ABSTRACTS

The Protection of Human Rights in the Inter-American System: A Model for Europe?

By *Thilo Rensmann*

Following the fall of the iron curtain and the accession of many Middle and Eastern European States to the European Convention on Human Rights, the European Court of Human Rights faces new challenges. On the one hand the Strasbourg court will have to address the manifold problems of the transition from dictatorship to democracy and the rule of law. On the other hand the Court will increasingly need to deal with individual applications arising from civil war scenarios such as the current conflict in Chechnya. The challenges lying ahead for the European Court are thus very similar to the problems which the Inter-American Court has been struggling with ever since its inception. The author tries to explore the extent to which the experience gathered in the American hemisphere may be transposed into the European context.

On a procedural level, the Inter-American System demonstrates that an implementation mechanism which is solely based on the review of individual applications is not suitable for addressing large-scale human rights violations in civil strife. Against this backdrop the author advocates the strengthening of monitoring systems based on country reports and on-site visits within the Council of Europe.

The recent withdrawal of Peru from the supervisory jurisdiction of the Inter-American Court highlights the problem of acceptance of human rights monitoring in States which are in a transition to democracy and the rule of law. The confrontation between Peru and the Inter-American Court demonstrates that a careful balance will have to be struck between an activist approach to human rights protection on the one hand and due regard for the new sensitivities of democratically elected governments with respect to domestic public opinion on the other.

The European Court of Human Rights is increasingly confronted with the phenomenon of forced disappearances. This is an area in which the case law of the Inter-American Court has broken new ground. The Strasbourg convention organs have begun to adopt the approach of their Inter-American counterparts. The recent practice of the European Court and Commission demonstrates, however, that the Inter-American approach cannot be applied indiscriminately to all situations in Europe but must rather be carefully adapted to specific cases at issue.

Finally, the Strasbourg organs have not yet made any clear pronouncements on the interplay between Convention rights and humanitarian law. This will be of growing importance in order to adjudge cases adequately within civil war situations such as

Chechnya. The European Court of Human Rights will be able to glean important insights from the recent case law of the Inter-American Commission which has made a number of interesting propositions with regard to the relationship between regional human rights protection and the ius in bello.

Recent Developments in Sri Lanka on the Freedom of Expression

By *M. Lakshman Marasinghe*

The Human Rights provisions found in the present Sri Lankan Constitution encompass a very large and fruitful area. They include such fundamental rights as Right to the Freedoms of: Speech, Expression, including publication; Peaceful Assembly (Art. 14.1.b); Association (Art. 14.1.c); to form and join a Trade Union (Art. 14.1.d); to manifest his religion in worship, observance, practice and teaching (Art. 14.1.e); to promote his / her own culture and to use his own language (Art. 14.1.f); to engage in any lawful occupation, profession, trade, business or enterprise (Art. 14.1.g); of movement, choosing ones residence within Sri Lanka (Art. 14.1.h) and lastly the freedom to return to Sri Lanka (Art. 14.1.i). These freedoms have been limited under Article 15.

The Article published here deals with the first of those fundamental freedoms, namely, the "Freedom of Speech and Expression including Publication". This freedom, as in the case of others, has been interpreted in a way that in most cases it has been periodically expanded and periodically contracted. The cases discussed in this writing show the high water mark of this freedom. Among others, the right to vote, has been included as a fundamental right, being an emanation of the freedom of expression. Similarly, the right of expression has been extended to include political protests and demonstrations. No declaration of Fundamental Rights could encompass all its different manifestations.

It is therefore left to the Courts to interpret the provisions in a way so as to ensure that the particular violation complained of, did fall within the area of protection afforded by the constitution. Additionally, the courts have justified punishing the violators of human rights, directly, and in their personal capacities, rather than punishing the institution, such as the Police, to which they may have belonged. The differentiation between personal liability of the violator, and the vicarious liability of the institution to which violator belonged is a significant development that the Supreme Court of Sri Lanka has recently introduced into this area of the law.

The State, Governance and the Energy Industry in Ghana

By *Francis N. Botchway*

Economic Management by the State has been criticized for a variety of reasons both within developed and developing countries, especially for failures in business. In Africa, among the reasons were the absence of good governance, interpreted variously as lack of competitive democratic practice, rule of law, inefficient bureaucracy, accountability and transparency. The result has been a call for a general roll-back of the state and for more entrepreneurship in economic enterprises.
The article does not join into the general criticism of the State, but surveys the role and the performance of the State in the energy industry in Ghana. The article begins with a brief discussion of the elements of good governance necessary for a functioning and effective State that is able to develop, shape, effect and scrutinize economic projects. It is followed by an introduction to the political economy of Ghana, giving an overview over the political history and its influence on the economy and the energy sector, in particular.
A short look at the governance structure of the energy industry reveals the roots of failure within the dictatorial bureaucracy. The following differentiated picture drawn of the organizational structure of the power utilities, which may, on the one hand, be characterized as showing features of a state of its own, allows, on the other hand, a closer understanding of the underlying matter: there is a basis for operation on sound commercial lines, there are environmental provisions which proved ineffective only under military rule and there were international dynamics that hinged on the instability of the West African region. The article concludes that the durable, equitable and efficient operation of the energy industry domestically and internationally, cannot be left to the benevolence of a particular government, but can only be achieved through good governance – evidenced in technically efficient and independent bureaucracy, rule of law, the real existence of freedoms such as speech, association, assembly and the judicious use of governmental discretion.

The National Question, Ethnicity and the State in Africa: the Case of Cameroon

By *Ibrahim Mouiche*

The departure of colonial administration left many African countries, stigmatised from the beginning as ”segmented states”, with serious problems of political integration. The State, or in general terms the Central Power, has to coexist with different peripheral and centrifugal entities, which it can hardly keep under control. Thus the colonial heritage of

centralism favouring the system of nation building was implemented, leading on the other hand to the quasi-diabolization of the peripheries pressing different ethnic identities under the yoke of the National State. After thirty years the results are discouraging: Rediscovered ethnic conflicts and armed rebellions heavily burden the process of democratisation in various countries since 1990.

Exemplifying the developments in Cameroon, the author points out that the Central State, by force unified within fixed and well-guarded borders, i.e. the concept of a State created in the eighteenth century, may not be a suitable general pattern or structure for countries all over the world, today, and is, thus, on its way to irrelevance. On the other hand, in Africa, the risks of balkanisation predestined by the former colonial powers have to be faced. So the author argues in favour of the official acceptance of a "multicommunity" State replacing the National State, which has been a quite problematic construction in both social and historical aspects. The ethnic context is not to be eliminated from the upcoming discussion heading to establish and promote a just, harmonic and durable development of the State in Africa.