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INTRODUCTION

This is the latest newsletter of Judges for Judges. Much is going on. The board tries to keep you informed both through the newsletter and through website updates.

Ilan de Vré, legal researcher in the research centre of the Dutch Supreme Court, has recently joined the board. Ilan, who has already been our web master for some time, will now also be

responsible for internal and external communications. We really need this as currently our board meetings address 17 countries where there are difficulties, and our national and international contacts are on the increase both in frequency and intensity. We also need more activists to monitor the countries on our radar screen (See elsewhere in this magazine).

We hope you enjoy reading this newsletter.

Gerritjan van Oven, chairman

ACTIONS/COUNTRIES

This section gives an overview of the countries about which Judges for Judges (JJ) has collected new information, and of any actions that JJ has recently taken or is planning to take with respect to these countries.

Spain

In an earlier newsletter JJ already addressed the persecution of the Spanish judge Garzon. He has been charged with starting an investigation without valid jurisdiction into the tens of thousands of executions and disappearances of civilians by the forces of General Francisco Franco during and just after the Spanish Civil War.

On February 9th 2012 in the context of another case, the Gurtel case, the Spanish Supreme Court suspended Garzon for 11 years from exercising his profession. This suspension was based on the fact that Garzon had ordered the interception of conversations between suspects and their lawyers.

On February 26th 2012 the same court considered that the complaints filed against Garzon with respect to the Franco victims were unfounded. The suspension of Garzon has raised many questions, particularly whether there may (also) be underlying political motives. JJ has discussed this matter with the UN Special Rapporteur Gabriela Knaul. Garzon has been contacted to see if he could be supported with possible next steps he might want to take.

Hungary

In recent months the attention of JJ has been drawn to the worrying developments in Hungary, inter alia with respect to the judiciary. We keep an eye on possible actions that The Hague,

Brussels and Strasbourg may take viz. a viz. Hungary.

Since the Fidesz party of Prime Minister Orbán has captured a majority of 60 % in the Hungarian parliament, a large number of controversial laws have been passed. This was possible as the two-third majority of Fidesz is even sufficient to change the constitution. Critics now accuse Orbán of “abuse of power”.

The changes in the law are said to affect the independence of the Hungarian National Bank, the judiciary and the news media. For instance in 2011 a new media law has been introduced which allows heavy fines to be imposed on media that are not 'objective'. This provision is contrary to the freedom of expression as laid down, inter alia, in Art. 10 ECHR. Furthermore, on January 1st 2012 a controversial new constitution came into force. Many believe that the new constitution threatens the independence of judges. One of the measures is that the present judges will be pensioned at the age of 62 instead of 70. Many are convinced that a group of independent judges will be dismissed in this way.

András Baka, the former president of the Hungarian Supreme Court has also been dismissed from his position. A new rule states that one has to have been a judge in a national court for at least 5 years before being allowed to become President of the Supreme Court. However, Baka has been a judge in the

European Court of Human Rights for many years and has not been back in the Hungarian judiciary long enough to meet that requirement. Geert Corstens, president of the Dutch Supreme Court and chairman of the European network of Supreme Court presidents, recently drew attention to this matter. On January 3rd this year in his speech on the occasion of the installation of new vice presidents of the Dutch Supreme Court he extensively addressed the Hungarian situation. The text of the speech is available [here](#) (in Dutch).

On March 19th 2012 the European Commission for Democracy through Law (Venice Commission) of the Council of Europe issued a report on the new Hungarian legislation on the judiciary. The Venice Commission concludes inter alia:

"The adoption of the Fundamental Law and, even more so, the adoption of the Act on the Legal Status and Remuneration of Judges and the Act on the Organisation and Administration of Courts of Hungary as well as the Transitional provisions of the Fundamental Law have brought about a radical change of the judicial system. (...) the reform as a whole threatens the independence of the judiciary. It introduces a unique system of judicial administration, which exists in no other European country.

The main problem is the concentration of powers in the hands of one person, i.e. the President of the NJO. Although States enjoy a large margin of appreciation in designing a system for the administration of justice, in no other member state of the Council of Europe are such important powers, including the power to select judges and senior office holders, vested in one single person. Neither the way in which the President of the NJO is designated, nor the way in which the exercise of his or her functions is controlled, can reassure the Venice Commission. The President is indeed the

crucial decision-maker of practically every aspect of the organisation of the judicial system and he or she has wide discretionary powers that are mostly not subject to judicial control. The President is elected without consultation of the members of the judiciary and not accountable in a meaningful way to anybody except in cases of violation of the law. The very long term of office (nine years) adds to these concerns."

The Venice Commission has drawn up a long list of points where legislation should be amended in order to meet the European requirements for the organization of an independent judiciary and the right to a fair trial. One of these points concerns reducing the retirement age of judges from 70 to 62 years, resulting in more than 200 judges losing their jobs and the appointment of a large group of new judges (sympathetic to the government?).

The full Venice Commission report is available at [here](#).

The situation of the judges in Hungary was on the agenda of the meeting of the European Association of Judges in May 2012. This year's meeting, organised by the Dutch judges association NVVR, will take place in Amsterdam. It has been announced that a delegation of the Hungarian judges association will attend the meeting. Following the meeting and in consultation with the NVVR, JJ is reviewing whether and, if so, what further action JJ should take. Please let us know if you are in contact with Hungarian judges who are directly affected in their position by the new legislation and who may wish to receive support or assistance from JJ.

As mentioned in an [article](#) in the Dutch newspaper NRC (in Dutch) and other news media, it was announced on April 25th that the European Commission intends to take Hungary to the European

Court of Justice because of reforms of the judiciary and privacy laws.

Philippines

Gerrard Boot, a JJ board member, spoke at the press presentation of the film "Give up tomorrow" at the request of the organizers of the film festival "Movies that Matters". The film is about a Filipino student who was sentenced to death in the Philippines in connection with the disappearance of two school girls. He was extradited to Spain, which is the country of his second nationality, and is still under arrest. In the film his teachers tell that at the time of the disappearances he was attending school and could therefore not have been involved in the disappearances. They were not given the opportunity to present this evidence to the court. The handling of the court case in the film is very reminiscent of the case of the murdered Filipino judge Gingoyondes, investigated by JJ.

Georgia

In August 2006, four of the five members of the Criminal Division of the Georgian Supreme Court were dismissed on disciplinary grounds. The "gross violation of law" which the judges were accused of was that in a murder case they had allowed the unmarried partner of the murder victim to be considered as the injured party (based on the ECHR) whilst the Georgian law only allows married partners as the injured party. After a disciplinary procedure which, according to the dismissed judges, was deficient in many ways, four of the five judges were dismissed. The fifth was only reprimanded.

In the autumn of 2007 the judges concerned sent their case to the European Court of Human Rights in Strasbourg. So far the court in Strasbourg has only registered the case.

In the autumn of 2011 (after 4 years!) their counsel sent an appeal to which the court replied that the case *would be communicated* to the government of Georgia *in the first half of 2012*. There is no better way of illustrating how a court has become completely blocked by its workload!

At the invitation of Judges for Judges one of the four judges, Tamara Laliashvili, gave a lecture on this matter in the Palace of Justice in Arnhem on April 22th 2010. At the time Tamara Laliashvili was accompanied by her counsel in the proceedings in Strasbourg, prof. Albrecht Weber. The text of her speech may be read [here](#).

In the mean time Tamara Laliashvili has obtained a doctorate in Germany. She now teaches at one of the Universities of Tbilisi, as do two of her dismissed (ex-) colleagues, Merab Turava and Nino Gvenetadze.

In January of this year, apparently as a result of this case but without explicitly mentioning it, Prof. Weber published an article in the journal of the Deutsche Richter Verein titled "Richterliche Unabhängigkeit in menschenrechtlicher Perspektive". In the article, he briefly describes the guarantees of judicial independence in several European countries. He then examines if a judge who has been "affected" in his/her independence may him/herself appeal to the ECHR. This is not self-evident as art. 6 ECHR in particular relates to access by civilians to an independent judge. But after the judgement in the case Kudeshkina / Russia (C.f. the [Russia page](#) of our website - in Dutch -) there is hope. In that case, a judge, who had been taken by the president of her court from a particular case, subsequently reacted critically in the press. *Because of those statements* she was dismissed as disciplinary punishment. Kudeshkina's complaint in Strasbourg succeeded

whereby the court considered that art. 10 ECHR had been violated in conjunction with Art. 6 ECHR. A judge whose independence is violated or

threatened could therefore appeal to the ECHR via art. 10 ECHR.

You can find Prof. Weber's [complete article](#) on our website.

ACTIVITIES

Swaziland Judge Masuku visits Judges for Judges

On Monday September 26th 2011 JJ received judge Thomas Masuku from Swaziland. At the time a dismissal procedure was running against Judge Masuku. Meanwhile Masuku has been dismissed. An appeal has been launched against this decision. The dismissal procedure raises big question marks with respect to the cause for dismissal as well as the procedural execution. Amongst other things Masuku is accused of having offended the king of Swaziland by passing a court sentence. Background information may be found [here](#).



Apparently a Rule-of-Crises takes place in Swaziland. Complaints filed against the Chief Justice are declared unfounded without any motivation. Cases against the King (e.g. in connection with unpaid compensation for land expropriation) cannot be filed with the court. Parliament has been rendered ineffective. The Swazi Bar has been on strike for weeks to enforce an independent judiciary. The case of

Masuku is an example of this situation, but that makes it no less difficult for him personally. He has been refused access to his office. JJ expresses its solidarity with colleague Masuku.

In addition to Masuku and the Dutch judges the meeting in The Hague was attended by Arnold Tsunga (Director ICJ Africa), Graham Leung (Director Centre for the Independence of Judges and Lawyers, ICJ Geneva), Thoba Poyo-Diwati (President SADC Lawyers Association), Germaine Balitalike (Project Director OSISA ABA, Bukavu, DR Congo), Liliana de Marco Coenen (IBA) and Iris Smalbrugge and Michael Hendrix (Dutch Ministry of Foreign Affairs).

On behalf of JJ Ilan de Vré attended a meeting of the International Commission of Jurists in Geneva in early December 2011. He spoke to Masuku and some of his colleagues from Swaziland. The position of several judges in Swaziland is under threat. The ICJ supports Masuku and counsels him whilst he takes further legal action. At the request of the ICJ, JJ has decided to make a financial contribution in this specific case. We have also asked you to show your solidarity by donating some money. We would like to very much thank all of you who have responded with a contribution.

FINANCE

Generous donations for RR

JJ recently received two generous donations. On the occasion of Willy Thomassen leaving the Supreme Court of the Netherlands almost € 900 was collected for the foundation. With the disbanding of the International Moot Court (IMC) it has been decided to donate the surplus of almost € 4,000 to JJ.

Willy Thomassen is a legal expert with an impressive career and a strong track record in the field of constitutional rights. From 1998 till 2004 she was a judge in the European Court of Human Rights in Strasbourg. Since 2006 she has been visiting professor at Erasmus University. During 2009-2010 she was chair of the State Constitution Committee. Since 2004 she was a judge in the criminal division of the Dutch Supreme Court. On February 14th 2012 she left the Supreme Court. Prior to and during her farewell reception, she called upon the invitees to donate to JJ. There was a generous response to this call. A total of € 890 was collected.

For years the IMC was a platform for the exchange of knowledge and understanding of different legal systems. The IMC was organized by the Foundation for International Moot Court, which was affiliated to the

Council for the Judiciary. Roughly once in every two years meetings were organized in which teams of lawyers from different countries staged a mock court session in which they conducted a fictitious case from the perspective of their own legal system. The teams consisted notably of judges and barristers. The sessions were not only accessible to all participating teams, but also to the public. The last IMC was held in 2009. The Foundation International Moot Court ceased to exist, leaving a positive balance on its books of € 3,913.99. In consultation with the Council for the Judiciary that amount has now fully been donated to JJ. Bert van Delden, founder both of the IMC and JJ said: *"There could not be a better destination."*

JJ is delighted with these generous donations. They make it possible for us to stand up for judges who are (likely) to be dismissed, threatened or prosecuted in connection with exercising their profession. The income of the foundation depends entirely on donations. Financial contributions are welcome on bank account **8071562** in the name of the foundation Judges for Judges in The Hague. Please contact info@rechtersvoorrechters.nl if you also want to raise funds for JJ. Many thanks in advance!

BECOME ACTIVE FOR JJ

Meanwhile, the number of countries on JJ's radar screen has greatly expanded, resulting in increased activities for the foundation. JJ needs more manpower if it wants to continue working for "judges-in-difficulties" in those various countries. If having read this newsletter you want to become active in JJ, you are cordially invited to contact JJ via info@rechtersvoorrechters.nl. Please indicate which countries you have knowledge of, experience with or interest in.

JJ is also specifically looking for people who can do translation work and/or want to join the working groups mentioned further on in this newsletter. However, it is also possible for individuals or teams to start their own working group on a country that has their specific interest in consultation with us.

Please do not hesitate to forward this newsletter to any judges whom you think might be interested in the work of the Foundation.

Colombia and Honduras

JJ is urgently looking for people who would like to busy themselves more intensively with Colombia or Honduras.

Colombia

JJ has been busy with Colombia since mid-2011. Colombia has been ravaged by decades of armed conflict between leftist guerrillas such as FARC and ELN on the one hand and the Colombian army and illegal right-wing paramilitaries on the other. The whole population has fallen victim to this conflict. It is one of the most dangerous places in the world for trade union activists, journalists, barristers, judges and human rights defenders.

In a previous JJ newsletter you were able to read about the murder of judge Gloria Gaona Constanza Rodriguez of the criminal court and the court case against three arrested suspects that is now pending. JJ has drawn the attention of the Dutch Human Rights ambassador to this case. It has also drawn the attention of the Dutch Human Rights ambassador to the situation of the criminal court judges María Cristina Salazar Trejos and Jenny Jimenez Rosania, whose safety is of serious concern to JJ. Additionally, JJ has brought this case to the attention of Gabriela Knaul, the UN Special Rapporteur for the Independence of Judges and Lawyers.

Honduras

In an earlier JJ newsletter you could have read about the visit to the Netherlands of two dismissed Honduran judges, Tirza Flores Lanza del Carmen and Adan Guillermo Lopez Lone. They spoke against the coup of June 28th 2009, when President Manuel Zelaya, who was elected on November 28th 2005, was deposed and kidnapped by the military. Adan Guillermo Lopez Lone participated in a demonstration against the coup and Tirza Flores Lanza filed a criminal complaint against those responsible for the kidnapping of Zelaya and spoke out publicly against the role of the Supreme Court. Both were eventually dismissed.

On July 6th 2010 both the Asociación de Jueces por la Democracia (AJD) and the Center for Justice and International Law (CEJIL) filed a petition in which Honduras is held liable for violations of the American Convention on Human Rights because of the arbitrary, illegal and political dismissal of these as well as two other judges. This petition was discussed on March 25th 2011 at a hearing of the Inter-American

Commission on Human Rights (IACHR) of the Organization of American States (OAS). The petition was admitted on March 31st 2011. A delegation from the International Commission of Jurists (ICJ) has paid working visits to Honduras both in December 2010 and in March 2011.

At request of AJD JJ co-signed an [international petition](#) on May 20th 2011, which called upon the OAS not to re-admit Honduras to the OAS after its suspension, as long as it does not meet the minimum requirements of a constitutional state nor the 2010 recommendations of the IACHR (including a halt to the harassment of judges who participated in protests against the coup).

Sign-up!

We are looking for people who preferably have some (at least passive) knowledge of Spanish. Amnesty International Netherlands has agreed to organize a seminar with JJ for interested people on effective campaigning concerning Colombia.

Please register by mail via info@rechtersvoorrechters.nl if the work of the above groups appeals to you.

Slovakia

As you may have read in previous JJ newsletters, the situation of the judiciary in Slovakia remains tense. After the inauguration of the new government a conflict has now arisen between the new government and the president of the Supreme Court, Harabin, who by nature of his office is also president of the Council for the Judiciary. At the request of JJ Werner Stemker Köster went on a reconnaissance mission to Bratislava in early October 2010.

JJ is also looking for people who want to actively engage on Slovakia. If you are interested, please sign up at info@rechtersvoorrechters.nl

Translators English, Spanish and French

JJ is urgently looking for translators English, Spanish and French. They will be asked to translate documents for the website, to translate the newsletter and for other translation work, such as translating (public) letters and statements of JJ. The amount of translation work will of course be subject to consultation. People who (only) occasionally wish to do translation work are also cordially invited to put their name forward. You don't need to have a formal qualification. Please register via info@rechtersvoorrechters.nl if you are interested.

FINALLY

As you may have read in this newsletter, the foundation has already undertaken numerous activities. This can only be

continued as long as sufficient funds are available.

Your help is vital. The income of the foundation depends entirely on donations.

Financial contributions are welcome on bank account **8071562** in the name of

the foundation Judges for Judges in The Hague.

If you want raise funds for the Foundation, please contact info@rechtersvoorrechters.nl.

Many thanks in advance!

This newsletter has been sent to persons who have expressed or are thought to have an interest in receiving it. Please let us know through info@rechtersvoorrechters.nl if you prefer not to receive any further newsletters. **Please let us know via the above email address if you did not receive this newsletter directly but would like to do so in future.** The same applies if you have changed your email address or if you prefer the newsletter to be sent to another e-mail address.