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Law Librarian of Congress

GLOBAL LEGAL MONITOR
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Tracking Legal Developments From Around the World

Adoption

EUROPEAN COURT OF HUMAN RIGHTS – France Condemned in Lesbian Adoption Case

On January 22, 2008, the European Court of Human Rights ruled that France violated Article 14 (prohibition of discrimination) in conjunction with article 8 (right to respect for private and family life) of the European Convention on Human Rights by refusing to authorize a lesbian woman to adopt a child because of her sexual preference. The applicant, a nursery school teacher who has been living with another woman since 1990, applied for the authorization to adopt a child in 1998. French law allows single persons to adopt. The adoption authorization was refused by the local French authorities because "the plan to adopt reveals the lack of a paternal role model or referent capable of fostering the well-adjusted development of an adopted child" and because there was a lack of the commitment to the adoption plan on the part of the applicant's partner, "which would make it difficult for the child to find [his or her] bearings."

The applicant appealed the decision before the French administrative courts without success. The courts considered that the refusal had been based on the best needs and interest of the child. The European Court of Human Rights disagreed and found that "the reference to the applicant's homosexuality was, if not explicit, at least implicit … [and] that the applicant's avowed homosexuality on the assessment of her application has been established and was a decisive factor leading to the decision to refuse her authorization to adopt." (European Court of Human Rights, Grand Chamber Judgment, E.B. v. France, *http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=4894862&skin=hudoc-en&action=request* (last visited Jan. 23, 2008)).
(Nicole Atwill)

Attorneys and Judges

BANGLADESH – Ordinance to Appoint Supreme Court Judges

On January 29th 2008, the Advisory Council of the Bangladesh Government approved the Supreme Judicial Commission Ordinance 2008, which specifies procedures for the appointment of judges to both the Appellate Division and the High Court Division of the Supreme Court.

The Supreme Judicial Commission is a nine-member body headed by the Chief Justice that will select and recommend candidates as judges in the High Court and Appellate Division of the Supreme Court. The ordinance provides that the Chief Justice will be the Chairman of the Supreme Judicial Commission. Other members of the commission will include the Law Minister, two senior-most judges of the Appellate Division, the Attorney General, a member of the Parliament each from the government and the opposition, the President of the Supreme Court Bar Association, and the Secretary of the Law Ministry. The ordinance also includes other qualifications for selection as a member of the Supreme Judicial Commission, such as academic qualifications, professional skills, seniority, honesty and reputation. The ordinance requires the Commission to hold meetings every six months. The Commission will recommend two candidates for each vacant post, and the President may appoint one of the two recommended candidates, or send back the recommendation to the Commission for a revision. (Mustafizur Rahman, *Govt. Frees EC Secretariat, Cabinet Okays Supreme Judicial Council Ordinance*, NEWS FROM BANGLADESH, Jan. 30, 2008, *http://www.bangladesh-web.com/view.php?hidRecord=185548*.)
(Shameema Rahman)

Capital Punishment

JAPAN – Basic Information on Executed Criminals Now Available

On December 7, 2007, the Ministry of Justice of Japan released the names of three executed criminals, together with information on the crimes they committed and the places of the executions. This is the first time the Ministry has released such information. In the past, the Ministry only announced that executions had been carried out and the number of criminals who were executed. Crime victims' groups have demanded that the Ministry provide more information on the executions. Minister of Justice Hatoyama stated that victims and the public need to understand that such an extremely grave penalty is properly carried out, based on the law. (*Fujima Seiha shikeishū ra 3nin shikei shikkō* [Death Penalty Executions of Three, Including Seiha Fujima], YOMIURI ONLINE, Dec. 7, 2007 (on file with author).)
(Sayuri Umeda)

UNITED STATES – Execution by Electrocution Held Unconstitutional in Nebraska

On February 8, 2008 the Supreme Court of Nebraska held that execution by means of electrocution constituted "cruel and unusual punishment" under Article I, Section 9 of the Nebraska Constitution and thus that electrocution could no longer be used as a method of execution by the State of Nebraska. Nebraska was the only remaining state in the United States which mandated electrocution as its method of execution.

The court stated that "the relevant legal standards in deciding whether electrocution is cruel and unusual punishment are whether the State's chosen method of execution (1) presents a substantial risk that a prisoner will suffer unnecessary and wanton pain in an execution, (2) violates the evolving standards of decency that mark a mature society, and (3) minimizes physical violence and mutilation of the prisoner's body." The court evaluated the evidence presented in the trial court and determined that under these standards, execution by electrocution violated the prohibition against cruel and unusual punishment in the state's constitution.

The court did not overturn the defendant's death sentence, but instead stayed the execution until a constitutionally acceptable method of execution was available. (State of Nebraska v. Mata, No. S-05-1268 (Neb. Feb. 8, 2008) *available at* http://www.supremecourt.ne.gov/opinions/2008/february/feb8/s05-1268.pdf.)
(Gary Robinson)

Constitutional Law

THE GAMBIA – Constitutional Law

The Gambia's Supreme Court recently dismissed a case brought jointly by two opposition parties, the United Democratic Party (UDP) and the National Reconciliation Party (NRP), challenging the constitutionality of recent amendments made to The Gambia's Constitution and the Local Government Act. The Attorney General and the Independent Electoral Commission of The Gambia were named defendants.

The plaintiffs argued that the recent amendments – which empower the President of The Gambia to dissolve municipal councils and to discharge elected councilors from office, and elected councilors to select chairpersons of local government areas in lieu of their being chosen through an election process of universal adult suffrage [?], violate The Gambia's Constitution. They claimed that the Constitution of the Republic of The Gambia 1997 (Amendment) Act and Local Government (Amendment) Act 2007 (Act No. 13 of 2007) should be struck down, and an injunction against elections for municipal and local government authorities, scheduled for January 24 in accordance with the amended Local Government Act and the Constitution, be issued.

The Supreme Court ruled against the plaintiffs and dismissed the case on the basis that it was incompetent to adjudicate on the matter and that the case was instituted improperly. It awarded one of the defendants, the Independent Electoral Commission, D20,000 (about US$906) to defray litigation costs. (*Gambia News: Supreme Court to Rule on Constitutional Case,* GAMBIANOW.COM'S GAMBIA NEWS, Jan. 10, 2008, *available at* http://www.gambianow.com/news/News/895.html.)
(Hanibal Goitom)

IRAN – President Returns a Law Passed by the House as Unconstitutional

Dr. Haddad A'adel, Speaker of the Islamic Consultative Assembly (House of Representatives of the Islamic Republic of Iran), made the following statement at a recent meeting of the Assembly: "Dr. Ahmadi Nijad has, in recent months and weeks, expressed his dissatisfaction over certain House enactments, *inter alia,* a law passed regarding the councils and a law passed regarding the office hours of the banks. He believes these matters fall within the exclusive functions of the Executive Power." The Speaker then said that the President sent a letter in December 2007 in which he referred to the passage of the law on the Fourth Development Plan as well as the State Budget for the current year, allocating additional funds for gas distribution to rural areas, and expressed his government's opposition to the law as being unconstitutional and in contravention of article 75 of the Constitution.

Article 75 of the Constitution states:

> No bill, motion, or amendment may be presented to the House by a representative in the course of passage of a law which provides for a reduction of the public income or an increase of the public expenditures unless it clearly defines how to compensate for the income reduction or additional expenses.

The House Speaker then stated that he decided to refer the matter to the Supreme Leader, who issued the following response: "[a]ll the laws passed in accordance with the constitutional procedure must be enforced by all the State Powers." The Speaker of the Assembly then added that he ordered the above law to be published in the OFFICIAL GAZETTE. (*Ettela'at,* TEHRAN DAILY [in Farsi], No. 3227, Jan. 22, 2008, at 3.)
(G.H. Vafai)

Consumer Protection

AUSTRIA – Consumer Protection

On November 13, 2007, Austria enacted a major reform of its Act Against Unfair Competition (UWG-Novelle 2007, BUNDESGESETZBLATT no. 79/2007), which implements the European Union Directive 2005/29/EC of the European Parliament and of the Council Concerning Unfair Business-to-Consumer Commercial Practices (2005 OFFICIAL JOURNAL OF THE EUROPEAN UNION (L 149) [May 11, 2005]). Austria chose to place the content of the Directive in the Austrian Act Against Unfair Competition, rather than in the Austrian Consumer Protection Act, because the same unfair business practices that hurt consumers also hurt competitors. In keeping with the requirements of the Directive, however, the Austrian Act Against Unfair Competition now differentiates the remedies that are available to consumers and competitors (A. Wiebe, *Umsetzung der Geschäftspraktikenrichtlinie,* JURISTISCHE BLÄTTER 69 (2007)). The Act, as required by the Directive, contains a catalog of "per se" prohibitions and two general clauses, one prohibiting "aggressive business practices" and the other prohibiting "misleading business practices." It remains to be seen to what extent the new Austrian law will change the highly developed domestic case law on unfair competition (S. Fehringer, *Die Umsetzung der Richtlinie*, MEDIEN UND RECHT 115 (2007)).
(Edith Palmer)

SRI LANKA – Rice Designated Essential Commodity

On January 23, 2008, the Sri Lankan government designated rice an "essential commodity" in accordance with provisions of the Consumer Protection Act. The move, which will allow the authorities to take actions against any traders who hoard and hide rice, follows reports that rice stocks were being withheld from the market by businesses. The Consumer Affairs Minister, Bandula Gunawardena, was the official who took the action, which was effective immediately. The Ministry has announced that it will take "tough actions" against the traders involved. (*Sri Lankan Government Declares Rice as an "Essential Commodity" with Immediate Effect*, COLOMBO PAGE, Jan. 23, 2008.)
(Constance A. Johnson)

Courts

ARMENIA – Judicial Code Enters into Force

On January 1, 2008, the Judicial Code, which was passed by the Armenian legislature on April 28, 2007, entered into force. For the first time, a post-Soviet republic has adopted a legal act that includes all legislative norms regulating the principles and practices of the judiciary and that establishes new, revolutionary norms aimed at changing the nation's judicial practice and traditions completely. The major novelty is the introduction of the precedential value of the judicial decisions. According to the Code, all rulings of the Armenian Court of Cassation, the nation's highest court for the majority of the cases, must be taken into account by the Court of Cassation in resolving similar issues, as well as by lower-level courts. Publication of all rulings issued by the Court of Cassation made after January 1, 2008, is required. Special provisions have been made to organize the online publication of the judgments. In order to fight corruption within the judiciary, the Code provides for random assignment of cases to judges and prosecutors, instead of prescribed assignment as was the rule before. (S. Gurginian, *Armenian Judicial Code Is the Best in the World* [in Russian], NOVOE VREMIA, No. 48, Dec. 25, 2007 (on file with author).)
(Peter Roudik)

GREECE – Early Retirement and Removal of Judges from the Judiciary

Under the Greek Constitution, judges are appointed for life, with a mandatory retirement age of 65 for all judges up to the rank of Court of Appeals Judge or Court of Appeals Deputy Prosecutor. For those of a higher rank, retirement is mandatory at 67.

A new law on the early voluntary retirement of judges is currently being discussed in the Greek Parliament. The draft law also establishes a special procedure for removal from the judiciary of those judges deemed unfit. Two reasons prompted the introduction of this legislation: a) the long lapse of time – 25 years – since a similar law was enacted and implemented; and b) a relatively high occurrence of incidents of corruption among judges. The draft law allows 100 judges to leave the bench at this time. Of these, 70 may come from the civil and criminal courts, up to 25 from administrative courts, up to 3 from the Conseil d'Etat, and up to 2 from the Comptroller's Court.

Pursuant to the draft law's provisions, Greek judges who serve the civil, criminal, and administrative justice system have the option to retire early, provided that they have served for at least 13 years and are deemed either:

- incapable of fulfilling their duties; or
- unfit to continue serving on the bench due to health or other personal reasons

In addition, the draft provides some incentives for early retirement, such as promotion to a higher grade and the possibility of appointment to government administrative positions,

provided the applicant fulfills certain criteria. A judge who wishes to retire early must apply to the Minister of Justice within two months of the publication of this law. Within 20 days, following the lapse of the deadline, the Minister of Justice will forward the applications to the Supreme Judiciary Council. The Council decides on the applications.

The draft law includes a clear procedure for removing judges who have not performed satisfactorily for some period. It assigns the inspectors of civil, criminal, and administrative courts to review the personnel files of such judges and to collect information based on the files and on any charges or negative reports against the judges. The inspectors prepare a report, which must confirm that "for a long time a judge obviously has diminished productivity, in quantity and quality," or has exhibited inappropriate "professional and social behavior and demeanor." The Minister of Justice the Presiding Judge of the Supreme Court, and the Presiding Judge of the Conseil d'Etat have the right to set in motion the procedure for permanent removal of a judge "who is deemed incapable or unable to exercise his duties or because of professional incompetence."

The Conseil d' Etat, the highest administrative court, in a 2002 decision, defined the term "professional incompetence" as follows:

> the inability of a judge, through no intention of his own, to carry out his duties or adjudicate cases satisfactorily for a long period of time. The inability to adjudicate cases may arise from personal or family misfortunes or may be due to lack of or insufficient professional qualifications or laziness or carelessness in regard to the judicial profession, and such conduct has resulted in a large number of pending cases and consequently the judge is unable to deal with them.

(Draft Law on Departure of Judges from the Judiciary, (last visited Jan. 16, 2007).)
(Theresa Papademetriou)

SWAZILAND – Criminal Justice System

Seven months after his appointment as Chief Justice of Swaziland, Richard Banda acknowledged the existence of "too much corruption" in the country's judiciary. Speaking about the setbacks experienced in the year 2007, he disclosed that serious corruption allegations have been made against individuals working in all branches of the criminal justice system, including judges.

Banda also talked about the causes for the court congestion in the year 2007. He attributed the problem to "inadequate funding, [an] inadequate number of judges and magistrates posts, limited jurisdiction for magistrates both in civil and criminal cases, inadequate court houses in regional centers, … limited means of transport which has resulted in the infrequent visits to circuit courts, and … inadequate court staff." As a result, the Chief Justice stated, there was an "unacceptable number of people waiting on remands, for delivery of judgments, for sentencing, and for bail applications." According to the Chief Justice, for these reasons the

judiciary was branded inefficient. (*Swaziland Chief Justice Paints Dim Picture, Calls Criminal Justice 'Inefficient,'* AGENCE FRANCE PRESSE, Jan. 22, 2008, Open Source Center No. AFP20080122544007.)
(Hanibal Goitom)

Criminal Law

BRAZIL – Judges Will Have to Make Monthly Inspections in Penitentiaries

On December 18, 2007, the Brazilian National Council of Justice issued a resolution (*Resolução No. 47 de 18 de Dezembro de 1007*) determining that the judges responsible for the execution of criminal sentences (*juízes de execução criminal*) will have to make monthly personal inspections in the penitentiaries under their jurisdiction. According to the President of the Federal Supreme Court, Justice Ellen Gracie Northfleet, the resolution was designed to enforce Constitutional principles that were not being followed.

The resolution stipulates that the judges will need to take the necessary measures for the proper operation of the penitentiaries and, whenever necessary, undertake inquiries to determine who is responsible for any failure. After making an inspection, the judge must prepare a report and send it to the respective Justice Control Office (*Corregedoria de Justiça*). Article 4 of the resolution provides that the judges must constitute and install Community Councils, composed of community representatives, attorneys, and social workers, that will visit the penitentiaries, interview the inmates, and prepare reports to be sent to the judge in charge and to the Penitentiary Council. (*Juízes terão de inspecionar presidios mensalmente, diz o CNJ*, JURID, Jan. 14, 2008, *available at* *http://www.jurid.com.br/new/jengine.exe/cpag?p=jornaldetalhejornal&ID=43858#null*.)
(Eduardo Soares)

EGYPT – Police Officers Jailed for Parading Detainee

On January 5, 2008, an Egyptian court sentenced a police major, Yousri Ahmed Issa, to five years in prison and two police officers to one year each for parading a male detainee up and down a street after forcing him to wear women's underwear. A judicial official said Issa arrested the detainee for asking Issa to move his car in April 2007, while the detainee was working at a car park in Alexandria. The officer considered the request an insult and is said to have attempted to force the detainee to confess to a robbery. (*Egypt Police Officer Jailed 5 Years*, ASSOCIATED PRESS, Jan. 6, 2008.)
(Issam Saliba)

Criminal Procedure

GERMANY – Sentencing

On August 23, 2007, the Third Criminal Panel of the German Federal Court of Justice (*Bundesgerichtshof*) proposed a sentencing decision to the Court's Great Panel for Criminal Matters, a procedure that is employed when a decision would constitute a significant departure from existing case law (Docket No. 3 StR 50/07, *http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=47566001b6dd70533b8bba929dda2739&nr=41098&pos=0&anz=1* (last visited Jan. 22, 2008); Gerichtsverfassungsgesetz, repromulgated May 9, 1975, BGBl I at 1077, as amended, § 132). In this decision, the Third Criminal Panel proposes to change the manner in which sentences are reduced to compensate the convicted perpetrator for a proceeding that violated his rights due to its excessive length. According to the European Court of Human Rights (Eckle v. Germany (art. 50), judgment of June 21, 1983, 65 Eur. Ct. H. R. (Series A) at 10), such compensation is required by article 6 of the European Human Rights Convention (Nov. 4, 1950, 213 U.N.T.S. 221) and, according to the German Federal Constitutional Court, it is also required by German constitutional due process requirements (Federal Constitutional Court, Second Panel, Second Chamber, decision, Apr. 19, 1993, No. 2 BvR 1487/90).

Until now, the German courts have lived up to this compensation requirement by treating unnecessarily long proceedings as a mitigating circumstance that reduces the sentence (by analogy to § 49 of the Criminal Code, re-promulgated Nov. 13, 1998, BUNDESGESETZBLATT I at 3322, as amended). In the case at issue, the application of this principle would have reduced the sentence for aggravated arson below the statutory minimum penalty of five years in prison. For this and other reasons, the Third Criminal Panel proposed changing the sentencing practice to impose at first a sentence that truly reflects the wrongfulness of the perpetrator's conduct and then, when reducing the sentence to compensate for a lengthy trial, to declare that part of the sentence is deemed to have been served.

If approved by the Great Panel, this decision will change the German sentencing practice by making criminal penalties more stringent. Currently, reductions in the sentence that are granted as compensation for delayed trials often lower a sentence below the two-year threshold under which the execution of a sentence is routinely suspended (Criminal Code, § 56) and perpetrators of economic crimes often benefit from these circumstances, thereby avoiding serving a prison sentence. If the Great Panel accepts the decision of the Third Criminal Panel, perpetrators of economic crimes will have to serve their prison sentences more often (*BGH will härtere Strafen für Wirtschaftsdelikte*, FRANKFURTER ALLGEMEINE ZEITUNG, Nov. 16, 2007, at 11).
(Edith Palmer)

INDIA – Anticipatory Bail and Proposed Change in Criminal Procedure Law

In criminal cases in India, an accused may petition a court to grant bail in anticipation of an arrest by the police on the basis of registration of a complaint against him. However, the law requires the petitioner to be present in court at the hearing of the petition so that the police may arrest him if his plea is denied.

The Law Commission of India has proposed a change to the above law, by deletion of a provision, inserted last year, that empowered the court, upon a prosecutor's application, to order the accused-applicant to be present at the final hearing (Code of Criminal Procedure [CrPC], 1973, §438, sub-sec. 1 B). In the Commission's view, the provision enables the police to arrest the accused in the court without a warrant on the basis of an accusation that is yet to be established.

Relying on a decision of the Supreme Court of India for the proposed change, the Commission, in an 89-page report, stated that the Supreme Court had observed that the mere rejection of anticipatory bail "is no ground for directing the immediate arrest of accused." The report further states that even after the rejection of a bail petition, it is possible that the accused might not be sent for trial if the police, after investigation, find that there is no material evidence against him. "Power of arrest, therefore, has to be exercised with due caution and circumspection and not in a mechanical manner," it added. (*Law Commission Suggests Change in Criminal Law Provision*, THE HINDU, Dec. 26, 2007, *available at* http://www.hindu.com/thehindu/holnus/002200712260322.htm.)
(Krishan Nehra)

Defense

ECUADOR—Coalition to Propose a Ban on the Presence of Foreign Forces in Ecuador

The "No Bases" Coalition of Ecuador ("La Coalición No Bases Ecuador") will propose before the Constituent Assembly that the draft *Carta Magna* (constitution) forbid the establishment of foreign military bases on Ecuadorian territory. The conference was held by the "No Bases: International Network for the Abolition of Foreign Military Bases".

The coalition requests that the draft Constitution include a statement detailing that "Ecuador is a territory of peace and in exercise of its sovereignty it shall not harbor foreign military bases, nor foreign troops." In addition, it will request that the government of Ecuador abstain from entering into any type of agreement that may imply other forms of warlike foreign presences and that it will not get involved in the armed conflicts of other countries.

The coalition reiterates the necessity for United States troops (deployed in 1999 to the Manta Military Base [also known as the Manta Air Base]) to abandon the base by November 2009, when the agreement with the United States has concluded. "The aim of the proposal is to avoid the resurgence of agreements like that of the 1999 agreement, where the military facilities of Manta were handed over to North American forces." The coalition's proposal states that "this objective should be fulfilled to preserve the integrity of the territory and as a precautionary measure for the security of girls and women that saw themselves and may see themselves affected by acts of sexual violence brought by the foreign forces."

The presentation of this proposal fulfills one of the resolutions approved by the World Conference for the Abolition of Foreign Military Bases, which took place in 2007 in Ecuador. (*Proponen prohibir por ley presencia militar foránea en Ecuador*, GRANMA INTERNACIONAL DIGITAL, EDICIÓN EN ESPAÑOL, Jan. 30 2008).
(Francisco Macías)

Discrimination

INDIA – Prohibition of Women as Bartenders Voided

On December 6, 2007, the Supreme Court of India annulled on grounds of discrimination section 30 of the Punjab Excise Act, 1914, as applicable to the National Capital Territory of Delhi, which prohibited hiring men below 25 years of age and women as bartenders in restaurants. As a result of its deliberations on the constitutional validity of section 30, the Court also removed the ban on employment of men below the age of 25 years.

The Delhi government cited examples of the dangerous consequences of the sale and consumption of liquor by young men below 25 and of the vulnerability of women working in bars. Rejecting the contention, the Court observed: "[w]hen the restrictions were in force, they could not prevent such occurrences. If the restriction goes, some such incidents may again happen. But [based] only [on] a pre-supposition that there is a possibility of some incident happening, we cannot declare a law *intra vires* which is ex-facie *ultra vires.*"

The Court further observed that legislation should be assessed not only on its proposed aims but also on its implications and effects. "The impugned legislation," the ruling stated, "suffers from incurable fixations of stereotype morality and conception of sexual role. The perspective thus arrived at is outmoded in content and stifling in means." (*Court Permits Women Bartenders in Delhi,* THE HINDU, Dec. 7, 2007, http://www.hindu.com/2007/12/07/stories/2007120754081400.htm.)
(Krishan Nehra)

Domestic Violence

TAIWAN – Domestic Violence Law Amended

On January 9, 2008, the Domestic Violence Prevention Law was amended. Article 10, item 3, now specifies that the docket fee is waived for the filing of a request for, revocation, alteration, extension, and appeal of a restraining order. (Amendment to Domestic Violence Prevention Law, 6779 THE GAZETTE OF THE OFFICE OF THE PRESIDENT 21 (Jan. 9, 2008), *available at* http://content.glin.gov/summary/201627.) The amendment further states that this provision is also to be applied in accordance with article 77-23, item 4, of the Code of Civil Procedure. The latter stipulates that there is to be no additional tax levied on fees for service effected by mail or telecommunication or on fees for meals, accommodation, and transportation incurred by the judge, court clerk, executive officer, and interpreter for conducting acts of litigation outside the courtroom. (Code of Civil Procedure, as last amended on Mar. 21, 2007, LAWBANK [in Chinese] (unofficial source).)

Article 10, item 3, of the Domestic Violence Prevention Law had formerly simply stated that the docket fee is waived for the petitions referred to in the preceding two items [i.e., requests by the victim (or the victim's representative) for a general or temporary restraining order and requests by the relevant authorities for a restraining order] (*Jiating baoli fangjhih fa* (amended as of Mar. 28, 2007), Domestic Violence and Sexual Assault Prevention Committee, Ministry of Interior, Web site; for an English translation, as well as related laws and regulations, *see* the same Web site at http://dspc.moi.gov.tw/lp.asp?ctNode=605&CtUnit=115&BaseDSD=7&mp=5 (last visited Feb. 1, 2008).) Taiwan established an electronic database on domestic violence pursuant to regulations issued on September 27, 2007 (Regulations on Establishment, Management and Use of Domestic Violence Electronic Database, *id*, *available at* http://dspc.moi.gov.tw/ct. asp?xItem=2229&ctNode=605&mp=5 (last visited Feb. 1, 2008)).
(Wendy Zeldin)

Education

ISRAEL – Prohibiting Commercial Activities in Schools

On December 25, 2007, the Knesset (Israel's Parliament) passed the Prohibition on Commercial Activities in Schools Law, 5768-2007. The Law prohibits any principal of an educational institution from allowing certain activities by business owners or advertisers on the institution's premises. Such activities include entry for the purpose of advertising and sale during times when educational activity is being conducted; display and distribution of commercials; collection of students' signatures; and receipt of data identifying students and their family members. The Law authorizes a principal or other party to receive a special permit from the general manager of the Ministry of Education to allow business-related acts or advertising for a limited time period for reasons that must be registered. The general manager will provide a yearly report to the Knesset Committee for Education, Culture, and Sport on the special permits granted during the past year. (Prohibition on Commercial Activities in Schools Law and Bill, 5768-2007, the Knesset Web site (last visited Jan. 18, 2008).)
(Ruth Levush)

KENYA – Raising of the Bar

On January 16, 2008, the Nairobi newspaper BUSINESS DAILY reported that Kenya's High Court had issued a judgment refusing 15 law students with degrees from foreign universities the opportunity to retake exams at the Kenya School of Law – the only recognized Kenyan institution to offer the final exams that must be passed to practice law in the country – after they had failed the exam upon two attempts. The ruling, designed to prevent "academic underachievers from graduating from law school and subsequently being admitted to the Bar," means that law-degree holders will not automatically be assured of admission as was formerly the case. (Albert Muriuki, *High Court Locks Out Law Students with Weak Marks*, BUSINESS DAILY (Nairobi), Jan. 16, 2008, *available at* http://www.bdafrica.com/index.php?option=com_content&task=view&id=5348&Itemid=5822.) It comes at a time when the Council of Legal Education (CLE), the Law Society of Kenya, and the Ministry of Justice and Constitutional Affairs have joined efforts to raise the country's academic and professional standards in the field of law.

A suit had been brought against the CLE by students in February 2004. That January the CLE had informed the students that they were barred from taking any further examinations under the provisions of the Advocates (Admissions) Regulations, 1997. At the time, law graduates had to take exams in eight subjects; the 15 students had passed all but one or two subjects each and asked the High Court to quash the CLE decision and order the CLE to allow them to sit for additional exams. The CLE decision, they contended, was "discriminatory, unfair and unjust" and "harsh, unconscionable and inherently passive and against the principles of natural justice." The CLE, citing the Advocates Act, argued that the petitioners "have not fulfilled the requirements of the Advocates Act, and therefore are not qualified to be Advocates of the High Court of Kenya" and that the Act allows the CLE to require the passing of any examinations it may prescribe. Under the CLE Act, the CLE has the power, with ministerial approval, to issue

regulations to give effect to the Advocates Act provisions, and so it duly promulgated the Advocates (Admission) Regulations 1997 through which, the CLE argued before the Court, it exercises general supervision and control over Kenyan legal education. The CLE further argued that the students "had been given the opportunity to sit [the CLE exams] and failed to pass in all the examinable papers at the fourth attempt [the maximum allowable under the Regulations], they are prohibited to any further attempts and cannot be admitted as Advocates of the High Court of Kenya."

In the opinion of the High Court, the CLE, not the courts, is "the best judge of merit pertaining to academic standards" under the mandate and policy prescribed by the CLE Act and the Regulations. Furthermore, Justice [Joseph] Nyama stated, "Parliament clearly vests the power of formulating the policy of training and examining of Advocates on the Council of Legal Education and it would be wrong in the view of this Court to intervene with the merits of the decision by the Council of Legal Education." (Muriuki, *id.*)
(Wendy Zeldin)

Elections and Politics

BANGLADESH – Ordinance to Create an Independent Election Commission

The Advisory Council of Bangladesh Government has approved the Election Commission Secretariat Ordinance 2008. The ordinance is designed to ensure the independence of the Election Commission Secretariat from the control of the Prime Minister's Office. It provides that the Election Commission Secretariat will have its own budget and will be responsible for appointing its officials and staff without having to seek government approval. (*Govt. Frees EC Secretariat,* INDEPENDENT BANGLADESH, Jan. 31, 2008, *http://www.independent-bangladesh.com/200801311221/country/govt-frees-ec-secretariat.html*.)
(Shameema Rahman)

FRENCH POLYNESIA – Reform to End Political Instability

Since the election of its local assembly in May 2004, French Polynesia has been in a state of chronic political instability. Five presidents have come and gone within three years and four motions of no confidence have been adopted. To end this state, the French Parliament adopted Organic Law 2007-1719 and Law 2007-1720 of December 7, 2007, aimed at strengthening the stability of the institutions and the transparency of political life in French Polynesia.

Organic Law 2007-1719 amends the method of election of the French Polynesia Assembly and reduces its term. As a result, new elections are supposed to take place in either late January or early February 2008. The Law also clarifies the existing provisions regarding the election of the President of French Polynesia. It sets a ceiling of 15 on the permissible number of ministers in the French Polynesian government.

The Law also establishes new conditions for censuring the territorial government. Any motion of no confidence must have the signed backing of at least a quarter of the members of the French Polynesia Assembly, and an absolute majority vote is needed to adopt the motion.

Title II of the Law contains numerous provisions concerning the transparency of political life, while Title III deals with jurisdictional, financial, and budgetary controls. (Loi organique No. 2007-1719 et Loi 2007-1720 du 7 décembre 2007 tendant à renforcer la stabilité des institutions et la transparence de la vie politique en Polynésie française, JOURNAL OFFICIEL [France's Official Gazette], Dec. 8, 2007, at 19890 & 19902.)
(Nicole Atwill)

MONTENEGRO – Presidential Elections Act Approved

On December 27, 2007, the Parliament of the Republic of Montenegro approved a new law on presidential elections. The law provides for direct popular elections of presidents for five-year terms. The law gives the right to nominate the candidates to political parties or groups of supporters, if these groups can collect the signatures of at least 1.5 percent of all registered

voters; previously the right had depended on the size of an organization's membership. The next Montenegrin presidential elections, which are scheduled for April 2008, will be conducted under the new law. The requirement of 50 percent voter turnout is now also abolished. (*Montenegro Approves Presidential Elections Act*, SOUTHEAST EUROPEAN TIME, Jan. 9, 2008, *available at* http://www.legislationline.org.)
(Peter Roudik)

Employment

GERMANY – Unemployment Compensation

On December 22, 2007, Germany's legislature enacted the Amending Law to Title 3 of the Social Code (Sechstes Gesetz zur Änderung des Dritten Buches Sozialgesetzbuch, BUNDESGESETZBLATT I at 3245), which reduces unemployment compensation from 4.2 percent to 3.3 percent of earnings. Half of these contributions are paid by the employer and the other half by the employee (SGB 3, Mar. 24, 1997, BUNDESGESETZBLATT I at 598, as amended, § 341), and they are levied on all wage income up to a limit that for most incomes in the western part of Germany in 2008 is €63.600 (US$93,244) (Verordnung, Dec. 5, 2007, BUNDESGESETZBLATT I at 2793, § 3). In addition, the Amending Law increases the length of time during which workers are entitled to unemployment compensation, by favoring older workers and longer periods of employment. Since the reform, workers over the age of 50 who worked for at least 30 months during the last five years are entitled to 15 months of unemployment compensation (formerly 12 months) and those over the age of 55 who worked at least 36 months during the last five years, to 18 months' compensation, whereas workers over the age of 58 who worked for least 48 months during the last five years are entitled to 24 months of unemployment compensation (formerly 18) (SGB 3, Mar. 24, 1997, BUNDESGESETZBLATT I at 598, as amended, § 434 r).
(Edith Palmer)

Environment

CANADA – Government Introduces Bill to Tackle Aquatic Invasive Species

On November 29, 2007, the government introduced a bill to create a new Fisheries Act for Canada. The major purpose of this bill is to provide for the development of a sustainable fisheries industry for the country. In recent years, stocks of once abundant species, such as the cod off Newfoundland, have been so depleted that a lengthy moratorium had to be put into place. Fishing in the Great Lakes has also been in decline. One of the reasons for this is that "more than 140 exotic aquatic organisms of all types—including plants, fish, algae, and mollusks—have become established in the Great Lakes" and "more than one-third of these organisms have been introduced in the past thirty years." (*Invasive Species in the Great Lakes Region*, Great Lakes Information Network, *http://www.great-lakes.net/envt/flora-fauna/invasive/invasive.html#overview* (last visited Jan. 30, 2008).) The Great Lakes Information Network (GLIN) notes that this increase coincided with the opening of the St. Lawrence Seaway connecting all five of the Great Lakes with the Atlantic Ocean. It is believed that many non-indigenous species entered the Great Lakes through the release of ballast from oceangoing ships. GLIN lists rusty crayfish, spiny water fleas, common carp, ruffles, sea lampreys, zebra mussels, pondweed, Eurasian watermilfoil, flowering rush, and purple loosestripe as some of the most injurious additions to the Great Lakes. Many of these prey upon or compete with indigenous species or their natural food sources. Zebra mussels pose a particular problem because they clog pipelines, turbines, and other machinery.

As part of its new Fisheries Act, the government has included provisions on "aquatic invasive species." If adopted, the legislation would authorize the Minister of Fisheries and Oceans to enact regulations prohibiting the export, import, transport, or release of such species. The Minister would also be authorized to take steps to destroy aquatic invasive species. Persons violating this law would be liable to a fine of up to Can$200,000 (US$201,100) for a first offense, and both a fine of up to Can$200,000 and imprisonment for up to six months for a subsequent offense. (Fisheries Act, 2007, Bill C-32, s. 72, 39th Parl. 2d Sess.)
(Stephen F. Clarke)

FRANCE – Financial Incentive to Purchase Clean Cars

In October 2007, a highly publicized environmental forum took place in Paris, the "Grenelle de l'environnement." The forum resulted in many recommendations to combat global warming and protect the environment. President Nicolas Sarkozy pledged to implement the recommendations and promised "an ecological revolution."

The main measures include: suspending commercial farming of genetically-modified (GM) crops pending the conclusions of an independent committee; passing a law to further regulate GM products; taking into account the "carbon cost" and biodiversity cost in all major construction projects; revising the Public Procurement Code to make environment clauses in public works projects compulsory rather than optional; adopting greater energy efficiency

standards for new buildings and for renovation of existing buildings; extending the national rail network; cutting the use of pesticides by half; refurbishing the inland waterways and sea transport systems; and encouraging the purchase of clean cars.

This last recommendation was implemented by a decree published on December 30, 2007. Buyers of clean cars will receive financial help if they meet certain conditions set forth in the decree. The amount of financial help depends upon the rate of CO_2 emission per kilometer, the type of vehicle, and the year of purchase. The highest amount is for CO_2 emissions of 60 grams or less. Buyers of vehicles with CO_2 emissions of 160 grams per kilometer will have to pay a higher tax. (Presentation of the Grenelle Environment Forum, concluding speech by M. Nicolas Sarkozy, President of the Republic, French Prime Minister portal, *http://www.premier-ministre.gouv.fr/en/information/press_871/presentation_of_the_grenelle_57902.html* (last visited Feb. 14, 2008, and Décret 2007-1873 du 26 décembre 2007 instituant une aide à l'acquisition des véhicules propres, JOURNAL OFFICIEL [France's Official Gazette], Dec. 30, 2007, at 21846.)
(Nicole Atwill)

UNITED STATES – EPA Regulations on Power Plant Mercury Emissions Stuck Down

On February 8, the U.S. Court of Appeals for the District of Columbia Circuit invalidated two rules promulgated by the Environmental Protection Agency ("EPA") concerning electric utility steam generating units ("EGUs"). The first rule removed coal- and oil-fired EGUs from the list of sources whose emissions are regulated under section 112 of the Clean Air Act ("CAA"). The second rule set mercury emission standards for coal-fired EGUs pursuant to Section 111 of the CAA, establishing a more lenient standard than would have been required under Section 112.

In December 2000, the EPA listed coal- and oil-fired power plants under section 112 of the CAA, stating it was "appropriate and necessary" to regulate mercury emissions of EGUs under this section. Once listed, a source of pollutants can be removed from the list only after the EPA has determined that "emissions from no source in the category or subcategory concerned . . . exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source." In 2005 the EPA removed EGUs from the section 112 list, and promulgated regulations concerning EGU mercury emissions under the more lenient section 111.

The court found that the EPA had not made the specific findings required by section 112 in order to remove a source of hazardous air pollutants from the list; as a result, the delisting was invalid. It ruled that section 112 was unambiguous, and the EPA's interpretation of the statute violated the section's plain language. The court held that the regulations promulgated under section 111 were also invalid, since EGUs were still governed by the provisions of section 112. (State of New Jersey v. Environmental Protection Agency, No. 05-1097 (D.C. Cir. Feb. 8, 2008) *available at http://pacer.cadc.uscourts.gov/docs/common/opinions/200802/05-1097a.pdf*.)
(Gary Robinson)

Family

SWITZERLAND – Child Allowance

On January 22, 2008, Switzerland promulgated the Federal Act on Family Allowances (AMTLICHE SAMMLUNG 131 (2008)). This law increases the paid allowances for children to a minimum of 200 Swiss Francs (about US$181) in all the cantons, and it introduces an educational allowance of at least 250 Swiss Francs (about US$226) per month. The child allowance is payable from birth until age 16 and the educational allowance from age 16 until 25, for as long as the young person is enrolled in an educational or training program. The law will become effective on January 1, 2009, to give the cantons time to adjust their laws to the new requirements.

The family allowances are aimed at helping families defray the cost of raising children. The unemployed who are not personally wealthy, farmers, and the self-employed are entitled to the benefits. For the employed, the costs are born by the employers; for the unemployed, by the cantons; and for farmers, federal subsidies are granted. The benefits are paid through funds that are administered at the cantonal level. The cantons also have the power to impose taxes to finance the system, and they may increase the benefits beyond the statutory minimum.
(Edith Palmer)

Foreign Investment

GREECE – Bill to Protect Companies of National Strategic Importance

In January 2008, following in the footsteps of other European Union Member States, such as France, Germany, Italy, and the Netherlands, Greece adopted legislation designed primarily to strengthen strategic companies of national importance. The new law requires private investors, either individuals or corporations, who intend to acquire more than a 20 percent share of corporations (sociétés anonymes) deemed to be of "national strategic significance" to obtain prior authorization from an inter-ministerial privatization committee. Companies that that own or exploit nationwide infrastructure networks in which the Greek government is a shareholder, are considered to be strategic companies.

The authorization for a proposed acquisition in such a company is granted upon verifying that private investors meet certain criteria, including transparency in their dealings; experience in the field; solvency; and clear specification of their investment strategies and goals, the structure of their share capital, and especially their shareholders outside the European Union.

The Law also requires companies of strategic significance, prior to entering into mergers, takeovers, or other deals that may endanger the continuation of services in fields of national importance, to obtain the approval of the Minister of Finance to ensure the protection of domestic interests. The Minister has to issue a decision within 30 days upon a company's request for authorization.

Widespread allegations cited in news reports indicate that the Greek government adopted this protectionist measure to shield the Hellenic Telecommunications Organization (OTE) from a hostile takeover by a Greek private entity, the Marfin Investment Group. The European Commission, the chief European Union enforcer of antitrust rules, and the European Court of Justice have viewed such protectionist measures unfavorably as infringing upon EU competition rules. (Amendment to the Law on Establishing a National Cohesion Fund and Other Provisions, *http://www.parliament.gr* (last visited Jan. 11, 2007).
(Theresa Papademetriou)

Freedom of the Press

CHAD – Radio Station Closed

On January 16, 2008, police in Chad's capital city, M'Djamena, raided a privately-owned radio station and closed it. Radio FM Liberté's manager, Djekourninga Kaoutar Lazar, was arrested the same day. When the 15 policemen entered the radio station's studios, they asked to see the manager, who was not present, and then asked to inspect all the news programs broadcast that week. The station refused, stating that the inspection of programming was a task assigned to the High Council for Communication, not the police. At that time, the police shut down the station, arrested the editorial coordinator Madji Madji Odjitan, and took him to the police station, where he remained for several hours until Lazar came in himself. Lazar is being held by the criminal investigation department, though no official explanation for his arrest was released at the time. Radio Liberté had carried commentators' criticisms of Chadian government supporters' demonstrations against what they feel is aggression from Sudan in the eastern part of Chad, bordering Sudan.

Calling for a an explanation of the raid on the station, the group Reporters Without Borders said,

> A raid on a respected radio station, its arbitrary closure and the arrest of its manager are methods one uses with gangsters. … It is not a crime to express an opinion that does not concur with government policy. On the contrary, it is the press and public's inalienable right. The government should act with restraint, even in a period of crisis, and should provide the public with an explanation for this show of force.

(Press Release, Reporters Without Borders, Chad: Police Close Down N'Djamena Radio Station, Arrest Manager (Jan. 17, 2008), *available at* http://allafrica.com/stories/200801 170716.html.) (Constance A. Johnson)

UNITED KINGDOM – Media Gag Rejected

The British Ministry of Defence lost an attempt to prevent a newspaper, THE GUARDIAN, from reporting allegations of serious abuse of Iraqis by soldiers from the United Kingdom; in part the issue was the naming of the individual soldiers in the report. Lord Justice Moses of the high court ruled that the attempt to gag the media on the subject had no legal basis and went on to argue that the government's view amounted to arguing for "one rule for the Ministry of Defence and another for the ordinary citizen." He argued that no one has the right to anonymity when the subject of a police investigation. He added, "There is nothing to suggest that publication of the names would endanger the life of those being investigated."

The gag order sought by the Ministry was broad in nature and would have prevented the media from reporting any details of the alleged torture of 31 detained Iraqi civilians in May

2004; more than 20 of them reportedly died. Accusations in the case include torture, abuse, mutilation, and execution. Attorneys representing the families of the victims were given legal aid to pursue the cases in England; they want to see an independent investigation of the incident. A court hearing into this demand for a separate inquiry will be held in April 2008. (*UK Court Rejects Bid To Gag Media From Reporting Alleged UK Army Abuse of Iraqis,* THE GUARDIAN, Feb. 1, 2008, Open Source Center No. EUP 20080201031002.)
(Constance A. Johnson)

Gender Equality

UNITED ARAB EMIRATES – Federal Judgeship for Women

On January 6, 2008, the Minister of Justice of the United Arab Emirates (UAE), Mohammed Bin Nakhira al-Daheri, said that the Ministry of Justice is amending the law to allow women to serve in the federal judiciary. He added that women are being trained at the Judicial Institute and will be prepared to work as judges and prosecutors. The Minister explained that the move is compatible with the teaching of Islam, as all laws in the UAE must be. (*UAE Women Can Now Become Federal Judges*, GULF NEWS, Jan. 6, 2008, *available at* http://archive.gulfnews.com/articles/08/01/05/10179848.html.)
(Issam Saliba)

Government Ethics

GABON – Twenty NGOs Banned

The Government of Gabon has accused about 20 non-governmental organizations of interfering in the political life of the country and has placed a temporary ban on their activities. The ban will be lifted for individual agencies, following briefings by the NGOs to the Ministry of the Interior about their activities, according to Minister of the Interior Andre Mba Obame. He went on to suggest that NGOs that wish to participate in politics should do so within the framework of political parties. A number of the groups had accused Gabon's government of corruption, including the diverting of large amounts of state funds for use in political campaigns, and had announced they would file international legal action against the regime for corruption. Gabon's President, Omar Bongo, is Africa's longest serving ruler, having held office for 40 years; he was re-elected for a seven-year term with 70 percent of the vote in 2005. (*Gabon Scolds Political NGOs*, AFROL NEWS, Jan. 10, 2007, *available at* http://www.afrol.com/articles/27676.)
(Constance A. Johnson)

NIGERIA – New Anti-Corruption Body Planned

President Umaru Yar'Adua stated on January 15, 2008, that Nigeria would establish a new government unit aimed at monitoring suspicious financial transactions, modeled on similar bodies in the United States and China, in order to strengthen anti- corruption efforts in the public sector. Since Yar'Adua took office in May 2007, seven state governors of the former administration have been charged with embezzlement and money laundering. However, two of them reportedly helped finance Yar'Adua's election victory, characterized by international monitors as "not credible because of widespread fraud," and in December 2007, the head of the Economic and Financial Crimes Commission, who led the anti-graft campaign under the former administration, was removed from office. Thus far, moreover, "there has been no significant progress in the cases against the former governors." (Felix Onuah, *Nigeria to Set Up New Body to Monitor Corruption*, REUTERS, Jan. 16, 2007, *available at* http://www.alertnet.org/thenews/newsdesk/L15648917.htm.) Five of them were charged in June 2007 and granted bail; the other two, James Ibori and Ayodele Fayose, were charged in December and are being held in prison. The Ibori case in particular is viewed as a major test of the Yar'Adua government's commitment to fight corruption. Ibori allegedly stole over US$85 million and attempted to bribe police with $15 million to stop their investigation of him. (*Id.*)
(Wendy Zeldin)

Government Organization

IRAQ – Collective Executive Council

On January 18, 2008, Iraq announced the establishment of "the Executive Council for the Administration of the State" or, as described by Iraqi President Jalal al-Talibani, "the collective leadership." In an address to a delegation from Anbar Province, Talibani said that the members of the Council agreed on the formation of the Executive Council for the Administration of the State in order to resolve problems through collective leadership. The chief of staff of the presidency office, Nair al-Ani, explained that the new Council is a four-member committee composed of the President, his two deputies, and the Prime Minister. (*Iraq: Executive Council to Administer the State*, AL SHARQ AL-AWSAT, Jan. 18, 2008.)
(Issam Saliba)

NETHERLANDS – Agreement Reached on Government Finances of Future Countries of Curacao and Sint Maarten

It was reported on January 23, 2008, that the Netherlands, the Netherlands Antilles, Curacao, and Sint Maarten had reached agreement on supervision of the government finances of the future countries of Curacao and Sint Maarten, both of which will gain independent country status within the Kingdom of the Netherlands after the Antillean state association is eliminated in mid-December 2008. Nevertheless, the feasibility of a December 15 initiation of the new political structure is still being discussed, with the Netherlands of the view that "too much work must still be done" and the islands urging that the negotiating process be accelerated. (*Agreement Reached on Netherlands Supervision of Netherlands Antilles Finances*, NRC HANDELSBLAD, Jan. 23, 2008, at 2, Open Source Center No. EUP20080124043002.)

The General Kingdom Measure for Temporary Financial Oversight stipulates that the recently created "financial oversight board," comprising representatives of the Dutch and Antillean governments and the islands, is charged with the supervision of the new countries' budget and borrowing authority. The budget will have to be balanced and money can only be borrowed by the countries for investments, not, as previously, to cover operational costs. The new board will not oversee sound management. The new countries have until August 2008 "to produce their own rules on political appointments to public enterprises and on their dividend payments. If this deadline is not met, the Netherlands can exert influence here." (*Id.*)

The Netherlands is restructuring the Antillean state debt of €2.2 billion (about US$3.2 billion) on two conditions. First, there must be financial oversight. The restructuring is slated to begin in July, after the measure has been approved by the Council of State and the Dutch Council of Ministers, as well as by the Dutch and Antillean Parliaments and the Curacao and Sint Maarten island councils. Second, it must be possible for the Dutch Minister of Justice to intervene in the two countries' law enforcement, a subject that was scheduled for political consultation in February. (*Id.*)
(Wendy Zeldin)

UKRAINE – New Law on Government

On January 10, 2007, the Verkhovna Rada (Ukrainian parliament) adopted a new version of the Law on Government, agreed upon by all the political parties that are members of the governing coalition. The new Law is a compromise between the legislature and the President of Ukraine, and expands the statutory power of the President to influence the formation of the government, bringing this process into conformity with the Ukrainian Constitution. The Law preserves the right of the President to nominate the candidate for the office of Prime Minister, leaving the final power of approval to the Parliament. The appointment and dismissal of the leading Cabinet members, such as the Minister of Foreign Affairs and the Minister of Defense, can be done on the president's initiative alone, according to the new Law. (*Coalition Agreed on the New Version of the Government Act* [in Russian], 5TH CHANNEL, Jan. 10, 2008.)
(Peter Roudik)

UKRAINE – New Terms of Office for Governors

On January 10, 2007, the Verkhovna Rada (parliament) of Ukraine amended the Law on Provincial and Local State Administrations, following the recommendation of the President of Ukraine to establish a five-year term of service for the heads of provincial and local executive authorities, whose position will not be political in the future and will not depend on the change of the President or government. According to the Law, all candidates for appointments will be selected from the personnel reserve established by the Governmental Civil Service Department. The reserve will include Ukrainian citizens fluent in the Ukrainian language and having no less than three-years of high-level managerial experience. Appointments will be made by the President upon governmental nomination. The Law establishes the rights and obligations of the administration heads, defining their competence to appoint heads of local agencies, initiate amendments to the national budget and to administrative acts, and disclose all their actions on the administrations' websites. The Law also stipulates relations between the administration heads and heads of business enterprises in the territories they govern. (*Yuschenko Gives 5 Years to the Heads of State Administrations*, GLAVRED NEWS AND ANALYTICS, Jan. 10, 2008.)
(Peter Roudik)

Health

KOREA, SOUTH – Trans Fat Labeling

The amendment of the country's Food Sanitation Law made it possible for the Korean Food and Drug Administration (KFDA) to implement trans fat labeling regulations in September 2006. The KFDA announced revised food labeling standards that make it compulsory to show the amount of trans fats in processed food such as bread, candy, chocolate, noodles, and beverages. The new standards took effect on December 1, 2007. If the food contains less than 0.2 grams of trans fat per serving, the label can read "trans fat: 0 grams." If the food contains 0.2 to 0.5 grams of trans fat per serving, the label can read "trans fat: less than 0.5 grams" or actual gram per serving. Under the U.S. Food and Drug regulation, food products that contain less than 0.5 grams of trans fats can claim to contain 0 percent. The pitfall is that Korean food companies may be using more saturated fat by eliminating trans fat. (Dong Hoon Shin, *Kankoku shokuhin gyokai o nayamaseru toransu shibo [Trans fat annoying Korean foodstuff makers*], CHOSUN ILBO, Dec. 5, 2007; *No Trans Fat Does Not Mean No Worry*, THE CHOSUN ILBO, Jan. 23, 2007, *available at* http://english.chosun.com/w21data/html/news/200701/200701230004.html.)
(Sayuri Umeda)

RUSSIAN FEDERATION – Total Ban on Tobacco Advertisement

On January 10, 2007, the Government of the Russian Federation adopted the Resolution on Joining the Framework Convention of the World Health Organization on the Fight Against Tobacco and issued a resolution recommending that the State Duma (legislature) pass all necessary implementing laws. The Convention requires the introduction of a total ban on advertising that stimulates sales or displays sponsorship of tobacco products. This requirement must be met within a five-year period after ratification of the Convention. A National Strategy on the Fight Against Tobacco, the elaboration of which is required of Member States by the Convention, has already been prepared by the Russian authorities. The establishment of a national office to coordinate anti-tobacco efforts is foreseen in the strategy document. These measures are accompanied by a heavy tax on and mandatory price increases for tobacco products and a ban on smoking at work, in public places, and on public transportation. Newly accepted requirements state that warnings about the dangers of smoking are to cover no less than 30 percent of the tobacco package surface. Special measures aimed at strengthening control of contraband tobacco products will be introduced. The Convention will enter into force 90 days after submission of the ratification instruments. (*Fight against Tobacco Will Have a Positive Impact* [in Russian], NEWSRU.COM, Jan. 11, 2008.)
(Peter Roudik)

Human Rights

CAMBODIA – Khmer Rouge Victims' Complaints Reviewed

The tribunal established to try Khmer Rouge leaders for their crimes in Cambodia has received more than 500 complaints by victims. The Extraordinary Chambers in the Courts of Cambodia (ECCC), established with the backing of the United Nations, is now in the process of reviewing and responding to them. Although the ECCC began to function in July 2006, most of the cases have come to the tribunal's attention since October 2007, through the efforts of organizations in the country that have been working to publicize the fact that people have the right to take part in the proceedings against the leaders who perpetrated mass killings and other serious violations of domestic and international law between April 1975 and January 1979.

The complaints will be reviewed by Co-Prosecutors, who will determine which should be further investigated. The ECCC will contact those who submitted complaints if there is key information missing, in order to try to complete the files; so far about a fifth of the complaints are lacking some key details.

Gabriela Gonzalez-Rivas, the Deputy Head of the Victims Unit, described the way the Cambodian tribunal is working as unique, saying "The ECCC is the first court in the history of international criminal law to offer victims full participation in the proceedings, and everyone at the Court is working hard to ensure that this participation is meaningful for them." (UN-Backed Tribunal Processing Over 500 Khmer Rouge Victims' Complaints, UNNEWS, Feb. 7, 2008, UNnews@un.org.)
(Constance A. Johnson)

CHINA – Legal Scholars Call for Ratification of ICCPR

On January 1, 2008, several legal scholars in China urged the State Council (Cabinet) to speed the process for the country's ratification of the International Covenant on Civil and Political Rights (ICCPR) before the upcoming summer Olympic Games in Beijing, by submitting the document to the National People's Congress (NPC) before the NPC's annual meeting in March. China signed the ICCPR on October 5, 1998; as of January 2008, it has 160 parties (*International Covenant on Civil and Political Rights New York, 16 December 1966*, Office of the United Nations High Commissioner for Human Rights (OHCHR) Web site, *http://www2.ohchr.org/english/bodies/ratification/4.htm* (last visited Jan. 28, 2008)). China has already ratified the International Covenant of Economic, Social and Cultural Rights (on March 27, 2001) (ICESCR), which, along with the ICCPR and the Universal Declaration of Human Rights, is a key component of the International Bill of Human Rights (*International Covenant on Economic, Social and Cultural Rights New York 16 December 1966,* OHCHR Web site, *http://www2.ohchr.org/english/bodies/ratification/3.htm* (last visited Jan. 28, 2008)) (the United States has not yet ratified the ICESCR).

According to the Chinese newspaper NANFANG ZHOUMO [SOUTHERN WEEKEND], insiders contend that the ICCPR legislation has been planned for a long time, but the authorities concerned have been resistant to changing or doing away with measures that effectively infringe on personal freedom and legal protection – core issues (in particular freedom of movement and of expression) addressed by the ICCPR – and have also postponed revision of the Criminal Procedure Law. As a result, "[i]t remains uncertain whether or not the fundamental elements demanded by the covenant, such as the right to remain silent and the rule of excluding illegally obtained evidence, will be realized through the amendment procedure." (*PRC Law Experts Call for Ratification of International Covenant on Rights*, NANFANG ZHOUMO, Jan. 10, 2008, Open Source Center No. CPP20080113530005.)
(Wendy Zeldin)

ETHIOPIA – Human Rights

Mohammed Farah Hassan, an American citizen, has been held in Jijiga, the capital of Somali State in Ethiopia, for over a year. Although the security chief of the region has claimed that Hassan has been sentenced by an Ethiopian court, he did not specify the charges or the sentence and has refused reporters permission to see him. The security chief described Hassan as a "mastermind" behind the Ogaden Liberation Front, an ethnic Somali movement seeking independence from Ethiopia. The Somali State's president has admitted to holding "many" foreign nationals of Somali heritage on suspicion of "international terrorism." (Anita Powell, *US Citizen Held in Ethiopia for 1 Year,* THE ASSOCIATED PRESS, Jan. 20, 2008.)
(Hanibal Goitom)

Identification

SRI LANKA – ID Offices to Be Computerized

Sri Lanka's Ministry of Internal Administration has announced that it will establish units in each region of the country to issue computerized identity cards. The new offices will be run by the Department of Registration of Persons, under the Ministry's direction. There are several such offices already established, and the Ministry has asked the Treasury for funding to complete the project. (*Sri Lanka to Establish Computerized ID Issuing Units in Every Regional Secretariat,* COLOMBO PAGE, Jan. 23, 2008).
(Constance A. Johnson)

Immigration and Nationality

CANADA – Federal Court Rules Safe Third Country Agreement with U.S. Is Unconstitutional

In the immediate aftermath of the events on September 11, 2001, Canada and the United States issued a statement on common security priorities. One of the top priorities was to develop a Safe Third Country Agreement that would require persons from third countries to present refugee claims in Canada or the United States, depending on which country they first entered. (Public Safety Canada, *Canada-United States Issue Statement on Common Security Priorities*, http://ww2.ps-sp.gc.ca/publications/news/2001/20011203_2_e.asp (last visited Feb. 4, 2008). The Agreement was seen by both sides as a means of discouraging multiple claims. For the United States, the agreement was viewed as providing some protection from potential terrorists attempting to use Canada as a means of backdoor entry; for Canada, the agreement was seen as a means of discouraging growing numbers of potential refugees attracted by its more generous refugee policies.

Canada and the United States negotiated a Safe Third Country Agreement that went into force at the end of 2004. The Canada Border Services Agency states that the "Agreement is part of the Smart Border Action Plan and builds on a strong history of Canada-United States cooperation on issues relating to migration and refugee protection" (Canada Border Services Agency, *Canada-U.S. Safe Third Country Agreement,* Oct. 11, 2007, *available at* http://www.cbsa-asfc.gc.ca/agency-agence/stca-etps-eng.html). The Agreement only applies to refugee claims presented at the border. However, even though it is very limited in its application, there has been concern about how it would be received by Canada's courts. As early as 2002, it became clear that "Canada's courts have extended many rights and protections to refugee claimants, frustrating some attempts by the Government and quasi-judicial officers to eliminate some abuses." (Stephen F. Clarke, quoted in Carl Ek, *Canada-U.S. Relations,* CRS Report 96-397F, at 52 (2002)). The question then became one of assessing whether Canada could enter into a meaningful safe third country agreement that would withstand judicial scrutiny on both legal and constitutional grounds.

In recent years, Canada's courts have struck down a number of provisions of Canada's anti-terrorism legislation as being unconstitutional. Following this trend, a judge of the Federal Court ruled at the end of November 2007 that the United States is ineligible to be considered a safe third country because of its refugee policies and that forcing persons to return to the United States to file their claims violates the Canadian Charter of Rights and Freedoms. The judge objected to numerous provisions of U.S. law. Included among these was the possibility that claimants may be returned to their country of origin even if they may face torture, the possibility that women will be returned to face domestic violence, and the one-year limitation on the filing of a refugee claim. (Canadian Council for Refugees v. Canada, [2007] F.C.J. 1583, *available at* http://decisions.fct-cf.gc.ca/en/2007/2007fc1262/2007fc1262.html).

Following the issuance of the trial judge's decision, the government asked the Federal Court of Appeal for a stay of the judgment pending appeal. On January 31, 2008, the Federal Court granted a stay, and thus the Safe Third Country Agreement is still in force. (Canada v. Canadian Council for Refugees, 2008 F.C.A. 40, *available at* *http://decisions.fca-caf.gc.ca/en/2008/2008fca40/2008fca40.html*).

The government of Canada is concerned that the striking down of the Safe Third Country Agreement could result in a tremendous increase in refugee claims and adversely affect perceptions in the United States about Canada's commitment to securing the border. Therefore, the question of whether Canada can legally enforce a Safe Third Country Agreement with the United States will almost certainly have to ultimately be decided by the Supreme Court of Canada, which still has a majority of judges who were appointed by the former Liberal governments of Prime Ministers Chretien and Martin.
(Stephen F. Clarke)

UNITED KINGOM – New Immigration Fees Announced

The UK Home Office has announced new immigration fees as part of a reform of border security provisions. Although fees for a number of immigration services, such as those for student visas, will be unchanged, there will be increases to keep some fees in line with inflation. For the new points-based immigration system, there will be fees that generally correspond to those already in place.

Fees will be levied for the "sponsorship" system, a new process in which organizations, such as businesses and schools, can share responsibility for making sure that immigration laws are followed. The organizations pay fees for four-year licenses to sponsor skilled workers, students, or other special migrants to enter the country. Small businesses and registered charities bringing skilled workers would pay £300, other employers would pay £1,000, and educational bodies would pay £400 for the licenses (about US$596, $1,988, and $795, respectively). Immigration Minister Liam Byrne defended the new plan, under which those who benefit most from the immigration system cover some of its costs. The new fees will fund improvements in the system, including capturing biometric data such as fingerprints from all visa applicants, a single border force with police powers to prevent illegal entrance, and compulsory ID cards for immigrants remaining in the UK. In addition, there will be "on the spot" fees for those hiring illegal immigrants. (Press Release, Home Office, New Immigration Fees Announced (Jan. 30, 2008), Open Source Center No. EUP20080201167009.)
(Constance A. Johnson)

International Relations

ISRAEL/CHINA – Cooperation Accord

On January 14, 2008, a memorandum of understanding was signed by Eli Yishi, Israel's Industry, Trade, and Labor Minister, and Chen Deming, his Chinese counterpart. The memorandum is designed to boost research cooperation and trade in agriculture, telecommunications, and water technology between the two countries. The ministers agreed, among other measures, to set up working groups to explore the opening of research and development centers of Chinese companies in Israel, preferably with Chinese employees who speak Hebrew, many of whom are already in Israel.

An additional agreement was entered between Yishi and Chen Lei, the Chinese Minister of Water Resources. Under this second agreement, a joint working group would be established "[t]o assist China in building an infrastructure for the advanced management of water resources with the Israeli experience and technology." The group will meet twice a year, once in China and once in Israel, and will include government representatives, academics, experts in the field, and representatives of relevant industries. (Sharon Wrobel, *Israel and China Sign Cooperation Accord*, JERUSALEM POST ONLINE EDITION, Jan. 15, 2008, *available at* http://www.jpost.com/servlet/Satellite?cid=1200308088757&pagename=JPost/JPArticle/ShowFull.)
(Ruth Levush)

IVORY COAST – UN Mission Extended

On January 15, 2008, the United Nations Security Council (UNSC), in a unanimously adopted resolution sponsored by France, extended the mandate of peacekeeping forces in Ivory Coast until July 30, 2008, in order to help arrange for presidential elections scheduled for June in that country. The U.N. Operation in Cote d'Ivoire (UNOCI) was established on April 4, 2004, by UNSC Resolution 1528 of February 27, 2004. It replaced the U.N. Mission in Côte d'Ivoire (MINUCI), a political mission that had been set up in May 2003 to help implement a January 2003 peace agreement among Ivorian parties.

Under a March 4, 2007, peace accord and agreements reached on November 28, 2007, Ivory Coast President Laurent Gbagbo and former rebel leader and current Prime Minister Guillaume Soro worked out a timetable culminating in the June elections. Under these agreements, the mandate of the 8,000-strong U.N. force (9,200, according to API news source) and 2,400 French soldiers (to be reduced to 1,800) is "to support the organization in Ivory Coast of free, open, fair and transparent elections." The March accord ended five years of conflict in the country. (*UN Urges for Elections, Extends Peacekeeping Mandate in Cote d'Ivoire*, AFRICAN PRESS INTERNATIONAL, Jan. 16, 2008, *available at* http://africanpress.wordpress.com/2008/01/16/un-urges-for-elections-extends-peacekeeping-mandate-in-cote-divoire/; *UN Force in Ivory Coast Should Stay for Another Year – UN Chief,* YAHOO! NEWS, Jan. 9, 2007; UNOCI, http://www.un.org/Depts/dpko/missions/unoci/index.html (last visited Feb. 5, 2008); *France*

Reduces Its Ivory Coast Peacekeeping Force, REUTERS ALERTNET, Jan. 20, 2008, *available at* http://www.alertnet.org/thenews/newsdesk/L20150484.htm.)
(Wendy Zeldin)

Legislative Power

KYRGYZSTAN – Cell Phone Ban in Parliament

The members of the Dzhogorku Kenesh, the Parliament of Kyrgyzstan, will be forbidden to use cell phones during legislative sessions under an amendment to the rules of procedure. A majority of the members voted for the new provision on January 24, 2008. In addition, the members approved a rule under which they will wear business attire in the Parliament, for official activities. (*Kyrgyz MPs Banned from Using Cell Phones at Parliamentary Sessions*, AKIPress, Jan. 24, 2008, Open Source Center No. CEP20080124950035.)
(Constance A. Johnson)

Libraries

RUSSIAN FEDERATION – National Version of Presidential Libraries

On January 9, 2008, the Government of the Russian Federation introduced to the legislature a bill on legacy centers for presidents whose term of office has expired. The bill was almost unanimously approved by the State Duma (parliament) of the Russian Federation. According to this newly passed legislation, the federal government will establish a president's legacy center, which will include a museum of the former head of state, his archive, a library, and a small think tank to conduct research on issues related to the activities of the former president. This act is aimed at memorializing the legacy of President Vladimir Putin, whose term expires in May of this year. The law does not cover the presidency of former president Boris Yeltsin and specifies that for future presidents, a special legislative act will be passed.

The law provides for the creation of such centers under the supervision of the current presidential administration, following consultation with the former head of state. In addition to the federal budget financing, financing from other sources is allowed. The law also provides for the center's independence; unlike regular nongovernmental organizations, these centers are protected from government control. The government has no right to intervene in the center's activities, to close it, or to declare it bankrupt. The center can conduct commercial activities, such as manufacturing and selling souvenirs related to the former president. The initiators of this law believe that the creation of such centers will help to keep former presidents involved in Russia's political process. (Vladimir Pligin, *To Preserve Russian History* [in Russian], REGNUM NEWS AGENCY, Jan. 10, 2008.)
(Peter Roudik)

Military Law

INDIA – Armed Forces Tribunal Established

On December 25, 2007, the President of India gave assent to the promulgation of the Armed Forces Tribunal Act, 2007. The Act provides for an Armed Forces Tribunal for the adjudication or trial, including appeals, of disputes and complaints with respect to commissions, appointments, enrollment, and conditions of service for persons covered under the Army, Navy, and Air Force Acts.

The Tribunal, with its principal bench to be located in New Delhi, will have the powers of a High Court. It will consist of judicial and administrative members, with their numbers to be fixed as required. Judicial members will be selected from among retired High Court judges and the administrative members from among officers who served as judge-advocates not below the rank of major general or the equivalent. Only a former judge of the Supreme Court or a former Chief Justice of a High Court will act as Chairperson.

After the Tribunal is constituted, all pending trials and appeals before civil courts will stand transferred to it. Appeals against verdicts of court martial proceedings would then be made only before the Tribunal. It will have the authority to subpoena witnesses; order production of documents and evidence, including reports from court-martial; and appoint expert witnesses. Without being bound by the procedure laid down in the Code of Civil Procedure, it will be guided by principles of natural justice and the provisions of the Armed Forces Tribunal Act. (Vijay Mohan, *Way Paved for Armed Forces Tribunal*, THE TRIBUNE, Jan. 9, 2008, *available at* http://www.tribuneindia.com/2008/20080109/main6.htm.)
(Krishan Nehra)

Narcotics and Drug Abuse

IRELAND – New Minimum Sentences for Certain Drug Offenses

The Government of Ireland has passed legislation creating stiff new penalties for drug trafficking. Under the new law, persons convicted of dealing in drugs having a value in excess of €13,000 (approximately US$19,240) must be sentenced to at least ten years' imprisonment, except in certain special cases, and they may be sentenced to up to life imprisonment for their crime. In what it terms a "construction clause," the legislation directs the courts to impose at least the minimum sentence in view of the harm caused to society by drug trafficking "unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of the offence, it would be unjust in all the circumstances to do so." This provision does not apply to persons under the age of 18. In considering whether there are exceptional circumstances justifying a lesser sentence in other cases, the courts may consider whether the accused pleaded guilty to the offense and whether the accused "materially assisted in the investigation of the offence." (Criminal Justice Act, 2007, (Act. No. 29/2007 (Ir.)), *available at* http://www.ucc.ie/law/irlii/legislation/statdisp.php?yr=2007 (unofficial source, last visited Feb. 2, 2007).)

The enactment of the Criminal Justice Act, 2007 has been controversial in Ireland. As early as March 2007, The IRISH EXAMINER reported that some experts thought the attempt to remove or severely limit judicial discretion was unconstitutional. (*Drug Law Plan 'May Be Unconstitutional,'* IRISH EXAMINER, Mar. 14, 2007, *available at* http://archives.tcm.ie/irishexaminer/2007/03/14/story27750.asp.) More recently, the same publication carried an article entitled *Law Bodies Express Concern on "Rushed" Criminal Justice Act* (IRISH EXAMINER, Oct. 12, 2007, *available at* http://www.irishexaminer.com/breaking/index.aspx?c=ireland&jp=mhmhkfqlidoj). Concerns have been expressed by the Irish Human Rights Commission and the Law Society of Ireland that the legislation was rushed through the Oireachtas (Ireland's parliament) for political reasons.
(Stephen F. Clarke)

SENEGAL – Penalties Increased for Drug Crimes

Under a new law adopted by Senegal's legislature, the punishment for drug trafficking will be increased to 10 to 20 years of hard labor, double the previous punishment. The law now must be promulgated by President Abdoulay Wade before it comes into force. The country, together with its neighbors in West Africa, has become a transit route for cocaine coming from Latin America into Europe. According to a report from the United Nations Office on Drugs and Crime, about 27 percent of the cocaine that reaches Europe has traveled through West Africa. Speaking about the necessity for revising the law, Abdou Latif Gueye, the parliamentarian who drafted the bill, said, "[t]he former drug law was outdated and inappropriate. … This law sends a strong signal to dissuade narco-traffickers from using our sub-region as an easy transit point." (*Senegal: Stiffer Penalties for Drug Traffickers,* IRIN, Jan. 16, 2009, *available at* http://www.irinnews.org/Report.aspx?ReportId=75953.)
(Constance A. Johnson)

Property

UNITED STATES – Supreme Court Rules That All Law Enforcement Officers Are Immune to Suit for Wrongful Detention of Property

The Supreme Court ruled on January 22 that all federal law enforcement officials are immune from lawsuits claiming wrongful detention of property. The ruling arose when a Muslim federal prisoner, Abdus-Shahid M.S. Ali, sued officials of Federal Bureau of Prisons, alleging he was harmed when his Quran and a prayer rug were not returned to him during Ali's transfer from one prison to another. The case involved interpretation of an exception to the Federal Tort Claims Act, which waives the United States Government's sovereign immunity for claims arising out of most torts committed by federal employees. The exception exempts from the general waiver of sovereign immunity "[a]ny claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any . . . property by any officer or customs or excise or any other law enforcement officer."

The lower courts ruled that this exemption from the Government's waiver of sovereign immunity barred Ali's lawsuit. The Supreme Court agreed. The majority, in a ruling by Justice Clarence Thomas, stated that the statute "forecloses lawsuits against the United States for the unlawful detention of property by 'any,' not just 'some,' law enforcement officers." In dissent, Justice Anthony Kennedy, joined by three other Justices, stated that the statute "should not be read to permit appropriation of property without a remedy in tort by language so obscure and indirect." (Ali v. Federal Bureau of Prisons, No. 06-9130 (Jan. 22, 2008) *available at* *http://www.supremecourtus.gov/opinions/07pdf/06-9130.pdf*.)
(Luis Acosta)

Religion

UNITED STATES – Civil Verdict Against Religious Protestors at Funeral Upheld

On February 4, 2008 the U.S. District Court for the District of Maryland upheld a civil verdict in a lawsuit brought by the family of a deceased soldier against protestors at the soldier's funeral.

Members of the Westboro Baptist Church in Kansas have been involved in a number of legal disputes arising from their protests at the funerals of United States soldiers in which they preach that God is punishing America for its tolerance of homosexuality by killing soldiers and other Americans. (See, *e.g.*, *Global Legal Monitor*, December 2007, at 49.) They carried out such a protest at the funeral of a soldier in Maryland, and afterward posted an article on the Church's web site expressing their view that the soldier had been "raised for the devil" and "taught to defy God."

The family of the soldier sued, and obtained a verdict for compensatory damages of $2.9 million and punitive damages of $8 million for invasion of privacy and intentional infliction of emotional distress. The judge, ruling upon a number of post-trial motions, upheld the verdict overall but reduced the punitive damages awarded to $2.1 million, applying principles of Maryland law. The judge rejected the claims of the defendants that their conduct was protected by the Freedom of Speech and Freedom of Religion rights granted by the First Amendment, noting that "the Supreme Court has recognized that there is not an absolute First Amendment right for any and all speech directed by private individuals against other private individuals" and that freedom of religious expression must be balanced against a state's interest in protecting its citizens from tortuous injury. (Snyder v. Phelps, Civil Action No. RDB-06-1389 (D. Md. Feb. 4, 2008) *available at* *http://www.mdd.uscourts.gov/Opinions152/Opinions/Snyder0204.pdf*.)
(Gary Robinson)

Taxation

JAPAN – "Temporary" Tax Hike for 34 Years at Least

In 1974, at the time of the first "oil shock," Japan's Diet (parliament) passed a law to amend the Tax Special Measures Law (Law No. 26 of 1957, as amended by Law No. 17 of 1974). The amendment added an increased gasoline tax rate for two years. Since then, the term has been extended every time it is reviewed, and the rate has never gone down, instead going up. That tax rate is a factor in the high gasoline prices in Japan. The current Diet has been called the "gasoline Diet." The opposing party, which gained a lot of upper house seats in the last election, decided to attack this "temporary" tax hike. The Cabinet submitted a bill to renew the term of this additional tax rate on February 23, 2008. If the bill does not pass and is not promulgated by March 31, the tax rate for gasoline in Japan will be half of the current rate, until the Cabinet and ruling party do pass the bill. (*Kihatsuyu zantei zeiritsu iji no hōan o kakugi kettei* [Cabinet Approval of Bill to Keep Temporary Gasoline Tax Rate], YOMIURI ONLINE, Jan. 23, 2008 (copy on file with author); Takezumi Ban, *Zantei zeiritsu hi gire de gasorin ga 25 en yasuku naru hi* [The Day Gasoline Prices Will Be Cheaper by 25 Yen], YOROZUBANPO, Jan. 14, 2008.)
(Sayuri Umeda)

Terrorism

YEMEN – Court Releases Militants Convicted in Plot Against US Ambassador

On Monday January 14, 2008, an appeals court in Yemen ordered the release of Hezam Ali Hassan and Khaled Saleh, after they had served more than three years in prison for attempting to kill the former U.S. ambassador to Yemen, Edmund Hall. In March 2006, the two men were sentenced to five years in prison, but the sentence was later reduced on appeal to three years. (*Militants Released in US Ambassador Plot,* ASSOCIATED PRESS, Jan. 14, 2008, *available at* http://www.asharq-e.com/news.asp?section=1&id=11457.)
(Issam Saliba)

Trade and Commerce

MERCOSUR/ISRAEL – Free Trade Agreement Signed

Following negotiations that began in 2005, on December 18, 2007, in Montevideo, Uruguay, the member states of MERCOSUR, the trade bloc that comprises Argentina, Brazil, Paraguay, and Uruguay, signed a trade agreement with Israel, the first non-Latin American country to sign this type of agreement with the bloc. Besides Israel, MERCOSUR has concluded agreements with Bolivia, Chile, Colombia, Ecuador, Peru, and Venezuela.

According to the Argentinean negotiator and undersecretary for Economic Integration and MERCOSUR, Eduardo Sigal, in four years 70 percent of all goods traded between the bloc and Israel will be free of import tax. Sigal added that in eight years the rate of tax-free trade will increase to 85 percent and in ten years, to 99 percent. The agreement is expected to enable a significant trade increase in general between the bloc and Israel. (*Mercosul Assina Acordo de Livre Comércio com Israel*, G1-GLOBO.COM, Dec. 18, 2007.)
(Eduardo Soares)

UNITED STATES – Private Securities Lawsuits Curtailed

On January 15, the United States Supreme Court ruled that private persons may not maintain lawsuits under section 10(b) of the Securities Exchange Act of 1934 (1934 Act) against persons who participated in arrangements facilitating securities fraud but did not prepare or distribute financial statements.

Stoneridge Investment Partners, LLC sued respondent Scientific-Atlanta, Inc. and other persons under section 10(b) of the 1934 Act after losing money following its purchase of stock in a corporation, Charter Communications, Inc. Stoneridge alleged that Scientific-Atlanta participated in sham transactions that allowed Charter to mislead its auditor and issue a misleading financial statement. Scientific-Atlanta did not help prepare or disseminate the financial statement, however.

The Supreme Court held that a private right of action under section 10(b) cannot be maintained here against Scientific-Atlanta because Stoneridge did not rely upon statements or omissions by Scientific-Atlanta in making investment decisions. The Court noted that in 1995 amendments to the 1934 Act, Congress directed the Securities and Exchange Commission (SEC) to prosecute persons who aid or abet securities fraud, but did not provide a right of action against them by private parties like Stoneridge. The Court stated that Stoneridge's theory of liability would extend securities law liability into ordinary business operations usually governed by state law, and would be contrary to Congress's decision to limit aiding and abetting claims to the SEC. It ruled that plaintiffs like Stoneridge must demonstrate they relied on statements or omissions in making investment decisions if they are to maintain a cause of action under section 10(b). (Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc., No. 06-43 (Jan. 15, 2008) *available at* http://www.supremecourtus.gov/opinions/07pdf/06-43.pdf.)
(Luis Acosta)

Transportation

BRAZIL – Proposed Law Authorizes 16-Year Olds to Drive

The Brazilian Chamber of Deputies is currently examining a proposed law authorizing 16-year olds to drive motor vehicles. According to the author of the law, Deputy Sérgio Barradas, young people have been undertaking responsibility at a very early age, forcing them to mature very quickly. As examples of the societal recognition of this maturity, Barradas cited the Brazilian Constitution, which grants 16-year olds the right to vote, and the fact that between the years 1972 and 2005, 77 proposals authorizing young persons to drive had been presented to either the Chamber of Deputies or the Federal Senate, making it a longstanding demand of the society.

To obtain a driver's permit under the provisions of the proposed legislation, the applicant's parent or guardian would have to authorize it. The permit would only allow minors to drive motorcycles, three-wheeled vehicles, and cars with a maximum capacity of eight passengers. (*Projeto Autoriza Maiores de 16 Anos a Dirigir*, JURID, Jan. 7, 2008.)
(Eduardo Soares)

War Crimes

LIBERIA – Human Rights

The Associated Press reported that Joshua Milton Blahyi, former rebel leader in the Liberian civil war, recently appeared before the Truth and Reconciliation Commission (TRC) of Liberia. In his testimony to the commission on January 15, 2008, Blahyi confessed to the killings of 20,000 people and ordering fighters under his command to rape women.

The TRC was established through the TRC Act of Liberia in 2005 and inaugurated in February 2006. It is vested with the mandate of investigating human rights abuses committed between 1979 and 2003 that claimed 250,000 lives in a nation of three million people. (Jonathan Paye-Layleh, *Liberian Ex-Rebel Confesses to Killings*, THE ASSOCIATED PRESS, Jan. 21, 2008). (Hanibal Goitom)

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