ABSTRACTS

The ambit of judicial review by the German Federal Constitutional Court in the examination of judicial decisions – a model for Georgian jurisdiction?

By *Konstantin Kublaschvili*, Tbilisi, and *Björn G. Schubert*, Leipzig

This paper presents the thesis that the introduction of a constitutional complaint against court judgments into the Georgian legal system will have multiple benign effects on the young democracy in the Caucasus. This applies in particular to improved of legal protection of the citizens, and also to lending substance, in the jurisprudence of lower-instance specialised courts, to the freedoms guaranteed by the constitution,. In addition, there is a re-adjustment of the actual significance of the Georgian Constitutional Court. Although the Georgian constitution does provide for a constitutional complaint as a matter of principle, it is only admissible against so-called normative acts, which have been conclusively defined in a catalogue in the law concerning normative acts. This does not cover judicial decisions, although the motives of the constitution markers for this are not quite clear and for good reason give rise to the suggestions made here. The core of the argument is that the application of a three-phased scale of examination developed by the German Federal Constitutional Court achieves an effective ambit of control which respects the requirements of specialised jurisdiction and also guarantees that the working capacity of the Constitutional Court is not overburdened. This criteria for this are guided by the principle of proportionality: the more incisively a judgment by a specialist lower court affects the basic sphere of rights of the defeated party, the stricter the requirements to be made for the justification of this intervention and the wider the scope for subsequent review on grounds of constitutional law.

On the Contemporary State of Environment and Environmental Governance in China

By *Wei Tan*, Berlin / Zhuzhou

China has missed targets to reduce pollution and conserve energy in 2006. The environmental pollution is continuously increasing in China. There are some major problems, such as overpopulation, accelerated industrialization and urbanization, which cause great pressure to environment in China. In the passed decades, the speed of legislation on environment and resources has been greatly expedited, and a general legal framework has emerged.

https://doi.org/10.5771/0506-7286-2007-3-287
Generiert durch IP '18.117.74.205', am 11.06.2024, 00:39:43.
Das Erstellen und Weitergeben von Kopien dieses PDFs ist nicht zulässig.

The Chinese government acknowledges the severity of China's environmental problems and has taken steps to curb pollution and environmental degradation. Unfortunately, in spite of all of efforts, there is general agreement that a wide enforcement gap persists. This article analyses the contemporary state of environment in China, reviews the evolution of China's environmental governance, explores the major reasons of environmental gaps and briefly introduces the emerging concerted actions for environment protection by other ministries.

The political dimensions of the phenomenon « Kirdi » in Northern Cameroon

By *Houli Fendjongue* , Ngaoundéré

Cameroon, with its german-anglo-french colonial past, is divided by 24 major languages and hosts over 130 ethnic groups. They include the "Kirdi" (meaning "pagan"), a people residing in the North of the country since 200 years when fleeing the domination by the muslim-orientated Fulani/Fulbe to the hills and isolated villages of the Mandara Mountains, where they are still living. The article deals with some questions resulting from ethnic and religious tensions in the country between the muslim majority and the non-muslim minorities, focussing possibilities of how to strengthen political representation and economic influences of those minorities meliorating their position on the country's political chessboard.

The Lebanon Conflict of 2006 and the International Law

By *Gerd Seidel*, Berlin

The article deals with the Lebanon war (from 13th July to 14th August, 2006) from the point of view of international law. The outbreak of the conflict is seen as a part of a series of border incidents at the frontier between Lebanon and Israel. The kidnapping of two and the killing of three Israeli soldiers by Hisbollah militiamen on Israeli territory had been an illegal act, but it did not constitute the case of „armed attack" in the sense of article 51 of the UN Charter since this notion presupposes a certain severity of an armed action that was lacking here. So Israel is not entitled to refer to the right of self-defence according to article 51 of the UN Charter. Because of the legal consequences one must distinguish between „small" and „severe" force. Only the severe force as an armed attack is a justification for the right to self-defence. A smaller armed act like the border incident of the 12th July 2006 entitled Israel only to an immediate and proportionate countermeasure below the self-defence and to the right to punish the individual perpetrators. Moreover, the Israeli

https://doi.org/10.5771/0506-7286-2007-3-287
Generiert durch IP '18.117.74.205', am 11.06.2024, 00:39:43.
Das Erstellen und Weitergeben von Kopien dieses PDFs ist nicht zulässig.

bombardments especially of civilian residential areas in Lebanon violated the principle of proportionality and rules of martial law.
The war opponent of Israel has not been the state of Lebanon but the Hisbollah militia. Hisbollah has had the whole southern part of Lebanon under its control, so that the armed actions carried out by Hisbollah could not be attributed to the government of Lebanon. Therefore according to the UN Security Council Resolution 1701 (2006) it is important to strengthen the state of Lebanon and to weaken the influence of the Hisbollah militia and their weapon suppliers abroad. At the same time a lasting solution can only be reached by negotiations among all parties concerned and bearing in mind that this conflict is closely connected with the complex of the Middle East Problem.

Fundamental Duties in the Constitution of India

By *Armin Albano-Müller*, Schwelm

The 42nd amendment (1976) of the Indian Constitution of 1949/50 inserted the new Part IV-A with the only article 51-A. The Indian Constitution has been currently adapted, till now 104 times, by way of amendments by Parliament. But it has also been made stronger by interpretations of the Supreme Court. A noteworthy example for the latter are judgements concerning the basic structure of the Constitution which are barred from amendment. Art.51-A is another remarkable example for the modernity of the Indian Constitution since it contains eleven obligations of every citizen towards the nation, its people, its culture, its environment, towards public property and to the education of their children. The constitutions of other countries only refer to duties such as military service or obligations to work, payment of taxes or the socially responsible use of ownership. The Indian Judiciary and lawyers draw attention to the importance of enumerating duties of the citizens because “the right to freedom implies that the citizens must create conditions and so fashion society that freedom for every individual is assured.”(*S.C.Kashyap*)

https://doi.org/10.5771/0506-7286-2007-3-287
Generiert durch IP '18.117.74.205', am 11.06.2024, 00:39:43.
Das Erstellen und Weitergeben von Kopien dieses PDFs ist nicht zulässig.