

NOTES AND NEWS

THE 9TH ANNUAL MEETING OF THE GERMAN ASSOCIATION FOR AFRICAN LAW

The 9th Annual Meeting of the German Association for African Law took place in Heidelberg (West Germany) on 11 and 12 November, 1983. The Association which was founded in 1973 now has an ordinary membership of about 100 and also several corporate members.

The objective of the Association is stated in article 2 of its memorandum.

- (1) The Association has as its object the dissemination of knowledge concerning the legal systems of the whole of Africa (hereinafter referred to as 'African Law') and the promotion of their comparative study.
- (2) In the light of this object it is specifically incumbent upon the Association
 - (a) to bring together those interested in African Law;
 - (b) to encourage, support and advise on research and learning in the field of African Law;
 - (c) to maintain contact with individuals, organizations and institutions at home or abroad that are concerned with African Law.
- (3) As a scientific society the Association is non-partisan and politically neutral.
- (4) The Association is non-profit making. Its object is not directed towards the acquisition of economic profit."

In furtherance of this objective, the Association holds annual meetings at which scholars familiar with African Law present papers on a wide range of topics. Papers can be read in English, German or French.

The Chairman of the Association, Dr. Kurt Madlener, opened the meeting on Friday, 11 November, 1983. Three papers were presented on this day by Mr. Justice Martin Kirsch, Conseiller à la Cour de Cassation, Paris, Professor Daniel Haile, Dean, Faculty of Law, University of Ethiopia, and M. Justice Claude Durand, Magistrat, Paris. Both Justices Kirsch and Durand had previously worked in Francophone African countries.

Mr. Justice Kirsch, whose paper was in French, spoke on "30 years of Labour Law in Francophone African Countries". He examined a code, adopted in 1952, which the French made applicable in 1953 for her then African colonies. He found this code, in many respects, to be more progressive than the labour law in the mother country. The irony is that although it was France, the colonial power, which gave the African colonies in 1953 a progressive law, she herself had to go through various stages of labour reform legislation before she achieved parity with her former colonies in the field of labour law. Mr. Justice Kirsch cited as an example the rights of workers receiving wider protection to the extent that unlawful dismissals were severely limited. The period for maternity leave was also lengthened under the new law. While labour courts were of complex nature in France, the code offered a reformed system for the African countries. In Africa, appearance before the courts was made free.

Mr. Justice Kirsch argued that, even though since the beginning of the 1960s the Francophone African countries, with the attainment of independence, have pursued independent legislative policies in the field of labour law, the code of 1952 still remains the base law except in the cases of Cameroon (because of the English and French sectors) and of the People's Republic of the Congo (because of socialist policies). The examples of some African countries were used to illustrate some of the new features in post-independent Francophone African labour laws. Mr. Justice Kirsch finds labour law in

Africa operating mainly within the big urban centres and affecting only the big enterprises. Small local enterprises and activities in the rural centres remain outside the sphere of labour law.

In conclusion, Mr. Justice Kirsch argued that labour law in Francophone Africa stands at the same level with many western countries, including West Germany or France.

In the discussion which followed, members wondered whether customary law (which plays an important role in African societies) has not interfered with the effective operation of the labour legislation. Mr. Justice Kirsch pointed out that, as far as the Francophone countries are concerned, this has not been the case. One explanation for this is the fact that labour law affects mainly the big firms and enterprises which operate mainly in the big urban centres where the influence of customary law is not very strong.

The second paper was presented in English by Professor Daniel Haile who spoke on the "Realization of Workers' Interests in Ethiopia". After tracing the history of labour law in Ethiopia, Professor Haile argued that the new labour legislation, the Labour Proclamation of 1975, introduced by the Marxist military regime, has given more rights to workers who were previously virtually treated as the employers' chattels. The law offers workers (of a minimum of ten) the right to form a union. The rights derived from the law are so wide that the dismissal of a worker is nearly impossible. However, one interesting feature of this law is that although the workers have a right to strike, the procedure is so cumbersome that it is almost impossible for any worker to go on a lawful strike.

Professor Haile's paper attracted many questions, contributions and criticisms. The recurring concern of most participants was the question of workers' inability to go on a strike. Many questioned the rationale behind a right which could not be exercised. Another important issue related to the possible damaging effect on the economy of the unbridled freedom and rights granted to the workers at the expense of the employer. Many participants pointed out that the new labour policy might create disincentive in the employment sector (especially where the employer is under compulsion to keep an unwanted and unproductive employee) and thereby destroy the economy. Many conceded that there is the need to protect workers' interests; it was, however, not in the national interest to ignore the interests of the employers.

The third paper, by M. Justice Claude Durand (who spoke in French) dealt with some "Features of Socialist Law in the People's Republic of the Congo". The Republic of the Congo, which has been a one-party state since 1964, has been practising scientific socialism with a pragmatic economic system. M. Durand limited himself to the legal development. He chose examples from both public and private law to illustrate some of the features.

Under public law two important pieces of legislation have emerged in 1983. The first is law number 52 which is designed to introduce a land reform. This law vests all land in the state—in other words the land belongs to the people. Private ownership of land is thereby abolished. But since the passage of this law nothing concrete has happened. It is therefore too early to see the real impact of this piece of legislation.

The second law (No. 58) is designed to restructure the judicial system. The innovation in this law is that it allows the people to administer their own justice. Several levels of courts have been created with a mixture of both professional judges and laymen. While the professional judges outnumber the laymen at the upper levels, the situation is different at the lower levels, where

the laymen outnumber the professionals. The judges at every level are, however, chosen by the party and its organisations.

M. Durand stressed that reform of other areas of public law was not being neglected. For example, a project intended for the reform of the criminal code had been established.

M. Durand found less influence of socialist ideas in the private law sector. He used the example of a draft family code to illustrate the point. This law contains some features of both the western and the socialist systems. In addition, many features derived from African tradition are found in this law. He cited a number of examples. "Polygamy" (strictly polygyny) is permitted under the law, but limited to a maximum of two wives. Parental consent in respect of marriages of their children (even in adulthood) is given recognition by the law. The payment of bride price is respected, but the amount to be paid is limited. Another example of African tradition relates to the grounds for divorce. Insults against in-laws, for example, can be a ground for divorce.

In commenting on M. Durand's paper some participants wondered whether the new land law was not in direct conflict with the African practice of allowing the individual to own property privately outside communal ownership. The concern was whether this law was not likely to affect national development. Another issue related to the reform of the administration of justice. When questioned as to whether the state has qualified personnel to handle the new judicial system, M. Durand answered that there are only 70 professional judges and 12 state attorneys in the country.

Mr. Costa R. Mahalu, Lecturer, University of Dar-es-Salaam, presented the last paper on "Legal Problems of transfer of Technology as an element of the New International Economic Order seen from an African Perspective". Mr. Mahalu, who saw the monopolisation of patent rights by the industrialised countries as a hindrance to an economic emancipation by the Third World, argued for the relaxation of the existing patent laws to facilitate a free flow of technology to the Third World. He saw this as the surest way for the developing countries to catch up with the industrialised countries. He suggested the use of the international forum for the making of treaties designed to remove barriers which make the transfer of technology difficult.

In the ensuing discussion, it was suggested that the problem relating to the relaxation of the patent laws was more of a moral rather than a legal nature. Mr. Mahalu conceded that the developing countries who were arguing for the free flow of technology would be unwilling to disseminate information relating to any invention they may develop in the future. It was pointed out that in most cases private patent rights were confused with governmental or state patent rights (which are virtually non-existent). Most patent rights were in private hands and were therefore strongly defended as individual property. Although many patent holders sympathise with the plight of the developing countries any attempt to remove the protection that their patents enjoy would be resisted.

The 10th meeting of the Association will also be held at the Max-Planck House in Heidelberg in November, 1984.

Revised versions of the papers presented at the meeting are scheduled to be published in volume 4 of the Association's Yearbook (Verlag C. F. Müller Heidelberg).

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