this moment Foundation Judges for Judges is actively involved in the Platform for an independent Judiciary in Turkey, which is composed of four European judge associations

We write letters to relevant stakeholders, we organize press conferences and speak with members of the European Parliament and the Parliamentary Assembly of the Council of Europe.

'There were and are more judges from Ukraine seeking the support of our foundation'

— *We know that the Foundation supported, among others, Ukrainian judges who were dismissed and applied to the European Court of Human Rights, without having exhausted all nationally available remedies. Could you please specify Ukrainian judges who have contacted you recently? How often do Ukrainian judges contact the Foundation, seeking support in addressing certain issues?*

— There were and are more judges from Ukraine seeking the support of our foundation. I cannot disclose their names, this is confidential.

Lately, I was confronted with judges from liquidated courts who were unsure of their position. Is it according to European standards and the rule of law to transfer or dismiss judges? Did they get an assessment on their merits?

In this respect it is of utmost importance that judges take part in strong associations of judges. Those associations can subsequently get the support of international associations.

— *We know that the Foundation made a stand for approx. 800 dismissed Serbian judges eight years ago. How often judges are dismissed wrongfully in other countries? Do judges succeed in reinstatement with the Foundation's support? Did Ukrainian judges—those dismissed in accordance with the Purge of Government Officials (Lustration) Act or accused of aiding the former government—contact the Foundation seeking such support?*

— We did not investigate this topic in general, but in Turkey at the moment the number of discharged and imprisoned judges is dreadful. 2,400 of our colleagues in Turkey are put in jail and are still so during a long time without a due process.

And yes, we are convinced that our modest contribution has sometimes been of help to get colleagues reinstated. We are of course not the only actor in such cases, but all together we seem to have some influence. But let me make clear that we are not performing as their lawyers. Judges must seek their own advocate.

'Administrative courts are key in protecting the separation of powers'

— *You often come to Ukraine and can observe the progress achieved in implementing the court reform. What is your general impression of the introduced changes?*

— I would not like to pretend that I have a complete and correct view on the reform, since the situation is complicated. But from the perspective of the rule of law, I would urge the responsible authorities to take decisions in accordance with the legal requirements.

For instance, every judge should get a transparent decision on his or her merits. This allows a judge to challenge such a decision to a competent court, including the European Court of Human Rights. This decision must be well motivated and based on lawful rules.

— *Some Ukrainian judges perceive the High Judicial Council as a punitive agency that applies double standards in the way they decide on the dismissal of judges. How do you assess impacts of the reform on the High Judicial Council? What should be changed in its activities?*

— According to European standards, the Judicial council should consist of a majority of judges, chosen by their peers. That is not the situation yet as I was informed.

— *In Ukraine, you are increasingly invited to attend events related to administrative proceedings. What is your assessment of the present condition of and prospects for the Ukrainian administrative courts that hear disputes involving government authorities? Especially if we take into account that the administrative justice is the youngest form of justice in our country. Are other countries abandoning their administrative court systems at the moment?*

— I am not informed that there are other countries abandoning their administrative courts.

Those types of courts, whether they are part of the Supreme court or independent, should be safeguarded with all possible means, since they are charged with trying cases on government decisions, which is often very sensitive. They should not suffer from undue influence, just as any other judge or court of course, because they are key in protecting the separation of powers which is an important element of the rule of law.

— *Today, Ukraine has two highest judicial bodies: the old and the new Supreme Courts. The old one still exists, while the new has existed for slightly more than one hundred days. Do you know any precedents when there were two supreme courts in any country? Is our situation unique in that?*

— In Bosnia Herzegovina, where I lead a project to support judges in their way of working, are two functioning Supreme Courts, in Sarajevo and Banja Luka. But those courts are both fully operational and performing separately.

— *If judges of the old Ukrainian Supreme Court—who are of the opinion that there can be no such thing as the liquidated Ukrainian Supreme Court—contact the Foundation for support, what kind of support will you offer them?*

— I think our foundation would suggest that the advice of the Council of Europe or the Venice Commission be asked. Other possibility is to ask for the opinion of the Consultative Council of Judges in Europe. This applies also to any other request for support in this reform.