



NIEUWSBRIEF 2021-01

'Fight for the things that you care about, but do it in a way that will lead others to join you.'

Ruth Bader Ginsburg – Radcliffe Day (29 mei 2015)

Vrienden van RECHTERS VOOR RECHTERS,

Wat een jaar, Vrouwe Justitia had in 2020 een mondkapje op en discussies over het *Rule of Law*-gehalte in medelidstaten van de EU waren aan de orde van de dag.

NRC kopte over 2020: 'Het jaar waarin iedereen in z'n eigen bubbel zat.' En daar wil ik niets aan af doen, maar onze stichting is er ook dit jaar in geslaagd om buiten de nationale bubbel te kijken. Wij deden dat vaak samen met anderen, zo schreven we [verschillende brieven](#) aan de relevante autoriteiten met het [PLATFORM FOR AN INDEPENDENT JUDICIARY IN TURKEY](#) om oog te hebben voor de schrijnende situatie van Turkse (ex-)rechters. En met dezelfde Europese rechtersverenigingen [vroegen we aandacht](#) bij de Europese Commissie en bij de Raad van de Europese Unie voor de [toegebrachte schade](#) aan de onafhankelijkheid van de Poolse rechterlijke macht. Samen met professor LAURENT PECH dienden we bij het Europese Hof in Straatsburg in [twee zaken](#) (die van de Poolse rechters WALDEMAR ZUREK en IGOR TULEYA) een zogenaamde *third-party intervention* in.



Waldemar Żurek
(foto: Jakub Włodek)

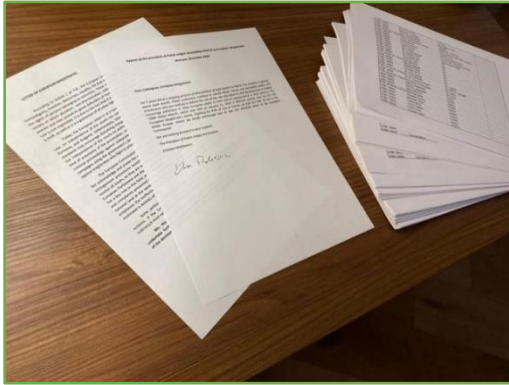
Op onze website verschenen dit jaar maar liefst 30 bijdragen, natuurlijk over Polen en Turkije, maar ook over Hongarije, Sri Lanka en Malawi. Er is actief getweet en inmiddels hebben we wereldwijd 3100 volgers.

PETITIE VOOR POOLSE RECHTERS



De petitie voor Poolse rechters werd door Belgische collega's aangeboden aan de Europese Commissie.

Ons jaarlijkse vriendenevenement rond het *Movies that Matter* filmfestival sneuvelde door COVID-19, maar het virus heeft ons er niet van weerhouden om met elkaar alarm te slaan over de situatie in Polen, eind 2020 met het tekenen van een [online petitie](#) en samen met onze collega's aldaar in juni en november een visuele muur van solidariteit te vormen rond rechter Igor Tuleya. Helaas heeft de Disciplinaire Kamer van de Poolse Hoge Raad op 18 november 2020 alsnog zijn immuniteit opheffen. Igor Tuleya is geschorst en zijn salaris wordt met 25% gekort. Dat betekent dat hij nu strafrechtelijk kan worden vervolgd vanwege – kortgezegd - een beslissing om de media toe te laten in zijn zittingszaal in een



De petitie voor Poolse rechters is ondertekend door 5231 Europese magistraten.

politiek-gevoelige zaak. Helaas was Tuleya niet de eerste Poolse rechter die werd geschorst door de Disciplinaire Kamer.

JUSZCZYSZYN EN MORAWIEC

Op 4 februari 2020 had de Disciplinaire Kamer van de Poolse Hoge Raad al rechter **PAWEŁ JUSZCZYSZYN** geschorst en zijn salaris met 40% gekort. Waarom? Rechter Juszczyzyn was de eerste Poolse rechter die de beslissing van het Europese Hof van Justitie van 19 november 2019 ([C 585, 624 en 625/18](#)) toepaste in zijn uitspraak. En op 12 oktober 2020 hief de Disciplinaire Kamer van de Poolse Hoge Raad de immuniteit op van **BEATA MORAWIEC**, rechter in Krakau en voorzitter van de

andere (naast de bekendere vereniging **IUSTITIA**) Poolse rechtersvereniging **THEMIS**. Ook zij werd geschorst en haar salaris is met 50% gekort en zij kan nu strafrechtelijk worden vervolgd op buitengewoon dubieuze gronden.

PATROON VAN INTIMIDATIE

Gerechtigde intimidatie van rechters die opkomen voor de Poolse rechtstaat en daarbij standpunten innemen die de Poolse autoriteiten onwelgevallig zijn, is schokkend genoeg een patroon geworden. Ook in het komende jaar zal **RECHTERS VOOR RECHTERS** aan de Poolse situatie de nodige aandacht blijven besteden. Weet dat onze Poolse collega's onze steun enorm waarderen, zie hun goede wensen voor het nieuwe jaar verderop in deze nieuwsbrief.



TURKIJE: 4½ JAAR LATER

In deze nieuwsbrief willen we ook wat langer stilstaan bij de situatie in Turkije. We zijn inmiddels zo'n 4,5 jaar verder sinds de mislukte coup op 15 juli 2016, wat betekent dat voor de duizenden rechters die toen zijn ontslagen en gearresteerd zijn wegens vermeende banden met de Gülen-beweging of FETÖ (Fethullah Terroristische Organisatie). Zie hierna de bijdrage 'The normalisation of absurdity' met daarin ook een oproep om een kaartje te sturen aan Murat Arslan en het interview dat op 4 november 2020 verscheen op de site van **THE ARRESTED LAWYERS INITIATIVE** als onderdeel van een serie interviews met Europese juristen.

MARS VAN 1000 TOGA'S: 1 JAAR LATER

Ik sluit af, maar niet zonder de eerstkomende activiteit in het nieuwe jaar te noemen. Op 18 JANUARI 2021 (nadere details volgen nog) zullen we stil staan bij *de Mars van de 1000 toga's* die dan een jaar geleden in Warschau op 11 januari 2020 werd georganiseerd en waar zo'n 25.000 mensen (waaronder vele collega rechters uit alle Europese landen) in een stille tocht door de stad hebben gelopen om hun grote bezorgdheid te uiten over de afbraak van de Poolse rechtstaat en de geplande invoering van de zogenaamde 'Muilkorfwet'. Op grond van deze - op 14 februari 2020 in werking getreden - wet worden Poolse rechters in verschillende opzichten zeer ernstig aangetast in hun onafhankelijkheid .

Dank voor uw donaties waarmee u de stichting in staat stelt haar activiteiten te ontplooiën. Graag wens ik u namens het hele bestuur alle goeds toe voor 2021 een jaar waarin ruimte is voor hoop en solidariteit.

TAMARA TROTMAN

Voorzitter Stichting Rechters voor Rechters



POLEN

WISHES FOR EUROPEAN FRIENDS



Dear Colleagues Judges!

The year 2020 is ending. This year was so much different from previous years, not only due to global challenges of covid-19 pandemic but also because of attacks on the rule of law which is the cornerstone of the European Community.

We have started this year together in a joint, unforgettable "1000 robes" march through the streets of Warsaw. There we stood together up for the guiding principles of law, which define us as Europeans.

We also are finishing this year together. By December 6th 2020 thousands of judges and prosecutors from virtually all European Countries have signed the letter to the European Commission.

Together, every single day, you European judges and prosecutors, show strong disagreement with the destruction of the rule of law and fundamental human rights of every citizen: the right to an independent and fair court deciding cases in accordance with the law understood as a harmonious system of European and national laws.

From the bottom of our hearts we would like to thank you for standing with us. Together we have become the links in a great human chain protecting the European community from the attacks on common values. Christmas is a special time for all of us, no matter where we live. It is a time of solidarity, a time of peace and hope for a better life. It is a time when human faith that Good finally prevails over Evil is reborn.

May this Spirit of Christmas shine over your life and never allow doubts to overshadow what is important. May the festive time allow for respite and bring hope and strength. We wish you health and safety.

We also wish that the passing year will take with it everything which deprives us of dignity and normality.

May the New Year bring us all peace. May the New Year free us from the fear for the safety and health of loved ones, from unrest and threats. We wish you many edifying thoughts, the energy to achieve the goals, the power to prevent the unwanted, and the normality we all miss so much. Together we are able to overcome the odds. This is why we wish you solidarity.

Healthy and Peaceful Christmas! And a Happy New Year!

**The National Board
of Polish Judges Association IUSTITIA**





TURKIJE

'THE NORMALISATION OF ABSURDITY'

De bedreigingen van de rechtstaat in Polen en Hongarije stonden dit jaar volop in de belangstelling. Terecht natuurlijk, maar laten we intussen onze collega's in Turkije niet vergeten. Het oppakken van kritische rechters, officieren van justitie, advocaten, journalisten, schrijvers is daar nog steeds aan de orde aan de dag.

Sinds de poging tot staatsgreep in Turkije in juli 2016 is al weer vier en een half jaar verstreken. En ook daar lijkt een "nieuw normaal" te zijn ingetreden. Het nieuwe normaal van het leven van alledag dat gewoon (nou ja, gewoon, ook daar is de pandemie) doorgaat terwijl duizenden magistraten zijn veroordeeld en hun straf uitzitten.

Maar er zijn ook nogal wat collega's die een veroordeling niet hebben afgewacht en zijn gevlucht, onder andere naar Nederland. Wij hebben contact met hen en hebben gevraagd hoe zij nu, eind 2020, vanuit hier tegen de situatie in Turkije aankijken. Hier volgt, in het Engels, hun, niets aan duidelijkheid te wensen overlatende, reactie:

In a country not far away;

While mafia leaders, thieves, murderers, etc. are released by an amnesty law issued by the government; political prisoners (judges, teachers, activists, etc) were excluded. But when the main opposition leader criticized this situation, he was insulted and threatened by the very famous mafia leader who was released by this amnesty law. When the reactions arose, the president of the coalition party made a statement supporting this mafia leader. Even a citizen who reacted to this mafia on social media was arrested. So what happened to the mafia leader: of course nothing!

In the same country; The prosecutor who closed the government's corruption files and prosecuted many sensational political cases in the past is elected as a member of the Constitutional Court. Besides, it is very common for the follower judges to be promoted by the government as a reward. Also, the Constitutional Court ignored a decision of the ECtHR on a political case. However, it is also normal for the first instance courts to ignore Constitutional Court decisions repeatedly... There are hundreds of similar examples.

Yes, you have guessed right: This country is Turkey. Such events have become so ordinary and they don't surprise anyone anymore. Unfortunately, those who made the country this way are about to achieve their goal. The concepts of normal and absurd have changed places in the country. The country is on the brink of a dystopia. In this context, every normal concept is marginalized. But this situation is painful for the "normal people". It is also a complete disaster especially for the victims of this system.

Let's repeat some numbers: After the coup attempt on 15 July 2016, in Turkey, more than 4000 judges and prosecutors lost their jobs on fabricated accusations, most of them were arrested, hundreds are still in prison, hundreds of them fled the country. Likewise, hundreds of thousands of people from all walks of life and professions faced the same fate. Dozens of them died in prison or while fleeing the country. Unfortunately, there are many children among those who died.

Almost 5 years have passed since this incident. People can only get out of the prisons either in a coffin or with fatal diseases. In this period, there has not been any single hopeful development for these people. On the contrary, the storm of local absurdities moved internationally. Despite all the obvious violations, it was very odd that the ECtHR preferred to remain silent. But the visit of the president of the ECtHR to Turkey has reinforced the perception of the normalization of absurdity. Yet, especially the purged judges had tied their hopes to the ECtHR from day one. Unfortunately all of these happenings completely disappointed them. Nowadays, when we talk with the victims or their relatives in Turkey; They say their hopes that something would change are waning with every passing day, and that their main struggle is not things like poor prison conditions, but fighting those nonsenses and the corrosive effect of time.

At this point, the institutional or individual supports and solidarity of European colleagues are very important. This support will be a great source of morale, especially for imprisoned colleagues. Every sort of support or solidarity means for them a message like that: "Endure! This madness is temporary, the antidote to this absurdity is the law, and one day the law will surely win!" This message will make them feel that they are not alone, and that is nowadays very valuable.

Duidelijke taal en genoeg om over na te denken. Aan de oproep solidair te blijven willen we graag gevolg geven.



Zoals bekend heeft [RECHTERS VOOR RECHTERS](#) de zittingen in het proces tegen [MURAT ARSLAN](#), voorzitter van de Turkse rechtersvereniging [YARSAV](#), bijgewoond. Hij is in januari 2019 tot 10 jaar veroordeeld. Murat zit sinds oktober 2016 vast en heeft dus nog meer dan de helft van zijn detentie te gaan. Hij is een hele moedige man en iedere keer wanneer wij contact met hem hadden, ook al was het kort in de rechtszaal, bleef hij opgewekt. Maar zo halverwege zijn detentieperiode in de *Sincan*-gevangenis begint het hem (en zijn vrouw en twee opgroeiende zonen) behoorlijk zwaar te vallen. Om hem een hart onder de riem te steken daarom opnieuw de oproep hem een kaartje met een korte boodschap (moet, vanwege de censor die meeleest, wel in het Turks) te sturen. Zijn adresgegevens zijn:

*Murat Arslan
Sincan Ceza Infaz Kurumlan Kampüsü
T-Tipi Ceza Infaz Kurumu
A-28 Kogusu
06946 Sincan Yenikent
Ankara, Turkiye*

Opkomen voor het lot van ontslagen en gedetineerde Turkse rechters blijft een zaak van lange adem. De uiteindelijke verandering zal moeten plaatsvinden langs de lijnen van politieke verandering, zo wordt ons door onze Turkse collega's verzekerd, maar daar is voorlopig nog niet veel zicht op. Waar enorme behoefte aan blijft is materiële steun aan gezinnen van ontslagen rechters in Turkije. Via de Europese tak van de [INTERNATIONAL ASSOCIATION OF JUDGES](#) worden [fondsen geworven](#) om daadwerkelijke steun te verlenen. Financiële bijdragen zijn meer dan welkom!

EVERT VAN DER MOLEN

THE ARRESTED LAWYERS INITIATIVE

In het kader van een nieuw project interviewt THE ARRESTED LAWYERS INITIATIVE prominente Europese rechters, advocaten, rechtsgeleerden en bestuurders van magistratenverenigingen. Op 4 november 2020 werd [een interview](#) gepubliceerd met onze voorzitter.

1. *You are the president of Judges for Judges (J4J). Could you tell us about you and J4J and your work?*

Rechters voor Rechters (Judges for Judges) is an independent and non-political Dutch foundation.

I have joined the board in 2009 and after a few years became the chair. It is one of my side activities next to being a criminal judge in the Court of Appeal of The Hague and my work for the Dutch Training and study centre for the judiciary (SSR).

Judges for Judges (J4J) was established in 1999 by BERT VAN DELDEN, former President of the District Court of The Hague, on the occasion of his stepping down from the office of chairman of the Dutch Association for the Judiciary (NVvR). He considered it a good idea for Dutch judges not only to focus on their own – generally comfortable – position, but to take up the cause of foreign colleagues in need.

Judges for Judges aims to support fellow judges abroad who have run into problems or risk problems on account of their professional practice. These problems are mostly related to (presumed) violation of their professional independence. J4J also concerns itself with judges, who have been discharged for disturbing reasons, have been arrested and imprisoned, put under pressure, are threatened, or even assassinated. We have supported judges all over the world. In the past years we have also monitored several criminal cases against Turkish judges and together with the other associations joined in the Platform for an Independent Judiciary in Turkey we try to keep a spotlight on the plight of our Turkish colleagues.

2. *You were a defense lawyer and now you serve as a criminal court judge. To what extent do these two professions differ in terms of the application of laws?*

Both defense lawyers and judges (and prosecutors for that matter) work with the same set of laws.

I would like to compare the right to a fair trial with a triangle. For a fair trial it then is of the utmost importance that all three necessary points of the triangle each fulfill their respective functions in the best possible way. Biggest difference between a defense lawyer and a judge is that the first has to be partial whereas the judge should be impartial and independent. What you unfortunately often see in countries with serious Rule of Law issues is that the executive encroaches on the independence of the judiciary and that lawyers are hampered in their work by the authorities by identifying them with their clients or their clients' causes.

3. *In one of your interviews you said "It is clear that judges often function as the canaries in the coalmine." As a judge and the chair of your foundation (J4J), how do you see the situation in Europe (the Europe Union and the Council of Europe) with regard to rule of law and the independence of the judiciary?*



There is so much going on at this moment on Rule of law related issues, both within the EU and outside of the EU in the broader assembly of countries of the Council of Europe. The past few years we unfortunately have seen democratic backsliding in certain member states. What you see is that this process of erosion of the Rule of Law is initiated by democratically elected governments and begins with dismantling democratic checks and balances, the judiciary, free media and civil society. Scholar [NANCY BERMEO](#) uses this great term '[executive aggrandizement](#)' the defining feature being that institutional change is either put to some sort of vote or legally decreed by a freely elected official, meaning that the change can be framed as having resulted from a democratic mandate. Turkey, Hungary and Poland are all examples of countries in which you have seen this happening.

But although you can certainly see similarities between the countries, it is important to also note the differences. The scale of the mass dismissals and arrests of Turkish judges (and prosecutors) after the attempted coup in 2016 is unheard of! The site of [Turkey Purge](#) visualized the scope of the post-coup crackdown and it shocks me every time I see those numbers. And it goes on and on, only last month on 14 October 2020 again eight judges and three prosecutors were dismissed without a fair procedure by Turkey's Council of Judges and Prosecutors (CJP) for alleged membership of or connections with the Gülenist movement.



Unfortunately, judicial harrassment is something that you now find in this type of society. Appointing politically loyal judges to crucial positions in the courts makes judges part of the problem in this kind of authoritarianism. As Human Rights Watch puts it on its Turkey-page: 'Executive control and political influence over the judiciary in Turkey has led to courts systematically accepting bogus indictments, detaining and convicting individuals and groups the Erdoğan government regards as political opponents, despite lack of evidence of criminal activity. Among these are journalists, opposition politicians, activists and human rights defenders.'

And yes, I think it is fair to say there is a Rule of law crisis in the EU. Who would have thought 10 years ago that proceedings under Article 7 of the Treaty of the European Union would have been triggered against two member states (Poland and Hungary). If we want to see the EU as a community of values, it is essential to find innovative ways to uphold the Union treaty values. The European Court of Justice in Luxembourg has a lot of important Rule of Law cases on its plate. Recently we heard that the European Commission moves forward with the infringement procedure opened in April against Poland regarding the 'Muzzle law' that entered into force on 14 February 2020. The Commission considers that this Polish law on the judiciary undermines the independence of Polish judges and is incompatible with the primacy of EU law. That is an important step. But the ECJ can not solve this issue single-handedly. Ultimately it is a political choice on how we want to cooperate together in the EU, what it truly means to be a EU-member state and what that means in terms of rights and obligations. The trilogue these days between the European parliament, the Council of the EU and the European Commission about how best to attach the rule of law conditionality to EU funds is crucial.

4. *You said "Living in a democracy under the rule of law is never a given, it is always work in progress." However, the problem is people take the rights and freedoms they enjoy for granted. One of the most essential ones is the right to fair trial which only can be ensured with the independence of judiciary. How can we better explain it to fellow citizens?*

Civic education is truly important so start young, citizens should understand that everyone should have the right to bring his/her case in front of an independent judge. Talk about these issues in your family and discuss with friends. The judiciary and individual courts should actively reach out to the media and

the public. Organize visits for schoolchildren and students to your court. Try to give reasoned judgments in clear language. These are all ways in which you can help to build public confidence and trust in the judiciary. Obviously in Turkey the Rule of law will first have to be restored and then a lot of effort will be required to build trust in the judiciary. What amazes me is the resilience and tenacity of Turkish human rights defenders, be it imprisoned judges, lawyers, journalists or other activists. Despite everything they do not give up dreaming of and striving for a better society. So the least we can do is show them our solidarity.

5. *Judges for Judges, for a long time, has been running campaigns on the situation of judges in Turkey and Poland. What would you like to say to our European colleagues as to how they could help their Turkish and Polish colleagues?*

Well first of all inform yourself about what is going on in these countries, support free and independent media, then whenever appropriate and necessary make some noise, for example through your judicial association. Most national associations are part of an international body as well. Try to reach out to your colleagues across borders. Let them know they are not alone in their struggle. And donate, for example:



For Poland: you can donate to KOS, the committee behind [Free Courts \(Wolne Sąd\)](#)

For Turkey: you can donate to the fund of the [International Association of Judges](#)



6. *In the cases of Alparslan Altan and Hakan Bas the ECtHR decided that detention of judges without respecting procedural steps laid in the Law on Judges and Prosecutors infringes the principle of judicial independence. However, the Turkish Constitutional Court (TCC) in its recent judgment refused to comply with these decisions. In your opinion, should the ECtHR cease to consider the TCC as an effective remedy?*

The threshold to conclude that the highest court in Turkey, the TCC is non-effective is very high and rightly so. But referring to [the words](#) of GIANNI BUQUICCHIO, president of the Venice Commission on the occasion of the 7th anniversary of the individual application system before the Turkish Constitutional Court: “at one point in time the tipping point will be reached and the application to that highest court will be found to be non-effective”.



The Commissioner for Human Rights of the Council of Europe, [DUNJA MIJATOVIĆ](#) analysed the situation clearly in her [Turkey report](#): “The Commissioner thinks that there are currently four interconnected issues casting doubt on the effectiveness of the individual application procedure to the Constitutional Court as a remedy for human rights violations in Turkey. These concern the tardiness of the Constitutional Court in remedying serious human rights violations, the lower courts’ highly problematic attitude vis-à-vis the case-law of the Constitutional Court, the extraordinary burden that this state of affairs put on the Constitutional Court, and finally recent judgments of the Constitutional Court in which it appears to be departing from its previous, Convention-compliant approach.”

When we look at (1) the way the TCC handled [the case](#) of judge [YILDIRIM TURAN](#) completely disregarding the ECHR decision in [the case](#) of judge [HAKAN BAS](#) (and [the similar case](#) of judge [ALPARSLAN ALTAN](#) and (2) see the inaction of the TCC regarding the ongoing detention in [the case](#) of human rights defender [OSMAN KAVALA](#) although the ECHR required the Government of Turkey to take measures to end the detention of human rights defender Osman Kavala and to secure his immediate release, I assume the tipping point is within sight. I am afraid we are lulling ourself to sleep if one still thinks the TCC can be an effective agent of change under the present conditions. Unfortunately both ways paint a bleak picture for the victims of human rights violations as the further flooding of the ECHR

with new cases will not offer a short term solution. Therefore ultimately the Turkish political winds will have to blow from another side.

7. *Judicial integrity and conduct of judges are essential to secure the trust of people towards judiciary. Would you like to comment on the ECtHR President Mr Spano's decision to accept an honorary doctorate from Istanbul University which sacked some 200 academics under Turkey's recent emergency rule? It has sparked wide criticism in Turkey and Europe.*

Well a lot has been said on this matter already, I don't feel the need to comment on his decision to accept this honorary doctorate. But I would like to conclude this interview with a quote from [the speech](#) that RÓBERT SPANÓ gave in September 2019 before the members of the Turkish Constitutional Court: "Those men and women that are privileged to be bestowed with judicial power must exercise this power in a manner that is conducive to upholding the rule of law and democratic principles. That endeavour often necessitates a sober mind and a brave heart, in particular in difficult times when our core principles are being challenged. But that is our role; that is our mission."

We all can take those words to heart!



STEUN ONS

Uw financiële steun is voor RECHTERS VOOR RECHTERS onmisbaar. Die maakt het voor ons immers mogelijk om op te komen voor rechters die (dreigen te) worden ontslagen, bedreigd of vervolgd in verband met hun beroepsuitoefening. De stichting is voor haar inkomsten volledig afhankelijk van giften. Financiële bijdragen zijn dus van harte welkom.¹

Het is ook mogelijk om een inzamelingsactie te organiseren voor de stichting. Als u dat wilt doen, kunt u contact opnemen via info@rechtersvoorrechters.nl.

RECHTERS VOOR RECHTERS een algemeen nut beogende instelling (anbi). Dat betekent dat uw gift aftrekbaar is voor de inkomstenbelasting (als het fiscale drempelbedrag wordt overschreden). Over een schenking aan ons is ook geen erfbelasting of schenkbelasting verschuldigd. Gedetailleerde informatie is verkrijgbaar bij het stichtingsbestuur en de fiscus.

Wilt u zich aanmelden of afmelden voor deze nieuwsbrief of ontvangt u die liever op een ander e-mailadres? Geef dit dan door via info@rechtersvoorrechters.nl.



VOLG [@JUDGES4J](https://twitter.com/JUDGES4J) OP TWITTER

¹ IBAN/SEPA NL12INGB0008071562 t.n.v. Stichting Rechters voor Rechters te Den Haag (BIC/Swift code INGBNL2A, ING Bank, The Netherlands).