



RECHTERS VOOR RECHTERS

Nieuwsbrief
2016-01

Juli 2016

Turkije, Venezuela, Genève, Botswana en meer in deze nieuwsbrief:



Vrienden van Rechters voor Rechters,

Het afgelopen half jaar is er veel gebeurd. Zo baart de situatie in de rechterlijke macht in Turkije ons ernstige zorgen. Andrew Gardner, Turkije-researcher van Amnesty International, zei het laatst zo in een interview:

'Ik zie de Turkse rechtsstaat wegwijnen en ik voorzie geen verbetering in de nabije toekomst'.

Wij proberen zo veel mogelijk van de zittingsdagen bij te wonen van het proces tegen de twee - nog immer gedetineerde - rechters Başer & Özçelik. Zij worden verdacht van deelname aan een terroristische organisatie nadat zij in april 2015 verdachten in een politiek gevoelige zaak na toetsing van de voorlopige hechtenis op vrije voeten hadden gesteld. In deze nieuwsbrief hebben we twee open brieven opgenomen van Yarsav, een van de Turkse rechtersverenigingen waar wij contact mee onderhouden. Lezing daarvan geeft u een alarmerend inkijkje in het land waar de EU eind juni de toetredingsonderhandelingen weer mee heeft heropend. De Volkskrant kopte laatst 'Grootste deel Turkse rechters ontslagen'. Nadat eerder dit jaar al een paar duizend rechters gedwongen zijn overgeplaatst, heeft het parlement in juni een wet aangenomen waardoor het gros van de 711 rechters van twee van de hoogste gerechten van het land wordt ontslagen. Op de foto ziet u protesterende rechters van deze colleges voor het geven van een persverklaring gegroepeerd voor het gebouw van de Supreme Court of Appeals in Ankara.

In Venezuela is politiek en economisch ook behoorlijk in beweging, maar dat kan niet worden gezegd over de straf- en tuchtrechtzaken tegen Maria Afiuni. De procedures slepen zich voort, de bezwarende schorsingsvoorraarden zijn nog steeds van kracht en haar gezondheidstoestand is zorgelijk. We hebben een donatie overgemaakt als bijdrage aan haar benodigde medicatie/behandelingen.

Wij hebben ook een donatie gedaan aan het procesfonds van de vier - sinds 28 augustus 2015 - geschorste rechters uit van de High Court in Botswana. Zij hadden zich eerder kritisch uitgelaten over de Chief Justice en over hun arbeidsvoorraarden. Leest u in de nieuwsbrief ook de tekst van de gezamenlijke statement met de Commonwealth Magistrates' and Judges' Association (CMJA) die wij vorige maand uitbrachten. Deze morele steun werd gewaardeerd door de betrokken rechters: 'We felt we were not alone'.

Onze betrokkenheid bij Swaziland is niet geëindigd na het uitbrengen door ICJ (International Commission of Jurists) begin dit jaar van het rapport over de missie van mei 2015. De '[Joint submission](#)' die wij schreven samen met International Bar Association's Human Rights Institute (IBAHRI), Lawyers for Lawyers (L4L) and the Southern Africa Litigation Centre (SALC) vormde de basis voor de lobby-activiteiten tijdens de UPR (Universal Periodic Review) pre-session op vrijdag 1 april in Genève. Dit heeft ongetwijfeld bijgedragen aan de formulering tijdens de Working Group in mei door verschillende landen van [recommendations](#) ter broodnodige versterking van de onafhankelijkheid van de rechterlijke macht aan Swaziland . Nu Swaziland vervolgens die aanbevelingen weer heeft overgenomen, vormt dat in ieder geval een gemeenschappelijk basis om in de toekomst zonodig nog eens op terug te grijpen.

Leest u verder vooral ook over de situatie van collega's in Suriname, Colombia, Lesotho en Polen.

Tot slot treft u in deze nieuwsbrief ook verschillende door Rechters voor Rechters mede-ondersteunde statements aan die tijdens de juni-vergadering van de VN-Mensenrechtenraad in Genève zijn uitgebracht. We zijn er best een beetje trots op dat gerenommeerde organisaties als IBAHRI en ICJ onze Stichting hebben gevraagd samen met hen op te trekken op deze onderwerpen die steeds de onafhankelijkheid van de rechterlijke macht raken.

Dan nog een kijktip voor komende zondag 17 juli 2016 (om 12.10 uur op NPO 1): het programma Het Filosofisch Kwintet ditmaal over de onafhankelijkheid van de rechtspraak, ons bestuurslid Ybo Buruma is een van de drie gasten.

Fijn dat u de tijd wilt nemen om over de rechters te lezen die in het kader van hun beroepsuitoefening in de problemen zijn gekomen. En zoals u zult begrijpen zijn donaties meer dan welkom, alleen op die manier kunnen we collega's of die nu in Turkije, Botswana, Venezuela of elders wonen daadwerkelijk steunen.

Een mooi zomer toegewenst!

Tamara Trotman
Voorzitter

Colombia Caravana 2016



Twee jaar geleden nam Anne-Marie Smit (hof Den Bosch) samen met Peter Ingelse (toen: Hof Amsterdam) deel aan de Colombia Caravana. Een buitengewoon interessante reis georganiseerd door de [Caravana UK Lawyers' Group](#) in samenwerking met de Human Rights Lawyers (ACADEHUM) uit Bogota. Enthousiast over haar ervaringen besloot Anne-Marie samen met de Nederlandse deelnemers van Lawyers for Lawyers de stichting [Caravana Nederland](#) op te richten. Haar doel is te bewerkstelligen dat de (moeilijke) positie van rechters in Colombia nadrukkelijk in het programma wordt opgenomen en daarbij in het bijzonder te focussen op de problemen voor rechters rond het land restitutieprogramma. Waar mogelijk werkt Rechters voor Rechters samen met deze stichting.

Van **20 tot 28 augustus 2016** is de volgende Colombia Caravana gepland. Anne-Marie Smit zal namens Rechters voor Rechters deelnemen. Voor deze reis zijn de volgende doelen geformuleerd:

- to prevent/reduce threats against lawyers and other defenders and the communities they work with by shining a spotlight on their work and making the Colombian authorities aware of the international concern;
- to identify and through first-hand accounts and open discussion, gather information on the current challenges facing Colombian human rights lawyers in several regions of the country, with special attention to challenges posed by the transitional justice process.
- to hold workshops on relevant subjects aiming to share expertise and information.
- to influence the government by engaging in dialogue with officials from relevant departments and raising ACADEHUM's concerns, to encourage these departments to take action on them.
- to use the information gathered to compile a report detailing the findings of the mission and including a series of recommendations for future action on the part of both the Colombian authorities and the international community.
- to draw up a framework with Colombian lawyers for future collaboration, support and exchange.

Het [algemene rapport](#) dat op grond van de ervaringen gedurende deze Caravana is geschreven is op 28 mei 2015 aan de **Colombiaanse ambassadeur** in Den Haag aangeboden. Het [rapport](#) dat specifiek ziet op de positie van Colombiaanse rechters is aangeboden aan de ambassadeur van Colombia op 14 februari jongstleden.

Voor nadere informatie over de Colombia Caravana 2014 zie [hier](#) en voor nadere informatie over Colombia Caravana Nederland zie [hier](#).

Noot bij EHRM uitspraak Ivanovski v. Macedonië

In het tijdschrift EHCR verscheen recent het arrest van 21 januari 2016 van het EHRM in de zaak **Ivanovski v. Macedonië**, voorzien van een noot geschreven door de voorzitter van Rechters voor Rechters, Tamara Trotman.

Ivanovski (geboren in 1946) was vanaf 2003 rechter en later president van het **Constitutionele Hof** in de voormalige Joegoslavische Republiek Macedonië. De Zuiveringswet 2008 bepaalde dat collaboratie met de staatsveiligheidsdienst tussen augustus 1944 en januari 2008 in de weg stond aan vervulling van een betrekking in overheidsdienst. In dat kader moesten alle overheidsfunctionarissen een non-collaboratieverklaring kunnen inleveren bij de zuiveringscommissie. Klager heeft op 3 september 2009 een dergelijke verklaring ingediend.



De zaak van klager was de eerste zuiveringszaak onder deze wet. Op 21 september 2010 heeft klager, via vertrouwelijke correspondentie van de zuiveringscommissie, vernomen dat zijn verklaring niet strookte met de informatie uit het staatsarchief, waar de commissie over beschikte. Op 27 september 2010 heeft op zijn verzoek een openbare hoorzitting plaatsgevonden. Al op 24 september heeft de Macedonische premier in een via de media verspreide open brief aan de ‘opponenten van de zuivering’ bericht dat de zuiveringscommissie had onthuld, dat een lid van het Constitutionele hof, benoemd door de vorige president, had gecollaboreerd met de veiligheidsdienst van het voormalige regime. De premier zag hierin een verklaring voor het door het Constitutionele Hof ongeldig verklaren van een aantal hervormingswetten van zijn regering (par. 32).

Het arrest en de noot zijn, zoals gepubliceerd in afl. 5 van EHCR 2016: EHCR 2016/94, [hier](#) en [hier](#) te vinden.

Juni 2016: Suriname – vonnis krigsraad 9 juni 2016

Rechters voor Rechters informeerde u eerder over het voor de **Krigsraad** aanhangige 8 decemberstrafproces, zie [hier](#) en [hier](#). Tijdens een zitting die plaatsvond op 4 maart 2016 heeft de auditeur-militair Roy Elgin gevraagd de schorsing van de vervolging in het 8 december strafproces voor de periode van een jaar te verlengen. De Krigsraad heeft dit verzoek echter afgewezen.

De Krigsraad heeft artikel 1 van de Amnestiewet, welke wet hangende dit proces werd aangenomen, buiten toepassing gelaten. De Krigsraad heeft vastgesteld dat de wetswijziging zonder meer kan worden aangemerkt als inmenging in een lopende strafzaak, die in een ver gevorderd stadium was. Dit op basis van artikel 137 van de grondwet. *Voor zover de rechter in een concreet geval aan hem voorgelegd, toepassing van een bepaling van een wet strijdig oordeelt met één of meer in Hoofdstuk V genoemde grondrechten, verklaart hij die toepassing voor dat geval ongeoorloofd.* De Krigsraad heeft bepaald dat het onderzoek ter terechtzitting zal worden voortgezet in de stand waarin het zich vóór de schorsing bevond, namelijk het requisitoir. Dat requisitoir zou plaatsvinden tijdens een zitting op 30 juni jongstleden.

Zo ver is het echter niet gekomen. Volgens President Bouterse, een van de verdachten in het strafproces, is er door deze uitspraak van de Krigsraad een constitutionele crisis ontstaan. Ook zou volgens hem de staatsveiligheid met de uitspraak in gevaar zijn gebracht. Op die grond heeft de regering op 29 juni besloten om artikel 148 van de grondwet in werking te stellen, welk artikel luidt: *De Regering bepaalt het algemeen vervolgingsbeleid. In het belang van de staatsveiligheid kan de Regering in concrete gevallen aan de Procureur-Generaal bevelen geven met betrekking tot de vervolging.* Tijdens de zitting op 30 juni heeft Auditeur-militair Roy Elgin de Krigsraad te kennen gegeven dat de procureur-generaal bij resolutie van de regering de opdracht heeft gegeven om het 8 december strafproces te beëindigen. De Krigsraad onder leiding van president Cynthia Valstein-Montnor, heeft besloten dat de zitting wordt verdaagd naar 5 augustus aanstaande. Dan zal er antwoord worden gegeven op de vraag van het Openbaar Ministerie om het 8 december strafproces te beëindigen.

In een reactie zegt de een vertegenwoordiger van de **International Commission of Jurists** (ICJ) tegen de Surinaamse krant Starnieuws dat de organisatie nogmaals het belang van onafhankelijke rechtspraak in Suriname benadrukt. "Zoals wij steeds hebben gesteld moet de Krijgsraad in vrijheid haar beslissingen kunnen nemen. Dit is in het belang van zowel de verdachte als de eisers (nabestaanden). De onafhankelijke rechtspraak, is ook in het algemeen belang van Suriname." Zie [hier](#).

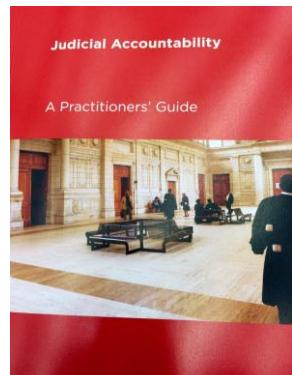
Dit standpunt wordt door Rechters voor Rechters onderschreven. Het vonnis van de Krijgsraad kan binnenkort van de site worden gedownload [[pdf bijgevoegd](#)]

Juni 2016: Who judges the judges?



Jolien Schukking met Monica Pinto

Tijdens de jaarlijkse vergadering van de **VN Mensenrechtenraad in Geneve** organiseerde de **International Commission of Jurists** (ICJ), samen met de **International Bar Association** (IBA), ook dit jaar een weer een zogeheten **Side Event**, een bijeenkomst waarbij aandacht wordt gevraagd voor een bepaald thema. Rechters voor Rechters was een van de co-sponsors van het Side Event. Bestuurslid Jolien Schukking was hierbij aanwezig. Het thema van de bijeenkomst op 14 juni jongstleden was '*Who judges the judges? Accountability for judicial corruption and judicial complicity*'. Tijdens een panel discussie waaraan onder andere Monica Pinto, de nieuwe VN Special Rapporteur on the Independence of Judges and lawyers, en Thulani Maseko, een advocaat uit Swaziland die slachtoffer is geweest van *judicial misconduct* en lange tijd op arbitraire gronden gevangen heeft gezeten, deelnamen werd het thema besproken. De nadruk lag daarbij op wijze waarop en de procedures



door middel waarvan dergelijk ongewenst rechterlijk gedrag kan worden aangepakt. Ook was er aandacht voor de situatie van landen in transitie, waar veelal de zittende rechterlijke macht nog nauwe banden heeft met het vorige regime. De veelheid en verscheidenheid aan vragen die door de aanwezige afgevaardigden van een groot aantal VN landen gesteld werden, gaf duidelijk aan dat dit een thema is dat leeft en dat, hoe precair ook, onze aandacht nodig heeft. Aan het einde van de bijeenkomst presenteerde de IBA een recent rapport **Judicial Systems and Corruption** en werd door Matt Pollard van het ICJ Centre for the Independence of Judges & Lawyers [de ICJ Practitioners' Guide on Judicial Accountability](#) gelanceerd, een gids die praktisch informatie verschafft over de wijze waarop ernstig *judicial misconduct* zou kunnen worden bestreden en aangepakt. Deze gids kan worden gedownload via [deze link](#).

Juni 2016: Statement on the impeachment of Justices Dingake, Letsididi, Garakwe and Busang of the High Court of Botswana

Leest u voor wat achtergrondinformatie bijvoorbeeld het bericht dat [Amnesty International](#) uitbracht over de schorsing van de vier rechters.

The judges, Key Dingake, Mercy Thebe, Rainer Busanang and Modiri Letsididi were suspended on 28 August 2015 under Section 97 of the Botswana Constitution for alleged misconduct and bringing the judiciary into disrepute. This followed a petition signed by 12 judges, including the suspended four, calling for the impeachment of Chief Justice Maruping Dibotelo.

Recalling that at its General Assembly on 19 September 2015, the **Commonwealth Magistrates' and Judges' Association (CMJA)** expressed its concern about the processes put in place to impeach the **Justices of the High Court** mentioned above.

Recalling the **CMJA** Statement issued on 3 October 2015 in relation to the suspension of Justices Dingake, Letsididi, Garakwe and Busang and the concerns expressed therein.

Recalling the provisions of the Commonwealth (Latimer House) Principles on the Accountability of and the Relationship between the Three Branches of Government (2003) which state that "*Disciplinary proceedings which might lead to the removal of a judicial officer should include appropriate safeguards to ensure fairness*".

Whilst not wishing to comment on current court cases which will run their normal course, the **CMJA** is concerned that the authorities in **Botswana** seem to be treating some judges more favourably than others and this gives the impression that there is a lack of equality before the law.

Any measure which is capable of being seen as eroding the independence and impartiality of the judiciary, or the fundamental rights to which all citizens of **Botswana** are entitled to, is a matter of serious concern and could undermine the international standing of the **Botswana** judiciary.

We therefore call upon the **Botswana** authorities to ensure that all processes followed are dealt with in a just and equitable manner to resolve the issues quickly to safeguard the good reputation of the **Botswana** judiciary for independence and impartiality.

Commonwealth Magistrates' and Judges' Association (CMJA)

Commonwealth Legal Education Association (CLEA)

Judges for Judges (Rechters voor Rechters), Netherlands

16 June 2016

Juni 2016: UN statement: judicial accountability, attacks on lawyers

Judges for Judges joined a statement on June 16th delivered by the **ICJ** at the **UN Human Rights Council**, on judicial accountability, and attacks on lawyers. **ICJ** made the statement on behalf of a group of eight NGOs, including professional organisations of judges and lawyers.

The statement, read out by Swaziland lawyer Thulani Maseko during the Interactive Dialogue with the **UN Special Rapporteur** on the Independence of Judges and Lawyers, read as follows:

"Madame Special Rapporteur on the Independence of Judges and Lawyers,

Our organizations strongly support your mandate. An independent judiciary and legal profession are essential to the rule of law and to the effective protection of human rights.

Independence and impartiality of the judiciary require integrity of individual judges and judicial institutions.

Accordingly, there must be accountability for judicial corruption and judicial involvement in human rights violations.



Accountability mechanisms must themselves be independent, fair and transparent, in order to ensure they do not undermine the independence of the judiciary and that victims and the broader population see them as credible and accessible.

*We note in this regard the **International Commission of Jurists'** newly published [Practitioners' Guide on Judicial Accountability](#), and the International Bar Association's recent report on Judicial systems and Corruption.*

We also must highlight the growing problem of repression of lawyers who act in cases perceived to have human rights or political aspects, including through: harassment, suspension or disbarment; arrest, detention, unfair trial, and arbitrary imprisonment; torture or other cruel, inhuman or degrading treatment, enforced disappearance, or even unlawful killings.

*This is inconsistent with the **UN Basic Principles on the Role of Lawyers** and incompatible with the rule of law. It violates the rights of individual lawyers and undermines the independence of the legal profession. It denies the rights of the people the lawyers are trying to protect.*

Among current examples, the scale and depth of repressive measures against lawyers and HRDs in China is particularly stark, but similar concerns arise in, for instance, Egypt, Turkey, Thailand, Azerbaijan, Malaysia,

Tajikistan, and Vietnam. (I myself was arbitrarily imprisoned in my own country Swaziland, for publicly expressing my opinions about judicial misconduct.)

We accordingly will urge lawyers, legal professional associations and others around the world to respond to the questionnaire you have prepared for your upcoming General Assembly report on the legal profession.

I thank you."

The following organizations also joined or otherwise supported the statement:

International Commission of Jurists
International Service for Human Rights
Commonwealth Magistrates' and Judges' Association
Commonwealth Lawyers Association
Lawyers for Lawyers, Netherlands
Avocats Sans Frontières Suisse
Southern Africa Litigation Centre
Strategic Advocacy for Human Rights (added support after delivery)

Juni 2016:

Publication Open Letter of Yarsav (Turkish Association of Judges and Prosecutors): "Final conquest of the last bastion of turkish judiciary: government purging high judiciary"

After relocation of nearly 9000 judges (out of appx. 15000) in less than 20 months and recruiting thousands of politically loyal people as judges and prosecutors to high judicial ranks, the government, under the guise of "judicial reform", "judicial re-organization", using the pretext of purging "parallel structure members" is reducing the number of members of the supreme courts by half.

A draft law aiming to change the structures of supreme courts, **Council of State** and **Court of Cassation**, has been submitted to the Parliament by the Justice and Development Party with plans to have it passed before the Parliament goes to recess at the end of June.

According to the draft, the number of judges at the Court of Cassation will be reduced from 516 to 200, while the number of judges at the Council of State will drop from 195 to 90. Tenure of high judges will be terminated when the law goes into effect. Right after this, the **Judicial Council**, which is under direct control of the government, will make reappointments to the high courts in 5 days among the same group. Some members of the Council of State will directly be appointed by President Erdogan. Judges, whose tenure will be terminated and who are not reappointed to the supreme courts as high judges will be sent to different lower instance courts as a plain judge. Newly reappointed high judges' tenure will be limited to 12 years.

In a stark contrast with the newest measure, the same government in 2011 and 2014 had increased the number of members of the high judiciary and had doubled the member quantity under the pretext of huge workload. Now in order to get rid of all dissidents, it reduces the number of high judges in a way that can only be described as "Civil Coup". After guardians of the democracy are removed people will become vulnerable against dictatorial acts and actions of the government.



Turkish constitution allows judges to remain in their positions until the retirement age of 65 which includes high judges. Thus, the draft law is against the constitutional principle of security of tenure and irremovability of judges. It appears that Serbian model is followed by the government.

President Erdogan is taking this action irrespective of the fact that it is unconstitutional and **Constitutional Court** will eventually annul this law. Unfortunately annulment decisions of the **Constitutional Court** have no retroactive effect so in practice annulment of law in question will be meaningless and useless. Damage will already be done until the **Constitutional Court** passes a judgement without possibility of restitutio in integrum.

It is obvious now that only those high judges who pledged allegiance to **Erdogan** will be reappointed and will save themselves from this unimaginable, unlawful, unconstitutional purge. **Erdogan** will be in full control of both lower courts and high judiciary after this law goes into force. Instrumentalisation of the judiciary by **Erdogan** will be

completed and the judiciary will serve as a government tool to silence and punish all kinds of opposition more than ever before.

In the name of all values, standards, fundamental rights and freedoms that contemporary world has paid heavy price to achieve and maintain we, free and independent Turkish judges and prosecutors, call upon international institutions to react strongly against rise of dictatorship at the doorsteps of Europe. Take into consideration what has happened in our region in the last couple of years and imagine what a dictator can do with a limitless power.

It is not only responsibility but also a duty for the international community to react in order to stop this act of madness. Respectfully submitted to your attentions.

Murat Durmaz
Turkish Association of Judges and Prosecutors

Juni 2016: UN Statement: indicators of independence of justice systems

Judges for Judges today joined a statement delivered by the **International Bar Association** on indicators of independence of justice systems. The statement came during the interactive dialogue with the **UN Special Rapporteur** on the Independence of Judges and Lawyers.

It read as follows:

"As international organisations of legal professionals, we endorse the recommendation made by the Special Rapporteur to develop a set of international indicators to assess the independence of justice systems.



The Special Rapporteur has previously stated: 'No ideal justice system exists; rather, there are universal principles that must be respected in the structure and functioning of any judicial system, so that it can duly fulfil its purpose'. (Report of the Special Rapporteur on the independence of judges and lawyers, (2014) UN Doc A/69/294, para 92.)

Achieving Sustainable Development Goal 16 – that is, providing access to justice for all and building effective, accountable and inclusive institutions – will require respect for the universal principles of independence and impartiality of justice systems and the independence of the legal profession.

In 2015, the International Bar Association (IBA) and the International Commission of Jurists (ICJ) proposed two indicators under SDG16, regarding the independence of the judiciary and an independent and self-governing legal profession. The IBA is currently developing 'indicia of independence' that can be used to assess the state of independence of the legal profession in a given jurisdiction. The Commonwealth Lawyers Association (CLA) and the Commonwealth Magistrates' and Judges' Association (CMJA) continue to monitor judicial and legal independence through the Commonwealth Latimer House Working Group.

We therefore, Madam Special Rapporteur, fully support your endeavour to develop universal indicators that complete the UN Rule of Law Indicators, and build on the UN Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, and the Guidelines on the Role of Prosecutors.

We further call upon States to ensure that national targets and indicators duly align with international indicators and international principles.

Thank you, Mr President"

The following organisations also endorsed the statement:

Avocats Sans Frontières -Suisse
Commonwealth Magistrates' and Judges' Association
Commonwealth Lawyers Association
International Bar Association's Human Rights Institute

Maart 2016: Verklaring Europese magistratenvereniging Medel

Rechters voor Rechters was - als 'observer'-aanwezig bij de vergadering van de Europese magistratenvereniging [Medel](#). Tijdens deze bijeenkomst is de volgende **verklaring** aangenomen:



Pisa, March 12, 2016.

medel declaration

Is Europe under Siege?

Dark clouds hang over Europe as threats to fundamental rights and freedoms arise from all countries and governments. In the last months, European governments – under the passivity of the European institutions – have carried out a series of measures aimed to destroy the basis of the rule of law.

[...]

3. *The attacks on the independence of justice in Poland, Romania and Turkey*

All over Europe, governments have been carrying out attacks against the independence of justice at a scale that not so long ago was unimaginable.

In Poland, the Constitutional Tribunal has been paralyzed through ignoring its rulings, amendments of the law, and factual actions of politicians. In this way the Tribunal has stopped to be an effective element of the system guaranteeing protection of human rights and the rule of law. Judgments of the Constitutional Tribunal must be promulgated and respected. The blockade of the Constitutional Tribunal does not allow for an urgent assessment of several laws adopted in the last few months by the Parliament which deeply interfere into, *inter alia*, the right to privacy, the freedom of media, and the administration of justice. The adopted *Law on the Police* has expanded significantly the powers of police and special services to conduct surveillance without sufficient safeguards for the protection of the right to privacy, journalistic sources and information covered by professional secrecy. Public media, which in a democratic society should be independent and pluralistic, have been placed under direct control of the government which has the powers to appoint and dismiss the members of the supervisory and management boards of public service television and radio. The merger of the position of the Minister of Justice with the Prosecutor General, combined with almost unlimited competence of interfering into any criminal proceedings can undermine the fundamental guarantees of division of powers and the fair trial.

In Romania, a general of the Romanian Intelligence Service (SRI) has admitted that the courts became "tactical fields" for this secret service, that all the judges are profiled using behavioural patterns and that this secret intelligence agency is currently "maintaining its interest/attention until a final court decision is been reached in each case". This raises serious concerns about the integrity of the judiciary system as a whole, as well as the independence of the judges. In almost a year since this scandal erupted, the Romanian authorities have failed to clarify the involvement of SRI in the judiciary process. The SRI Director stated publicly that this secret service agency is in partnership with the prosecutors to conduct criminal investigations, an activity that it is forbidden by the law. At the same time, invoking classified procedures and secret protocols, the Romanian authorities have failed to explain in a transparent way how they conducted the investigation to conclude that there are no undercover agents of any intelligence agencies among the magistrates. In the context that SRI is part of the criminal investigation and it is also involved in the courts, corroborated with the failure of authorities to clarify transparently these matters, this raises serious doubts about the respect for basic human rights and the guarantee of a fair and just trial of any person accused by the state. The most recent attacks to the Romanian Constitutional Court, for ruling unconstitutional the article used by prosecutors to delegate SRI to

conduct acts of penal investigation, confirms that there is an unhealthy involvement of SRI in the judiciary process. The solution of the Romanian Government to fix this unconstitutional article in the law, by passing an emergency ordinance making SRI a “special organ” to conduct penal investigations, legalizes actually the involvement of a secret intelligence agency in the judiciary process which is undermining its independence. With SRI legally participating now in the penal investigation, and with SRI transforming the courts as their “tactical fields”, profiling judges and “maintaining their interest/attention until a final court decision is been reached in each case”, Romania is violating the human rights, independence of the judiciary, rule of law and separation of power principles.

In Turkey, for over a year judges Metin Özçelik and Mustafa Baßer and prosecutors Süleyman Bağriyanık, Ahmed Karaca, Aziz Takçı and Özcan Şışman are in detention only because of their judgments and for their professional judicial activity (judges Özçelik and Baßer because of release orders they issued for police officers involved in anti-corruption investigations; prosecutors Bağriyanık, Karaca, Takçı, and Şışman for investigations against illegal arm-smuggling). Requests for visiting them by international observers were rejected and when a representative of MEDEL tried to attend a hearing as international observer, it was decided that the trial was to be continued *in camera*, raising strong doubts about the compliance of the proceedings with the international standards of transparency and respect for the rule of law.

All these situations are notorious attempts of the executive power to control the judiciary, violating severely the fundamental rights and freedoms. The access to an independent judiciary is a fundamental right of any citizen and one of the cornerstones of the rule of law – to violate it is to put at risk the basis of all European values and standards.

Is Europe is under siege? Yes, but not by migrants or asylum seekers – by policies that risk to destroy the basic freedoms and the rule of law on which Europe was built.

Taking into consideration that the EU needs the support of Turkey tackling the refugee crisis, MEDEL expects that the European Union makes no concessions to the authoritarian regime in Turkey in regard with the rule of law, state of liberties and human rights, which are the fundamental values upon which the European Union is based and must be respected also by Turkey, which applied to join the EU.

Particularly in times of crisis, we must not abandon our democratic, social and humanitarian achievements. MEDEL therefore is committed to joining forces in the spirit of tolerance, solidarity, democracy and the rule of law in Europe.

The Council of Administration of MEDEL, gathered in Pisa:

- **Supports a Europe that protects human dignity and provides prospects for a harmonious society and a dialogue on cultural, religious and social diversity and the creation of forums for people to come into contact with one another;**
- **Appeals for the rigorous prosecution of inhumane attacks by right-wing extremists on refugees and their accommodation, as well as on the police, the media, and volunteers;**
- **Recalls the urgent need for the definition of a clear and humane common policy for migrants and refugees;**
- **Calls on all European governments to immediately cease all attacks on individual liberties and fundamental rights;**
- **Demands full respect for the independence of the judiciary, mainly by the Polish government, and demands the immediate release of the detained Turkish colleagues and the immediate ceasing of any kind of interference of secret services in the judiciary in Romania.**

Maart 2016: Joint UPR statement IBAHRI

Human Rights Council, 31st session

Agenda Item 6: General Debate – Universal Periodic Review (18 March 2016)

Mr President,

The **International Bar Association’s Human Rights Institute (IBAHRI)** released this week its [report](#) on the ‘Role of the UPR in advancing human rights in the administration of justice’. The report assesses more than 38,000 recommendations made between 2008 and 2014 for references to the legal profession.

The report's key findings include:

UPR recommendations still insufficiently address the role of judges, lawyers and prosecutors, or the threats they face, as extensively documented by the **Special Rapporteur on the Independence of Judges and Lawyers**. Significantly, these recommendations often make no reference to relevant UN standards.

Recommendations relating to the independence of judges are often too vague to be an effective response to the shortcomings of any given jurisdiction. Serious issues in the appointment and removal of judges are mostly ignored.



The independence of lawyers was considered in fewer than 100 of the 38,000 **UPR recommendations**.

Prosecutorial independence is addressed in less than 10 per cent of the recommendations calling upon States to effectively investigate or prosecute rights violations.

Guarantees for legal professionals' rights to freedom of expression, assembly and association are barely addressed. This fails to reflect the key role that self-governing organisations of legal professionals should play in upholding human rights and the rule of law, the independence of the legal profession and law reform processes.



As international organisations of legal professionals, we foster the engagement of the legal profession in UN human rights mechanisms and in monitoring the implementation of UPR recommendations.

We call upon the **Human Rights Council**, as well as States, to ensure that in the third cycle of the UPR, the role of judges, lawyers, and prosecutors receives the heightened attention that it is due, as recognised by the UN Basic Principles on the independence of the judiciary, the UN Basic Principles on the role of lawyers and the UN Guidelines on the role of prosecutors.

Thank you, Mr President

The following organisations have endorsed this statement:

Commonwealth Magistrates' and Judges' Association

Commonwealth Lawyers Association

International Bar Association's Human Rights Institute

International Commission of Jurists

Judges for Judges

Lawyers for Lawyers

Southern Africa Litigation Centre

Maart 2016: Publication of Open letter of Yarsav (Turkish Association of Judges and Prosecutors): "THE LAST S.O.S CALL FROM FREE TURKISH JUDGES"

According to government controlled **daily newspaper (Sabah)** which functions as a mouthpiece and precursor of government attacks to the judiciary, the **High Council of Judges and Prosecutors** will suspend a total number of **680 judges and prosecutors** on the grounds of being members of "**Parallel Structure**" and "**Gülenists**". Ensuingly judges and prosecutors will be disbarred from profession and put on trial in a very short time. According to the news, although this number (5000) is denied by HCJP, there are a total number of 5000 judges and prosecutors who are being investigated and this will be the first step to disbar and try all of them.



This will be the greatest purge that we have ever seen and we know that without concrete evidence our colleagues and ourselves will be labeled as members of "Parallel Structure" and "Gülenist" and persecuted accordingly as it has happened to many of our colleagues previously.

As a first step there will be **120 administrative judges and 560 civil and criminal judges and prosecutors** most probably including many **members of our association “Turkish Association of Judges and Prosecutors”**.

According to said newspaper **the vice president of the Judicial council, Mr. Metin Yandırmaz**, told them that judicial leg of this parallel organization (a term which is coined by **President Erdogan**), has 5000 judges and prosecutors and they will all be dealt with step by step.

So far 14 judges and prosecutors were disbarred from profession, being put on trial, some arrested and 80 judges and prosecutors have been suspended under this pretext.

Executive's modus operandi is to make this kind of news in his own media firstly and after weighing reactions and see that there is not enough reaction he carries out his plans accordingly. We have seen this many times. It is obvious that this news is laying the groundwork for a huge purge.

This is the last chance of the contemporary world and international community that believe in democracy, fundamental rights and independence of judiciary to react strongly otherwise there will be a dictatorship on the doorsteps of Europe under your watch.

We, **Turkish Association of Judges and Prosecutors**, invite international institutions to react and stop executive's latest attempt to eradicate the last obstacle in front of it in order to establish a dictatorship within the boundaries of Turkey which will have detrimental effect on our region and Europe. This is the last chance to say stop this madness or in order to save today, tomorrow will be lost for all of us who wants to see peace in the region and Europe.

Free Turkish judges and prosecutors who are defending democracy, freedoms and independence of judiciary need your immediate support, solidarity and reactions in order to save the last bastion of Turkish democracy.

We would like to underline the reality that this may be the last call issued by us to the free world.

Respectfully...

Murat Arslan

President of YARSAV (Turkish Association of Judges and Prosecutors)

Februari 2016: Trial observation regarding Turkish judges Baser and Öczelik



On **February 10th, 2016**, the former chair of Judges for Judges, Gerritjan Van Oven observed the second hearing in the criminal trial against the **judges Baser and Öczelik** in Ankara (Turkey).

Judges for Judges has been following their cases since their arrest and detention in May 2015 (see for more information: <http://www.rechtersvoordechters.nl/judges-for-judges-concerned-by-the-arrest-and-ongoing-detention-of-two-turkish-judges/>).

IAJ Honorary President Mr. Gerhard Reissner observed the trial as well, he had been also present at the hearing of January 21st.

Although three days were earmarked for this trial, it was postponed after the first day. After motions of the defense lawyers concerning the competency of the court were denied earlier that day finally all the lawyers stepped down and the two accused judges remained without defense lawyers. Due to the type of the offenses the two judges are suspected of a defense lawyer is necessary, so the trial had to be adjourned. The prosecutor put forward a motion to keep the judges in detention. Both of them delivered in response a long and impressive argumentation showing why there is no legal basis to keep them in prison.



In spite of their arguments, after a break the court announced that the accused judges should remain in detention and that they had 15 days to reorganize their defense otherwise a court appointed defense counsel would be assigned.

The court also announced which witnesses the court is going to hear. The two accused judges made clear that they wanted to be present during the questioning of the witnesses and that they also want to have the possibility to ask them questions in order to defend themselves.

The court made it possible that the accused could see their families, which had traveled from Istanbul to **Ankara** to follow the hearing, among them the wife of defendant Öczelik, a medical doctor, who used to work for the Bezmialem Vakif University Hospital but who was fired without reasoning but right after the arrest of her husband and the couple's 5 year old son, who was probably for the same reason expelled from his kindergarten.

The observers also had a short possibility to speak with the accused judges and their families.

The next hearing will take place **March 14th**, Judges for Judges plans to send an observer again.

[Inmiddels heeft Rechters voor Rechters zowel op 14 maart als op 30 mei 2016 een proceswaarnemer gestuurd. De zaak van de beide rechters heeft laatstelijk op 13 juli weer op zitting gestaan. De zaak is toen aangehouden tot 7 september 2016. Wij doen beknopt verslag via onze twitteraccount, een langer verslag over de zitting van 30 mei zal in een later stadium nog op onze site worden gezet.]

Februari 2016: Nieuws uit Lesotho



Rechters voor Rechters werd door **Advocaten voor Advocaten** geattendeerd op de situatie in Lesotho, een mini staatje in Zuid-Afrika. Daar circuleert een "hitlist" met advocaten die het leger onwelgevallige procedures voeren. Het gaat dan bijvoorbeeld om het bijstaan van militairen die om onduidelijke redenen worden vastgezet. Een van die advocaten is ook daadwerkelijk vermoord. We hebben de situatie onderzocht via het netwerk dat Rechters voor Rechters heeft in Zuid-Afrika. We vernamen toen dat ook de rechterlijke onafhankelijkheid zwaar onder druk staat in Lesotho. De president van het Hof is bijvoorbeeld afgezet en vervolgd, zogenaamd vanwege belastingtechnische redenen. Overduidelijk is dat dit een politieke actie is.

Wij hebben de **Chief Justice van Lesotho** laten weten dat wij steun verlenen waar en wanneer dat nodig en opportuun mocht blijken. Daar is met dank op gereageerd. Mogelijk volgt er dit jaar een **factfinding mission** waar Rechters voor rechters aan deelneemt. En daarnaast wordt de mogelijkheid van proceswaarneming overwogen als de zaak van de president van het Hof in appel wordt behandeld.

In samenwerking met het Zuid-Afrikaanse **Southern Africa Litigation Centre (SALC)** en de **International Commission of Jurists (ICJ)** houden wij de situatie nauwlettend in de gaten.

Februari 2016: Report on judiciary in Swaziland published: Justice Locked Out: Swaziland's Rule of Law Crisis

Judges for Judges (J4J) participated in the International Fact Finding Mission in Swaziland (IFFM-SZ) held in May 2015 by the ICJ, in collaboration with the **Africa Judges and Jurists Forum** (AJF) and the **Commonwealth Magistrates' and Judges' Association** (CMJA).

On 18 February 2016 the report was presented that scrutinizes judicial independence and accountability in **Swaziland** and makes several findings and recommendations regarding the independence and accountability of the judiciary in the country. The mission was conducted at the backdrop of a number developments of concern for the independence and accountability of the judiciary in Swaziland.



International
Commission
of Jurists



The [report](#) observes that:

The Kingdom of Swaziland has a constitutional and legislative framework that does not respect the separation of powers or provide the necessary legal and institutional framework and safeguards to ensure the independence of the judiciary;

The former **Chief Justice Ramodibedi** failed to protect and defend the institutional independence of the judiciary;

The Executive failed to respect the independence of the judiciary; and

The failure to respect the independence of the judiciary by the Executive and the failure by the Chief Justice to defend the institutional independence of the judiciary created conditions conducive to abuse of the legal system for personal gain

Presenting the Mission's findings, the ICJ Africa Regional Programme Director, **Arnold Tsunga** urged the Crown, Judiciary, civil society and international community to collectively work towards the implementation of the recommendations to strengthen the institutional and structural independence of the judiciary thereby restoring citizen's and stakeholders confidence in the judiciary and the rule of law.

Doneer nu!

Uw financiële ondersteuning is voor Rechters voor Rechters (RR) onmisbaar. Die maakt het voor ons mogelijk om op te komen voor rechters die (dreigen te) worden ontslagen, bedreigd of vervolgd in verband met de uitoefening van hun beroep. De stichting is voor haar inkomsten **volledig afhankelijk van giften**.

Financiële bijdragen zijn van harte welkom op rekening IBAN/SEPA NL12INGB0008071562 ten name van Stichting Rechters voor Rechters te Den Haag (BIC/Swift code INGBNL2A, ING Bank, The Netherlands).

Het mogelijk ook een **inzamelingsactie** te organiseren voor de Stichting. Als u een inzamelingsactie wilt organiseren, dan kunt u daarover contact opnemen met [info@rechtersvoorrechters.nl].

RR is een **ANBI**, een algemeen nut beogende instelling. Dat betekent dat een gift aan RR, als het door de fiscus gestelde drempelbedrag (1% van het drempelinkomen) wordt overschreden, aftrekbaar is voor de inkomstenbelasting. Over een schenking aan RR is ook geen erfbelasting of schenkingsbelasting verschuldigd. Gedetailleerde informatie is verkrijgbaar bij het bestuur, dan wel bij de fiscus.

Aan-/afmelden nieuwsflits/-brief

Deze **nieuwsbrief** is verzonden aan personen die kenbaar hebben gemaakt of van wie verwacht werd dat zij daarin geïnteresseerd zouden zijn. Indien u geen prijs stelt op het ontvangen van volgende nieuwsflits/-brieven van Rechters voor Rechters, kunt u dit kenbaar maken via [info@rechtersvoorrechters.nl].

Mocht u deze nieuwsbrief niet rechtstreeks van Rechters voor Rechters hebben ontvangen en zou u dat in de toekomst wel graag willen, dan kunt u zich voor nieuwsbrieven en -flitsen aanmelden via voornoemd emailadres.

Ook wijzigingen van uw emailadres of als u nieuwsflitsen/-brieven liever op een ander emailadres ontvangt, kunt u op die wijze doorgeven.



Volg Rechters voor Rechters ook via **twitter** [[@J4J_RR](https://twitter.com/j4j_rr)]