

ABSTRACTS

Some Reflections on three Scholars of Chinese Legal Culture

By *Robert Heuser*, Cologne

In his farewell lecture the author deals with three Chinese legal Scholars as exemplifying the cultural substance of the study of "Chinese Legal Culture": Chen Guyuan (1896-1981) as a historian of pre-modern Chinese law, Wang Boqi (1908-1961) both as a pioneer of modern Chinese civil law doctrine and as a critic of the non-receptive traditional socio-cultural environment, and Qu Wu Jingxiong (1899-1986) as a legal philosopher emphasizing the need for a moral basis of the legal system. After having summarized the specific contribution of the three scholars to the study of Chinese Legal Culture, the author reflects upon the significance of their views, methods and findings as inspiring further inquiry into the subject.

Judges and Tribunals in China

By *Qingbo Zhang*, Macao

China is in spite of its material laws, which are similar to the western laws, far away from under Rule of Law. One of the most important reasons is the rank or the role of the judges and the courts in Chinese society. With a functional comparison between the german system of the justice and that of China the characters of Chinese system are displayed. It could be thereby easily understandable, why the laws in China are not implemented so much as in Europe.

Administrative Guidance (Xingzheng zhidao) in Chinese Law

By *Daniel Krause*, Cologne

In Western literature, China's "administrative guidance" remains a widely unexplored legal phenomenon, even though it can serve as an indicator of the stage of development China's administrative law has reached and of problems waiting to be solved. This article introduces the basic principles and legal and economic implications of "administrative guidance". In order to understand its role and position in China's system of government, the article offers a short overview of its administrative law regime. After identifying the main characteristics of "administrative guidance" and highlighting its most controversial aspects, the article concludes that even though this kind of administrative action maybe

widely regarded as eminently useful and highly efficient, Chinese jurists are keenly aware of the difficulties of properly placing “administrative guidance” within China’s legal system.

Article 23 of the Hong Kong Basic Law: Whither Media Freedom?

By *Benjamin Lotz*, Hamburg

The paper will address one of the most contentious issues in Hong Kong’s current constitutional debates: the introduction of laws against treason, secession, sedition, subversion, and theft of state secrets as stipulated in Art. 23 of the Special Administrative Region’s so-called “mini-constitution”, the Basic Law. It will particularly focus on possible effects on the local media landscape.

In 2002 and 2003, a proposal of accordant legislation in Hong Kong caused a flurry of excitement among opposition leaders, local legal experts, and, eventually, the general population. Concerns raised particularly related to the supposed encroachment on civil liberties since the bill allegedly granted sweeping powers to state authorities and imposed harsh sanctions on perpetrators. Even though as a result of the protests the bill has been withdrawn, the issue is far from being settled: The constitutional duty to implement the named statutory offenses remains. Moreover, in 2009 the Special Administrative Region of Macao – which had been under the same constitutional obligation – on its part reformed its state security law and, thus, set an example for neighbouring Hong Kong. Considering the city’s prominent position as a location of international media corporations, its former reputation to host “the freest press in Asia”¹, as well as the important role free media are playing in the SAR’s broader political context, an Art. 23 legislation which wisely balances the interests of the state and the concern for a free press today constitutes one of the major legislative challenges faced by the Hong Kong government.

After introductory remarks (A.), a first part will sketch the constitutional background of the issue, i.e. the basic concept of a Special Administrative Region with particular regard to the legislative relation between the regional and the central government and the purpose of Art. 23 Basic Law in this constitutional context (B.). A third chapter will refer to freedom of press in Hong Kong, its legal foundations and its special significance (C.). This is to be followed by a disquisition on the implementation of legislation as prescribed by Art. 23 Basic Law. The paper deals with the question of how to resolve the conflict of interests between the PRC’s legitimate need to secure its sovereignty and political stability on the one hand and Hong Kong’s long guaranteed freedom of press on the other hand (D.).