ABSTRACTS

Broadcast and media law in Japan – actual problems

By *Hidemi Suzuki*, Osaka

The article deals with the Japanese broadcast and media law, focussing two issues of actual interest: The journalist's privilege of refuse to testify and the state's influence on broadcasting services.

The journalist's right to refuse to testify is not guaranteed by law, but meanwhile by judiciary. In 1952 the supreme court denied it in the field of criminal procedure, but accepted it at the first time 2006 in civil procedure, where it is guaranteed as protection of professional secrecy normally for doctors, lawyers, clerics pp. The article argues to regulate it by law in criminal procedure as well.

Dealing with the state's influence on broadcasting services, the article gives an example analysing the "Aruaru"-TV-Scandal 2007. The author criticises the indirect control of the program autonomy through the „Ministry of Internal Affairs and Communication“, by decent hints (*Gyôseishidô*).

Environmental protection – the basic rights view

By *Kazuhiko Matsumoto*, Osaka

The environmental protection as a constitutional problem can be also treated from the perspective of the basic rights. In Japan there are many basic rights problems concerned with the preservation of the environment. In this Article only some topics are picked up, for example, about the discussion on the environmental rights, legal problems of the personhood rights and the property, the public welfare as the justification for the restrictions of the basic rights, the obligations of the state for the basic rights protection and the environmentally related aspect of the procedural basic rights. After the analysis it is concluded that the environmental protection from the viewpoints of the basic rights is much valuable to examine, while it has some limitations.

A normative or semantic Constitution? The Discourse on the Constitutionality of the Property Rights Law of the People's Republic of China

By *Björn Ahl*, Hong Kong

Before the adoption of the Chinese Property Rights Law in March 2007, Chinese scholars of private law and constitutional law engaged in a debate on the constitutionality of the

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draft of the Property Rights Law. The article explores the constitutional discourse particularly in view of the Constitution's binding force in relation to the legislature. This approach differs from other studies which focus on the application of constitutional provisions by the judiciary in order to determine the normative character of the Chinese Constitution. Eventually, the results of the analysis are used to substantiate the notion of the 'socialist rule-of-law state' which was inserted into the Constitution by the 1999 amendment.

Korean Constitutional Law confronted with the possibility of reunification: Can german experiences help?

By *Kolja Naumann*, Köln

A prospective Korean Reunification will raise many questions in Constitutional Law. This article contends that some of these problems can be adequately solved when comparing them to German Reunification. In the German transition process, the Federal Constitutional Court played an important role, illustrated by the more than hundred judgments delivered. Yet, the Court often considered state acts to be constitutional because it served the “historic chance to achieve the unification of Germany”.

This observation might prove instructive for a prospective Korean process. If constitutional law stipulates the parameters for reunification which have to be respected, it also provides a certain margin of appreciation for the competent authorities how to cope with some of the highly difficult issues. This implies that the high standards of human rights protection usually guaranteed by the Korean Constitutional Court will have to be somewhat loosened in transition. The Court must keep in mind that the measures have been taken to realize one of the Constitution’s main goals. The Constitution does not loose its normative power in reunification, but it allows a certain flexibility to adapt to the special difficulties.

Domestication of the Leviathan? Southeast Asia’s Constitutions and the new homogeneity standards for constitutionalism in the ASEAN Charter

By *Jörg Menzel*, Pnom Penh

Southeast Asia is a diverse region with a dynamic development of its constitutional landscape in recent history. In 2007, the ASEAN Member States signed a new Charter, a regional constitution, as some would call it, which will enter into force in the end of 2008. This Charter defines the purposes and principles of ASEAN and among the concepts enshrined are democracy, human rights, rule of law, constitutionalism and adherence to international law.

In reality, Southeast Asian States are far away from being united under such concepts for the time being. Brunei is an absolute monarchy, Myanmar military dictatorship. Laos and Vietnam are economically liberal communist one-party systems. Cambodia, although

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having a democratic constitution since 1993, is currently more often qualified as elected strongmanship than living constitutionalism. Thailand and the Philippines, both under democratic constitutions, have been in severe crisis in recent years. Indonesia is widely considered to be the best practice example in Southeast Asia, when it comes to the development of constitutionalism.

Compared to the situation more than twenty years ago, the balance of democracy, human rights and constitutionalism seems much improved, however. The new ASEAN Charter therefore does not reflect the current situation, but a strong tendency. ASEAN should be applauded to have included a somewhat visionary agenda in its Charter. The provisions concerning constitutionalism may not be hard law for the time being, but they formalize an agenda, which has not been appreciated by all leaders in Southeast Asia in recent history.

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