2016

FLE Learning

4th Academic International Conference on Interdisciplinary Legal Studies

Abstracts e-Handbook

Conference Venue: Harvard University, Martin Conference Center at Harvard Boston USA
Conference Dates: 21st- 23rd November 2016

AICILS Boston

FLE Learning

4th Academic International Conference on Interdisciplinary Legal Studies

21st –23rd November 2016

Conference Abstracts e-Handbook

Conference Committee Members

The conference organisers would like to express their gratitude for the contribution made by following committee members for the abstract papers reproduced in these proceedings.

Dr Avnita Lakhani
Dr Monika WIECZOREK-KOSMALA
Dr. Indianna Minto-Coy
Dr. Joanna Błach
Dr. Nitin Upadhyay
Dr. Poomintr Sooksripaisarnkit
Dr. Rajesh Sharma
Dr. Ramandeep Chhina
Dr. Zhixiong Liao
Dr. Zinatul Zainol
Miss. Kate Masih
Ms. Florence Simbiri-Jaoko
Ms. Mercy Khaute
Prof. Tshepo Herbert Mongalo

Format for citing papers
Author surname, initial(s). (2016). Title of paper. In Proceedings of the 4th Academic International Conference on Interdisciplinary Legal Studies, (pp. xx-xx). Bostom, November 21st-23rd, 2016.

FLE Learning
FLE Learning is the trading name of FLE Learning Ltd. FLE Learning Ltd is a registered company in the British Columbia, Canada. Company Registration Number BC1083539; GST/HST Number 75915 9320 RT0001 Registered Office Address: 900-400 Burrard St. Vancouver BC V6C 3B7 Canada.

AICILS 2016 (Boston)| © 2016 FLE Learning Ltd
Conference abstracts e-handbook have been published by the FLE Learning Ltd trading as FLE Learning
T: +1 778 819 0134 **F**: +1 604 757 0701 **E**: submit@flelearning.ca **W**: www.flelearning.ca

Table of Contents

Corporate Governance in Singapore: Exploring the Concept of Director Independence In Light of Global Corporate Governance Principles....5

Ms. Chen Meng Lam....5

Social protection in South Africa, Brazil and India: From the viewpoint of poverty reduction and beyond 5

Mr. Clarence Itumeleng Tshoose....5

The emergence of the new equal pay provisions in the Labour Relations Act 66 of 1995: Better protection for atypical employees in South Africa? 6

Mr. Shamier Ebrahim....6

Arbitral Awards Under the New Saudi Laws and International Rules, Challenges and Possible Modernization6

Mr. Ahmed A Altawyan....6

Issues pertaining to International Arbitrations under the Private International Law 7

Dr. Hemant Garg and Dr. (Prof). Sushil Gupta....7

Investment Agreement under the Free Trade Area of the Asia-Pacific (FTAAP) as the Basis of Global Investment Policy 7

Prof. Tomoko Ishikawa....7

Once a debtor, always a debtor – lessons from Bulgarian debt collection practices 8

Ms. Kristina Stefanova....8

Medicolegal Aspect of Autopsy in Indonesia: An Ethical Dilemma on Medical Forensic Expert's Authority 9

Ms. Raania Amaani; Mr. Aristyo Rizka Darmawan; Ms. Sella Dwi Julian; Ms. Shaqina Said and Prof. Agus Purwadianto....9

13-AD49-1014....9

Reconstructing Property Rule and Liability Rule for Copyright Holders, Users and Indirect Service Providers: An Approach to Reduce Transaction Cost 9

Prof. Han Zhang and Weijie Huang....9

Educational Status of Tribes in Jharkhand (India): A Comparative Study of Oraon and Santhal 10

Dr. Sujit Kumar Choudhary....10

Contracting out of Non-refoulement Protections....11

Mr. William Worster....11

Is Voluntary Disclosure a Tool for Increasing Tax Revenues or Avoiding Tax Evasion? ; A Tax Administration Dilemma 11

Dr. Burcin Bozdoganoglu....11

Socio-Cultural Cohesion in the South African Ethics Governance System: The Years Past and Years Ahead...12

Mr. Uhuru Dikgang Moiloa....12

A Critique on the Human Rights Protection Mechanism before the European Court of Human Rights: The Croatian Perspective....13

Mr. Tunjica Petrasevic....13

The New Concept of Sex-Crimes in Croatian Criminal Law 13

Dr. Igor Vuletic and Davor Simunic....13

Methodologies and Perceptions to Theorising Migration 14

MRS. JOYCE AYENI AND PROF SANJANA BRIJBALL PARUMASUR 14

Adat Law Society and The Rights Over Natural Resources: Institution and the Management of Sasi In Maluku Indonesia 14

MR. MUHAMMAD YAHDI SALAMPESSY 14

Poverty, Inequality and the Social Causes of Crime 15

DR. SALIM YAACOUB 15

Reframing Tribal Governance in Tripura: TTAADC to the Village 15

MS. H THERESA DARLONG 15

List of Listeners 17

DR. TAKUYA KAJISA 17

MR. MUZIWENHLANHLA NTULI 17

MS. LINDIWE DZIMBA 17

CONFERENCE COMMITTEE MEMBERS 18

1-AD36-4115

CORPORATE GOVERNANCE IN SINGAPORE: EXPLORING THE CONCEPT OF DIRECTOR INDEPENDENCE IN LIGHT OF GLOBAL CORPORATE GOVERNANCE PRINCIPLES

Ms. Chen Meng Lam[1]

Director independence in the context of corporate governance has long been a subjective trait that is not easy to quantify. While there are difficulties in developing an ideal solution, regulators around the world do their best to deal with the subjectivity inherent in the concept of director independence by prescribing criteria that can be quantified and implemented in practical terms.

This paper explores the concept of director independence in Singapore, with special focus on the definition and role of an independent director under the 2012 Code of Corporate Governance ("Singapore Code"). The concept of director independence varies from jurisdiction to jurisdiction. To provide a more complete understanding, comparison will be made with the corporate governance regime in the United Kingdom and the United States, focusing on the key similarities and differences. The concept of director independence in both the G20/OECD Principles of Corporate Governance and the ICGN Statement of Global Governance Principles will also be addressed.

There are a myriad ways to define director independence. Singapore now requires independent directors to not only be independent from management but also from shareholders holding more than 10% of the company's shares. While this brings the definition in Singapore closer to that of the United Kingdom, the requirement of independence from substantial shareholders has raised much recent debate in Singapore. This paper delves into some of the pertinent implications and obstacles faced by listed companies as a result of the requirements linking substantial shareholders and director independence.

While the definition of independent directors is well-elaborated in the Singapore Code, the role of independent directors in Singapore is not clearly defined and remains largely a major grey area. This ambiguity is perhaps not surprising, given the challenging and contentious role of independent directors. A number of salient questions are raised and examined in this paper – for example, is the role of independent directors limited to protecting minority shareholders, or do they also serve other stakeholders in some way?

Special attention has been paid to discuss the role of independent directors under the international guidelines and standards. Until the role of independent directors is better defined, the concept of director independence in Singapore remains debatable. This paper concludes by providing various suggestions on appropriate roles and responsibilities that should be assigned to independent directors in Singapore, taking into account the unique local considerations in business culture and ownership.

Keywords: corporate governance; independent directors; substantial shareholders; Singapore Code of Corporate Governance.

2-AD34-4416

SOCIAL PROTECTION IN SOUTH AFRICA, BRAZIL AND INDIA: FROM THE VIEWPOINT OF POVERTY REDUCTION AND BEYOND

Mr. Clarence Itumeleng Tshoose[2]

The underlying normative commitment of social protection is the improvement of the quality of life of the population by promoting economic or material equality. Social protection ensures that all citizens have a stake in society and that each individual has an incentive to contribute to the community at large. The social protection system provides social transfers which form the key instruments offering a vehicle for the abolition and prevention of poverty.

[1] Ms. Chen Meng Lam, Lecturer, SIM University.
[2] Mr. Clarence Itumeleng Tshoose, Senior lecturer, University of South Africa.

This paper analysis the following issues. First it examines the system of social protection in South Africa in the context of poverty reduction and beyond. Second, it evaluates the impact of cash transfers in Brazil, and it also looks at the role of bolsa família, that is the largest conditional cash transfer programme in the world in as far as poverty alleviation and the improvement of the lives of the poor people in Brazil are concerned. It also examines other programmes aimed at poverty alleviation in Brazil. Third, it looks at how the India Courts have interpreted, protected, and promoted the economic and social rights entrenched in the Indian Constitution.

3-AD33-4417

THE EMERGENCE OF THE NEW EQUAL PAY PROVISIONS IN THE LABOUR RELATIONS ACT 66 OF 1995: BETTER PROTECTION FOR ATYPICAL EMPLOYEES IN SOUTH AFRICA?

Mr. Shamier Ebrahim[3]

Equal pay for equal work and work of equal value is recognised as a basic human right in international law. The Employment Equity Act 55 of 1998 (EEA) is the main piece of legislation which seeks to achieve equity in the workplace by redressing unfair discrimination. Unequal pay for equal work and work of equal value are specific forms of discrimination which are dealt with in the EEA. The EEA provisions dealing with pay discrimination applies to all employees in the workplace. An employee experiencing pay discrimination in the workplace would thus use the EEA to institute an equal pay claim. This, however, has changed since the introduction of sections 198A-198D of the Labour Relations Act 66 of 1995 (LRA) which provides equal pay protection for atypical employees earning below the threshold of R205 433.30. While the EEA and the LRA both provide protection with regard to equal pay for the same or similar work for atypical employees, the LRA unlike the EEA does not provide protection with regard to equal pay for work of equal value. This equal pay protection in the LRA is unique as the redress of unfair discrimination is not one of the purposes of the LRA and the Act does not contain provisions related to unfair discrimination.

The purpose of this paper is to analyse the equal pay provisions as set out in sections 198A-198D of the LRA in order to ascertain the ambit of the protection offered by the sections, the limitations thereof and the dispute resolution procedure which should be followed. The EEA, European Union law and the law of the United Kingdom dealing with equal pay will be referred to where necessary.

4-AD35-4415

ARBITRAL AWARDS UNDER THE NEW SAUDI LAWS AND INTERNATIONAL RULES, CHALLENGES AND POSSIBLE MODERNIZATION

Mr. Ahmed A Altawyan[4]

Arbitrating parties expect that the arbitration process will result in final and binding awards. To reassure the foreign investors to invest in the Kingdom, the Kingdom signed the New York Convention in 1994. Despite such acceleration to a stated convention, Saudi Arabia has been described as a hostile country toward the recognition of arbitration agreements and enforcing foreign awards, and many international awards have been rejected. Hence, the Kingdom has tried to improve by reforming its arbitration regime.;A new Enforcement Law came into effect in 2012 by a Royal Decree No. M/53. The new law, which replaced relevant provisions, and its possible impact on the enforcement of arbitral awards should be examined in the context of domestic and international arbitration. In practice, how will the new enforcement law and the new arbitration law impact arbitral awards and avoid the flaws of the previous legislation. This study will address the arbitral award under the Saudi law challenges and possible modernization by comparing it with the modern trends in the international commercial arbitration practice.

[3] Mr. Shamier Ebrahim, Senior Lecturer, University of South Africa.
[4] Mr. Ahmed A Altawyan, S.J.D. Student, Indiana University.

5-AD38-4384

ISSUES PERTAINING TO INTERNATIONAL ARBITRATIONS UNDER THE PRIVATE INTERNATIONAL LAW

Dr. Hemant Garg[5] and Dr. (Prof). Sushil Gupta[6]

The paper is aimed at exploring core issues under the private international law that may arise during international arbitrations. Private International Law is the legal framework composed of conventions, protocols, model laws, legal guides, uniform documents, case law, practice and custom, as well as other documents and instruments, which regulate relationships between individuals in an international context. International contracts and disputes also fall within the ambit of Private International Law. When a dispute arises out of an international contract, the parties may resolve it through different modes. The three principal modes to resolve international disputes are litigation (judicial proceedings), conciliation (mediation), and arbitration (settlement of disputes by third party pursuant to agreement of the parties). Arbitration is one of the modes through which a dispute is resolved by appointing one or more neutral third parties as arbitrators, who are usually agreed to by the disputing parties. However, there are certain kinds of issues under the Private International Law, which are involved in international arbitrations. The first major issue is that there are so many major independent arbitral organizations having their own international arbitration rules, which are modified at a frequent rate. These changes massively affect the overall structure of international arbitrations due to their impact on uniformity and predictability of rules of arbitration under the Private International Law. The second issue is relating to the domination of arbitration institutions which formulate arbitration rules according to their own internal policies. Resultantly, such administered arbitrations become interdependent upon the institutions which administer these arbitrations Third issue is with regard to the cross-cultural differences, which may affect various aspects of arbitral proceedings. Forth issue is related to choice of law in international arbitration agreements, which emanates while drafting an international arbitration contract.

Keywords: Arbitration, Public International Law, disputes, international contracts, law

7-AD42-4323

INVESTMENT AGREEMENT UNDER THE FREE TRADE AREA OF THE ASIA-PACIFIC (FTAAP) AS THE BASIS OF GLOBAL INVESTMENT POLICY

Prof. Tomoko Ishikawa[7]

While harmonization of international trade and investment rules has been the universal agenda for years, at the global level, there is little prospect of it being achieved in the near future. This has resulted in the proliferation of regional trade agreements (RTAs), and the recent phenomenon is the growth of 'mega' RTAs such as the Trans-pacific Partnership Agreement (TPPA).

As its preamble explicitly recognizes, the TPPA is also expected to form the basis of the FTAAP, the membership of which would extend to the 21 Asia Pacific Economic Cooperation (APEC) member states and certain non-APEC states including India. The TPPA and the Regional Comprehensive Economic Partnership (RCEP) which comprises 16 countries including all the members of the Association of South-East Asian Nations (ASEAN), are considered to be the pathways to reach the FTAAP. However, given the existence of predicted gaps in the areas such as state-owned enterprises as well as the protection of intellectual property rights between the TPPA and RCEP, the prospect of concluding the FTAAP as a high-level, or 'TPPA-level', RTA is not high.

On the other hand, for the following reasons it would be feasible to agree on rules limited to investment promotion and protection on the basis of the texts of the TPPA. There are already extensive international investment agreements (IIAs) – investment chapters of RTAs and bilateral (or trilateral) investment treaties – amongst the potential FTAAP members. For example, Japan has concluded IIAs with all the potential FTAAP members except for Chinese Taipei. Most of these IIAs include: (a) commitments on investment liberalization; and (b) investor-state arbitration, which covers a wide range of

[5] Dr. Hemant Garg, Postgraduate Student, Panjab University.
[6] Dr. (Prof). Sushil Gupta, OSD to Vice Chancellor, Central University Punjab.
[7] Prof. Tomoko Ishikawa, Associate Professor, Nagoya University.

investment disputes. Both of these are considered to be important obstacles to IIA negotiations. The TPPA investment chapter also overcomes the obstacles by, for example, the flexible use of the reservation lists and the exchange of letters, tailored exception clauses and detailed investor-state arbitration provisions. It is argued that they have contributed to the successful conclusion of negotiations.

However, there is also room for improvement in TPPA investment and relevant chapters. Concerns over the legitimacy of investor-state arbitration tribunals might well be further addressed by, for example, incorporating the interpretative approaches adopted by the WTO Appellate Body.

Against this background, this study first proposes that the FTAAP members should start fast-track negotiations of an IIA, i.e. the 'FTAAP Investment Agreement', which can later be incorporated into the mega Economic Partnership Agreement. The TPPA may well serve as the starting point of the negotiations, but this study also examines the elements for improvement in the TPPA. Given its scale, scope and significance in all areas, a well-balanced and carefully drafted FTAAP Investment Agreement would serve as the foundation of global investment policy, and this study aims to provide both practical and theoretical guidance for negotiations.

8-AD43-4435

ONCE A DEBTOR, ALWAYS A DEBTOR – LESSONS FROM BULGARIAN DEBT COLLECTION PRACTICES

Ms. Kristina Stefanova[8]

Individual bankruptcy is already a fact in most European countries. The debate now is not whether, but to what extent to relieve the individuals. It is believed that a reconciliation between consumers' and creditors' interests is a difficult task. This paper aims to prove that once a debt is in default, the individual bankruptcy is in both parties' best interest. The most reasonable solution is a debt relief and a second chance for the debtor. In order to persuade the reader, the paper depicts the consequences of household over-indebtedness in the extreme: the debt collection reality in Bulgaria - a country where individual bankruptcy is still a myth, which some people have only heard of.

First, we present the options a creditor has: court proceedings and then executive proceedings, debt collection agencies, or both. We briefly examine the legal framework of the executive proceedings in Bulgaria to show that they usually lead to increase of the debt rather than its decrease, as well as to unequal distribution of the debtor's assets among the creditors. Hence, it is often impossible for most of the creditors to recover their claims. We use the available quantitative data regarding household debts and the number of executive proceedings in Bulgaria to support our statement that the current debt collection methods are not efficient enough.

Debt collection by private agencies, on the other hand, has no legal framework at all. This gives the collectors complete freedom to take any actions they consider necessary, as long as they receive payments. The paper exposes some of the debt collectors' incentives and their malicious practices used in the debt collection industry. The only legal protection the debtors can receive is limited to the distribution of their personal data. We examine the decisions of the Bulgarian Commission for Personal Data Protection on complaints filed by debtors against debt collection agencies, so as to analyze the most common problems the debtors have and what kind of protection they receive.

The paper concludes that in a jurisdiction where debtors cannot pay back their debts and cannot be relieved through individual bankruptcy proceedings, they have no incentive to cooperate or try to pay back their debts even partially. The current situation with household over-indebtedness in Bulgarian shows that when the opportunity for a fresh start is not granted to the individuals, they are left with no other choice but to hide, not to acquire property and even stop working. They become desperate and inadequate members of the society.

By presenting the information in this paper, we hope to cast more light on the problems caused by household over-indebtedness and debt collection, especially when individual bankruptcy does not exist in a certain jurisdiction. Our purpose

[8] Ms. Kristina Stefanova, PhD Candidate, University of National and World Economy.

is to draw the attention of legislators and creditors to the severe consequences when debtors are not granted relief and a second chance when their debt is in default.

9-AD45-1013

MEDICOLEGAL ASPECT OF AUTOPSY IN INDONESIA: AN ETHICAL DILEMMA ON MEDICAL FORENSIC EXPERT'S AUTHORITY

Ms. Raania Amaani[9]; Mr. Aristyo Rizka Darmawan[10]; Ms. Sella Dwi Julian[11]; Ms. Shaqina Said[12] and Prof. Agus Purwadianto

The regulations regarding the division of authority between medical forensic expert and investigator for doing an autopsy in Indonesia remain unclear. There is a high-profile case in Indonesia in which a woman, Wayan Mirna Salihin, is suspected to have died from cyanide poisoning and the trials are being broadcasted live across the country. The victim's unnatural death receives public concern because of several peculiarities related to the case. For unnatural deaths, the body of the victim must undergo complete forensic autopsy in order to explore the exact cause of death. However, considering the request of the victim's family, the investigator did not order a complete autopsy. Family members requesting to do an autopsy is unusual in Indonesia, as Indonesian values make it difficult for the community to accept dissection of a human body. But, the absence of a complete autopsy has yielded problems in court. The expert witnesses found difficulties in reaching a conclusion from only a partial autopsy. As a result, the defense attorney insisted that the evidences were not strong enough to make the guilty verdict and blamed the medical forensic expert for not doing a complete autopsy. The article 216 of the Penal Code, however, states that one cannot refuse an investigator's order. But, this fact remains unbeknownst to the public, resulting in nationwide naming, blaming and shaming of the medical forensic experts. It is becoming an ethical dilemma, because while the decision to perform an autopsy is dependent to the investigator, the article 2 of the Indonesian Doctor's Code of Conduct states that a medical doctor has to make a decision independently and they must give performance according to the highest standard. Taking a case study of Salihin's case, this paper aims to present the implication of ethical dilemma of autopsy in Indonesia and the proposed solution. This article only focuses on medical forensic expert's perspective. Analysis of the primary and secondary data collected from interviews, observations and literature reviews shows that the medical forensic experts' ethical dilemma of performing an autopsy highly contributes to the shaping of the expert witnesses' testimonies in court. In high-profile cases, an expert's testimony is able to shape a certain social stigma of his profession and significantly influence judge's consideration. In a public law case, the ultimate purpose of every decision made must be to pursue the material truth and thus upholding justice. Therefore, the writers offer some advice. Firstly, Indonesia should have a strong legal basis for autopsy which regulates a clear division of authority between a doctor and an investigator regarding who to decide the means to prove one's cause of death. Secondly, the ethical code which is made by the Doctor Council of Indonesia shall be in line with any legal basis which regulates the autopsy procedure to prevent any contradiction between both regulations. Lastly, a doctor should be able to explain to the investigator which procedure that the doctors think would be the best to present evidence in the court.

Keywords: autopsy, ethical dilemma, investigator, forensic, medicolegal.

13-AD49-1014

RECONSTRUCTING PROPERTY RULE AND LIABILITY RULE FOR COPYRIGHT HOLDERS, USERS AND INDIRECT SERVICE PROVIDERS: AN APPROACH TO REDUCE TRANSACTION COST

Prof. Han Zhang[13] and Weijie Huang

When users upload their remix, parody and other user-generated content (UGC), the copyright holder of the original work can notice video website, on-line forum and other Indirect Service Providers(ISPs) to take down the UGC. This "notice and

[9] Ms. Raania Amaani, Student, Universitas Indonesia.
[10] Mr. Aristyo Rizka Darmawan, Student, Universitas Indonesia.
[11] Ms. Sella Dwi Julian, Student, Universitas Indonesia.
[12] Ms. Shaqina Said, Student, Universitas Indonesia.
[13] Prof. Han Zhang, Associate Professor, South China University of Technology, School of Law.

takedown" regime which is commonly used in the USA, China and other countries, authorizes copyright holders to stop possible infringements by removing UGC without a judicial injunction. Copyright holders' takedown notices substantially supersede the injunctions known as property rules in law & economic scholars Calabresi and Melamed's well-known formulation. The problem is that this practice of "notice and takedown" increases transaction costs for possible negotiations among copyright holders, users and ISPs. Moreover, when transaction costs go up, liability rules providing compensation through"judicial pricing" take effect in an unbalanced way. Although copyright holders can be relatively well compensated for copyright infringements, compensation for wrongful removal of UGC is strictly limited due to the subjective good-faith standard for copyright holders' misrepresentation and the narrow scope of recoverable damages under the economic loss rule.

The current regime is based on the assumption that users can be copyright pirates and also that piracy damages the market for original work. Therefore, the emphasis of the current regime is on protecting copyright holders' entitlements. However, in this new age of UGC wherein users are more likely to be re-creators rather than copiers, UGC has become a major source of creativity and ISPs have become the platform for creativity. A more balanced reconstruction of property rule and liability rule for copyright holders, users and ISPs is needed. Replacing "notice and takedown" regime with property rules based on the decisions of courts or other authorities can promote future transaction and cooperation among copyright holders, users and ISPs. This replacement of regulations also contributes to possible industry chains that are based on the negotiation and collaboration among copyright holders as original creators, users as re-creators and ISPs as re-creative mediums. Strengthening liability rules in protection of users' and ISPs' entitlements can also bring back the balance among copyright holders, users and ISPs. Specifically, objective standard in good faith test for copyright holders' misrepresentation causing removal of UGC and applicable economic loss liability for copyright holders in tortious interference cases should be implemented.

14-AD28-2970

EDUCATIONAL STATUS OF TRIBES IN JHARKHAND (INDIA): A COMPARATIVE STUDY OF ORAON AND SANTHAL

Dr. Sujit Kumar Choudhary[14]

The Government of India has taken a number of steps to provide equality of educational opportunity to the scheduled tribes at all levels of education. In case of elementary education, the government has been trying to improve their educational status with the help of various policies and programmes, especially through the Right to Education Act (RTE) and Sarva Shiksha Abhiyan (SSA). Despite these, tribals have still been facing educational deprivation in one way or the other. However, this educational deprivation is not constant; it varies from place to place and it's a tribal specific. For instance, the Oraon tribe of Ranchi district is much more educated and has higher socio-economic and political status than the Santhal tribe of Deoghar district. Both the districts, in fact, belong to the same state, i.e. Jharkhand state. In all these variations, the major reasons are that the nature of exposure that a particular tribe had in the past with the outer world and also the role of the government in educating these people.

The paper is based on the empirical study of two specific tribes, i.e. Oraon and Santhal in the Jharkhand state of India and the data was collected in the year 2007-08 with the help of various tools, especially schedule, focused group discussion, ethnomethodological investigation and personal interview. The study is comparative in nature which comprises two villages; one is from Ranchi and other is from Deoghar districts. Hence, the paper will look into the educational status of tribals in Jharkhand in general and the comparision between the two tribal groups in particular.

15-AD55-1024

[14] Dr. Sujit Kumar Choudhary, Assistant Professor, Central University of Jharkhand.

CONTRACTING OUT OF NON-REFOULEMENT PROTECTIONS

Mr. William Worster[15]

Recently several cases applying the European Convention on Human Rights (ECHR) have identified strategies within existing jurisprudence of the European Court of Human Rights (ECtHR) for avoiding the ECHR's non-refoulement human rights obligations. Various regional human rights systems have jurisdiction to ensure non-refoulement for at risk persons. However, recent trends show that the protection of these systems, and the ECHR in particular, can be avoided, not only by direct conflict of norms, but by constructing separate legal regimes that impact the facts and jurisdiction inherent in ECHR non-refoulement cases.

The UK proposed to expel the alleged terrorist Abu Qatada to Jordan, even though he had successfully received asylum. The UK repeatedly failed before the ECtHR, since that human rights system generally classifies diplomatic assurances against mistreatment as facts, pertaining to the risk of mistreatment. Thus assurances are scrutinized for credibility and reliability. However, the UK was able to overcome this bar when it agreed to a treaty with Jordan in which Jorden with same content at the assurances. While the ECtHR generally views assurances as facts, it views a treaty as law. This treaty is an example of an international agreement that establishes certain facts. This is the first way that parties might contract out of non-refoulement by agreeing that the facts that trigger the obligation do not exist.

The International Criminal Court (ICC) called several witnesses who claimed asylum upon arrival in the Netherlands. Their applications were refused, but not on the merits. In this case, the agreement at issue is the ICC-Netherlands Headquarters Agreement which obliges the Netherlands not to interfere with the ICC and more importantly prohibit its exercise of jurisdiction within its territory. The Dutch Supreme Court permitted their expulsion by analyzing the ECHR jurisdiction. ECtHR practice on jurisdiction is rather unusual, focusing on control, and for that reason, the Dutch Supreme Court held that the Netherlands did not have jurisdiction in the ECHR sense, so the ECHR did not apply. This is the second way that parties might contract out of non-refoulement by invoking the unusual practice on jurisdiction and agreeing to limit their jurisdiction, thus not incurring the non-refoulement obligation in the first place.

Both of these two cases expose weaknesses in the ECHR non-refoulement protection regime and present a problem for migration issues. While a human rights court such as the ECtHR might normally hold in favor of the human rights norm lex specialis where there is a direct conflict of legal norms, these cases avoid direct confrontation. The US Court of Appeals has been challenged with the direct conflict between asylum non-refoulement and the obligation to immediately return an abducted child under the Hague Convention on Child Abduction. The Court sided with the Hague Convention and refused to give effect to non-refoulement. It is unlikely that the ECtHR would reach the same result. However, there are other ways, that are increasingly being exploited, to use the ECtHR's practice on facts and jurisdiction to avoid the non-refoulement obligation.

16-AD19-4329

IS VOLUNTARY DISCLOSURE A TOOL FOR INCREASING TAX REVENUES OR AVOIDING TAX EVASION? ; A TAX ADMINISTRATION DILEMMA

Dr. Burcin Bozdoganoglu[16]

Tax administrations aim to increase tax revenues quickly, but at the same time try to avoid or minimize tax evasion. This two aims can be struggle each other at some points. In general terms; voluntary disclosure programmes define; opportunities offered by tax administrations to allow previously non-compliant tax payers to correct their tax affairs under specified terms. How can voluntary disclosure programme effects individuals' tax compliance level? The factors influencing tax payer behaviour are complex but a tax administration will have more influence over future behaviour if its compliance strategy is responsive to the taxpayer's attitude to compliance. If it is drafted carefully, voluntary disclosure programmes benefit everyone including taxpayers making the disclosure, complaint taxpayers and governments.

Many countries tax administration have different voluntary disclosure programmes in their system. Countries which have only "voluntary disclosure programmes" provide an opportunity to facilitate compliance in a timely and cost effective

[15] Mr. William Worster, Assistant Professor, The Hague University of Applied Sciences.
[16] Dr. Burcin Bozdoganoglu, Associate Professor, Siirt University Faculty of Economics and Administrative Sciences.

manner, saving costly and contentious audits, litigation and criminal proceedings. Another kind of programmes is "offshore voluntary compliance programmes" which offer the opportunity to maximize the benefits of improvements in transparency and exchange of information for tax purposes to increase short-term tax revenues and improve longer term tax compliance.

In addition several countries have put in place a temporary voluntary disclosure programme in order to take advantage of the momentum given by, for example the availability of information about financial accounts held abroad and increased cooperation between tax administration while many countries were using voluntary disclosure programmes in their general law or administrative practice permanently thus provide certain incentives to taxpayers who have not complied with their tax obligations to come forward.

In this study some country examples will examine briefly and try to perform the comparison of programmes generally. Especially tax evasion crimes and its penalties will be discussed in different countries and what offer voluntary disclosure programmes as advantages e.g. exemption from criminal prosecution or imprisonment or both of them. But does it create more compliance taxpayers or more willing individuals to tax evasion?

A voluntary disclosure programme seems to be an indispensable tool for tax administration because it is an important way to increase tax revenues, to learn methodologies used by tax evaders and determine what information and records are likely to be available to an investigator, to end a tax dispute before court level. But in another way this programme shouldn't be encourage individuals to tax evasion

This study aims to explain how to design a successful and optimal voluntary disclosure programme in line with the standard and recommendations of OECD.

17-AD52-1012

SOCIO-CULTURAL COHESION IN THE SOUTH AFRICAN ETHICS GOVERNANCE SYSTEM: THE YEARS PAST AND YEARS AHEAD

Mr. Uhuru Dikgang Moiloa[17]

Marked by its embeddedness to the country's historical past, the South African ethics governance system is shaped by a perpetual relational interplay between social, cultural, economic, and political spaces of cohesion. The country's three arms of government (i.e. the Executive, the Judiciary, and the Legislature) all form the essence, applications, and validity of the nature in which ethical decisions are taken. The role of social cohesion (as a policy outcome from such an essence) is manifested in the manner through which popular decisions and policies that influence the whole of society are taken.

The years of apartheid structural formations, and the years ahead remain dissimilar in that the current institutions of governance are democratic, inclusive, and warrant innovative thought in their operational mandates. These should find semblance in how they consider the manner in which internal cultural diversity and law-making behaviour are affected by social cohesion.

Furthermore, the changing nature of the South African governance culture where ultra-democratic transparency seems to deter effective and prompt decision-making, resembles a culture of divergent views in how society should interpret quality service delivery. Arguably, the mushrooming of new and break-away political parties seems to have an immense impact on how culture diversifies governance.

Conversely, deadlock between these divergent cultures in governance has seen both interest groups and various political parties resorting to courts in attempting to achieve any form of decisional progress. As significant interventions and steps geared towards affirming the independence and effectiveness of institutions supporting democracy, the 'cultural intelligence' aspects of ethical governance are fast gaining strategic momentum in ensuring the well-being of the people of South Africa, the discipline in the separation of powers plays a pivotal role in South Africa today as it will in the years ahead.

[17] Mr. Uhuru Dikgang Moiloa, Deputy Speaker, Gauteng Provincial Legislature.

18-AD21-4186

A CRITIQUE ON THE HUMAN RIGHTS PROTECTION MECHANISM BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS: THE CROATIAN PERSPECTIVE

Mr. Tunjica Petrasevic[18]

The paper shall give a critical review of the working methods of the European Court of Human Rights (ECtHR) that potentially jeopardise the efficient protection of individual rights and freedoms. The first part shall provide an overview of the development of the human rights protection mechanism before the ECtHR with special reference to Protocols No. 11 and 14. Protocol No. 11 enabled the direct access of individuals to the Court, which resulted in a substantial increase in the number of requests. The accession of transitional countries of Eastern and South-Eastern Europe further led to the Court's overload. To prevent the collapse of the entire system it was necessary to make modifications in the mechanism. To this end, the Council of Europe adopted Protocol No. 14 that entered into force in 2010. Among other things, Protocol No. 14 saw the introduction of certain new institutes: firstly, a single judge who may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34 whereby such a decision can be taken without further examination. Such a decision is final. The second disputed institute involves the so-called rapporteurs who assist the single judge. Both institutes have been established with a view to filtering the cases before they reach the Court. Many have criticized the work of single judges and non-judicial rapporteurs and their common denominator is "non-transparency". Such criticism will be the subject of analysis in the second, central part of the paper. Does the ECtHR itself violate some of the rights guaranteed by the Convention? This being a serious question for debate, the third part of the paper shall try to answer it by taking into account the viewpoints of researchers, but also of legal practitioners, principally Croatian lawyers. The fourth part shall discuss whether there are further legal means following an inadmissibility decision, after which concluding observations and recommendations will be made on how to resolve complaints and shortcomings of the mechanism of protection of human rights as guaranteed by the Convention.

19-AD20-4132

THE NEW CONCEPT OF SEX-CRIMES IN CROATIAN CRIMINAL LAW

Dr. Igor Vuletic[19] **and Davor Simunic**

On the 1th Jan 2013 the new Croatian Criminal Code has entered into force, introducing reformed concept of sexual crimes into Croatian criminal law. The reform was, before all, motivated by the effort of the legislator to follow international standards, especially the ones within the European Union and Council of Europe. However, it is very interesting that creators of the new Criminal Code in the case of sex-crimes did not follow usual German model. Instead, they have chosen to roll-model sex-crimes more similar to English concept. Such solution is very untypical for Croatian legal tradition. The new concept significantly expands criminal liability for sexual crimes in several aspects. Typical examples for such claim can be found in criminalization of negligent form of rape and incrimination of rape by deception. These types of sexual offence are atypical for continental law tradition. Until now, they have not been characteristic for Croatian criminal law and it will be interested to see how courts will accept and apply new model. In this paper, author discusses these changes not only from theoretical, but also from practical point of view. He gives critical analysis of the new concept of sex crimes in Croatian CC and comments some interesting cases from recent court practice in Croatia. Based on the example of case-law, the author points main problems of new concept.

20-AD41-4038

[18] Mr. Tunjica Petrasevic, Assistant Professor and Vice-dean, Josip Juraj Strossmayer University of Osijek.
[19] Dr. Igor Vuletic, Assistant Professor, Josip Juraj Strossmayer University of Osijek.

METHODOLOGIES AND PERCEPTIONS TO THEORISING MIGRATION

Mrs. Joyce Ayeni[20] and Prof Sanjana Brijball Parumasur

It has been widely circulated that migration received minimal exposure from researchers before the 20th century, but a great deal of attention was given to migration thereafter which shed light on several frameworks that exist under it. The end of the 20th century witnessed a shift from the state-centered framework to highlighting the diversity existing in categories under migration, such as race, eras, age-grade, and gender, among others. Fresh models have emerged in migration since the 1990s confronting popular fallacies that have dominated migration studies. It is noteworthy to state that migration has progressively evolved into an interdisciplinary subject; it has attracted contribution from researchers in various fields and is still attracting many (Brettell & Hollifield, 2000).

This varied contribution provides interesting perspectives to migration studies and a clearer understanding of the phenomenon whilst tackling misconceptions and stereotypes. Fresh facts are emerging using previous studies on migration as a foundation for stronger research works. Widespread notions on migration have experienced a paradigm shift due to new and ongoing studies on migration. Migration norms and models of internal and international migration have also been challenged based on evolving facts.

The significance of the theoretical framework of the study cannot be over-emphasized. It enables the reality about a phenomenon under study to be established while exposing the misconceptions around it. Model building provides the opportunity to make new discoveries, generalise the result of the study to other situations as well as form the basis for future exploration. Adequate understanding of the subject can be gained by examining the cause and effect highlighted in previous models. Model building can also support the researcher in predicting future occurrence with regards to the phenomenon and achieve the purpose of science which is to cultivate descriptive theories. Models and theories depend on the use of research questions and hypotheses which are approached through logical analysis to examine the connections between different variables. The result of the logical analysis can be used to negate, support or reform the original theories and models.

21-AD16-4062

ADAT LAW SOCIETY AND THE RIGHTS OVER NATURAL RESOURCES: INSTITUTION AND THE MANAGEMENT OF SASI IN MALUKU INDONESIA

Mr. Muhammad Yahdi Salampessy[21]

This research aims at observing and analysing Maluku's Sasi institution as an instrument to protect and preserve the rights of adat society over natural resources. Sasi is the term used for a body of laws established by Maluku's adat society that stipulates the guidelines for the people in managing their environment, including the utilization of natural resources. Sasi can also be defined as a restriction to collect or cultivate certain natural resources product in certain period within certain areas. Almost every adat village in Maluku applies Sasi as the main mechanism to manage natural resources in their localities. The general objectives of Sasi institution is to protect the tradition of local people, creating a balance between the nature and the people.

Sasi plays an imporant role for the sustainability of adat society and the management natural resources in Maluku. As law instrument, Sasi plays an important role not only to protect the rights of adat society over natural resources but also to preserve the nature. Such instrument can be a refference for policy making pertaining to the management of natural resources at the national level. The government, thus, not only protect the rights of adat society over natural resources, but also establish a environmental sustainable developmental based on local knowledge.

This research, thus, aims to conduct a throughout and comprehensive analysis of Sasi with regard to its institution, form, and management. The research further analyses the impact of Sasi for natural resources management based on sustainable

[20] Mrs. Joyce Ayeni, PhD Student, University of Kwazulu-Natal.
[21] Mr. Muhammad Yahdi Salampessy, Lecturer, University of Indonesia.

development in Maluku. The research also analyses the position of Maluku's adat law within the national legal system regarding the protection of the rights of adat society over natural resources. The research applies yuridical normative method to analyse regulations, both at the national and regional levels, pertaining to the recognition and the implementation of Sasi law in ensuring the rights of adat society over natural resourses. Maluku is chosen as the research location because Maluku is an area where adat law is strongly rooted in the society. To this date, the people of Maluku still maintain and preserve the culture values and tradition from their ancestors. Adat law become the main instrument to govern the life of the local people, including to set the relationship between the people and the nature. Furthermore, there is no research specifically and comprehensively address adat law in Maluku, particularly with regard to Sasi that become the subject in this research.

22-AD51-4295

POVERTY, INEQUALITY AND THE SOCIAL CAUSES OF CRIME

Dr. Salim Yaacoub[22]

Crime can be defined in many ways, most simply as the breach of the rules that govern society. There are numerous variables related to crime. These include: poverty levels; family stability; individual and societal health; social and cultural background; along with geographic, demographic and political considerations. It is further argued that there exists a clear correlation between crime rates and inequality. This paper will examine and explain the main reasons behind the current trends in increasing crime rates in the United States and Europe and explore possible solutions to combat these trends.

23-AD37-4291

REFRAMING TRIBAL GOVERNANCE IN TRIPURA: TTAADC TO THE VILLAGE

Ms. H Theresa Darlong[23]

The Tripura Tribal Areas Autonomous District Council (TTAADC) was initially set-up under the TTAADC Act, 1979. With effect from April 1, 1985 the TTAADC came under the purview of the Sixth Schedule of the Constitution of India. Tripura along with Assam, Meghalaya and Mizoram are the four states in the north-east of the country which have autonomous district councils functioning under the purview of the Sixth Schedule of the Constitution. The objective of Sixth Schedule is to protect the interest of the tribals by providing a framework of governance and administration in areas that are largely inhabited by them. The provisions of the Sixth Schedule allow the tribals to protect their customs, culture and identity including rights to land, natural resources and traditional beliefs. The TTAADC was also created with the objective to preserve and protect the interest of the tribals of Tripura who constitute about one third the population of the state (2001 Census).

There are 19 tribes and about 17-sub-tribes residing in Tripura. Unlike states like Meghalaya, Assam and Mizoram which have tribes or tribal majorities living in geographically compact areas, the tribal population in Tripura are scattered among a number of areas and are a culturally and linguistically heterogeneous minority in the state. Under the TTAADC, the most basic unit of governance is constituted by the Village Committee, which though an ideal of decentralised governance also means that the 527 different village committees makes it challenging for the TTAADC to formulate a common mandate for the tribal populace of the state.

Further, the Sixth Schedule provides for the administration of legislative, executive and judicial functions. The TTAADC consists of 28 elected members and 2 tribal members nominated by the Governor of the State out of which 25 constituencies are reserved for tribals. While the TTAADC has legislative and executive functions, it has not yet framed any legislation regarding the setting up of village courts to try cases that are exclusively between tribals. Para 4 of the Sixth Schedule entitles the Council to constitute Village and District Council Courts in the autonomous areas to adjudicate or try cases according to customary laws in which both the parties are tribals. This has not been done in Tripura. This implies that the customary practices of the tribals living in the area are not fully within the ambit of Constitutional law, making for confusion and defeating the empowering purpose of the Sixth Schedule for autonomy and self-governance. Concurrently, there are also cases where tribal customary practice may renege against legal rights because of the lack of clear-cut laws regarding the authority and legality of decision-making at the village level.

[22] Dr. Salim Yaacoub, Assistant professor, Prince Mohammed Bin Fahed University.
[23] Ms. H Theresa Darlong, Assistant Professor, Women's College.

A list of legislations enacted by the TTAADC shows that the legislations mainly deal with the regulation of markets, establishment of village committees, allotment of land, etc. While these are mainly regulatory in nature, a cursory glance at the list of legislations shows that an important aspect of protecting tribal culture and identity is the codification of customs and customary laws and practices, which has not been done yet. Social legislations protecting tribal interest in the spheres of personal laws in marriage, divorce, succession to property, inheritance, etc. need to also be looked into. In the context of Tripura, since there are many tribes this has to be done in active consultation with them. Since many of the tribes are not able to find a voice as they lack a majority to elect a representative from their tribe, hence an alternative mechanism of consultation has to be found out to ensure that the voice of all the 19 tribal groups also reaches the council.

As far as Village level autonomy is concerned the TTAADC has enacted the Tripura Tribal Areas Autonomous District (Establishment of Village Committee) Act, 1994 and framed rules under this Act. A criticism was that for a long time elections were not held to these village committees. In 2006 election to the 527 village committees was conducted that has resulted in democracy reaching the grassroots. Since many tribal villages are also predominantly inhabited by one tribe or sub-tribe this mechanism has ensured that each tribe, which may not be able to elect its own member to the TTAADC at least is able to elect the members of the village committee which in turn are recognized by the TTAADC. This mechanism needs to be strengthened if the TTAADC has to ensure true tribal autonomy and financial inclusion. This paper attempts to lay out the issues that exist in the current political structure of the tribal people of the state and also to look for solutions to these longstanding problems, such that they are inclusive and meaningful for all concerned stakeholders.

24-AD40-269

LIST OF LISTENERS

Dr. Takuya Kajisa[24]

Mr. Muziwenhlanhla Ntuli[25]

Ms. Lindiwe Dzimba[26]

[24] Dr. Takuya Kajisa, Doctor, Miyagami Hospital.
[25] Mr. Muziwenhlanhla Ntuli, Researcher, Gauteng Provincial Legislature.
[26] Ms. Lindiwe Dzimba, Member of the Gauteng Legislature, Gauteng Provincial Legislature.

CONFERENCE COMMITTEE MEMBERS

FLE Learning Ltd

Conference Division

T: 0044 131 463 7007 F: 0044 131 608 0239

E: submit@flelearning.co.uk W: www.flelearning.co.uk