A European view of the LaRouche trial

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The criminal suit against Lyndon LaRouche in the United States has awakened considerable interest in Europe, particularly among jurists, following the publication of the extensive documentation *Railroad!*[1] The view unanimously expressed in the numerous opinions up to now by prominent European scholars and practitioners of law had been that the principle of a fair trial, and thus a fundamental human right, has been violated several times in the case at hand.

The well-known German professor of law, Friedrich August von der Heydte[2] went so far as to compare the case of the United States of America against LaRouche and his co-defendants with the infamous Dreyfus affair in the 1890s in France,[3] which has gone down in legal history as a classic example of a political trial.

Concern with 'the global dimension'

The internationally respected law expert and former minister of justice of the Republic of Austria, Prof. Dr. Hans Richard Klecatsky,[4] together with the Salzburg jurist Prof. Dr. Waldstein, underscored particularly the global dimension of this American legal case, in a detailed and well-argued expertise, and emphasized, "that the legal questions raised by the appeal not only touch on important issues regarding the Constitution of the United States of America, but moreover on issues vital for the tradition of human rights and dignity in the civilized world."[5] It follows from this as a logical consequence, that "violations of that same Constitution therefore seriously undermine the progress of human rights in the world."[6] In this expertise, also undersigned by Prof. Dr. William Nieboer from Tilburg and by James R. Mann (Greenville) from the United States, Klecatsky and Waldstein particularly pointed up the authority of international law in domestic jurisprudence of the United States, and specifically the right founded in international law to a fair trial, with particular regard to the principle of *ne bis in idem* ["not twice against the same"].[7] The cited authors did not neglect to mention the obvious "question of inhuman punishment," and added the observation that a 15-year prison sentence for the 66-year-old LaRouche would be seen in Europe as a life sentence.[8]

Another prominent jurist, Prof. Dr. Albert Bleckmann. director of the Institute for Public Law and Political Sciences at the University of Münster in the Federal Republic of Germany, likewise criticized in his exposé as *amicus curiae* [friend of the court] the violation of the principle of *ne bis in idem* as a "grave violation of the prohibition against double jeopardy,"[9] as well as the curtailment of the fundamental rights to defense of the defendants, the violation of the principle of impartiality of the court, and the violation of the principle of proportionality, in the sense, "that the punishment must not be out of proportion to the crime."[10] As Bleckmann argues in the latter context, jurists in continental Europe are dismayed particularly about the severity of the sentence against LaRouche, which appears to be "immoderately exaggerated" in relationship to the damage-value. Bleckmann's reference to the fact, that a Federal German court had imposed a sentence of maximally two years in such a case, and that even this would be considered severe, also indicates the incompatibility of the penalty imposed upon LaRouche with continental European standards, and in general with the principle anchored in Art. 3 of the European Convention on Human Rights, according to which "no one shall be subjected to . . . inhuman or degrading treatment of punishment."[11]

Among the prominent practitioners who have joined in the *amicus curiae* briefs on the appeal against the conviction of LaRouche in Virginia, attorneys Lennart Hane from Sweden and Maître Jacques Stul from France deserve special mention in this connection. Hane expressed his deep concern about the media campaign in the United States which preceded the trial against LaRouche, and expressed the general suspicion, that "it appears as though a whole series of impermissible measures took place in the *U.S. v. LaRouche et al.*

in Virginia, which did nothing else than let the 'storms of emotions' loose in a way that set aside important fundamental principles of criminal law."[12] With detailed references to a study published some years ago on witch trials in Sweden, Hane posed the provocative rhetorical question: "Is there any significant difference in such uses of well-selected 'special circumstantial evidence' in those witch trials of the 17th century, and the U.S. Government prosecutor's insisting, during sentencing proceedings of Jan. 27, 1989, page 27 in the transcript, on a harsher sentencing of the defendants because of (as the prosecution argued to the Judge), 'LaRouche's absolute inability to accept his responsibility for what took place [here], his absolute inability to show anything like remorse.' That is, the final statements by the defendants to the Court of their innocence, were taken by the prosecution as further justification for the prosecutor's desire to demand unprecedentedly harsh penalties."[13]

The already-cited French attorney Maître Jacques Stul devoted his attention chiefly to the violation of the principle of freedom of association of political movements, and expressed the view in this connection, that "the procedures used against Mr. LaRouche show all the characteristic signs of an attempt to annihilate a political movement."[14] In detail, Stul particularly remarked that "both the great size of the fine, and the reason given for its being imposed, strike a French lawyer both as something quite unheard-of, and as something which reveals a manifest intent to use the justice system for partisan political aims."[15]

In view of the spectacular escalation of this case, which culminated in the recent accusation of the American bankruptcy Judge Martin V.B. Bostetter, that the American government had acted "in bad faith," and perpetrated a "fraud on the court,"[16] Stul's criticism of the American government is certainly justified, that it were "quite paradoxical to blame a political movement for not repaying loans while the justice system itself seems to have done everything in its power to make repayment impossible. Through its operations against Mr. LaRouche's movement, the government itself appears to have willfully and knowingly prejudiced the interests of the lenders, and then to have turned around and tried to put the responsibility for this onto the shoulders of Mr. LaRouche."[17]

Here we add the observation that Maître Jacques Stul also considers the violation of the principle of a fair trial[18] to be a proven fact, which serves to round off the picture of that questionable trial atmosphere in which politically uncomfortable persons were sentenced to exorbitant prison terms, and in the process fundamental human rights were blatantly disregarded.

Shock at rejection of the appeal

In view of the grave reservations of prominent European legal personalities from scholarly and practical life who have supported LaRouche's appeal with so-called *amicus curiae* briefs, cursorily reviewed here, one should have looked forward to the appeal proceeding with a well-founded attitude of positive expectations. A nation which has written liberty and justice so prominently on its banner, in the face of such massive criticism and vehement protests from European human rights experts who are far from any American partisan political influence, ought to consider that practices of the incriminated sort as described here put at stake nothing less than the credibility of the United States of America as a nation under law and guarantor of human rights.

It was therefore with all the more dismay that the decision of the Court of Appeals was received on Jan. 22, 1990, which continued the path taken by the first court in Alexandria, that of the "railroad," obviously utterly unimpressed by the severe criticisms of this procedure. The extent of the argument confirming the verdict of the first court, which must be termed strikingly short and curt in view of the severity of the case, certainly does not help to remove the odium of unfair trial which weighs over this entire case. At best there were a number of points of complaint which yield an *in dubio* constellation, which, according to generally recognized principles of constitutional law, would have to have been decided *in favor* of the defendants. The charge that the jury was not impartial in Alexandria, the speed of the conduct of the trial there, as well as the suppression of exculpatory evidence in favor of the defendants are not removed in the argument of the Appellate Court; to the contrary, they are corroborated.

We may pick out merely as a detail, the argument on the point of "excessive sentence" as of particular significance for the basic attitude in violation of human rights diagnosed in this political trial, which reads laconically: "Fourth Circuit precedent holds that the Eighth Amendment's prohibition of cruel and unusual punishment . . . [does] not require a proportionality review of any sentence less than life imprisonment without possibility of parole."[19] Finally, the Appellate Court argues its decision that it does not intend to change the sentence of 15 years for LaRouche ordained by the first court with the pithy remark: "This court has consistently endorsed the view that a sentence fixed within the limits approved by Congress will not be reviewed on appeal in the absence of *extraordinary circumstances*."[20] In the view of the Appellate Court, this case is "normal," and not one of "extraordinary circumstances"!

What recourse?

In the nations of the European Council, such a case would be continued at the supranational level at the European Court for Human Rights in Strasbourg, with a probability bordering on certainty, on account of the blatant violation of the principle of fair trial according to Art. 6 of the Human Rights Convention. LaRouche will not be able to appeal to the more or less analogous American Human Rights Convention of Nov. 22, 1969 with much success, which likewise foresees

Nov. 22, 1969 with much success, which likewise foresees the "Right to a Fair Trial" (Art. 8) and the "Right to Human Treatment" (Art. 5), and prohibits anyone from being subjected to "torture, cruel, inhuman, or degrading punishment or treatment." LaRouche cannot appeal to the Inter-American Court for Human Rights *rebus sic stantibus*, in existence since 1979 in San José in Costa Rica, since the United States does not appear among the 20 nations which have ratified the American Convention of Human Rights up to this time.[21] Thus the initially hypothetically formulated fear of Hans Richard Klecatsky may well become a certainty: "If defendants tried in a United States court are denied important rights for a fair trial by an impartial jury, this in turn constitutes a setback for the evolution of human rights in the entire world."[22]

It is deeply regrettable that the United States, through trials of this sort, as well as through executive measures in foreign countries without the agreement of the concerned nation (most recent example: Panama), not only violates elementary human rights, but also throws principles of classical international law overboard and thus promotes that devastating global development, instead of countering it, which the previously cited professor of international law Friedrich August Freiherr von der Heydte recently characterized with the observation, that "it is characteristic of a world power to be *legibus solutus*, particularly when the issue is the assertion of its interests beyond its own state borders."[23]

In view of such facts, European jurists also, who are still inclined to treat the United States historically as the paragon of the realization of internationally protected human rights, will have their attention increasingly drawn to the contradictory character of most recent developments, and to confront the Great Power with the fact, that it has not to date joined in the United Nations Human Rights treaties, and has not ratified the Convention for the Elimination of Racial Discrimination, nor the already-cited American Convention of Human Rights, nor other important agreements for the protection of human rights.[24]

Notes

1. Commission to Investigate Human Rights Violations, Washington, D.C., 1989.
2. On him, see Körschner's *Deutscher Gelehrten-Kalender*, 15th edition, Berlin-New York 1987, p. 1795.
3. *Railroad!, loc. cit.*, pp. 202-208.
4. On him, see Körschner's *Deutscher Gelehrten-Kalender. loc. cit.*, p. 2264.
5. *Railroad!, loc. cit.*, p. 73 ff.
6. *Ibid.*, p. 74
7. *Ibid.*, p. 74 ff., 78 ff.
8. *Ibid.*, p. 92
9. *Ibid.*, p. 63
10. *Ibid.*, p. 68 ff.
11. EMRK, Nov. 4, 1950. Cf. also the analogous prescription in the American Convention of Human Rights, Art. 5 below, p. 5 ff.
12. *Railroad!, loc. cit.*, p. 96.
13. *Ibid.*, p. 101.
14. *Ibid.*, p. 108.
15. *Ibid.*, p. 109.
16. See *The Washington Times*, Dec. 4, 1989, p. F5.
17. *Railroad!, loc. cit.*, p. 109.
18. Stul stated in this connection: "I am very much struck by the fact that the judge in Alexandria accepted, at the outset of the trial, a government motion requesting that any evidence, documents or arguments demonstrating government surveillance or interference with Mr. LaRouche's activities be excluded from consideration by the Court. This deprived the defense of any means to prove good faith, and made it impossible to prove prosecutorial bias, as well as the violations against freedom of association which prevented Mr. LaRouche from repaying debts contracted by his supporters.

"This is made even more serious by the fact that in the Boston trial against Mr. LaRouche and his friends, Judge Keeton rejected a similar motion by the government, and ordered the government to produce documents in its possession dealing with Mr. LaRouche and his friends. In particular, I am informed that the Boston judge had ordered that the archives of the then Vice President of the United States, Mr. George Bush, be opened, as well as the archives of the FBI.

"The search of these and other archives established beyond a shadow of a doubt the fact that the government had constantly interfered in Mr. LaRouche's activities, even seeking to organize operations which would cause prejudice to Mr. LaRouche.

"One might perhaps be allowed to note in this context that a sharp polemic between Mr. LaRouche on the one hand, and the U.S. government—especially its then Vice President Mr. Bush—on the other hand, was very much in the public view, due to Mr. LaRouche's outspoken hostility to the Contra operation and to the arms sales to Iran. It is most remarkable that some of the self-same individuals involved in the dealings with Iran appear as persecutors of Mr. LaRouche in government documents made public during the Boston trial." (*Railroad!, loc. cit.*, p. 109. f.)
19. United States Court of Appeals for the Fourth Circuit, No. 89-5518, p. 43.
20. *Ibid.*, p. 44.
21. Cf. *Human Rights Law Journal*, Vol. 10, No. 1-2, 1989, p. 114.
22. *Railroad!, loc. cit.*, p. 73.
23. Cf. his essay, "Der bewaffnete Überfall der Vereinigten Staaten auf Panama. Eine völkerrechtliche Bewertung" ("The armed invasion of the United States in Panama. An evaluation from the standpoint of international law), in *Spuren und Motive*, Vol. 83/84 (1990), pp. 22-25, quote on page 24. Published in English in *EIR*, Feb. 2, 1990, under the title "The U.S. invasion of Panama: an evaluation from the standpoint of international law."
24. See the recent essay by Th. Buergenthal, "Entwicklungen in der Menschenrechtspolitik der USA," in *Europäische Grundrechte-Zeitschrift*, 16 (1989), pp. 149-157. In this study the author comes to the critical conclusion: "The progress which it has achieved domestically, however, still does not justify the United States's negative attitude toward the ratification of treaties on human rights. With its attitude, the United States has deliberately excluded itself from what is probably one of the most significant developments—a development in which people's urgent demands for a more human world are coming clearly to the fore. This attitude does harm to that development, in addition to being a sign of shameful arrogance on the part of one of the great democracies, which is letting the rest of the world know that it has nothing to gain from, and nothing to contribute to the system established by these treaties. It is also difficult to deny the uncomfortable impression of hypocrisy which arises when the United States institutes domestic laws aimed at ensuring the maintenance of international standards of human rights in other states, when the United States is not ready to ratify the treaties whose implementation is supposed to ensure the enforcement of those very same laws. Moreover, the United States is setting the worst conceivable example with its numerous reservations and declarations upon which it has made its ratification contingent. It is entirely understandable when reservations are brought up when they are appropriate on constitutional grounds; but it is entirely another matter, when reservations are brought up in order to ensure that the treaty in question will have no force over domestic law. And that is precisely the effect of the clauses concerning the federal states, and of the declaration qualifying a treaty as 'non self-executable.' "

The English version of this essay appears in *Human Rights Law Journal*, Vol. 9 (1988), pp. 141-162, under the title "The U.S. and international human rights." Cf. further Dens., "Menschenrechtsschutz im inter-amerikanischen System," in *Europäische Grundrechte-Zeitschrift*, 11 (1984), pp. 169-189.