

ABSTRACTS

Basic structure of the Kyrgyz constitution and its relevance for decentralisation and self-government

By *Heinrich Scholler*, Munich

Since about ten years, Kyrgyzstan has started to develop an independent political system based on the constitution from May 1993. This constitution was oriented on Western ideals and models and gave a specific importance to decentralisation of the political power and to local autonomy. It's of importance that the Kyrgyz parliament (Dschogorku Kenesch) was for the first time in the Kyrgyz history freely elected. Kyrgyzstan has a federal structure, in so far as seven regions (Oblast) were established. Kyrgyzstan is the first country of Central-Asia which has organized democratic elections on the level of local autonomy.

The result of the democratic realization of local power was naturally the stronger participation of the population in public affairs and the not expected or wanted demand of more democratic participation in all state activities. It is remarkable that the constitution itself has an own section, in which detailed rules on local autonomy are formulated.

The article tries to compare the extent of rules concerning local autonomy in the Kyrgyz constitution with the sections or single guarantees with regard to local government on European countries. It is obvious, that the number of formulated constitutional rules increases in those countries which have changed to a democratic system and vertical decentralisation after longer periods of centralized and undemocratic government. With regard to the guarantee of local autonomy, it might be questionable whether the guarantee can be considered to be a fundamental political right which can be brought to court or whether it's more a kind of political structure. A second problem could be the technique or theory that also other ordinary laws, which are established to realize local autonomy, participate in the constitutional quality of the institutional guarantee (article 91 to 95). Therefore, the property in the hand of local authorities is protected by the general guarantee of property, which is effective and valid not only in favour of the citizen or the foreigner but also for the local autonomy organization.

On the other hand, human rights granted by the constitution are also granted with regard to local government, especially if it has to full fill duties and powers transferred from the state government to the local authorities

There are some other issues, which might be interpreted in favour of strengthening local autonomy, because they are granting vertical separation of powers. Also the representation of decentralized administrative organizations in the second chamber of parliament is strengthening the local authority. The constitution also grants the local authority, the competence and function of organizing, tax imposing, planning and competence of personal management. It is also interesting to see that the lower state authorities and the local

authorities are working on the same level, however the state's local authority has the competence of controlling

The new Constitution and its new system of power-sharing were introduced in order to grant and develop more stability especially by decentralisation and local autonomy. It is getting more and more doubtful whether this Western model can achieve this aim, because the traditional system of power and the slow implantation of decentralisation makes it difficult to overcome the existing weakness, the growing tension in a society with difficult neighbours outside and growing tensions inside.

Conflict prevention and resolution in Africa and lessons from the past: The Democratic Republic of Congo up to 2003 with comparisons from Mozambique

By Isaac C. Lamba, Lilongwe / Berlin

This study in conflict prevention and resolution in Africa has featured for its illustrations the Democratic Republic of Congo (DRC) and Mozambique, countries with quite similar war experiences. Each of the two countries underwent war encounters generated by internal traditional and cultural African interests and competition for opportunity and advantage following attainment of political independence. External gain seekers take advantage of the existing chaos to derive benefit, as was the case in DRC. Sometimes this intricate nexus may not be clearly apprehended and understood by the fighting nationals who serve as pawns.

This essay demonstrates how the desire to exploit natural resources in a country such as the Congo can lead to prolonged physical conflict which for a long time defies mediation. However, mediators in any such conflict must utilise delicate negotiating skills with resilience and patience to avoid suffocating the effort in haste. Mozambique presents a model case of successful peace negotiations initiated from outside.

Judicial enforcement and the protection of the right to health and the environment. A Peruvian case

By Rocio Meza Suarez, Giessen

From the compliance/enforcement traditional perspective, the citizen (or the private sector) is seen as the one who must comply with the regulations, and the government as the one who must enforce them. But, what happens when it is the citizen who must start the enforcement mechanism against the government, to force it to comply with the regulations and halt situations that endanger the public health and the environment?

This paper seeks to give some possible answers to this question through the analysis of the case of La Oroya, a Peruvian city that is home to a multi-metal smelter and that has been widely considered one of the most contaminated cities in the world. The article

focuses on the Compliance Suit brought by citizens against the authority who refused to abide a legal norm, and the ruling of the Peru's Highest Court, who gave the Peruvian Ministry of Health 30 days to declare a health emergency and to put in place an emergency plan for the city.

La Oroya case shows us that good legislation is not enough to protect health and environment, if it is not accompanied by effective compliance and enforcement mechanisms. Parallel efforts to public enforcement such as judicial and administrative procedures enable citizens, by bringing legal action against a public authority entrusted with responsibility for implementing the laws, to play an active role in the enforcement of health and environmental laws. In that sense, the case of la Oroya is a clear example of the important role that such mechanisms are playing nowadays. Additionally, this case offers lessons about how essential are courts in enforcing regulation.

The concept of an Islamic republic: The constitutions of Afghanistan and Iran compared

By *Ramin Moshtaghi*, Heidelberg

The concept of an Islamic republic is a very popular concept in the Middle East and in regard of the immense legitimising effect Islam can muster in conservative Islamic societies, it is possible that we will have to face more Islamic republics in the future. Although there is great concern regarding the spread of the concept in the West, literature is scarce on the question which specific aspects render a republic an Islamic republic. In this essay this question is examined by a comparative analysis of the Iranian and the Afghan Constitution. In order to examine the consequences of the establishment of an Islamic republic for universal human rights as they are established in the Universal Declaration of Human Rights and both UN Human Rights Covenants, these consequences are classified into three categories. First there are consequences which are positive in regard to human rights. These are mainly social rights and the respective state obligations, for instance the obligation to create social justice, which is a prominent feature of Islam. These aspects seem to contribute most to the popularity of the concept in the Middle East. The second category of consequences is formed by regulations which are in a clear breach of international human rights, such as discriminations against followers of non-Islamic beliefs. The third category of regulations is composed of such provisions which potentially may infringe international human rights depending on the interpretation of Islamic law. The establishment of Islam as the state religion and the guarantee of the conformity of legislation with Islamic criteria can be classified into this category of regulations. A comparison of the two constitutions under these categories demonstrates that social rights are featured very prominently in the Iranian Constitution. However, the two Constitutions most decisively differ in regard to the third category of consequences since the Afghan Constitution gives the protection of human rights a high priority which is virtually unknown in other constitutions of the regions. This

might facilitate the protection of human rights in cases in which there is conflict between the Islamic law and human rights. The Iranian Constitution on the other hand unconditionally clarifies that in cases of conflict Islamic law prevails. Additionally, the Afghan Constitution gives the directly elected representatives of the Afghan people the power to influence the interpretation of Islam decisively, since the judges of the Supreme Court who are competent to review the compatibility of the legislation with Islamic criteria are appointed by the elected President of the Republic with the consent of the Lower House of Parliament. In contrast, in Iran this competence rests with the religious scholars of the Guardian Council, who are appointed by the Religious Leader whose term of office is neither restricted nor is he elected directly by the people.

The outcome of the analysis is that although the concept of an Islamic Republic is problematic in regard to international human rights, there are rights which are supported by the principle, namely social and educational rights. Moreover, as the analysis of the two constitutions reveals, there are decisive differences in regard to the protection of human rights. While the Afghan Constitution which gives a prominent role to human rights is very positive and should be regarded as a model for the region, the Iranian Constitution is much more problematic. Hence, what is decisive are the concrete constitutional regulations and guarantees of human rights in particular in case of conflict with Islamic law and only to a much lesser extent the decision whether a republic is referred to as an Islamic republic.

ERRATUM

Caused by technical damage the following contribution in our volume 2007-4 has been published without footnotes:

»Communal Labour« – another technique of acquisition of manpower required for administrative tasks in Cameroon?

by *E.H. Ngwa Nfobin*, Dschang/Cameroon, VRÜ 40 (2007) p. 521-541.

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VRÜ apologizes to the author and our readers.