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Newsletter, year 1, number 2

INTRODUCTION

This is the second newsletter of the foundation Judges for Judges. Since last newsletter, the board has undertaken various activities, which will be discussed below. Besides that, the board is in search of people who would like to be active participants in the foundation. Many people have already put their names forward to aid the foundation's work. The board is organising a meeting on Friday, June 25 to discuss its plans for the future and to get to know one another. I would like to invite you to register for this meeting if you have not already done so. All help is welcome and together we can make a difference to judges elsewhere in the world. The work of Judges for Judges has not gone

unnoticed: we have regular contact with the Special Rapporteur on the Independence of Judges and Lawyers of the United Nations, Mrs. G.C. Knaul de Albuquerque e Silva. She is expected to give a lecture at the upcoming meeting on Friday, June 25. Additionally, the foundation is in regular contact with the secretary of MEDEL (Magistrats Européens pour la Démocratie en la Liberté) about the current problems that judges face in particular Georgia, Serbia and Slovakia. These issues will be discussed below.

Gerritjan van Oven, president

ACTIONS/COUNTRIES

In this column, you will find a list of the countries about which Judges for Judges has been able to collect information and cases in which

actions have already been undertaken or will be undertaken shortly.

Visit to the UN Rapporteur

Two members of the board of Judges for Judges, together with the president of Lawyers for Lawyers have had a meeting with the Special Rapporteur on the Independence of Judges and Lawyers of the United Nations, Mrs. G.C. Knauth de Albuquerque e Silva. Several specific situations have been brought to the attention of the Special Rapporteur. Mrs. E Silva has expressed her appreciation for bringing to her attention reports of judges who have encountered impediments in the execution of their professional duties.

Together with Mrs. E Silva and several other human rights committees (amongst others the foundation Lawyers for Lawyers, the International Comité on Jurists and Lawyers Right's Watch Canada), Judges for Judges will organise a side event on 3 June 2010 in Geneva during the meeting of the United Nations Human Rights Council in the first week of June.

Ecuador

Contact has been established with a retired judge and a lawyer. It appears that there are several situations involving threats to judicial independence. Judges for Judges hopes to provide more information in the next newsletter.

Georgia

On 22 April Judges for Judges organised a meeting at the Court of Appeal of Arnhem. Tamara Laliashvili gave a lecture about her experiences as a member of the Supreme Court of Georgia and the disciplinary procedure against her and her subsequent dismissal in August 2006. The text of this lecture is published below. As previously

reported, Mrs. Laliashvili, together with three other dismissed judges of the Supreme Court, have lodged a complaint against Georgia with the European Court of Human Rights in Strasbourg. Her counsel at the European Court of Human Rights, Professor Weber from Osnabrück, has informed the audience about the current state and content of the procedure.

In the meanwhile, Professor Weber has filled additional grounds for the complaint relating to freedom of expression, in line with the Kudeshkina v. Russia case.

Medel

The foundation MEDEL (Magistrats Européens pour la Démocratie en la Liberté) was founded in 1985. Membership is open to national professional organisations of magistrates (judges and prosecutors) and their members. Currently, organisations from 13 European countries (including Turkey) have joined Medel. The NVVR (Dutch association for the administration of justice) is not a member of Medel.

Just after the new start of Judges for Judges the board has contacted Medel at the end of last year. In February 2010 Judges for Judges went for a working visit to Serbia, together with Medel. On 19 March 2010 Judges for Judges attended the general meeting of Medel in Turin. Judges for Judges takes an interest in cooperation with Medel, which is also due to their large international network.

The upcoming months Judges for Judges will be looking forward to a closer acquaintance with Medel.

Russia

NRC newspaper of 13 February 2010 published an elaborate interview with Olga Kudeshkina. Judges for Judges have discussed her situation with Special Rapporteur E Silva and with Olga herself about future actions on her behalf.

Serbia

Serbia is a potential candidate member state for the European Union. Within the framework of the Stabilisation and Association process in the European partnership with Serbia, reforming the judicial system is considered a top priority. With reference to the judicial reforms, the Serbian High Judicial Council decided not to re-appoint (i.e. the dismissal) more than 800 judges, who had been appointed for life, and 150 prosecutors. Due to this disturbing news, Judges for Judges and Medel, on the invitation of the Serbian Judges association JAS, have made a working

visit to Belgrade from 4 to 6 February 2010.

During those two days, the working group met the president of the High Judicial Council, the ombudsman, professors of law faculties, members of the Bar Association and journalists. This was to obtain a good impression of the current situation in Serbia. In addition, with help of the Dutch embassy, the members of the working group have also spoken with representatives of the OSCE and the Council of Europe. During the press conference in Belgrade at the end of the visit, Judges for Judges and Medel issued a joint statement underlining the irremovable position of judges as a fundamental guarantee for the independent administration of justice. Furthermore, they have expressed their concern about the total lack of transparency in the selection procedure: none of the 837 judges has received an individualised decision, the judges have not been heard on their cases nor has there been an adequate appeal procedure.

Judges for Judges has brought the situation in Serbia to the attention of the Venice Commission of the Council of Europe, the CCJE (Consultative Council of European Judges), the Serbian embassy and the Special Rapporteur.

Also in February, an EU expert mission visited Serbia. As a result of this visit, José Barroso sent a letter to JAS, in which the following was stated: 'The findings of the expert mission confirm that the re-appointment procedure showed important shortcomings regarding the composition and independence of the High Judicial Council and the State Prosecutorial Council, the application of objective criteria and the transparency and reliability of the overall process'. The Serbian authorities have been asked to review the procedure 'in an unambiguous way'.

Nevertheless, there have been no changes for the dismissed judges. The situation will be closely monitored by Judges for Judges. We have already received an invitation by JAS for a follow-up working visit.

For a complete overview and the joint statement by Judges for Judges and Medel:

www.medelnet.org/pages/128_2.html.

This site also provides other relevant background information.

Slovakia

With regard to Slovakia, contact has been made with the Dutch embassy in Bratislava. The embassy has made contact with several members of the Supreme Court that are currently facing disciplinary charges. Other western diplomats are also involved in this situation and they have attended the disciplinary hearings.

Judges for Judges has requested the NVVR to pay close attention to this situation within the framework of the Consultative Council of European Judges. The Council for the administration of justice (RvdR) has been requested to do the same but in the framework of the European Councils for the administration of justice.

Spain

In Spain, charges have been pressed against investigative judge Baltazar Garzón. He supposedly launched an investigation without proper jurisdiction into tens of thousands wartime executions and disappearances of civilians by troops of General Francisco Franco during and shortly after the Spanish civil war. Human Rights Watch has urged Spain to lift the amnesty for the crimes committed during and shortly after the Spanish civil war. Judges for Judges has contacted the ambassador for human rights in the Netherlands about the prosecution of Garzón.

Turkey

Judges for Judges has made an appointment with the contact person in Turkey, a judge. After contact has been established, further steps will be taken. Judges for Judges hopes to provide more information in the next newsletter.

Venezuela

Judge María Lourdes Afiuni has been arrested after releasing a banker suspected of corruption who had been in pre-trial detention for three years. In Venezuela the limit for pre-trial detention is two years. Afiuni has been

on remand since December 2009.

Judges for Judges has contacted a human rights activist who is involved in this case in Venezuela. From this contact, it became clear that the detention should be ended as soon as possible because it is contrary to the independence of judges and the rule of law, but also because of fears for the safety of Afiuni in prison. She is being held with women whom she herself has

convicted. The UN, Human Rights Watch and Amnesty International have issued statements condemning the detention of Afiuni. Judges for Judges has requested an explanation from the Venezuelan embassy in The Netherlands. In addition, Judges for Judges have issued a statement stating its concern about the situation, requesting the release of judge Afiuni and requesting a fair legal process with all legal and procedural safeguards.

ACTIVITIES

On Friday 25 June 2010 the board of Judges for Judges will organise a meeting for all members. The programme will be announced when ready, but a speech by Special

Rapporteur on the Independence of Judges and Lawyers of the United Nations, Mrs. G.C. Knauth de Albuquerque e Silva is on the provisional programme.

LECTURE LALIASHVILI

April 22nd 2010, lecture in Arnhem by Tamara Laliashvili.

On April 22nd 2010 Tamara Laliashvili, former judge in Georgia, gave the following lecture.

Judiciary in Georgia

Dear ladies and gentlemen,

First of all, please let me express my gratitude for your interest in the judiciary in Georgia. I do believe that the Association Judges for judges can play an important role for the democracy and rule of law in our country. It is a crucial moment for any further democratic development in Georgia, and in the entire region. Since the collapse of the Soviet Union European countries and the USA have been involved in our efforts to build-up a state. Today, critical and constructive support by European experts is even more crucial than any financial support. Today, after more six years after the so-called rose revolution in Georgia we reached a turning point where we realize that many of our positive results from the last decade are jeopardized.

While Georgia was celebrated as a positive model in terms of judiciary reform by the international community in 2001, we have nowadays a judiciary that is weak, dependent and ready to follow any instructions given by the executive branch. Pretending to reform the judiciary and fight against corruption the new government weakened the judicial branch and strengthened the Presidential power through constitutional and legislative changes and replaced dependent and professional judges with new judges who are either young and inexperienced or close allies to the government, in any case easy political tools to ensure total control over the judicial branch.

I will now tell you in a more detailed way what has happened since the so-called rose revolution which is less but still celebrated as a success story in particular by some Western states, in particular the United States.

The new government has planned to carry out judicial reform in two directions: Structural reorganization of the courts and changes in the composition of the courts. Thereby, the

government has stated openly its political will to replace all old judges with new ones.

While the official reason for the replacement of judges was to get rid of corrupt judges there are several indications that the main aim of the replacement was to get rid of independent and professional judges who could not easily be used as political tools to express the State policy interest.

How could the government remove old judges and appoint new judges?

According to the law, judges of first and second instance courts of Georgia are appointed by the President of Georgia for 10 years and they can be removed either through disciplinary or criminal prosecution or through reorganization or liquidation of courts.

In the first stage, the government has declared the reorganization or liquidation of courts and has removed half of all acting judges from their positions. Thus, through this method the government got rid off more than one hundred and fifty judges of first and second instance courts.

Some but not all of these judges have been replaced by young judges, who are often inexperienced easily to use for political purposes.

Due to the special constitutional protection it is much more difficult to remove Supreme Court judges. The Supreme Court judge is appointed by the Parliament of Georgia for ten years and can be removed exclusively either through criminal or disciplinary prosecution, or through voluntarily resignation. The government started with the second option and put pressure on judges to resign. In order to ease this path, the Parliament adopted a law according to which a Supreme Court judge, who resigned before January 2006, would receive full compensation of his salary until the end of his term. The result of this policy was that 21 Supreme Court judges out of 37 judges resigned by the end of 2005.

As to the remaining judges, who refused signing their resignation disciplinary proceedings were initiated immediately after their refusal. There is only one

remarkable exception: one judge who is widely known for taking bribes kept his job. It might be no coincidence that this judge is a close relative of the wife of the chairman of the Supreme Court.

I am one of the six judges that decided not to resign and stay in the office, because we were confident that our efforts to build up an independent judiciary during the last eight years could not be destroyed easily. Considering that we have always acted purely in accordance with the Constitution and Georgian laws, and that we have never taken bribes and never followed external interests neither from the government nor from any other parties we were and are today also convinced that it is our duty to continue protecting rights of owns, of citizens, in particular through defending the independent judiciary.

We also believed that our constitution would protect us from any unreasonable and illegal prosecution. Therefore, we openly rejected the government demand to resign and leave the office.

But unfortunately our hopes went in vein:

In September of 2005, the High Council of Justice, a presidential body, has started disciplinary prosecution against judges who refused to leave the office.

We were reiterately offered other jobs in the university or even grants for researching abroad due to our "high professionalism" as governmental representatives argued. Our questions why we should resign from our posts if we are considered as being so highly professional remained without response. To offer other jobs or grant for researching remains to day again as a important alternative from Government (especially from President Saakasvili) to dismiss high ranking Official. During the last five six years Georgia had a 7 Minister of Justus, 4 or 5 Prim minister, 7 Ministry of Defense, 6 or 7 Minister of Education and so on. Most of them were offered grants for studding abroad.

On 25 December 2005, when all international observers were on Christmas holiday, the High Council of

Justice suspended me and 4 other Supreme Court judges from the office. One judge received admonition as disciplinary punishment. The Parliament of Georgia consisting of 90 % MPs from the governmental party has approved this decision.

On 10 August 2006 the Disciplinary Chamber of the Supreme Court confirmed decision of disciplinary council of High Council of Justice and finally dismissed me and my Collegues.

We filed a complain at the European Court of Human Rights and we are ready to defend our rights up to the very end. Why did they punish us, what were the charges?

There were two charges made formulated by the Disciplinary Council. The first charge was that we violated the law while hearing a criminal case of murder. The case involved killing of 45 year old man by his own brother. The defendant was convicted and sentenced by the court to 3 years of deprivation of liberty.

According to the Georgian law, the victim of the crime has the right to appeal the court sentence. If the victim of the crime is dead, then this right is given to his close relative – including his wife. In this case the right to appeal was used by the common law wife of her dead husband. This wife had children with her husband and was considered as a normal wife, although they did not register their marriage – a common practice in Georgia where couples often choose to marry only in the church without being registered according to the civil law.

The appeal court decided that unregistered wife of the victim could be considered as “wife”, therefore, granted the right to appeal to the victim’s common law wife.

In our decision, we agreed to the court of appeal and decided that common law wife could also be victim of the crime. Our interpretation of the law was based on standards of the European Convention of Human Rights and other international standards defining the rights of the victim.

In all civilized countries, the judge (and especially Supreme Court Judge) has the power to interpret the law.

Secondly, the High Council of Justice stated that we did not review cases against those defendants who did not appeal against their decisions.

Indeed, the Georgian criminal procedure legislation obliges under certain circumstances the court of appeal and the court of cassation to review cases even when defendants did not appeal themselves. Whenever we reversed or modified decision of lower courts with regard to non complaining defendants, we always wrote it in Supreme Court decision. However it was common and recognized practice not to mention the fact of non complaining defendants if the lower court decision was not changed by us.

The Disciplinary Council decided that this common practice was wrong and we had to mention non complaining defendants in all written decisions.

Thus, the recognition of a common law wife as a victim of a crime and this alleged mistake in judicial decision writing, which the Disciplinary Council himself considers as minor mistake, we 4 judges of the Supreme Court were fired from office.

Just let me also briefly mention that the composition of the Council of Justice was against the Georgian law. Close friends of the president of Georgia were included in the Council who did not fulfil the minimal requirements of the law. (In particular art. 75 of the law on Disciplinary Liability of Judges). She did not had a five year professional experience and high university education, which was a requirement of the law. We filed a Complain about it at the Administrative court but the court rejected our complain. And Parliament which consisting of 90 % MPs from the governmental party has changed the law and annulled the requirement of law.

Our case received a wide publicity throughout Georgia. Media called us “rebel” judges and received wide support from NGO sector and Georgian public, who is interested in having an

independent judiciary protecting their rights and not the interests of government.

However, we have serious doubts that this Georgian government can develop a democratic and rule of law based society through dismissing independent and professional judges without legally based reason and through using judges as political tools and interfering into any ongoing judiciary cases as it is practice nowadays in Georgia.

Given that there are no real independent branches in the Georgian state anymore, that the civil society and the media has been seriously weakened since the so-called rose revolution Georgia needs critical and constructive support from Europe in order to become a democratic and rule of law based state.

For this reason I do believe that it is of utmost importance for our region that you invited us to this conference. Thank you very much again!

IN CLOSING

Anyone who would like to receive the forthcoming Newsletters, can apply by sending an email to rr@rechtspraak.nl. If your emailaddress changes or if you would like to receive the Newsletter through an other emailaddress, please inform us by sending an email to the mentioned emailaddress of Judges for Judges. If you know someone else who would be interested in this Newsletter,

do not hesitate to forward it. Financial support is welcome on the following bankaccount of 'Stichting Rechters voor Rechters': **8071562**, ING Bank, The Netherlands, IBAN/SEPAnumber: NL12INGB0008071562, BIC/Swiftcode INGBNL2. The foundation has undertaken many actions and continuation is only possible with enough financial support.