



ISSUE 2: OCTOBER 2008

EDITORIAL

The history of the modern world has seen students being at the forefront of advocating for the protection of human rights. Ranging from the US Civil Rights Movement, to the anti-Vietnam war protests, Athens in 1973, and Tiananmen Square in 1989, the images of students standing up to governments are strongly etched in our minds. Yet, today, at least in this country, we see apathy replacing action. Whilst students are still on the frontline of fighting for basic rights in Tibet and Burma, for example, there is a danger that we in the UK are more accepting of an often unjust status quo.

In addition to updating us about what is happening in the UK and the wider world in respect of human rights, this Bulletin should also act as a reminder that action by students is needed today just as much as it was needed in the past.

The Student Human Rights Programme is a dynamic human rights organisation led by students, aiming to further human rights protection by raising awareness, prompting discussion and encouraging action with the aim of fostering a human rights culture.

EVENTS

SHRP General Meeting

6th October 2008

Zimbabwe Panel Discussion

13th October 2008

Asylum Seekers' Rights

10th November 2008, 6:30 pm - 8 pm

Gustave Tuck Lecture Theatre.

Coming Soon: for all the latest cases, news, articles and interviews, visit www.uclshrp.co.uk/bulletin

Human Rights News

Inquest into death of Jean Charles De Menezes opens

Over three years since the death of Jean Charles De Menezes at the hands of British police officers, the inquest into the events surrounding his killing has begun. Mr De Menezes, 27, was shot by armed police less than a mile away at Stockwell Tube station after he was mistaken for a suicide bomber on July 22, 2005. He had been followed by police surveillance teams from an address linked to one of four men who had tried to detonate bombs on the London transport system the previous day.

At the end of the inquest – which is expected to take around three months – the jury will be asked to deliver a verdict on the cause of the death of Jean Charles de Menezes, and the facts of “how, when and where” the death occurred. The inquest jury cannot determine whether any individual is liable, in criminal or civil law, for the death. The inquest will attempt to ascertain whether the killing of Jean Charles de Menezes was lawful – specifically, whether the force used was no more than absolutely necessary and a proportionate response in the circumstances.

Secret CIA jails in Poland to be investigated

News emerged this month that in light of increasing evidence that the CIA operated a secret detention facility in Poland, public prosecutors have initiated an investigation into these long-standing allegations. In August 2008, Polish media reported that a note prepared by military intelligence, confirming the existence of a secret CIA facility, had been seen by government officials in 2006. Allegations of secret CIA detention facilities in Eastern Europe first emerged in November 2005 in the Washington Post; other media and Human Rights Watch later identified Poland as one of the countries hosting CIA “black sites”. In 2007, the Parliamentary Assembly of the Council

of Europe’s report affirmed that “there was now enough evidence to state that secret detention facilities run by the CIA did exist in Europe from 2003 to 2005, in particular in Poland and Romania”.

Britain blocking prosecution of Sudan’s ruler

Human rights activists have accused the British government of a ‘shocking abdication’ of its commitment to justice after it emerged that Britain is backing moves by Libya, the Arab League and several African countries to halt the indictment of Bashir by the International Criminal Court (ICC) in The Hague. But the government says it has adopted the controversial position to save lives in the western Sudan province where the United Nations estimates that 200,000 people have died and 2.5 million others have been driven from their homes since 2003.

In July the ICC’s chief prosecutor, Luis Moreno-Ocampo, applied for an international arrest warrant for Bashir – the first such move ever against a serving head of state – for alleged war crimes, crimes against humanity and genocide. Under the Rome Statute that created the ICC, the Security Council has the power to stall such moves by the prosecutor for up to one year.

Lawyers lose fight to halt execution of Jack Alderman

Despite last minute attempts by British lawyers, Jack Alderman, the longest serving prisoner on death row in the United States, was executed this month by lethal injection. British lawyers had made an eleventh-hour attempt to save him which was ultimately unsuccessful. The Law Society, the Bar Council and the charity Reprieve had called on David Miliband, the Foreign Secretary, to use diplomatic channels to stay the execution of Alderman and end what they called the “gross injustice of 34 years”.

Cases: Recent Human Rights Developments in the Courts

R v O**Court of Appeal Criminal Division.**

The appellant was arrested on attempting to leave the country using false documentation. The custody record indicated that although the appellant insisted she was older, she appeared to be a juvenile, and subsequently informed her solicitors she was 17 years of age. Further, she claimed that she had been a victim of sex-trafficking, which was documented in writing by an outreach worker in counsel's brief. At the Crown Court she pleaded guilty with neither the discrepancies about her age, or trafficking claims being explored further – with both issues being ignored by the defence and the prosecution. Upon appeal to the Court of Appeal, it was held that there was a complete absence of a fair trial. The failures by both the Crown, in not investigating the apparent youth of the appellant, and defence counsel, in failing to raise the issue of the trafficking as a possible defence of duress, were shameful and the conviction was quashed.

Kadi v European Communities Council**European Court of Justice (Grand Chamber).**

This case concerned applications made to the ECJ in respect of asset freezing orders made against certain individuals, who were suspected of terrorism. Pursuant to Security Council Resolution 1267, it was felt by the EC Council that Community action to implement the Resolution was required, and subsequently Regulations were passed allowing, amongst other things, assets of individuals to be frozen. The Court made two key holdings. First, that fairness required that the authorities communicate to the individual concerned at least the grounds upon which orders made under the Regulation to freeze assets were made, so that there could be an effective judicial review. As the Council has not afforded the individuals the right to be informed of evidence against them, there had been a breach of their right to be heard, and a violation of the principle of effective judicial protection. The effect

that this aspect of the decision will have on the UK's use of closed evidence – evidence used against an individual without its disclosure, notably in terrorism cases – will be of interest. Secondly, the Court held that the argument, which was accepted by the Court of First Instance, that because the regulations were passed in accordance with Security Council authorisation there could be no review of their lawfulness, was wrong in law. The Court held that even where Security Council authorisation is concerned, it must undertake a full review of any action taken in light of fundamental rights.

R (Thomas) v Havering LBC High Court, Queen's Bench Division (Administrative Court).

This case discussed the extent of positive obligations of the State under Article 2 (the right to life) in respect of the care of individuals in residential homes. The case concerned applications made challenging the decision of the local authority to close residential homes as being a breach of the positive obligation under Article 2, because the claimants alleged that moving individuals with dementia and other ailments had a statistically significant adverse effect on mortality rates. The Court held that the decisions were neither unreasonable nor contrary to Article 2.

M (Kenya) v SSHD Court of Appeal Civil Division

The contractual right to receive private medical treatment is not property or possession for the purposes of Article 1 Protocol 1. Indicia of possessions for the purposes of establishing a property right under Article 1 of Protocol 1 of the ECHR include: tangibility, whether the possession is assignable, transmissibility, and economic value, and the possession must be capable of being described as an 'asset'. Thus an individual who claimed that the revocation of his visa to the UK, which prevented him travelling here to receive already contracted for medical care, could not argue that his property rights had been interfered with.

INTERVIEW**Professor Darius Rejali**

Reed College



The main thesis of *Torture and Democracy* is that democracies, not dictatorships, have been the main driving force behind the development

of modern torture, and the tendency has been increasingly towards torture techniques that leave few marks (clean not scarring torture). This is hopeful in its way because the tendency to cleanliness in torture is the effect of increasingly effective human rights monitoring. When we watch, states become careful and sneaky.

Torture typically leaves a twenty-year shadow and changes of government do not deal with the deeper organizational damage that torture leaves behind. To mention a few, when soldiers are trained to torture, they return home and take jobs as civilian police or security, and not surprisingly in several cases, they bring their torture techniques with them.

I think anyone who undertakes to study torture must expose themselves to human suffering on a scale few people can imagine. Unlike many people, I am able to go into dark places and come back with thoughtful stories and come back relatively undamaged. Hades is a dark place, and the only light you have there is your heart. Lose that, or burn it up, and it will not be an easy road home.

All violence is decidedly human, human beings do it and so human beings can understand it. We are not alien to ourselves, and we would be in serious trouble if we lost touch with that. Even torturers are humans, though that might be hard thought to acknowledge. But to lose sight of compassion for the violators is to lose sight of your humanity.

Professor Darius Rejali and Professor Philippe Sands will give a lunchtime seminar at the British Institute of International and Comparative Law on the 27th November 2008 from 1 to 2 p.m.