

ABSTRACTS

ESSAYS

We present Diane F. Orentlicher's essay under the title 'The Role of Domestic Courts and Their Judges In the Application and Enforcement of International Humanitarian Law'. The author deals with the practical indictability of crimes against humanity, and surveys the ways in which the offenders can be prosecuted. In the centre of her analysis stands the application of international law by domestic courts. She surveys the obstacles that can occur before the adaptation of international law, what kinds of problems can result from the collision of jurisdictions, and she emphasisedly deals with the political aspects of international criminal law.

Péter Takács wrote an essay about the Finta-case, which had formerly created a great sensation. In the author's opinion the development of international criminal law in the 1990s shows, that the decision made by the Canadian Supreme Court had at least one positive effect. In the 1990s the acquittal in the Finta-case is only one of the very many. These decisions and the special literature surrounding them have created such a psychological atmosphere in which it has become obvious, that international law can deal with crime against humanity and war crimes, and can call the offenders to account more effectively than any national law.

This has not only presented an example to states following the principle of strict territorial effect, concerning what kind of legal solutions they can fit crimes under international law into their own legal systems with, but also led to the recognition that an efficient system of law needs an efficient machinery to enforce rights, too.

INTERVIEW

After the terror attack of 11 September 2001 the United States of America, as the leader of an international coalition levelled airstrikes at Afghanistan, a country ruled by the Taliban. At the very moments of the locking of the form the last Taliban soldiers were surrendering; at the time of the interview of three well-known Hungarian international lawyers weapons were still active. The jurists discussed the question, whether the American behaviour can be viewed as rightful self-defence, and whether the armed response was proportionate. They touched upon the questions of state liability, then discussed the possible ways of response to international terrorism, with the methods of a constitutional state, without using violence.

FORUM

The dilemmas of terrorism and freedom, and their reconcilability in the post-11 September world: this was the topic of our question to well-known sociologists. Péter Balassa assumes that the most important thing to do would be to basically rethink the socio-solidary aspect of the distributional system, which, though is not just in itself, but is seeking justice, and approaching it. In his opinion this is really the question of life and death, before the democratic police state is introduced - which prospect is not at all a legal impossibility -, in reference to the supremacy of white democracy. This is, of course, the growingly disclaimed consumer egoism of a - typically Western -, and immensely economic-mental notion of freedom. According to Tamás Földesi, the efforts of the Human Rights Committee of the UN to provide serious amounts of money to the propaganda of human rights, however valuable, cannot really be expected to have any effect in

for example a Palestinian refugee camp without first solving the underlying social problems. Ferenc Horkay Hörcher argues, that the differences in interpreting the 11 September attack and the responses to it result necessarily from the opposing political languages the parties use. The argument for the inviolability of basic freedoms uses the language of modern liberalism devoted to individual basic freedoms, while the argument relating to the order and freedom of the state goes back to the tradition of antique republicanism.

András Láncki's standpoint is that we have to rewrite the history of terrorism after 11 September 2001, but not that of freedom. He calls it a complete naivety, and the lack of sense of reality that the maintenance of basic freedoms is sacred and inviolable: if a serious threat occurs, the logic of things is that of survival - which will force the restriction of freedom. However, this is due to defence and survival. He emphasises the necessity of making a difference between freedom, the abstraction of rights and the control of legitimacies.

Zsolt Rostoványi says that co-operation has to include a wide international co-operation against terrorism. This is because terrorism has no other aim but to raise fear, and reach its objectives through raising fear. This is something no goal, no ideology, religion or view of the world can legitimise. Gábor Szabó points out, that the real dialogue between cultures, and the control of economic globalisation is the pledge of the enforcibility of reinterpreted human rights. After globalisation we have to rethink the notion of political community, the frames of control and the priorities within the system of human rights.

György Tatár is of the opinion that the opponents have a basically different view of the relationship between life and politics: in the Islam religion God makes all political decisions interest-oriented. The West has to find bombers which can be effective as far as the gardens of this Paradise. László Percz analyses the ideas of Huntington, Foucault and Rorty, and concludes that the fashion-philosopher diluting the notions of traditional continental philosophy; the postmodern guru creating discourse, and the most effective figure of neo-pragmatism seem to agree on one thing: after 11 September all three of them make us deeply thoughtful.

DOCUMENTS AND COMMENTARIES

This column also deals with two topics. In connection with the decision of the Hungarian Supreme Court concerning the clash of the right to receive public information, and the interest to maintain business secrets Zsuzsa Kerekes examines what happens if the regulations of the Act on Data Protection ordaining the publicity of data of public interest, and those of other Acts protecting business data get into conflict.

Judit Bayer analyses the background information of the ways the National Council of Radio and Television, and the national televisions broadcast the terror attack against the United States, and the consequences of the attack. In her opinion the resolution, although not compulsory, is suitable to intimidate broadcasters, as it has a chilling effect upon them, caused by the general feeling of threat.

PRIOR TO DECISION

In this column András Jóri analyses some pieces of informatic legislation: the Act concerning electronic signatures; the Bill on electronic commerce; and the modification of the Hungarian Criminal Code concerning cybercrime. No professional debate or conciliation precedes the quick legislation in this field, and this is why a professional control is missing in many questions; such as the regulation

of cryptograms with civil objectives, the judgement of hackers' activity, and the so called notice and take down procedure.

The other two writings of this column try to find an answer as to why the investigations following impeachments concerning anti-Semitic hate speeches have not started, or if started, why have they been delayed wantonly?

Péter Molnár's writing argues, that only a court could have decided about the crime of hatred against minorities, after having examined all the circumstances of the case. This is why authorities should have conducted an investigation. Presenting the history of the development of the American clear and present danger test, Molnár concludes that the differentiation of hate speeches and hatred is possible only with a working test, and by examining all the circumstances of the case.

Gábor Halmai's writing 'Hate Speech and Personal Rights' draws our attention to the fact, that those who feel offended in their human dignity as a result of hate speech can institute civil proceedings. It would be interesting to see, says Halmai, how courts would receive cases, where the complaining party is not an identifiable person according to the offensive speech.

AFTER DECISION

In this column we issue the so called Princeton Principles, dealing with the questions of international criminal impeachment. Ágnes Vadai made a selection of decisions dealing with terrorist affairs, made by the Strasbourg Court. Our readers can also read about the latest decisions of the Hungarian Constitutional Court.

PROTECTORS OF RIGHTS

In this column we introduce the Hungarian Women's Foundation (MONA), which was founded in 1992 as a party-neutral, non-profit women's organisation. One of its leaders, Violetta Zentai sums up the most important thoughts of the international congress *Roles, Rules, Numbers*, which had been organised by the MONA and the Hungarian representative of the Friedrich Ebert Foundation in November 2000, with the participation of representatives of political, social and professional organisations.

REVIEW

We recommend two books to our readers, one of them is a selection, its title is: *Anti-semitic Common Talk in Hungary, 2000*, edited by András Gerő, László Varga and Mátyás Vince. The other book was written by Ferenc Petrik, and is about the protection of personal rights, and the right of correction.