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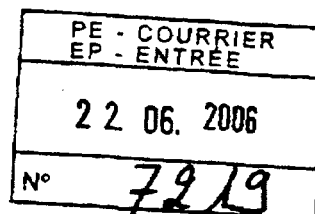
MEDEL

MAGISTRATS EUROPÉENS POUR LA DÉMOCRATIE ET LES LIBERTÉS

LE SECRÉTAIRE GÉNÉRAL

Bruxelles, le 18 juin 2006

Monsieur
 Josep BORRELL FONTELLES
 Président du Parlement européen
 60, rue Wiertz
 1047 Bruxelles (Belgique)



Objet: Licenciement arbitraire de juges en Géorgie


Monsieur le Président,

C'est au nom de Monsieur Miguel Carmona Ruano, Président de l'association „Magistrats européens pour la Démocratie et les Libertés” – MEDEL, que j'ai le plaisir de vous transmettre la présente résolution dénonçant le licenciement arbitraire de juges en Géorgie. La résolution a été adoptée par les délégués des 15 associations nationales de juges et de procureurs, membres de MEDEL, réunis à Prague les 16 et 17 juin 2006.

Les quatre juges de la Cour suprême de la Géorgie, qui se sont opposés à leur licenciement arbitraire par le gouvernement, seront jugés ce jeudi, 22 juin 2006, pour cause d'une mauvaise interprétation de la loi. On leur reproche d'avoir traité une femme vivant avec un homme depuis six ans au même terme qu'une femme mariée. Par leur résolution, les magistrats européens de MEDEL soutiennent la lutte de leurs confrères géorgiens contre le remplacement systématique de juges indépendants stigmatisés comme „juges rebelles”, par des magistrats soumis, que le gouvernement impose sous le sigle de „réforme judiciaire”.

Les représentations diplomatiques européennes ainsi que les ONGs présents à Tbilissi partagent notre avis. Mais le verdict contre les „juges rebelles” est déjà connu, et ils seront licenciés à moins d'une intervention politique déterminée en leur faveur.

Je vous prie, Monsieur le Président, de bien vouloir accepter mes salutations les plus distinguées.


 Christian Lange

Pièces jointes: Résolution adoptée par les „Magistrats européens pour la Démocratie et les Libertés” – MEDEL, – à Prague le 17 Juin 2006

Information succincte sur „Magistrats européens pour la Démocratie et les Libertés

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European Judges and Public Prosecutors for Democracy and Fundamental Rights – MEDEL – Magistrats européens pour la Démocratie et les Libertés,
Gathering in Prague on 16 and 17 June 2006 for the Meeting of their Administrative Council,

Representing within their Administrative Council 15 national associations and about 15.000 judges and public prosecutors,

- Having regard to the fact that the Republic of Georgia is a Member of the Council of Europe and has ratified the European Convention on the Protection of Human Rights,
 - Given that the Republic of Georgia is a Member of the Organisation for Security and Cooperation in Europe (OSCE);
 - With a view to the Republic of Georgia's commitment for defending human rights, for the rule of law and for adopting Europe-wide standardised legal practices;
 - having regard to the principle of the independence of the judiciary stressed in all international legal acts, such as the „Basic Principles on the Independence of the Judiciary“¹, by the European Charter of the Statute for Judges of July 1998, and the Recommendation of the Committee of Ministers to Member States on Independence, Efficiency and Role of Judges²
 - Having regard to the continued support provided to the Republic of Georgia by the European Union, by the Council of Europe, and by the Organisation for Security and Cooperation in Europe (OSCE), for the the establishment of the Rule of law and of good governance, for the Reform of the judiciary, and for the professional training of judges in this country;
- A. Whereas the government of Georgia fired the majority of all judges in the country without appeal in order to recruit new judges, close allies to the Government; the Government suggested to most of those put off that they better retire and accept continued pensions until the end of their term rather than risking disciplinary action under the pretext of any alleged infringement;
- B. Whereas the Government presents the arbitrary dismissal of judges as its fight against corruption in the judiciary, although it is precisely such action that leaves judges in fact scared and obediently complying with the Parliament's, the Government's, and prosecutor's wishes;
- C. Whereas the European Parliament refers to improper influence being brought to bear on judges by officials belonging to the Council of Justice and the Prosecutor General's Office (Written Question E-3299/05 by Mr WIFERSMA to the EU Commission)
- D. Whereas stopping arbitrariness in the process of making and of enforcing the law an independent judiciary is, as well, an indispensable prerequisite for building up a democratic, peaceful and prosperous society;

1 adopted by the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

2 Recommendation No. R (94) 12

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- E. Whereas the suspension of four judges of the Supreme Court of Georgia, not for corruption but for their opposition to their dismissal, hints at a proper breach of the Constitution unveiling the failure of the judicial reform in Georgia; in fact their suspension was decided pursuant to a disciplinary procedure on the grounds of an alleged mis-interpretation of a criminal procedure rule
1. Stresses that it is important to respect democracy and the rule of law notably in the reform of the judiciary, which would oblige the government to fight against corruption with measures under the rule of law, implying a correct law suite and admissible proofs;
 2. Insists that justifying disciplinary prosecution with mis-interpretation of a procedural rule infringes against the principle of appropriate action and the independence and impartiality of judges;
 3. Supposes that a possible mis-interpretation of the law by a single judge in a given case could only be appreciated by a legal appeal to a superior court;
 4. Calls upon the EU Council, the EU Commission, the Council of Europe, and the Organisation for Security and Cooperation in Europe (OSCE) to give better and more sustained guidance towards a reform of the judiciary in Georgia that would respect the rule of law, independence of the judiciary, and transparency of procedures relating to the position of judges;
 5. Instructs its President and its Secretary General to forward this resolution to the President of the Council of the European Union, to the High Representative of the European Union, to the EU-Commission, to the President of the European Parliament, to the Secretary General of the Council of Europe, to the President of the Parliamentary Assembly of the Council of Europe, to the Secretary of the Venice Commission, to the President and the Secretary General of Organisation for Security and Cooperation in Europe (OSCE), to the President of the Parliamentary Assembly of the OSCE, to the Director of the Office for Democratic Institutions and Human Rights (ODIHR), as well as to the President, the relevant authorities, and the President of the Parliament of the Republic of Georgia.

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**European Judges and Public Prosecutors
for Democracy and Fundamental Rights**

**Magistrats européens pour
la Démocratie et les Libertés**

- MEDEL -

Brief outline

More than twenty years ago national organisations of judges and public prosecutors of now ten Member States of the European Union have established a European association named "Magistrats européens pour la Démocratie et les Libertés" - MEDEL - "European Judges and Public Prosecutors for Democracy and Fundamental Rights". The affiliated associations are:

- In Belgium (*Association syndicale des Magistrats ASM*),
- In Cyprus (*Cyprus Judges Association*),
- In Czech Republic (*Soudcovska Unie České Republiky* and *Unie statnich zastupcu České republiky*),
- In France (*Syndicat de la Magistrature*),
- In Germany (*Vereinigte Dienstleistungsgewerkschaft VER.DI [Fachausschuss Richter und Staatsanwälte]* and *Neue Richtervereinigung NRW*),
- In Greece (*Eteria Elinon Dikastikon Litourgon Gia ti Demokratia ke tis Eleftheries*),
- In Italy (*Magistratura democratica - Md -*, and *Movimento per la Giustizia*),
- In Poland (*Polish Association of Judges "Iustitia"* et *Association of Public Prosecutors of Poland*),
- In Portugal (*Associação Sindical dos Juizes Portugueses - ASJP* and *Sindicato dos Magistrados do Ministerio Público - SMMP*),
- In Spain (*Jueces para la democracia* and *Unión progresista de Fiscales*),
and
- In Austria and in the United Kingdom MEDEL has individual members.

Administrative Council and Bureau of MEDEL

The Administrative Council of MEDEL provides for information and coordination amongst the affiliated associations and takes the political and organisational guideline decisions. It is composed of the delegates, four from each country. It meets three to four times a year in different European cities to allow to the magistrates of the countries visited to take part in the debates.

The Bureau of MEDEL is composed of seven members and is elected by the Administrative Council for a two years term, renewable.

Chairman: Miguel CARMONA RUANO, Spain

Vice Presidents: Vito MONETTI, Italy
Eric ALT, France
Ludmila KRIŠLOVA, Czech Republic
António CLUNY, Portugal
Stavros MANTAKIOZIDIS, Greece

Treasurer: Leandro VALGOLIO, Germany

Web site:

MEDEL's web site (http://www.medelnet.org/pages/68_1.html) would lead to those of the affiliated national associations.

MEDEL's mission

MEDEL's mission is to bring together judges and public prosecutors of the countries of Europe to joint efforts for promoting independence, effectiveness, democracy, and transparency of the judiciary and for defending the Rule of Law and Fundamental Rights, instead of corporative interests.

The member associations represent at the same time judges and public prosecutors as the two equal pillars of the judiciary in modern society. MEDEL is committed to a judiciary, which should be modern, effective and close to the citizen. This way MEDEL and its national associations have, from the outset organised public conferences on themes that were topical for the judiciary and that have paved the way for future legislation projects on both national and European level.

Along with its enlargements the European Union urgently needs impetuses to deepen the integration process. The guarantee of fundamental rights, of security and of justice is an indispensable cornerstone to build and consolidate the house Europeans want to live in together. Europe cannot again lose time, but would need all its powers to achieve.

MEDEL's objectives in this context are to support European integration by public debates among magistrates across the EU and its Member States and to provide substantial expert contributions for the development of judicial cooperation, taking into account relevant national experiences. We advocate a professionally driven steering of the judicial practice. We actively support joint training courses for judges and public prosecutors as well as twinning and exchange programmes among the judicial services of the EU Member States, so to develop and strengthen trust in common EU standards for the judiciary. At the same time we stand for the independence of the judiciary against every other power or exertion of influence by business or politics. To meet the challenges involved, we promote the exchange of information on best practises in the judiciary between the EU Member States.

MEDEL is organising a permanent debate on ethics.- On national, European and international level MEDEL is working for a transparent and accessible judiciary, which makes its activities and decisions understood, known and accepted by the citizens. The capacities of modern judiciary to act as a public service attached to the principle of transparency, should be improved, as well as the opportunities for the citizens to monitor its functioning.

We promote the respect, in all circumstances, for legal values indispensable to the democratic state and the rule of law, which cannot be skipped or biased in military conflicts, so-called "humanitarian interventions" or operations against paramilitary and terrorist activities. The rule of law must prevail as principle even in treating enemies, terrorists or common criminals.

MEDEL advocates the Europe-wide promotion of a democratic legal culture through transnational exchanges of information and the study of common topics; we work for the proclamation and the protection of the rights of minorities and the safeguarding of diversities. We stress in particular the rights of immigrants and of the most disadvantaged, in a perspective of a social emancipation, albeit this is still a domain of national competences

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One of the key profession-oriented demands MEDEL puts up is the democratisation of the recruitment procedures within the judiciary and the conditions for the exercise of the profession, in particular with a view to the hierarchical structures. On national level MEDEL member associations successfully pursue this objective within the relevant judiciary councils. We insist on the assertion of the right of magistrates, as of all citizens, to exercise the freedom of assembly, association and expression, including the right to form trade unions, to meet and to take collective action.

Policy papers

A European Statute of the Judiciary

The member associations of MEDEL are familiar with the different legal systems of Europe. They have drafted a "*European Statute of the Judiciary*" and adopted formal resolutions, namely on:

- "Elements of a European Statute of the Judiciary" (Palermo, 1993)
- "Declaration of Principles on the Prosecution" (Naples, 1993)

The Council of Europe largely endorsed these initiatives by MEDEL, as well those concerning the European Statute of Judges as those concerning the proposal for a European Statute of Public Prosecutors.

Other topics of preceding colloquia:

- Ethics of the judiciary and proposals for Codes of Ethics;
- Training of Judges and Public Prosecutors;
- "Judiciary chained up";
- Improving the effectiveness of the judiciary in civil matters;
- Treaty on the European Constitution, in particular the position of the EC Court of Justice and the Court of First Instance, the independence of the Judges and Advocates General, procedure of their appointment, Statute of the Court and the future of the co-operation in civil and criminal law matters, integration of the contents of the CEDH and the European Social Charter in the European Constitutional Treaty;
- Independence of the Judges in Latin America;
- European Arrest Warrant, Eurojust and European Public Prosecutor.

The European Charter of the Fundamental Rights

Magistratura democratica organised, together with MEDEL and the European Commission, on 28 and 29 April 2006 in Rome a colloquium on the references to the European Charter of the Fundamental Rights (Charter of Nice) by the EC Court of Justice and the Court of First Instance and by national Courts.

Liability of Judges and Public Prosecutors

The liability of Judges and Public Prosecutors will be the topic of the Administrative Council meeting of MEDEL organised by our Czech friends in June 2006 in Prague.

Globalisation of the Law

In co-operation with

- the Spanish Ministry of Justice,
- the associations of *Jueces para la democracia* of Spain,
- *Magistratura democratica* of Italy,
- the Sindicato dos Magistrados do Ministério Público - SMMP – of Portugal, and
- MEDEL

a Conference on "Globalisation of Law" will be held in November 2006 in Madrid.

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International Criminal Court (Colloquium at Oviedo from 5 to October 7, 2006)

Topics:

- Humans right after September 11, 2001 - Introductory statement by Miguel CARMONA, Spain,
- The principle of universal jurisdiction - Introductory statement by António CLUNY, Portugal,
- International Criminal Justice and the Subsidiarity Principle - Introductory statement by Franco IPPOLITO (tbc), Italy.

Working with the European institutions

MEDEL is participating regularly in the works of the European institutions:

- with the Council of Europe, and
- with the institutions of the European Union.

The Council of Europe:

MEDEL is a Non-Governmental Association having participative status with the Council of Europe. It works with the Council of Europe, notably for the legal co-operation projects with the Central and Eastern European countries. It took part in the drafting of the European Charter on the Statute of Judges, adopted in Strasbourg in July 1998.

Currently, MEDEL takes part in an advisory capacity very actively in works of the Consultative Council of European Judges (CCJE), of the European Commission for the Effectiveness of Justice (CEPEJ) and the Conference of the Prosecutors Generals of the Council of Europe. The European Committee on Crime Problems (CDPC) of the Council of Europe also recognized MEDEL as observer.

European Commission:

MEDEL takes part in works of the European Commission as regards Co-operation of the judiciary (in particular mutual recognition and enforcement of civil law judgements across the European Union) and in the works of the Directorate-General Freedom, Security and Justice in matters such as the draft Framework Decision covering the rights of suspects and defendants in criminal proceedings in the European Union, the "Green Paper on Conflicts of Jurisdiction and the Principle of *ne bis in idem*" in Criminal Proceedings", etc.

In the same way the judges and public prosecutors of MEDEL assist the Commission in the Euro-Mediterranean partnership under the Process of Barcelona by accepting training missions in Morocco and in Tunisia.

European Parliament:

MEDEL is heard as expert in the European Parliament and answers the invitations of the European Parliament (EP) Committee on Civil Liberties, Justice and Home Affairs, of the Legal Affairs Committee, of certain political groups as well as of other parliamentary bodies. Only recently, in late April 2006, Professor Teresa Romer, President of the *Polish Association of Judges "Iustitia"*, former Vice-President of MEDEL, gave the keynote speech in an Interparliamentary Colloquium organised by the EP with a great number of MPs from Candidate Countries and with EU Commissioner Frattini. The topic was "The Rule of Law and the Independence of the Judiciary – Preconditions for Accession to the EU". – A meeting of the MEDEL Administrative Council with the Bureau of the EP Committee for Civil Liberties, Justice and Home Affairs is coming up soon.

International Criminal Court:

In the same way the International Criminal Court seeks the co-operation of MEDEL

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Origin and Establishment of MEDEL

The foundation of MEDEL, European association magistrates (judges and public prosecutors) committed to Democracy and Fundamental Rights took place in June 1985. Ten national associations of six European Community Member States then participated in the foundation.

The foundation of MEDEL had started from debates among participants, French and foreign, of the courses at the *École de la Magistrature* in Bordeaux and still from an international congress organised in February 1983 by the French *Syndicat de la Magistrature* and the University of Lille on the topic "Justice and Democracy in Europe", whose speeches and documents were published under the title "Being judges tomorrow". Profiting from the possibility of an institutionalised dialogue with an organisation of progressive, but politically independent judges and public prosecutors, two successive presidents as well as other Members of the Legal Affairs Committee of the European Parliament highly appreciated and supported the foundation of MEDEL. They warmly welcomed the association and have supported it since the first years of its existence.

Along with the fifth enlargement of the European Union, associations of four new Member States adhered to MEDEL. Thus MEDEL is composed today of fifteen national associations of magistrates (judges and prosecutors) of eleven EU Member States.

Statutes of the association

Two years after its establishment in Strasbourg, MEDEL obtained the legal personality. Its statutes define its goals and regulate its internal life, in particular the admission and the rights of national associations. In 1994, the Administrative Council of MEDEL adopted Internal Rules of Procedure to complete the statutes.

Brussels, 20 March 2006

Christian Lange
Secretary General