

*Human Rights' Protection in the
light of the changes introduced
by the Treaty of Lisbon*

—

Training Modules for Romanian Judges

In cooperation with the Romanian Ministry of Justice

Bucharest, Romania

May 23, 2011

Opening remarks by

Thorsten Geissler

Director, Rule of Law Program South East Europe,
Konrad-Adenauer-Stiftung

I am very happy that the Rule of Law Program South East Europe of the Konrad Adenauer Foundation which is based in Bucharest was invited by the Ministry of Justice and the National Institute of Magistracy to co-organize this project.

I consider this project an important one because the Treaty of Lisbon which came into force in December 2009 makes significant advances regarding the protection of human rights and it is essential that judges like you enhance their knowledge as regards of the protection of human

Konrad-Adenauer-Stiftung e.V.

**RECHTSSTAATSPROGRAMM
SÜDOSTEUROPA**

THORSTEN GEISSLER

May 2011

www.kas.de/rspsoe

www.kas.de

rights and the enforcement of the new provisions and thus create the premises for a unitary application and interpretation of the EU provisions.

Of course I would also like to use this opportunity to talk about Konrad Adenauer Foundation and its Rule of Law Program in particular.

Konrad Adenauer Stiftung is a political foundation affiliated to the Christian Democratic Movement. Its precursor, the Society for Christian Democratic Education Work, was founded in 1955. Nine years later the name was changed to its present one. We are proud to bear the name of Konrad Adenauer. The first chancellor of the Federal Republic of Germany's name and principles are our guidelines, duty and obligation. We stand for the Christian Democratic values of freedom, solidarity, and justice.

As a think-tank and consulting agency our soundly researched scientific fundamental concepts and current analyses are meant to offer a basis for possible political action.

Our headquarters are located in Berlin and St. Augustin near the former West German capital of Bonn. Berlin is also the seat of our Academy which is the national forum of dialogue between the spheres of politics, economy, science and society. We do, however, work in more than 120 countries, having more than 80 offices all around the globe, which are in charge of more than 200 projects. We focus on consolidating democracy, on the unification of Europe and the strengthening of transatlantic relations, as well as on development cooperation.

Our conferences and events attract people "who have a say" – like you. We provide moral and material support to intellectually gifted people young people not only from Germany but also from Central, Eastern, and South Eastern Europe and we stay in close contact with more than 10000 alumni.

The Rule of Law Program exists since 1990. It consists of five regional programs, one for Latin America, based in Mexico City, one for Asia, based in Singapore, one in Sub-Saharan Africa based in Nairobi, one in South East Europe, which was founded in 2005 and is based in Bucharest and one is currently being set up and will be based in Tunis.

The Rule of Law Program South East Europe comprises Romania, Bulgaria, Croatia, Serbia, Albania, Macedonia, Kosovo, Montenegro, Moldova and Bosnia Herzegovina .

We concentrate on the following six subject areas in which there is substantial need for reform and consultation within and among the countries of the region.

- Constitutional Law insofar as to guarantee separation of powers and provide mechanisms to ensure an effective system of checks and balances within the state as well as the independence of the judiciary.

Konrad-Adenauer-Stiftung e. V.

**RECHTSSTAATSPROGRAMM
SÜDOSTEUROPA**

THORSTEN GEISSLER

May 2011

www.kas.de/rspsoe

www.kas.de

- Protection of Human and Civil Rights by both the Constitution and the ordinary legal acts and strengthening of international human rights protection systems

- Protection of Minority Rights by supporting compliance with the internationally recognized principle of non-discrimination. The Rule of Law program aims to secure full compliance with this principle in relation to any minority group., i.e. not only ethnic minorities, but also other socially discriminated groups

- Fight against Corruption above all the promotion of a professional and ethical conduct by legal professionals by means of education about and promotion of international and regional codes of conduct and ethics for the judiciary and by supporting further development of laws and measures aiming at the prevention of conflicts of interest, and the promotion of transparency and free access to public information

- Coping with the Past by Legal Means by promoting the exploration of possibilities of the legal mastering of the authoritarian or totalitarian past

- European Legal Order by assisting the countries of the region to develop their legal structures and cultures to match those of the European Union. In this area there are of course significant differences between the two EU member countries Romania and Bulgaria and the other countries of the program region.

By cooperating with local partners the Rule of Law Program seeks to ensure that it responds to the most urgent needs and developments both in each country, and in the region as a whole.

We are very happy that both the Romanian Ministry of Justice and the National Institute of Magistracy are partners of our Program. We have had an excellent cooperation in the past and are determined to make it an ever closer one.

Please allow me to make a few remarks about this project which as I already pointed out fits perfectly well into our program.

The history of human rights is a long one. The Czech jurist Karel Vasak divides human rights into three different generations. It is a theory that is controversially debated but this is true for any academic theory.

According to it the first generation of human rights deals with the moderation of an executive power or government, with liberty and participation in political life. In this context the Magna Charta Libertatum (1215), the United States Bill of Rights, the French Declaration of the Rights of man and of the citizen (1789) and the 1948 Universal Declaration of Human Rights need to be mentioned, the latter one being given status in international law in Articles 3 to 21 of the Universal Declaration, and the International Covenant on Civil and Political Rights.

Second-generation human rights are related to equality and ensure different members of the citizenry equal conditions and treatment. They

Konrad-Adenauer-Stiftung e. V.

**RECHTSSTAATSPROGRAMM
SÜDOSTEUROPA**

THORSTEN GEISSLER

May 2011

www.kas.de/rspsoe

www.kas.de

are fundamentally social, economic, and cultural in nature. They are also covered by the Universal Declaration of Human Rights and further embodied in Articles 22 to 27 of the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights. At European level the Council of Europe's Social Charter and the Community Charter of Fundamental Social Rights of Workers need to be mentioned.

The term "third generation human rights" houses an extremely broad spectrum of rights, for example the right to economic and social development, to a healthy environment, to natural resources, to communicate, to participation in cultural heritage etc.

These rights are subject to controversial debate and thus have been hard to enact in legally binding documents. However, the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment and the 1992 Rio Declaration on Environment and Development are worth to be mentioned. It is also noteworthy that the Charter of Fundamental Rights of the European Union mentions environmental protection and consumer protection, however, not as individual rights but as political objectives. It will be most interesting to watch how the courts will interpret these provisions.

So as we have seen the protection of human rights is part of the international law. However, in the past the protection of freedom of security was primarily seen as the responsibility of individual countries. The Constitutions of the member countries of the European Union do all contain a range of human, civil, political, economic and social rights, and guarantee free access to independent courts. At European Union level, however, such a guarantee was missing.

But over the past decades the European Union had been transformed from a loose economic community to a supranational organisation with extensive competences. I remember a conference quite a couple of years ago when a Professor even described the European Union as a state in status nascendi. At this time the idea of a constitution of the European Union was born. A Convention was set up in 1999, a respective document was drafted and on the 7th December 2000 it was solemnly passed by the European Parliament, the Council of Ministers and the European Commission. Part of this constitution was the Charter of Fundamental Rights of the European Union. However, its then legal status was uncertain and did not have full legal effect. It was intended to transform it from soft law into fully legally binding law by incorporating it into the Treaty on the European Constitution which was passed in 2004. But this Treaty was opposed by a majority both in French and Danish referenda, and a "roll-back" campaign was initiated which posed a serious threat to further European integration. I am glad that with enormous efforts some cornerstones of the Constitutional Treaty, among them the Charter of Fundamental rights, could be salvaged in the treaty of Lisbon and with its coming into force on 1st December 2009 have become legally binding instruments.

So for the first time in the history of the European Union in a single text the whole range of civil, political, economic and social rights of the European Citizens and all persons resident in the EU are set out.

Konrad-Adenauer-Stiftung e. V.

**RECHTSSTAATSPROGRAMM
SÜDOSTEUROPA**

THORSTEN GEISSLER

May 2011

www.kas.de/rspsoe

www.kas.de

These rights are divided into six sections:

- Dignity
- Freedom
- Equality
- Solidarity
- Citizens` rights
- Justice

This Charter proclaims additional rights not mentioned in the European Human Rights Convention such as data protection, bioethics, and the right to good administration and it reaffirms important steps to outlaw discrimination-

It is no coincidence that the first Article of the Charter "Human dignity is inviolable. It must be respected and protected" is almost identical with the first article of the German Basic law but is probably due to the fact that the convention responsible for drafting the charter of Fundamental Rights was chaired by Roman Herzog, former President of the German Constitutional Court.

The treaty of Lisbon guarantees the enforcement of the Charter of Fundamental Rights and has to be respected by all legislative and executive bodies of the European Union and the Court of Justice is now able to apply and interpret the Charter.

The German Minister of Justice is furthermore of the opinion that if a German law should be contradictory to the Charter the European law prevails and furthermore the German law would have to be altered but I know that this standpoint is controversial.

But in any case the Parliaments of the member countries of the European Union will have to respect the Charter when transposing EU law into national law. That is of great significance: 50 % of the legislation of the German Parliament is the transformation of EU law into national law.

Thus, the enforcement of the Charter of Fundamental Rights is also in the hands of the national courts because the decisions of the national parliaments and the administration of the law by the executive can be challenged in the court room.

And thus the protection of human rights embodied in the Charter of Fundamental Freedoms is also in your hands.

I am very glad that you have expressed your will to familiarize yourselves closer with the provisions of the European Charter of Fundamental freedoms, I congratulate you for having been selected and I wish this project every possible success.