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INTRODUCTION

Here is a new Judges for Judges newsletter. In the last few months a lot has happened. We have maintained our network of contacts and expanded it (see for instance the contributions on Hungary by Janneke Bockwinkel and Jacco Snoeijer).

On 10th December, Judges for Judges in cooperation with Lawyers for Lawyers organized a meeting on human rights (see elsewhere in this newsletter).

Ilan de Vré, who joined in April, has stepped down for personal reasons, much to our regret. His web-master responsibilities are now taken care of by

Douwe Sikkema, a lawyer from Leiden, and a board member of the Dutch Section of the International Commission of Jurists (NJCM). He is also well-versed in online media matters.

On December 11th and 12th Jolien Schukking and Douwe Sikkema, members of the board of Judges for Judges, attended the 17th World Congress of the International Commission of Jurists on '[Access to Justice and Right to a Remedy](#)'.

Douwe Sikkema also attended the third annual Forum of the Centre for the Independence of Judges and Lawyers of

the ICJ. This Forum took place on 13th December last under the heading '[Improving Access to Justice, the Role of the Domestic Court](#)' ([a report will later be published](#)). He spoke with judges, lawyers and other contacts from the countries that are relevant for Judges for Judges, e.g. Carlos Ayala from Venezuela, Thomas Masuku from Swasiland and Karinna Moskalenko, who is the legal counsel for Olga Kudeshkina.

With respect to the organisation of Judges for Judges: financially we are doing well, thanks to some very welcome 'farewell-donations'. A few eager beavers have joined up, but in

view of the ever growing number of countries that need our attention we call out to all supporters to make yourselves known when you are interested in a specific country, either in general, or as a translator.

We hope you will enjoy reading this issue,

Gerritjan van Oven
Chairman

ACTIONS & COUNTRIES

This section gives an overview of the countries about which Judges for Judges (J4J) has collected new information, and of any actions that J4J has recently taken or is planning to take with respect to these countries.

Honduras

In earlier newsletters you have been informed about the position of **Tirza del Carmen Flores Lanza** and **Adan Guillermo López Lone**, two out of four Hondurese judges who were dismissed after the 2009 coup. Their complaints have been received by the Inter-American Commission on Human Rights (IACHR) in 2011 and the cases of all four judges concerned were heard by this Commission. The two other judges concerned are **Luis Chávez** and **Ramón Enrique Barrios**. The State of Honduras claims that the judges were fired because they had taken part in political activities (against the coup), thereby violating the Constitution and the judicial code.

The judges who were fired retorted that they were not politically active, but tried to re-establish the rule of law after the coup. A report of the hearing can be found on [hrbrief.org].



(photo credits: [Patricia Leiva/OAS](#))

In view of the heavy workload of the IACHR it is not sure whether the Commission's findings can be expected before the spring of 2013. We will keep you informed.

UN Special Rapporteur visited Honduras

Margaret Sekaggya, the [UN Special Rapporteur on the situation of human rights defenders](#), had made an official visit to Honduras from 7th to 14th of February 2012.

In some cases judges can be regarded as human rights defenders:

Those who contribute to assuring justice – judges, the police, lawyers and other key actors – often have a particular role to play and may come under considerable pressure to make decisions that are favourable to the State or other powerful interests, such as the leaders of organized crime. Where these actors in the judicial process make a special effort to ensure access to fair and impartial justice, and thereby to guarantee the related human rights of victims, they can be said to be acting as human rights defenders.

After her visit to this country the Special Rapporteur stated with specific respect to the position of judges in Honduras:

I have received disconcerting information indicating a lack of independence and impartiality of the judiciary which undermines both the effectiveness of the administration of justice and the potential role of judges as human rights defenders. As a consequence, protection remedies such as habeas corpus and the writ of amparo become illusionary mechanisms. The absence of an independent body to safeguard the independence of the judiciary and to supervise the appointment, promotion and regulation of the judicial profession has resulted in political interference which jeopardises the legitimacy of the judiciary. I observe that the uncertainty over judges' tenure is detrimental to the exercise of their functions.

And in her list of recommendations she stated:

The effective operation of the administration of justice is a key benchmark for the protection of human rights defenders. The independence and impartiality of the judiciary are fundamental to ensure the rule of law. While noting the adoption of the Decree 219-2011 on the Law on the Judicial Council and Judicial Career (Ley del Consejo de la Judicatura y la Carrera Judicial), an independent body should be established to safeguard the independence of the judiciary and to supervise the appointment, promotion and regulation of the profession in accordance with international human rights standards. Judges should be ensured tenure in order to exercise their functions in an independent manner.

You can find the full statement she made concerning her visit at [\[ohchr.org\]](#).

She presented the country-report on Honduras to the Human Rights Council during the 22nd session [\[ohchr.org\]](#).

December 2012: Judges dismissed again

This month the ICJ has (again) expressed its concern on the situation of the judiciary in Honduras and the interference of the administration. You may have come across this news on our website. This statement was spurned by the dismissal on the 13th December 2012 of four judges, all members of the Constitutional Chamber of the High Court of Justice of Honduras. Their names are: **José Antonio Gutiérrez Navas** (president), **Gustavo Enrique Bustillo Palma**, **Rosalinda Cruz Sequeira** and **José Francisco Ruiz Gaekel**. Previously, these judges had decided (4 votes to 1) that a new anti-corruption bill, meant to clean-up the police-force, violated the Hondurese constitution, because it did not warrant guarantees for a fair trial of the policemen involved. Very displeased with this decision, the president of

Honduras accused the High Court of Justice of Honduras of being an enemy to the State. After a session that lasted throughout the night, the Hondurese parliament dismissed the four High Court judges mentioned above, without even hearing the judges themselves¹. These coming months Judges for Judges will keep a close watch on this case and decide on steps to be taken. (ICJ.org)

Hungary

Judgment of the European Court of Justice

Last month the Court of Justice of the European Union decided that a new law setting a required early-retirement age for Hungarian judges amounts to unwarranted age-based discrimination. The European Commission has presented the case to the Court by means of a so-called infringement procedure.

Earlier this year Hungarian prime-minister **Viktor Orbán**, whose Fidesz party enjoys a two-third majority in parliament, lowered the compulsory retirement age for judges from 70 to 62 years of age. Judges who by 1st January 2012 had reached the age of 62 were obliged to step down from office by 1st June 2012, while judges who reached the new retirement age in the course of 2012 were required to stop working by 31st December 2012. The new law forced a total of 270 judges into early retirement, including a considerable number of appeal judges.

Both in Hungary and internationally the new law was received critically and was seen as an attempt to interfere with the independence of the judiciary. The new law also included measures that touched upon the independence of the central bank and freedom of press.

¹ [hondurasnews.com]

According to the Hungarian government the new law was necessary in order to make government employees' retirement rules consistent, and to allow easier access to the judiciary for young lawyers. The resulting 'well-balanced age structure' would thus lead to an improvement of the quality of the judiciary, according to the Hungarian government.

The European Court rejected this argument and decided that the judges concerned were justified in their expectations that they could remain in office until the age of 70.

Earlier, on 16th July 2012 the Hungarian Constitutional Court – the Alkotmánybíróság – had retroactively declared the new law null and void. The Alkotmánybíróság decided that the forced retirement of judges violated the principle that judges cannot be forced to step-down – barring exceptional circumstances – and that it therefore violated judicial independence as guaranteed by the constitution.

Prime-minister Orbán reacted indifferently to the European Court's judgement. 'It's like beating a dead dog', he said at a press conference, referring to the earlier decision by the Alkotmánybíróság to invalidate the new law. Orbán added that his government would propose new laws 'in order to settle the matter'.

Dismissal of the Supreme Court president

The ruling of the European Court did not affect the position of **András Baka**, the former president of the Hungarian Supreme Court.

After serving as the Hungarian judge in the European Court of Human Rights between 1991 and 2007, Baka was elected Supreme Court president for a six-year term in June 2006. Late 2011,

after the enforcement of a law that required – retroactively – any president of the Supreme Court to have at least five years of experience as a judge *within* Hungary, Baka could no longer be considered suited for this post and was forced to step down 1st January 2012.

The law was widely seen as a product of *ad hominem* legislation. Earlier, Baka had been critical about a new law requiring judges to retire early and other reforms of the Hungarian judiciary introduced by the Orbán government.

Because Baka had been dismissed from his position, he could not continue his presidency of the **Network of the Presidents of the Supreme Juridical Courts of the European Union**. His successor was **Geert Corstens**, president of the Supreme Court of The Netherlands. Corstens has publicly voiced his criticism about the present situation of the Hungarian judiciary on several occasions – among them the ‘diner pensant’ on the recent Human Rights Day (please see the report of this day further down in this newsletter) and in a speech delivered during the Night of the Rule of Law on 23rd November 2012 (felix.merites.nl, in Dutch).

In November 2012, in response to the dismissal of Baka, the Network of the Presidents of the Supreme Juridical Courts of the European Union appointed its former president as an honorary president. By doing so, the Network wanted to make a statement that dismissing judges on improper grounds is a threat to the rule of law.

Venezuela

A large number of visitors from our stand at the **Dutch Association for the Judiciary (NVvR)** conference on the 4th October 2012, as well as the visitors of the theme day of the **Training and Study Centre for the Judiciary (SSR)** on

‘What does the Dutch judge do with European law’ on the 9th November have sent postcards to our Venezuelan colleague **Maria Afiuni**. The cards have been sent to our contact in Venezuela who will make sure the cards get to Afiuni.

17th December, it was exactly three years ago that the Venezuelan judge Maria Afiuni was arrested. Since February 2011 Afiuni has no longer been imprisoned. However her situation has not greatly improved. Since her release from the INOF female prison Afiuni has been under strict house arrest. Visit our website to see our previous announcement on this topic. Afiuni’s trial still hasn’t officially commenced, the reason being that Afiuni refuses to come to court out of protest against the judge who is hearing her case; Afiuni does not recognise this judge to be an independent magistrate.

Recently a new highly criticised law, which is presumed to be unlawful, has been enforced in Venezuela. Because of this law it is possible to condemn people by default. Before the enforcement of this law this was impossible, so a protest was filed at Afiuni’s trial. Recently on the 28th November the trial of Afiuni commenced in her absence. Her case therefore is the first case in Venezuela in which someone will be condemned by default. The case, however, was put on hold again that same day. Presumably Afiuni will be tried by default; but it is not yet clear when the procedure will be put on the agenda again.

On the 23rd November 2012 the journalist Francisco Olivares presented his book called ‘The Prey of the Commander’ (**La Presa del Comandante**). The book is mainly based on interviews with Maria Afiuni. A few days before the presentation some horrendous parts of the book leaked in which Afiuni for the first time speaks

openly about the horrible abuse she underwent in prison by the other inmates. She was also raped by a Justice official and the pregnancy which followed was terminated by an abortion. Visit the NY Times website to read more: (nytimes.com).

These revelations made by Afiuni were later denied by various authorities through the media. It was also revealed that Afiuni would be prosecuted for defamation. The general attorney said that Afiuni would have to report the fact that she was raped. The team of Afiuni's defendants however say that by Venezuelan criminal law there is no need to report the crime since an investigation has to commence by virtue of one's office when the suspect is a civil servant. Moreover Maria Afiuni did file a complaint to the public prosecutor on the 8th November. This complaint however has never been investigated. On the 29th November at 6 o'clock in the morning Maria Afiuni was picked up from her house and brought to the house of the general attorney. She was then asked to formalise the accusations of rape, as stated in her book, in an official complaint.

Afiuni and her lawyers refused to do so and have emphasised the fact that the public prosecutor ex officio is obliged to start a forensic investigation on the basis of the complaint which was filed in November 2010. Maria Afiuni's lawyers have qualified the current state of affairs as a legal trap in which was tried to force to file an unnecessary complaint just to cover up the fact that the investigation of Afiuni's treatment in prison should have commenced two years earlier.

The General Attorney then drafted a statement which said that Afiuni refused to file a complaint. Afiuni refused to sign the statement and left the office with her lawyers. But immediately after Afiuni left the general attorney's office, he sent out a press release which stated that

Afiuni had given up all her rights to press charges. Afiuni's lawyers are concerned that because of this press release a prosecution for defamation will be started considering the statements she made in her book about what had happened to her at the INOF jail.

Judges for Judges will obviously keep monitoring Maria Afiuni's situation and ask for attention for her case with the Dutch authorities, especially for the investigation which will take place by the Venezuelan authorities with respect to the serious complaints of Afiuni's treatment and rape while incarcerated. Moreover the Dutch embassy in Venezuela, in conjunction with a few representatives of other countries, has assured that with each hearing in the criminal prosecution of Afiuni at least one observer will be present.

Swaziland



(Credit: Douwe Sikkema)

In earlier newsletters you have been able to read about the redundancy procedure of judge **Thomas Masaku**. Currently Masaku is occupied with doing research work for ICJ Africa from his home in Swaziland. Furthermore he is investigating whether or not he can successfully propose his case to the African commission of human rights. In the meantime Masaku is considering the possibility of temporarily helping out the judiciary on the Seychelles, with

clearing out the back log of work, through a Commonwealth organisation. Last year we already asked you for a contribution on behalf of our colleague judge. Hereby Thomas Masaku would like to thank you for the attention and support that was given to his case.

Bucharest statement by MEDEL (Magistrats Européens pour la Démocratie et les Libertés)

Please look into our booklet "[Matters of Principle](#)" ([pdf](#)) and you will see that many international codes of conduct for judges contain provisions on resources and remuneration. We refer to Principle 7 of the Basic Principles on the Independence of the Judiciary (p. 16), or to Recommendations 33 and 54 (on pages 43 and 48 respectively) of the Recommendation on Judges: Independence, Efficiency and Responsibilities CM?Rec (2010)12.

No doubt, MEDEL was inspired by these words and has proceeded to take action. On November 10th, 2012 Medel has phrased a critical resolution with regard to those EU-Member States that have decided on budget cuts severely restraining the budget of the Judiciary.

MEDEL holds the view that these measures endanger the effective performance of a constitutional state and thus violate EU-law. The board of MEDEL will not only file a complaint with the European Commission, but will also present a report on this infraction to the European Parliament. Click these links for the [English \(pdf\)](#) and [French \(pdf\)](#) text of the Resolution.

Georgia

No progress has been made in the case against the dismissed members of the Penal Chamber of the Supreme Court in Georgia. This dismissal took place in August 2006.

The procedure is still on the agenda of the European Court of Human Rights.

Tamara Laliashvili, being one of the four (disciplinary) dismissed members and at the moment a University teacher in Tbilisi, was offered a post as a Public Prosecutor. In view of the pending procedure in Strasbourg, she has had to decline.

However, the four dismissed members of the Supreme Court recently have asked their parliament to reconsider the dismissal. The (newly composed) Georgian parliament is expected to decide within a month.

Philippines

In our last newsletter we wrote about a judge from the Philippines who had contacted Judges for Judges. He has informed us recently that there have been no further threats against him and that he considers his situation as 'normal'. Judges for Judges will remain in contact with the judge.

There has been no progress in the investigation of the murder on 21st December 2005 of the Philippine judge **Henrik Gingoyon**. Judges for Judges continues to bring the case to the attention of the Philippine authorities. Relevant details on this will follow.

Serbia and Slovakia

Please keep an eye on the website for updates on the situation in [Serbia](#) and [Slovakia](#).

ACTIVITIES

Pamphlet ‘Matters of Principle, codes on the independence and impartiality of the judiciary’

On 25th June, The Foundation ‘Judges for Judges’, took the initiative and in co-operation with the **Council for the Judiciary (Rvdr)** published a pamphlet, called ‘Matters of Principle, codes on the independence and impartiality of the judiciary’, containing the most important judicial codes, in an international, as well as a European and Dutch sense.

Core values, mentioned in each of these codes, are: independence, autonomy, impartiality, integrity, expertise and professionalism.

The pamphlet was distributed among all judges in Holland. An online version can be found on our website [rechtersvoorrechters.nl]. The board of the Foundation is grateful to the Raad voor de Rechtspraak for funding this publication.

State banquet 20th November 2012

A state banquet was held at the Royal Palace at Dam Square in Amsterdam on the occasion of the state visit to The Netherlands of the president of Slovakia, mr. **Ivan Gašparovič**. Judges for Judges was invited as well. Gerritjan van Oven had the opportunity to speak with mr. Gašparovič offside of the banquet, expressing his concern on the situation of a number of Slovakian judges who have been disciplinarily prosecuted.

Human Rights Day 20th December 2012 joint venture with Lawyers for Lawyers and Kennedy Van der Laan

On 10th December 2012 Judges for Judges, together with the foundation Lawyers for Lawyers and Kennedy Van der Laan solicitors mounted “Human Rights Day”. The subject was the independence of judges, lawyers and public prosecutors. The idea for this conference originated from **Gabriela Knaul**, the UN Special Rapporteur on the independence of judges and lawyers. She wanted the three professions to meet on this first occasion with a view on further co-operation in the future.



(credit: L4L)

The daytime programme was open to the public. Among the speakers were **Germ Kemper**, Dean of the Amsterdam Bar Association, and a Russian advocate who is in danger because of his work. **Frederiek de Vlaming**, co-founder of Lawyers for Lawyers acted as moderator. **Gerritjan van Oven** and **Phon van der Biesen** spoke about their work for Judges for Judges, respectively Lawyers for Lawyers. After the work of Gabriela Knaul had been explained, the discussion focussed on the question of how to support judges and lawyers who

are under threat because of their work. **Peter Ingelse**, President of the Enterprise Court of the Amsterdam Court of Appeals and **Alice Krispijn**, lawyer at Kennedy Van der Laan, spoke of their participation in the **Caravana Internacional de Juristas** last summer in Colombia. They spoke with judges and lawyers during this fact finding mission. Their report –yet to be finished - will be presented to Gabriela Knaul in the beginning of 2013.

In the evening, during the private ‘diner pensant’ the discussion about the independence of the three professions continued. Geert Corstens, President of the High Court of the Netherlands spoke

of the situation of the President of the High Court of Hungary and of the efforts of the network of EU High Court Presidents to support him. Speeches were also delivered by **Derk Kuipers**, secretary-general of the International Association of Prosecutors and **Karen Brewer**, secretary-general of the Commonwealth Magistrates' and Judges' Association.

Via [this link](#) you can read more about this event in Dutch and English.

Keep a close eye on our website for a report on the Caravana Internacional de Juristas in Colombia that was held last summer.

BECOME ACTIVE FOR J4J

Meanwhile, the number of countries on J4J's radar screen has greatly expanded, resulting in increased activities for the foundation. J4J 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 J4J, you are cordially invited to contact J4J via info@rechtersvoorrechters.nl. Please indicate which countries you have knowledge of, experience with or interest in.

J4J is also specifically looking for people who can do translation work and/or want to join the working groups. 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.

Translators Spanish and French

J4J is urgently looking for translators 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 J4J. 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 contact the secretariat 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 the secretariat via to discuss your ideas 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 same 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 email address.