ABSTRACTS

Judicial Activism between Reality and Rhetoric – the Political Role of the Constitutional Court of Colombia

By *Alexander Springer,* Vienna

In 1991 the Constitutional Court of the Republic of Colombia has been established as a new institution embodying the start into a new democratic system of government. The article focuses on the question how the judges in the Constitutional Court of Columbia act in specific situations and which factors may be relevant to explain their behavior with regard to the question of judicial activism. The court is thus evaluated and classified within a scale ranging from activist to reserved. Hypothetically it is taken that the factors influencing the decisions of the judges are personal preferences, the legal culture within the country, the institutional equipment of the court as well as interaction with the political environment. Attempts to become involved in or to influence the political process will also be considered.
The article comes to the conclusion that there is a constant effort of the Constitutional Court of Colombia to extend its jurisdiction which may be due to a strategic adaptation to its political environment. The limits of judicial activism can, however, be seen in the implementation of its rulings which are frequently underminded by the other institutions involved.

The Institutionalization of Political Parties in South Korea: Conceptional Remarks and Empirical Findings

By *Patrick Köllner,* Hamburg

The role of political parties comprises both the representation and mobilization of the population as well as the legitimization of democratic rule. In spite of all critique and the predictions about the decline of modern parties, there is no adequate and effective alternative to political parties as link between the State and society. Thus stable and functioning political parties are considered to be a precondition for the consolidation of democratic systems of government. The article looks into the institutionalization of political

parties in the period after the ”democratic opening” of South Korea in 1987 and inquires to what degree the low degree of institutionalization of the political parties in South Korea impedes democratic consolidation.
The article looks into the development and the present condition of political parties in the country and discusses different concepts of institutionalization. In a second step, Samuel Huntington’s criteria for effective institutionalization are applied to the political parties in South Korea. In a third step, the causes of their specific development are considered and discussed. The article shows that the political parties – also in comparison with neighboring countries – have a comparatively weak level of institutionalization, a merely formalized structure and a short life, yet little change in their leadership and little effect on changes in government and opposition functions. Persons and personalized factions occupy a strong role undermining the stability of the political parties. Among the causes special focus is given to historic reasons and aspects of political culture and the strong position of the President in the institutional structure of the government. The article concludes with Ragsdale and Theis that the deciding factor may be seen in the reaction of political leaders in South Korea to institutional incentives and their relationship to their political parties.

The human right to development as a paradox

By *Wouter Vandenhole*, Leuven

The right to development – most often understood as a human right belonging to the so-called third generation of human rights – has for a long time been a highly disputed concept, politically, conceptually and legally. This article tries to legally define the human right to development in such a way so as to make it both politically and legally acceptable and relevant for development. The paradox of a legally defined human right to development is that in order to be meaningful and useful, it needs to break new ground, but in order to enjoy broad acceptance, it needs to be kept within the mainstream international human rights law concept.
It is concluded first that the best way of dealing with this paradox from a legal perspective is in fact to abandon the idea of a human right to development. From a developmental grassroots perspective, no strong reasons exist for pleading for a human right to development.
Secondly it is concluded that even if one sees the necessity to preserve the idea of a human right to development, evading the above-mentioned paradox is not easy. The challenge seemed to lie in innovating (and thus making more meaningful) the human right to development without losing out on political acceptability and conceptual rigidity. Extending the circle of the duty-bearers of the human right to development seemed to be

the most promising route to be taken, and the development compact suggested by the independent expert appeared to be the most feasible approach to go down that road. This approach leads, however, back to where the right to development rightly belongs: the realm of interstate rights.

By way of a final observation it is emphasized that the scepticism towards the human right to development is not inspired by indifference for the claims made by people in the South. However legitimate these claims may be, the human right to development seems to be the wrong vehicle from a legal point of view to assert them. The legitimate claims of the states of the South for a more just global economic order should be discussed in terms of state claims and rights. For the people of a state, improving the implementation and enforcement machinery for civil, political, economic, social and cultural rights on both the national and international level is believed to be potentially more beneficial for their development aspirations.

Different Conceptions of Human Rights Protection in the Latin American and the European Integration Process: The "Andean Charter of Human Rights"

By *Waldemar Hummer* and *Markus Frischhut*, Innsbruck

During the Nizza-Summit, on December 7, 2000, the Charter of Fundamental Rights of the European Union was proclaimed. One and a half year later, on July 26, 2002, the Presidents of the five Member States of the Andean Community, Bolivia, Colombia, Ecuador, Peru and Venezuela, meeting in Guayaquil/Ecuador as the Andean Presidential Council and on behalf of the peoples of the Andean Community, signed the Andean Charter for the Promotion and Protection of Human Rights. They declared this Charter to be the first comprehensive manifestation of the Andean Community on the subject of human rights in the Community sphere, complementing national, international and universal regulations thereon. The article deals with this Charter in a comparative view focussing on the role of these two new human rights protection instruments in Latin America and Europe. The first part, published in this issue, after giving a startup overview, describes the origin of the Andean Charter, discusses the differences in integration concepts of both Latin America and Europe and analyses some details, especially the protection of the democratic system and the (non-)role of the Andean Court in the Charter's institutional framework.