Congress success unites lawyers

On 15th April 2014, members of the Haldane Society attended the 18th Congress of the International Association of Democratic Lawyers (IADL), held at the Vrije Universiteit in Brussels. The five day Congress, entitled ‘Lawyering for People’s Rights’, gathered human rights defenders, lawyers and law students from 56 countries from across Africa, Asia, the Americas and Europe.

The purpose of the congress was to bring together different branches of the legal profession who dedicate their professional activity to the struggle for the complete realisation of all human rights, civil and political, social, economic and cultural, so as to discuss and share experiences of their own national issues and in so doing reinforce mutual international struggles.

The Congress opened with a welcome from Jan Buuens from Progress Lawyers Network, the Belgian lawyers’ organisation responsible for much of the preparatory work leading up to and during the Congress. This was followed by a report from Jeanne Miret, the indefatigable President of the IADL, regarding the organisation’s work during the last five years since the previous Congress which took place in Hanoi, Vietnam.

The Plenum which followed the opening session, saw Samir Amin, Founder of the World Social Forum, and Kumi Naidoo, International Executive Director of Greenpeace, both give inspiring talks on the ‘Economic crisis and People’s Rights’ and ‘The Right to a Clean and Healthy Environment’ respectively. Raji Sourani, Director of the Palestinian Centre for Human Rights in Gaza, was due to also address the Congress on ‘Palestine and Impunity for Violation of International Law and International Humanitarian Law’, but was poignantly not able to attend due to the Israeli government’s refusal to allow the Palestinian delegation to travel to Belgium. The South African lawyer Max Boqwana was asked to read out Mr Sourani’s speech, which he concluded with a resounding shout of “Viva Palestine!”

The two days that followed were dedicated to ten commissions covering the following topics:

• The human right to peace;
• Independence of the judiciary, protection of lawyers and democratic people’s justice;
• Fighting for Labour and Trade Union Rights in the face of neo-liberal regimes;
• The Economic Crisis, Debt and Promoting a New Democratic International Economic Order;
• Ending Impunity for crimes and promoting international justice;
• Lawyering for the people;
• Rights of Migrants;
• Right to Health and to a clean environment in the face of global warming and climate change;
• Right to protest and to organise to achieve our indivisible human rights: Civil and Political, Economic Social and Cultural Rights;
• Struggle for equality and against all forms of discrimination.

The Haldane Society were actively involved in the commissions, submitting and presenting papers for four of these commissions, with reports covering topics including the state of legal aid in the UK and defending human rights defenders. Nick Bano gave an incisive talk on recent developments in case law on industrial relations concerning the UK. Richard Harvey of the Haldane Society’s executive committee chaired the commission on the environment for which Declan Owens acted as rapporteur.

Haldane Society members also participated in the session which focussed on the work of young lawyers within the IADL for whom a network is now being set up.

The fourth day of the Congress saw the holding of the General Assembly of the IADL, which included the joining of new member organisations from Nepal, Colombia and Bangladesh. A new bureau was also constituted.

The final day of the Congress began with reports from each of the ten commissions, followed by the presentation, discussion and adoption of the inspirational closing declaration, whose purpose was to guide the organisation in its work over the next five years. The Congress then closed with touching tributes to deceased...
The present Lord Chancellor is in a class of his own, because he is entirely miscast as Lord Chancellor. He would be perfectly cast in ‘House of Cards’… His legacy, I am sorry to say, is going to be bleak.’

Dannng words and unusually strong ones to have been uttered in the House of Lords. They were made by lawyer and Liberal Democrat Lord Lester of Herne Hill in the debate on legal aid ‘reform’ on 7th May 2014. His criticism, as you might guess, was directed at the Secretary of State for Justice, Chris Grayling.

The subject matter of the debate was the Civil Legal Aid (Remuneration) (Amendment) (No. 3) Regulations 2014, which came into force in April 2014. The regulations restrict legal aid for judicial review to those cases where permission to bring the claim is granted by the court. Since public bodies challenged in the courts will frequently recognise the weakness in their case and throw in the towel before this stage, the rule will mean that a proportion of important, merit worthy cases will no longer receive funding. The rigours of the change will be mitigated to an extent by the Legal Aid Agency retaining a discretion to grant funding in these cases. The financial uncertainty inherent in the new regime will provide little solace for law firms struggling to keep their business afloat. As Lord Pannick QC said, ‘nobody can proceed on the basis of a hope that the Lord Chancellor, in his discretion, may choose to make a payment’.

The consequence – as the senior judiciary warned in their response to the consultation that preceded the regulations – will be a ‘chilling effect’ on judicial review. Citizens will find it considerably harder to hold the State to account for unlawful acts unless, that is, they can afford to pay privately. That power should be wielded according to the law and that all should be equal before the law and able to avail themselves of its protection, are fundamental tenets of the rule of law. These latest regulations offend against all three of these principles. And yet they have been pushed through by the politician who is constitutionally bound by section 1 of the Constitutional Reform Act 2005, to uphold the rule of law. In the circumstances Lord Lester’s ire is perhaps understandable.

Lord Lester is not the only prominent parliamentarian to express concern over Grayling’s reforming zeal. A week prior to the debate, the Joint Committee on Human Rights fired a shot across Grayling’s bows criticising his energetic pursuit of reforms which place direct limits on the ability of the courts to hold the executive [to account] and expressing concern over the conflict of interests inherent in his twin role as Lord Chancellor bound by oath and statute to uphold the rule of law and defend the judiciary, and Government minister with a brief to cut the justice budget.

It had been thought that the reforms to the role of Lord Chancellor brought about by the Constitutional Reform Act 2005 might go some way toward easing these tensions. It might be said that those reforms have generated more problems than they have solved. Lord Lester, who championed the reforms at the time, expressed his regret in the recent legal aid debate that the reforms, which allow for the office to be held by a non-lawyer such as Grayling, have enabled the constitutional responsibilities of this venerable role to be cast off so lightly. ‘Would a lawyer be any better? Jack Straw was no champion of human rights or of legal aid when he was in the post, a fact acknowledged by Lord Lester who served Straw as an unpaid adviser for some 18 fruitless months’. Likewise Ken Clarke, another lawyer and barrister, did not hold back when he presided over the cuts contained in the Legal Aid Sentencing, Punishment of Offenders Act 2012, notwithstanding that this legislation stripped anyone of low to modest income of the ability to enforce their social rights in court. And Clarke’s early speeches in 2010, soon after the coalition came to power, decried the provision of legal aid to those who did not live in the UK, set the stage for Grayling’s abhorrent residence test four years later.

Restricting the role of the Lord Chancellor to politicians who are also lawyers is not a complete answer. Neither would it be an answer to restrict the role to lawyers who are not politicians. Such a solution would do away with the conflict inherent in the role, but it would also remove the political clout of the position, ending up with an independent champion of the rule of law who lacked any real power to defend it against political attacks.

A lateral solution might be to beugradingly accept the political reality that from time to time we will have to put up with a Lord Chancellor who does not know of or care about our constitution, and focus instead on providing statutory protection for the rule of law itself. This would have been the effect of an amendment proposed by Labour during the committee stage debates on the Criminal Justice and Courts Bill.

The Bill, which embodies the remainder of the Government’s current attack on judicial review, such as changes to the rules on Protective Costs Orders in public interest litigation and the cost liability of charities and NGOs who provide assistance to the courts by intervening in proceedings, is about to receive its third reading in the House of Commons. Labour’s amendment to the Bill would have prevented the Lord Chancellor from making any further cuts to legal aid for judicial review by way of secondary legislation. Such changes would have to be made by primary legislation instead thereby ensuring a commensurate level of parliamentary scrutiny. The amendment, regretfully, was voted down in the committee stage and does not form part of the Bill at this stage. The Bill will now pass to the House of Lords where it is to be hoped that those peers who do understand and value the rule of law will be waiting.

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Young Legal Aid Lawyers
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Equal before the law?

Defendants to be anonymised and for their trial to be held entirely in secret. The application for an entirely secret trial was supported by the Home Secretary, Theresa May, and the Foreign Secretary, William Hague.

Y oung LegalAid Lawyers

members of the IADL, including president emeritus Nelson Mandela, messages of solidarity from other organisations and a speech from the re-elected president Jeanne Mirer.

The Congress was a clear success and the Haldane Society looks forward to working closely with the IADL and its member organisations in our fight to ‘lawyer for people’s rights’.

To read the documents mentioned above, including the papers submitted by the various national organisations and the final declaration, please visit http://progresslawevents.net/ where you can find these along with more information regarding the Congress.

Carlos Orjuela

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