ABSTRACTS

The "Directive Constitution" and the crisis of Constitutional Theory in Brasil

By *Gilberto Bercovici*, São Paulo

The article explores the tense and complex relationships between politics, State and Constitution, from the famous discussion about democracy and constitutionalism, through the paradoxes of the juridical formalism of Constitutional Law, the political law par excellence. We describe the occurence of a cycle of key-concepts during the history of Public Law. The Constitution was the key-concept during the revolutionary era, between XVIII and XIX centuries. The State became the key concept during the XIX century, with the General Theory of State as main discipline of the Public Law. But, with the contestation of the exclusively juridical method during the Weimar Republic, the Constitution became the key concept with the new discipline Theory of Constitution, the substitute of the old General Theory of State. This new discipline tried to include the political in the constitutional analysis, especially during the second post-war period. The main debate of the Theory of Constitution has oscillated between substantive and procedural theories of the Constitution, both striving for conducting politics and the State or excluding both from constitutional analysis. This trend culminates in the "Directive Constitution", with its pretension to be a plan for the future of the entire society, and in the Constitutional Courts and the empting of the debate about politics and legitimacy in contemporary Constitutional Theory, which needs the "return to politics" and the "return to the State", with a new and renewed Theory of State to get out of its present deadlock.

Protection of cultural heritage by implementation of intellectual property right in Cameroon

By *Joseph Fometeu*, Ngaoundéré

Artistic creation and expression inspired by cultural heritage and identity can be protected by the implementation of the intellectual property right and in particular, the copy right. By this right, the author is said to possess a certain number of prerogatives that gives authors of these artistic works the right to protect and defend their productions.

Meanwhile, the present system characterised by government intervention is quite complex and difficult for the effective application of the intellectual property right.
This, indeed, gives the government the right to manage and protect works of arts and that of state property whereas a larger majority of users of the artistic works operate in the countryside where the administration is absent. It is necessary to include private persons in order that the real authors derive financial benefits from creation.
Field work has shown that promoters of cultural heritage in Cameroon strongly share this idea.

The 2004 Constitutional Amendment in the People's Republic of China

By *Nicole Schulte-Kulkmann / Lea Shih / Sebastian Heilmann,* Trier

In March 2004, the National People's Congress amended the Chinese constitution – enacted in 1982 – for the fourth time. Prior to this amendment, in June 2003 the Central Committee of the Chinese Communist Party established a working group headed by NPC chairman Wu Bangguo commissioned to generate a draft amendment. In October 2003 this draft amendment was approved during the 3rd session of the XVI. CCP Central Committee. In December 2003, the NPC Standing Committee accepted this draft version. Finally, in march 2004 the NPC adopted the constitutional amendment with only slightly modified formulation.
This study contrasts the 2004 constitutional amendments with the relevant constitutional provisions as of 1999 (in Chinese as well as in German). Each constitutional amendment is commented in detail. Finally, the legal, economic and political consequences of the latest constitutional amendment are presented and analysed.

Comparison of Legal Cultures and Legal Systems worldwide

By *Markus Kotzur*, Bayreuth / Leipzig

The article describes and analyses the programme, the structure and the results of an international comparative law congress. In February 2004, the *Instituto de Investigaciones Juridicas* (Universidad Nacional Autónoma de México) and its academic director, *D. Valadés,* organised an international congress on the topic of a worldwide comparison of legal systems and legal cultures. For the first time in the Latin American world, an out-

standing endeavour like this could assemble nearly 1000 legal scholars, lawyers and law students from all over the world for one week of intensive work and debates in Mexico City. Twelve discussion panels dealt with the classical disciplines of the law such as constitutional law, administrative law, civil law or penal law, but also with most current affairs: national and international security, health and law, bio-ethics, urgent reforms of the social state or legal problems of the internet. The leading principles for the discussions were not only deeply rooted in legal history, philosophy, theory and sociology; even more importantly, they were based upon the method of law comparison being understood as a macro-comparison respectively as *cultural* comparison. It became very obvious that the comparative way of legal thinking is not a one way road from Europe or the United States to Latin American Countries – and there societies struggling for democracy. On the opposite: The traditional democracies can learn a lot from the innovative texts and ideas being recently developed by an open-minded and very productive Latin American scientific community. Only an ongoing legal discourse between the different legal cultures will help to meet all the requirements of the 21st century's globalized world.