ABSTRACTS

Constitutional Legal Pluralism in West Sumatra: Changes in State and Village Constitutions in the Process of Decentralisation in Indonesia

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The paper examines the changing constructions of state and traditional constitutional principles in West Sumatra, Indonesia. Along with the general decentralisation of central political authority and economic resources to the districts, a fundamental restructuring of local village government has been initiated.
The policy of regional autonomy has been taken up "to return to the *nagari*", the traditional, pre-colonial political units of Minangkabau political organisation. Despite all changes and transformations during the colonial period and since independence, the *nagari* and *nagari* government have remained firmly associated with Minangkabau political identity. This changed rather dramatically, when the Law on Local Government of 1979 introduced the uniform model of the *desa* as the lowest level of local government. The former *nagari* were split into several *desa*, administered by *desa*-heads embedded in a strictly hierarchical administrative system. When decentralisation became a major issue in Indonesia, this was taken up to abolish the *desa* system and go back to the *nagari*.
At present, West Sumatran politicians, traditional and religious leaders are engaged in constructing a new institutional structure and create new legitimations for political authority and political decision making, in which the discourses of tradition, Islam, the international donor community and the Indonesian state are partially merged and partially confronted with each other. The paper discusses the new role of *adat* and *adat* leaders and councils within these political units *vis-à-vis* religious and governmental authority and ideals of bottom-up democracy and community rights.

The Foundations of Chilean Environmental Law

By *Jorge Bermúdez*, Valparaíso/Gießen

The Chilean Constitution of 1980 contains in its catalogue of constitutional rights the right to live in an environment free of contamination (Art. 19 N° 8). This right represents an advancement in comparison with most of the other Constitutions from that time, which only

included a general declaration about the protection of environment or a declaration of the State's duty. The Chilean Constitution establishes in addition a special action that is similar to *Habeas Corpus*, which protects this right. An important problem of this right is the concept of environment and an environment free of contamination. The general environment statute carried out those two concepts. Both have an important meaning to understand the application of the right to live in an environment free of contamination and to establish the difference to other rights, for example the right to live. Another issue is the problem that presents the setting of the environmental protection standards. As an example the crisis management of air pollution in the capital Santiago of Chile is discussed. The question arises whether the political authority could set stricter standards concerning the PM10 limits in order to protect public health, taking in consideration the unfortunate geographical location of the capital and the economic problems of the country.
The second part refers to the special constitutional action or special *Habeas Corpus* which protects the right to live in an environment free of contamination and makes a comparison with the general constitutional action. As result it is emphasized that the problem about the horizontal interactions of the constitutional rights (*Drittwirkung*) does not represent any controversy for the Chilean legal doctrine. The Supreme Court of Justice has always interpreted that the constitutional rights have a "horizontal" effect. The protection of the environment can interfere with other constitutional rights, and therefore limitations might be necessary. A modern interpretation of the Chilean Constitution leads to the understanding that the protection of the environment has an outstanding rank in the Chilean constitutional law. Finally the State's duties concerning the protection of the nature and the enforcement of the right are outlined.
As a conclusion, the reality of the protection of environment in Chile and the difficulties to catch the goal of sustainable development is reflected.

Amendments to the Constitutions of Turkey by Way of Law No. 4709 of 3 October 2001 from the Perspective of Criminal Law

By *Silvia Tellenbach*, Freiburg/Br.

The Republic of Turkey has been facing a bulk of legal reforms in the context of its efforts to join the European Union. Outside of Turkey, special attention was given to the various Amendments to the Constitution of Turkey by Way of Law No. 4709 of 3 October 2001. This article highlights the changes as far as they affect criminal law and the law of criminal procedure. One of the most important changes has been the abolition of the death penalty with the exception of times of war, threat of war and terrorist acts. An amendment act of August 2002 which did not rely on a qualified majority for constitutional amendments, but

only a simple majority, extended the abolition of the death penalty and limited it on times of war and threat of war only.
The use of languages and dialects which are commonly used by Turkish citizens, i.e. especially the Kurdish language, will be unrestricted in radio and television broadcasts, private language courses will not be prohibited.
The principle of fair trial has now been granted constitutional recognition and status, as has the exclusionary rule, i.e. the exclusion of evidence improperly obtained which had been guaranteed in the criminal procedure code in 1992 and is aimed at fighting torture. The constitutional reform of 2001 is a step into the right direction which has to be followed by many more.

Decentralization in Chad

By *Volker Lohse*, Bielefeld

Decentralization has been discussed in the Republic of Chad since 1960, but noticeable progress in practice can only be measured since the entry into force of the Constitution of the Republic of Chad of 31 March 1996 which is based on the work and the ideas of the Sovereign National Conference (*Conférence nationale souveraine*). With the support of the *Förderung der Dezentralisierung* (Support of Decentralization) Project of the German development cooperation institution *Gesellschaft für technische Zusammenarbeit* (GTZ) preparatory seminars and workshops have been held to work on solutions for some of the most important open questions, *inter alia* procedures for the founding and competences of the self governing local administrative entities. Studies by specialists have been suggested, supported and financed, concepts for the necessary legal drafts of many of the decentralization codes have been shaped and public awareness and sensitivity for the decentralization process has been supported.
In face of scarce resources and little experience with decentralization in the Republic of Chad, the projects to bring decentralization into effect began on the local level of the communities and rural communities. The process of preparation of local self-administration has been strongly supported and brought ahead both by President Idriss Déby and all three prime ministers since 1997 – in spite of opposition, e.g. from the *Chefferie traditionnelle*. Thus the process of institutionalizing *démocratie de proximité* in the Republic of Chad may today be considered irreversible.