RECHTERS VOOR RECHTERS

TO BE DISTRIBUTED TO (THE REPRESENTATIVES OF) THE COMMITTEE OF MINISTERS

Concerns: Execution of ECHR judgment of 26 February 2009 (***Kudeshkina v. Russian Federation***) Application no. 29492/05

The Hague, 2 May 2012

Dear Sir, Madam,

The Foundation Judges for Judges – which aims to support fellow judges who have experienced or may experience problems related to their profession (www.rechtersvoorrechters.nl) – kindly draws your attention to the case of our Russian colleague Olga Kudeshkina.

Olga Kudeshkina was dismissed from the judiciary in 2004 by the Moscow City Court. Relying on Article 10 of the Convention, she complained that her dismissal was in violation with her right of freedom of expression. The European Court of Human Rights (ECHR) concluded in its judgment of 26 February 2009 that the manner in which the disciplinary sanction had been imposed on Ms Kudeshkina had not secured important procedural guarantees. It furthermore noted that the penalty imposed, Ms Kudeshkina's dismissal, had been capable of having a "chilling effect" on judges wishing to participate in the public debate on the effectiveness of the judicial institutions. The Court therefore held that that penalty had been disproportionate.

The Russian Federation has partly executed this judgment. It has paid EUR 10.000,- in respect of non-pecuniary damages the Court awarded to Ms Kudeshkina. However, by failing to take further individual measures regarding the position of Ms Kudeshkina and by failing to take general measures to prevent such violations in future, the Russian Federation has not completely fulfilled its obligations under Article 46 of the Convention. In that respect the Foundation would remind you that in its judgment of 31 October 1995 (Papamichalopoulos v. Greece) the Court ruled that:

> *"It follows that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach." (...) "If the nature of the breach allows of restitutio in integrum, it is for the respondent State to effect it.*

Such reparation has not yet taken place. Instead, the Moscow City Court on 18 December 2009 has dismissed Ms Kudeskina's request to reopen her case and reinstall her as a judge, which decision was upheld by the Supreme Court. Ms Kudeshkina has asked your attention for her situation on 5 August 2011 (DH–DD (2011)583). As far as we know her situation and the full execution of the ECHR-judgment of 26 February 2009 have, however, not yet been discussed within the Committee. The Foundation therefore urgently requests you to put this case on your agenda for debate at your meeting in June 2012.

Sincerely yours, on behalf of the Foundation Judges for Judges,

Gerritjan van Oven, President of the Board of the Foundation

JUDGES FOR JUDGES
POSTBUS 95959 • 2509 CZ DEN HAAG
WWW.RECHTERSVOORRECHTERS.NL
INFO@RECHTERSVOORRECHTERS.NL
KVK: 27172198
BANK ING: 8071562 TNV
STICHTING RECHTERS VOOR RECHTERS