

ABSTRACTS

A Schufa for the People's Republic of China? – Credit Information System for the Promotion of Transparency and Legal Certainty in the Banking Sector

By *Immanuel Gebhardt and Robert Dübbers*, Beijing

The People's Republic of China's WTO accession offers opportunities for foreign banks to enter the Chinese market. Although China's banking market will not be fully opened before 2007, foreign banks have to be present in China today, if they want to benefit from the market's coming liberalisation. At present, the Chinese government and parliament prepare legislative and economic measures to make the country's banking sector fit for the opening. Thus, credit information systems similar to the German SCHUFA are tested and developed in several Chinese provinces. It is intended to enlarge such systems to the whole country. A uniform credit information system for the whole People's Republic of China is necessary for the development of China's retail banking market. Especially the consumer credit and credit card business needs reliable credit information. At the same time, reliable credit information becomes more important for banks operating in China because of the planned intensification of the country's supervision of banking in accordance to international standards. The article deals with the economic and legal development in the field of credit information systems in the People's Republic of China. It shows how the country's banking sector has changed because of China's economic reforms and how credit information systems were established in the economically advanced cities of Shanghai and Shenzhen. It describes the existing legal framework and, moreover, gives some suggestions for the development of a comprehensive legal framework.

The Constitutional Crisis in Venezuela

By *Nicole Monleón*, Hamburg

Venezuela's President Hugo Chávez was democratically elected in 1998 and re-elected in 2000 after the entry into force of the new Constitution. He came to power on a platform of radical reforms. Time passed, and Mr. Chávez failed to comply with his manifold election pledges. A severe economic crisis, paired with what many regard as authoritarian rule,

invigorated the faction-ridden opposition. In early 2002 Venezuela experienced extreme political turmoil, which culminated in an attempted coup on April 11th. After the failure to oust President Chávez, Venezuelan society remained deeply polarized, political protests continued, and economic conditions worsened, leaving the country at risk of further violent conflicts and jeopardizing democracy and the rule of law. The opposition's will to force Mr. Chávez out of power through democratic means is strong. Since the two-month general strike 2002/2003, designed to force Mr. Chávez to resign, the efforts of Venezuela's opposition are focused on a recall referendum. Although the first attempt at a recall petition was rejected on September 12th 2003 by the electoral authority, the National Electoral Council (CNE), whose five board members had finally been appointed by Venezuela's Supreme Court in August. According to polling data Mr. Chávez would suffer a massive loss in a recall referendum, with as much as two thirds of the electorate voting against him. The prospects of the referendum to be held are uncertain. President Chávez will seek to avoid such an expression of national discontent. If the referendum takes place even so, it must be accomplished before August, 19th 2004. If it's set thereafter and successful, the office will be assumed by the Vice-President. The means at Mr. Chávez's disposal to retard the referendum are plenty.

The Mexican Constitution - Expectations, Promises, Reality. The Results of a Survey by the Instituto de Investigaciones Jurídicas, Mexico

By *Markus Kotzur*, Köln/Bayreuth

The constitutional state is based upon the normative powers of the constitution as well as on the social reality, a reality being determined by a continuing process of day to day constitution building and dependent on the citizens' perception of *their* constitution. Therefore, the international scientific community should pay great attention to a recent survey carried out by the "Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México" and its director *D. Valadés*. In Latin America it is the first study of its kind applying an interdisciplinary, comparative and cultural sciences approach. About 1800 people older than fifteen and representing the regional diversity of the Mexican State have been questioned. The manifold topics of the questions include what one could describe as constitutional *law* and constitutional *life* being *emanations of culture*. To give some examples: The target group was confronted with the general question of what they know about their constitution and whether or not they believe to have a sufficient notion of their country's constitutional architecture. More specifically, the questioned people were asked if – at least in their opinion – the constitutional guarantees correspond to the society's most urgent needs. Further questions were: Should there be a reform of the

constitution, if so, a general reform or only limited to specific topics? Should the president be allowed to be re-elected. What do you think about affirmative action; what about the human rights standards? Do you believe that the political powers obey the *normative* constitution. What do you know about the “amparo”?

Most interesting – especially for a *society in transformation* to a modern, liberal and egalitarian democracy – is to learn, from whom and where people receive information about their constitution and its power to shape the political structure of a society that is marked and characterized by strong dichotomies – most obviously the contrast between rich and poor. An important role do, of course, play the media as specifically public *guardians* in a system of checks and balances (sometimes even gaining a „pre- or sub-lawmaking function“), but also schools, churches and many other private or public actors of a pluralistic society. People have to be educated with regard to their constitution as such and to the values this constitution is based upon. The notion of liberty as a fundamental right and value may be the starting point. When more than 90 % of the questioned people believe that their freedom of religion is not only a promise, but reality, when 83,6% have no doubts about free elections, when 80,9% think, that the freedom of assembly – surely one of the most important freedoms for the politically active citizen – is sufficiently guaranteed, all the facts give reason for optimism as to a prosperous future of Mexican democracy. It also has to be mentioned that in a multicultural and multi-ethnical society with a colonial past the rights of the indigenous people play a most important role. A very difficult problem is to solve the conflict between the long tradition of indigenous rights and modern human rights if the first contradict the latter ones. It may not be forgotten that the moral authority and legal relevance of all human rights is *universal*.

The survey presented in this article shows how effective and important a comparative sociology of constitutionalism can be. This is true for Mexico, where the necessary reform process can follow the line which is to some extent drawn by the results of the survey. This is also true for all Ibero-America, and it is true for Europe, where a European legal sociology is more than desirable for the future of our European Constitution “in process”.

Constitutional Reforms in Lebanon: Consociational Democracy vs. Democratic Plurality?

By *Cordelia Koch*, Beirut

„Coexistence“ is associated with plurality, in the case of Lebanon with the diversity of religious groups. Between 1943 and 1975 the Lebanese political system was therefore commonly referred to as being a consociational democracy, as 19 religious communities share state power according to a fixed ration between the various Christian and Muslim

sects. With the outbreak of Civil War in 1975, Lebanon no longer seems to be the center of research on consociational democracy. However, this article attempts to draw attention to the fact that not only the Lebanese political system, but also its written constitution of 1990, shows the main features of consociational democracy.

Two joined reforms, proposed by the Lebanese minister of the interior, Elias el-Murr in September 2002 gave rise to a wave of protests and have not been realized until now: the creation of a nationwide constituency and the establishment of the senate as a second chamber. This article argues that these reforms would be perfectly in line with the functioning of consociational democracy on the one hand, but they would reduce democratic plurality on the other. Their combination tends to stabilize the sects' position on the institutional level since the electoral law, conceived by the minister of the interior, would not touch on confessional representation of Parliament. At the same time, the senate would grant the sects an additional channel to pursue their political interests. Most advocates of consociational democracy claim that by accepting intermediate social groups (that stand between the citizen and its state), consociational democracy leads to a stable state entity. The article will show that, in a specific kind of consociational democracies, where groups are defined and therefore fixed by state law, consociational democracy stabilizes the plurality of these fixed groups. The combination of a nationwide constituency with the establishment of a senate reinforces and stabilizes the religious groups. Therefore, these reforms demonstrate how consociational democracies favour group plurality instead of leading to a state entity.

This leads to the article's third aspect. By distinguishing religious groups' coexistence of two other political realities of Lebanon, the coexistence of notables and the coexistence of interests respectively, I can argue that the nationwide constituency, as an amendment to the existing electoral law, would considerably reduce both the notables' possibilities to become deputy and the parliaments' plurality of interests. Whereas the first consequence is not a defining element of consociational democracy, the second is.

As a result, these reforms have opposing effects on the Lebanese consociational democracy. They would stop the coexistence of interests, whereas they would reinforce the coexistence of those groups which constitute the Lebanese state, i.e. the religious communities. However, looking at this case study, one cannot draw the conclusion that the coexistence of interests always stands behind.