

# ABSTRACTS

## **Reception of foreign legal systems in Japan – Examples in the fields of Law of Economy and Law of Family**

By *Koresuke Yamauchi*, Tokyo

Most lawyers including legal historians are studying their own national legal systems and a few foreign systems together in order to know whether their own legal system are positioned in the global legal history. Reception of foreign legal systems is one of the polemical issues in the field of Comparative Law and makes clear which relation a legal system in the world has with another systems each other. First of all, we must think about a definition of the reception as a previous problem, because its definition decides the range of our study.

Generally understanding, Japan experienced the reception three times historically. Primarily Japan recieved the Chinese law step-by-step after the seventh century. The judgment that Japan selected Chinese law at that time was depending on its geographical circumstances. Many codes, manners and customs in China were brought into Japan on a large scale for a long term. Second, Japan recieved French law and German law mainly for the 19th century. It was because Japan hoped for a change of his diplomatic relations with the European countries. Japanese government recieved French legal systems actively and changed French law for German law in part. Lastly, the reception of American law in the 20th century was fate to be necessary for Japan as a result of defeat in the Second World War. Of course these have something in common.

When studying the reception of foreign legal systems, it is very important that we must have a critical mind on the reason why man will study the reception. If we are going to obtain good results, we must have a lot of knowledge about legal systems of various countries in the world. Unification and harmonization of laws are contemporary problems of the present age in the global society. It may be said that the reception of foreign legal systems is also a modern problem.

## Legislative Procedures in the PR China

By *Barbara Darimont*, München

Since the end of the 1970s, laws have been codified on a large-scale in the PR China. Although a legislative procedure is laid down in the Constitution, in force since 1982, it is scarcely applied. With the passing of the legislative bill on 15 March 2000, this grievance was to be redressed. The legislative procedure was given concrete substance and regulations were adopted for the law-making procedure relating to executive rules and for the hierarchy of laws. Opinions differ over the regulations on abstract judicial review (of the constitutionality of laws), which pursuant to Art. 67 of the Constitution is exercised by the National People's Congress, since this constitutional norm is of no practical relevance. In the course of discussion, consideration has been given to the establishment of a constitutional court, or at least a constitutional commission. Whether such a body should be independent or subordinate to a State authority, such as the National People's Congress, is in dispute. The discussion shows that the PR China is still far away from a separation of powers in the Western sense.

## Judicial Co-operation in the context of EU-China political relations

By *Nicole Schulte-Kulmann*, Trier

The Human Rights and the Rule of Law are two areas of great importance for the European Union's (EU) policy towards the People's Republic of China (PRC) albeit strategies followed by the EU in order to further these goals have changed over time. Since the end of the 1990s, special emphasis was laid on technical legal co-operation between the EU and the PRC as an instrument to improve the Rule of Law and the Human Rights situation in the PRC. This article concentrates on the "EU-China Legal and Judicial Co-operation Programme" as one important measure in this field.

A detailed description of the programme's organisation, aims and activities reveals that co-operation based on non-confrontation is an important pre-condition for a successful European-Chinese legal exchange of views – even in sensitive areas such as Rule of Law and Human Rights. Furthermore, an atmosphere of non-confrontation is especially conducive to the development of networks – or 'epistemic communities' – between European and Chinese legal experts. These networks are of great importance for the transplantation of legal norms and legal concepts such as the Rule of Law from their western origin to the PRC.

The experiences gained from the practical European-Chinese legal co-operation indicate that in the political area of EU-PRC relations, too, “quiet diplomacy” might prove more successful in promoting Human Rights and Rule of Law in the PRC than offensively urging the PRC to adapt to western standards in these areas.

### **Different Conceptions of Human Rights Protection in the Latin American and the European Integration Process: The ”Andean Charter of Human Rights”(II)**

By *Waldemar Hummer* and *Markus Frischhut*, Innsbruck

Continuing from VRÜ 2003 – 3, part II of the contribution describes the normative details of the Andean Charter. This part examines the various articles dealing with human rights issues, including rights of the first, second and third generation. The authors give special interest to the rights of groups object to special protection (women, children and adolescents, older adults, persons with disabilities, migrants pp.), discussing also the human rights promotion and protection mechanisms on both national and international level in the Andean Community.