

Booklaunch of the maiden edition of the SADC Law-Journal and the 10th edition of “Monitoring Regional Integration”

SPEECH FROM AMBASSADOR EGON KOCHANKE AT THE LAUNCH OF THE PUBLICATION OF SADC LAW JOURNAL, JULY 22ND 2011, GOETHE CENTRE, WINDHOEK/NAMIBIA

Address of Welcome

It is an honour and privilege to have been once again invited by my good friend, the outgoing representative of Konrad Adenauer Foundation, Dr. Toni Bösl, to speak on the occasion of two book launches. I will concentrate on one!

This occasion, which is letting us gather here today at Goethe centre, is supposed to become a further step towards the establishment of a **supranational rule of law within southern Africa**. We are here to launch the first edition of the Law Journal of the South African Development Community, the *SADC Law Journal*.

The publication of the SADC Law Journal is closing an existing gap on the way towards the integration of SADC and the SADC-Tribunal in the southern African region. Legal practice of every justice system is positively influenced by a well-balanced and critical academic literature. Such should not just only focus on economic and political backgrounds. It should be aiming for an interdisciplinary discourse. This aim was reached by publishing the SADC Law Journal and by broaching the issue of the juridical aspects of SADC's work written by well-known jurists – especially in regard to the SADC-Tribunal.

At this point I want to emphasize that the publication of the SADC Law Journal would not have been possible without the generous support of Konrad Adenauer Stiftung (KAS). I am sure that the law community, scholars and students appreciate this and are grateful for this support. I would further like to praise the department of law of the University of Namibia as well as of the University of Cape Town for their cooperation.

At the beginning of every project there is a vision – this was the same on European ground, on which the setting and sustainable integration of supranational legal practice has a long tradition: the establishment of the European Court of Justice in Luxembourg grounded on the basis of the Treaty of Founding of the European Coal and Steel Community in 1952 as well as the initiation of the European Court of Human Rights in Strasbourg based on the European Human Rights Convention in the year 1959. Both institutions were established in the sense of sustainable supranational jurisdiction and are recognized as greater instruments of consolidating the rule of law, expanding democratic structures and unifying the interpretation of applicable law.

To realize these goals an unhindered access to legal practice and the consistent enforcement of the supranational law must be assured in all member states. Especially the

last aspect caused problems within the European supranational jurisdiction: member states showed difficulties by recognizing and implementing the supranational rule of law including my country and which is still the case for new member states.

Because of that, special focus must be laid on communicating the content of the supranational law in all member states and publishing amendments and appendices immediately in a medium that is accessible to the general public. Additionally, supranational law must be an integral part of the national jurist education in the member states.

At the beginning there is a vision – this basic principle is also valid for the African continent. Exemplary for establishing a supranational rule of law is the SADC-Tribunal as judiciary organ of SADC. It started its work with appointing the responsible judges in the year 2005. In accordance with the regulations of the protocol all states as well as juristic or natural persons can call upon the SADC-Tribunal in case of violations or questions to the right construction of the regulations. In that sense the statute of the Tribunal can be compared to those of the European Court of Justice. The SADC-Tribunal was continuing this tradition of supranational legal practice on the southern part of the African continent, which has already been established in Europe.

After the promising start of the SADC-Tribunal the development took a concerning road due to the current situations within the community. Since I am not a lawyer I do not want to speak about the **legality of the suspension** of this important court and the review process, this has been done recently by the former President Judge, Justice Pillay, at the Law Society in Windhoek.

However, I would like to ask some questions:

- Why did SADC come up with remarkable doubts regarding the lawfulness of the Tribunal only following the so called *Cam-pell-judgement*?

- Why did the ministers only recently realize that the relevant protocol had to be ratified?
- And why should there be a **final revision** of the Tribunal protocol instead of a ratification?

These questions are very relevant considering the results of the expert report provided by the independent Consultant and handed in in November 2010. Under direction of the renowned jurist Dr. Lorand Bartels, University of Cambridge/England, was stated that the protocol of the SADC-Tribunal **is lawful** and by that the practice of the Tribunal as well as the past legal cases are **taken on a lawful foundation**.

The first publication of the SADC Law Journal can basically be ranked as a sign of high appreciation of the practice of the Tribunal. It is not just recognized among juridical professionals but is especially acknowledged by diplomats and politicians with an interest in SADC, and by those countries from outside of Southern Africa supporting regional cooperation and through financial contributions the SADC Secretariat.

When the German Parliament, the Bundestag, invited in the beginning of 2011 the former president and other members of the SADC-Tribunal from the countries Angola, Botswana, Malawi, Mauritius and Namibia to Europe to discuss the topic „**The role of supranational legal practice to the development of human rights and civil liberty**“, they did not foresee the recent developments. But when the delegation visited at the beginning of June Berlin, the judges used the opportunity to talk to members of the German government, members of parliament, staff of the ministries, members of political foundations and well-known law experts in Luxembourg and Strasbourg about the suspension of the SADC Tribunal and raised awareness. And they received a lot of moral support.

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EGON KOCHANKE

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I would like to take this opportunity to emphasize again that the Federal Republic of Germany is highly engaged in a cooperation regarding the field of supranational jurisdiction in southern Africa. The establishment and the sustainable implementation of systems, that are beneficial to such a cooperation should be developed in the future. We are not talking about undoing national constitutions. But in a globalized world African states cannot survive as legal islands, they have to recognize the role of supranational law. The past practice of the SADC-Tribunal resulted in critical judgements, which showed that the Tribunal is committed to an independent and balanced legal practice according to the regulations in the SADC-treaty.

The work of the SADC-Tribunal as an independent and super ordinate authority is the right path. Sentences of domestic legal frameworks have to be declared illegally by a higher-ranking authority, if they are not consistent with the prevailing supranational law of the SADC-treaty. To assure this, it is necessary to provide an instrument for individual appeal of citizens of the member states of SADC. Abolishing this remedy will inevitably lead to a loss of protective mechanisms to secure the adherence of the rule of law and the human rights. Furthermore, the nature of the concluding legal force of the decisions made by the Tribunal should not be doubted by any member state of SADC. It rather has to be the consistent result of all sentences of the SADC-Tribunal.

Roman Herzog, Chairman of the European Convention, former President of the Federal Republic of Germany and former President of the German Federal Constitution Court, once said: „Visions are strategies of action. That is what differs them from utopia. Vision includes courage, strength and the willingness to realize them.“

In that sense I would like to encourage SADC Member States to realize this vision of a supranational legal practice by forcing the existing strength and willingness as well as awakening the required courage in those who are still doubting to achieve a fast and well-founded implementation.

I thank you for your attention.