# SUPPORTING THE RULE OF LAW WORLDWIDE

THE KONRAD-ADENAUER-STIFTUNG
RULE OF LAW PROGRAMME

**3** | FOREWORD

**5** | GLOBAL INTEREST
IN GERMAN LEGAL CULTURE

**9** | PROMOTION OF THE RULE OF LAW
BY THE KONRAD-ADENAUER-STIFTUNG

- *Promoting the rule of law in Latin America . . . . . . 13*
- *Promoting the rule of law in Asia . . . . . . . . . . . . . 16*
- *Promoting the rule of law in Sub-Saharan Africa . . 22*
- *Promoting the rule of law in South-East Europe . . . 25*

**32** | SELECTED PARTNERS OF THE
KONRAD-ADENAUER-STIFTUNG

**35** | CURRENT PUBLICATIONS
(SELECTION)

www.kas.de

# FOREWORD

*Since the fall of the Berlin Wall and the end of the systemic confrontation of the Cold War, development policy discussion has increasingly centred on the search for political framework conditions to achieve successful and sustainable development as well as value-based development cooperation. The increased focus on political framework conditions was aired at the start of the 1990s in the form of five political criteria set out by the former Federal Minister for Economic Cooperation and Development of the Federal Republic of Germany, Carl-Dieter Spranger. These criteria, the guarantee of the rule of law and legal certainty, observance of human rights, popular participation in the political process, creation of a market-friendly economic system and, not least, state policy generally geared towards development, have henceforth been of central significance in terms of the nature and extent of development cooperation (conditionality) and have simultaneously outlined important fields of activity for such cooperation. Similar criteria have also been developed on an international level, above all by the World Bank, the OECD Development Assistance Committee (DAC) and the European Union.*

*In 1994, the World Bank published a study that described inadequacy of laws, uncertainty in their application, arbitrary interpretation, deficient enforcement, inefficient and drawn-out processes and a lack of independence on the part of the judiciary as decisive barriers to development that discourage trade and investment, increase transaction costs and foster corruption. From that point onwards at the latest, development policy discussion duly succeeded in asserting that the rule of law represents one of the primary basic prerequisites to achieving successful economic and social development. Rule of law and legal certainty go hand in hand with sustainable economic development in that the one cannot be achieved without the other.*

*Against this backdrop, it is not surprising that many national and international development cooperation institutions are attaching ever-greater importance to promoting statehood based on the rule of law. Indeed, the subject is often positioned as a cross-cutting issue; for example, since 2004 the United Nations has been working to establish the rule of law as a cross-cutting issue in all areas of activity.*

*In the 2005 World Summit Outcome Document, the world's heads of state and government ceremoniously confirmed the decisive role played by the rule of law in terms of development action: "We acknowledge that good governance and the rule of law at the national and international levels are essential for sustained economic growth, sustainable development and the eradication of poverty and hunger."*

*More recently, in Potsdam during Germany's presidency of the EU, foreign ministers of the G8 countries once again underlined the significance of the rule of law. Amongst other aspects, their "Declaration on the Rule of Law" of 30 May 2007 states: "We, the Foreign Ministers of the G8, reaffirm that the rule of law is among the core principles on which we build our partnership and our efforts to promote lasting peace, security, democracy and human rights as well as sustainable development worldwide. (…) There can be no sustainable development without the rule of law to protect the rights and liberties of all persons. The advancement of the rule of law is, therefore, an imperative for any country that wants to achieve social and economic progress in a globalizing world."*

*This conviction also lies behind the international efforts of the Konrad-Adenauer-Stiftung (KAS). It is for this reason that, since 1990, the foundation has been supplementing its global projects for the promotion of democracy and political dialogue with a transnational sector programme designed to promote the rule of law – the Rule of Law Programme. German lawyers with international expertise direct this programme from bases in Bucharest, Nairobi, Mexico City, Montevideo and Singapore, while cooperating closely with KAS national offices spanning the whole of South-East Europe, Sub-Saharan Africa, Latin America and Asia. The head of the national office in Cairo additionally coordinates our rule of law development work in North Africa and the Middle East. At the foundation's headquarters in Berlin, a lawyer is also tasked with overseeing these worldwide activities.*

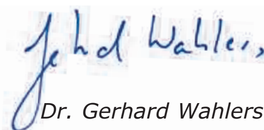
*In line with its commensurate function and identity, and in contrast to many other bilateral and multilateral donors and advisors, the Konrad-Adenauer-Stiftung does not adopt a purely technical stance, but rather pursues an explicitly political, dialogue-based approach. Thanks to trusted contacts often nurtured over decades – KAS has been operating abroad since 1962 – the foundation is able to credibly promote the principles of the rule of law in numerous countries throughout Latin America, Africa, Asia and, since the fall of Communism in 1989, also in Central and Eastern Europe. Indeed, such action is of utmost importance, given that even the finest constitutions and laws will barely create an impact where a general consciousness of applicable law and its ensuing rights and obligations is lacking among protagonists within the justice system and the population as a whole. Such consciousness can, however, only be established and maintained through continual efforts to promote political education.*

*As a German political foundation, the Konrad-Adenauer-Stiftung has considerable advantages over state development cooperation in terms of its commitment to promoting the rule of law. Despite a growing interest in contributing to the internal order of states and influencing social processes, state action is restricted by the limits of international law where the partner state has no desire to support such commitment. Generally, in these instances, the only opportunity for German development policy to make an effective contribution in this area is through the targeted efforts of political foundations whose projects for the promotion of democracy and the rule of law act in support of state development cooperation; whereby, in terms of the power of their arguments, they make use of what former German President Roman Herzog once referred to as "soft power".*

*This is an aspect of considerable relevance specifically in the sensitive area of fostering the rule of law, in which, in many places, the Konrad-Adenauer-Stiftung cooperates directly with the judiciary and, in particular, constitutional court and supreme court judges. Thanks to its political proximity to the Christian Democratic Union of Germany (CDU) and an entrenched value system, from the very outset the foundation has enjoyed the essential credibility needed to enter into fruitful dialogue with local political partners. Whereas state institutions undertaking foreign development cooperation frequently encounter a certain level of mistrust, particularly in the area of law, experiences over recent years show that the opposite is true in relation to reactions to the KAS Rule of Law Programme. The trust enjoyed by the foundation in many regions of the world affords a considerable comparative advantage, particularly in terms of activities to promote the rule of law.*

*The aim of this brochure is to present the global activities concerning the rule of law undertaken by the Konrad-Adenauer-Stiftung to a broader public. As such, we start by providing an outline as to why there is generally such a strong interest for German law and the German legal culture in many countries of the world – a fact that the outside observer may find somewhat difficult to understand. Discussion then moves on to illustrate the nature of the foundation's work on the rule of law, focussing particularly on the areas of law KAS deals with in individual regions of the world, the goals it pursues and the manner of its approach. Finally, in addition to a selection of relevant publications, we present a number of selected partners with whom the foundation cooperates in the countries in which it is active.*

*I trust you will find the reading both interesting and informative; we would be delighted to receive any feedback and suggestions you may have.*



*Dr. Gerhard Wahlers*
*Deputy Secretary General*
*Konrad-Adenauer-Stiftung e.V.*

# GLOBAL INTEREST IN GERMAN LEGAL CULTURE

German expertise in the area of law and justice is the subject of great attention throughout the world. Indeed, a whole host of newly industrialised and developing countries in Latin America, Asia, Africa and Central and Eastern Europe have demonstrated considerable interest in our legal culture. This applies in equal measure to German legal doctrine, jurisprudence, legislation and legislative procedures, implementation of laws and questions of legal organisation. From a historical perspective, that countries compare their respective legal systems and also effect "legal imports" as the case may be, is nothing new. In the late Middle Ages, Germany itself absorbed Roman law to a considerable extent. A further example in German legal history is the influence on municipal law by the Allies following the end of the Second World War.

A considerable level of interest exists first and foremost on the part of the Latin-American countries – with whom we share a common legal tradition and also, above all, common value systems and legal ideals. In this region there is barely a textbook on, for example, constitutional and administrative law or criminal law, that does not cite German legal teachings. However, many other countries in Africa, Asia, and Central and Eastern Europe also have a sizable advisory requirement, one that Germany should not hesitate to meet to the greatest possible extent.

The reasons for this are diverse; and a number are afforded cursory attention in the following. Primarily, German legal culture is marked by heavily differentiated dogmatism and sub-specialisation. The result being that sufficiently consolidated and reliable material, and, as a rule, also the corresponding specialists are generally available for each required area of law. Additionally, in contrast to the common law domain, German resolution models are readily available, immediately applicable and supported by an in-depth experiential base (for example, as a result of successfully effected institutional development in the new German federal states). German bilateral development cooperation may well have fewer resources, particularly in comparison to major multilateral players; however, as regards the rule of law, the absolute extent of resources frequently plays a lesser role in terms of project success. Often of far greater importance is access to key local protagonists and their subsequent trust in the advisory institution, given that this can strengthen commitment in the recipient countries to ensure that legal reforms are not only set out in theory, but are also actually implemented. Moreover, German interests are generally formulated in an open manner, without any hidden agenda. German development cooperation is effected in equal measure on the basis of solidarity and self-interest. Adopting the rule of law provides the respective partner country with enhanced development opportunities. At the same time, from both an economic and security policy perspective, Germany benefits where it is able to count on stable, democratic partner countries founded on the constitutional rule of law. The needs-based and dialogue-orientated approach adopted by Germany is also clearly well received by numerous cultures, particularly with regard to the law. Indeed, when advising on the rule of law,

those who fail to afford local legal traditions the same consideration as social, religious and cultural factors will see little success. The Konrad-Adenauer-Stiftung offers consulting and continuing education for precisely defined legal themes; however, on no occasion does it attempt to implement German legal concepts that extend beyond the legal culture of the respective recipient country. Furthermore, close cooperation with influential and credible local protagonists is absolutely essential and is a standard procedure for the Konrad-Adenauer-Stiftung throughout the world.

To single out a particularly explicit example, it has been observed that many countries throughout the world show a marked interest in the German constitution; whereby the direct applicability of basic rights and the instrument of constitutional complaint are considered exemplary. The culture of precise interpretation engendered by the Federal Constitutional Court gives rise to impetus and resolution models in the same measure as Germany's highly specialised and tradition-steeped constitutional theory.

It is against this background that both the Bolivian and Columbian constitutional courts in Latin America approached the Konrad-Adenauer-Stiftung regarding the Rule of Law Programme in 2001/2002, requesting that access to jurisprudence of the German Federal Constitutional Court regarding basic rights be provided in Spanish. As a result, together with a systematic index, the foundation facilitated translation and publication in both Spanish and Portuguese of the essential elements of all the fundamental judgements of the Karlsruhe court since its establishment. In this manner, and for the very first time, the foundation provided academia and legal practitioners – above all, judges – throughout the whole of Latin America, with systematic access to case law in this area from the highest German court. Today, the volumes can be found in supreme and constitutional courts, parliamentary and university libraries, foreign, interior and justice ministries, educational institutions for judges and lawyers, as well as a whole host of legally orientated non-governmental organisations throughout the entire Latin-American continent, and are repeatedly cited in court judgements and academic papers. In South-East Europe, the foundation is also currently preparing a comparable publication in a number of South-East European languages. These works are due to be published in 2009, in time to be implemented in foundation activities on the occasion of the 60th anniversary of the establishment of German Basic Law (Grundgesetz).

Specifically in the years directly following the major upheaval of 1989/90, the practice of Central and Eastern European constitutional courts took a strong lead from both the jurisprudence of the German Federal Constitutional

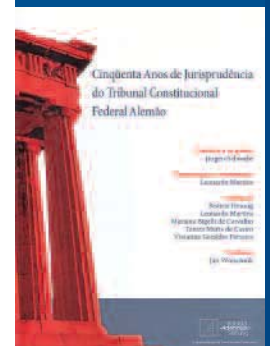



*Photo top: President of the Parliamentary Council, Konrad Adenauer, signs the German Basic Law (Grundgesetz) (Bonn, 23 May 1949).*

*Photo middle: German Federal Constitutional Court judges in Karlsruhe.*

*Photo right: In a work of approximately 1000 pages, the foundation has provided Portuguese-speaking readers with an overview of the jurisprudence of the German Federal Constitutional Court (Karlsruhe) for the first time since its establishment. To date, only isolated judgements have been available in Portuguese. The major part of the publication is devoted to the basic rights; however, it also includes leading decisions on constitutional law and the law of constitutional procedure. Moreover, the systematic keys and indexes simplify access for the non-German jurist. The Brazilian translation team was headed by Leonardo Martins, a professor at the Univ. Fed. do Mato Grosso do Sul (UFMS), who also provides a comprehensive introduction to German constitutional jurisprudence in the volume. In terms of area, population and economic power, Brazil is the most important country in South America and one of the largest economies in the world. It is deemed one of the so-called newly industrialised countries currently in the process of transforming from a developing country into an industrial nation.*

Court and that of the European Court of Human Rights, particularly in terms of developing the principle of the rule of law and constitutional protection of basic rights. Central and Eastern European constitutions that have progressively entered into force from 1989 onwards consistently support respective national objectives to achieve a democratic state founded on the rule of law, which in turn affords respect for human and civil rights and breathes life into the principles of social justice. In this respect, the concept of constitutional statehood in the new democracies is unmistakably orientated on the model of German Basic Law. This applies in terms of comprehensive commitment to the constitution by all the state powers – including the legislature – which is frequently expressly entrenched within the text of the constitution in the form of specific clauses of higher authority, and also in terms of the institutional mechanisms required for effective enforcement of such. The majority of these constitutions have opted to establish specialised constitutional courts that are independent of other courts, and which are primarily charged with scrutinising the constitutionality of laws passed by parliament. In this manner and building on their own experience, these constitutions have adopted a model of constitutional jurisdiction that has long been practiced in the Federal Republic of Germany and – to some extent taking a conscious lead from the German model – also in Italy and on the Iberian Peninsula. In contrast to this is the legal status of the constitutions in a series of Western and North European states, which either generally reject the idea of binding the legislature to higher constitutional law (UK), refrain from establishing a specific constitutional jurisdiction to effectively enforce higher constitutional authority (Scandinavia), or only afford constitutional jurisdiction limited powers of control (France). Against this background, a basic constitutional consensus is apparent amongst those European states that have endured a prolonged phase of totalitarian and authoritarian governments in the recent past and which, in light of such experiences, are no longer willing to leave respect for fundamental constitutional values to the arbitrariness of political forces. Considered in this light, it is of little surprise that the jurisprudence of the German Federal Constitutional Court in particular, also enjoys such popular demand in Central and Eastern Europe.

Asia, and particularly the South-East Asian region, has witnessed the development of an intensive preoccupation with the relationship between citizens and the state and the significance of the rule of law. This confrontation has been primarily espoused by civil society; whereby the improved economic conditions have also played a notable part. The scope created for private enterprise trading and the resultant strengthening of a productive civil society are giving rise to ever-greater calls for bureaucratic structures to be adapted to the changed economic setting. Precisely within this context, it is German expertise that is frequently requested in the hope of gaining impetus and attaining resolution models from Germany. Calls for good governance – encompassing efficiency, transparency, citizen orientation, popular participation, responsibility and effective mechanisms to combat corruption – are becoming ever louder. Protagonists within the realm of civil society are progressively denouncing widespread corruption and their commitment is drawing the ever-increasing attention of governments. In some instances, innovative methods are being tried with the aim of at least enhancing awareness of the fact that corruption is not an acceptable evil; for example, an NGO network on the island state of Indonesia, which stretches over approximately 5,000 km, has set up so-called ‘watch teams’ in the individual provinces to investigate reported cases of corruption and subsequently publish substantiated facts on the Internet.

Moreover, independence of the judiciary is becoming an ever-greater subject of discussion in many countries throughout Asia and, indeed, in some cases is being courageously demanded. Throughout the region, the lack of balanced systems for mutually controlling power (checks and balances) is increasingly being termed a barrier to development, particularly that of an economic nature. Essentially, such considerations emanate from discussions on possible constitutional reform or endeavours to actually make effective application of the constitutional system a constitutional reality. Even countries such as Vietnam are already considering the scope for a judicial authority charged with examining the constitutionality of laws and other sources of law in individual cases. Indeed, at the start of 2008, the foundation received a formal request to provide long-term consulting to the commensurate National Assembly working party in Vietnam.

A constitutional court was established in Thailand a number of years ago and just recently also in Indonesia. However, such moves have not yet attained an exemplary character, rather they remain within the parameters of the respective country and must first prove their worth in practice locally. In addition, such positive developments still remain susceptible to set-

backs. Due to a lack of knowledge, initiatives fostering the rule of law are greeted with a lack of enthusiasm by the population as a whole and face a lack of understanding or even rejection by power elites who find their established circles disturbed. This was patently evident during the September 2006 military putsch in Thailand, when during a – thankfully bloodless – coup the 1997 constitution was overridden and parliament dissolved. The constitutional court judges were quite literally sent home (indeed, without any official dismissal notification or similar documentation). Harsh criticism has also frequently been lodged against the constitutional court in Indonesia, which has come under fire for unconstitutional decisions that are unpopular with certain groups of the political elite. Moreover, in most other Asian countries, the respective constitutions and vested civil rights offer anything but the guarantees that they should in reality provide.

Overall, the justice systems in Asia can rarely be characterised as truly independent – here too structural dependency and corruption is encountered. Frequently the judiciary is misused as a political tool. Indeed, in recent years, the courts in Malaysia used spurious charges to place the political opponent of former Prime Minister Mahatir, Deputy Premier Anwar Ibrahim, behind bars. In Pakistan, in 2007, a dispute escalated between President Musharraf and the Supreme Court judges owing to the fact that, contrary to the constitution, the President was also Chief of Army Staff at the time. In anticipation of negative judgements, Musharraf removed the judges, including Chief Justice Chaudry, declared a state of emergency and placed them under house arrest. This led to continued protests from practically all quarters of the judiciary and legal profession, and only first subsided following the Pakistani general elections in February 2008. Opposition to undue influence being placed on the judiciary is also increasingly being heard elsewhere, often from the legal profession and, on occasion, also from judges themselves.

Turning to the African continent, the new start for democracy in South Africa provides an exemplary model based on one of the most liberal constitutions in the world. The Konrad-Adenauer-Stiftung played a substantial advisory role in the process of constitutional reform and, as such, enabled Germany's experience in shaping its democracy – for example, in terms of a federal state structure with strong municipal districts – to be considered and adopted during the landmark Kempton Park negotiations. Germany was extremely keen to see a successful change of system, to the extent that delegations including representatives from the relevant parties and other experts were invited to the Federal Republic of Germany. High-level talks took place at the Federal Constitutional Court in Karlsruhe, in which former President Prof. Ernst Benda played a significant role. Moreover, multi-party conferences were held in South Africa centring on constitutional dialogue regarding the multi-party system, federalism and the social market economy, which in turn served to clarify pivotal issues. Of note in this context is that German advisory support was directed at all parties and – albeit in varying degrees – was also openly accepted.

In addition to German constitutional law – namely the law of basic rights and state law – when pursuing social, political and legal stability many countries also wish to gain knowledge of German electoral law, political party law, criminal law and the law of criminal procedure, civil law and the law of civil procedure, or administrative law and the law of administrative procedure. Particularly in recent times, there has been a desire to understand how administrations operate under the rule of law, including specifically in terms of courts with binding jurisdiction over the administration.

An immediate response to this demand should not purely stem from a development policy perspective; but rather, German and European commitment to providing legal advice should also encompass foreign policy perspectives. Ultimately, this could develop into a test case for the application of a European soft power approach to foreign policy: indeed, in the area of legal and judicial reform, open dialogue founded on strong argumentation holds particular promise. Against the background of our distinct historic experiences and our firm belief in the importance of human dignity, we as Germans particularly consider ourselves obliged to pursue this cause.

Nevertheless, one must also be cautious of a constantly recurring misunderstanding in this respect. The German Basic Law may well be an excellent constitution; however it is not an "export article" in the sense that it simply needs to be adopted without further ado. On the contrary, in conjunction with its interpretation by way of case law and doctrine, it should be considered as a rich source of possible solutions that can only ever be effective within the context of the actual legal culture of the recipient country; whereby this observation also applies in equal measure for all the other areas of law referred to above.

# PROMOTION OF THE RULE OF LAW BY THE KONRAD-ADENAUER-STIFTUNG

Generally perceived, a state may be designated as one founded on the rule of law where – within the meaning of a minimal definition – the following conditions have been fulfilled. Firstly, the principle of the separation of powers must apply; specifically, a system of horizontal, political and legal controls must be created and the functionability and independence of the judiciary and parliament guaranteed. Secondly, the legality of the executive must be assured and can primarily be guaranteed by way of an effective administrative court. The third requirement is to bind all laws to the constitution in its capacity as the supreme authority. Finally, and not least, any state based on the rule of law must provide sufficient scope for application of fundamental personal and human rights, which should not be deemed purely negative rights of defence, but rather should also include pro-active elements.

The objectives formulated by the Konrad-Adenauer-Stiftung in relation to its global work to further the rule of law are closely associated with this definition.
The foundation advocates:

- institutions based on the rule of law and central institutional elements of the rule of law, such as effective constitutional courts;
- the separation of powers, particularly a strong, established and independent judiciary and a legitimate executive;
- the guarantee of fundamental personal and human rights, both in terms of substantive law and from the procedural law perspective;
- the strengthening of regional unions where such action safeguards the rule of law and democracy.

In pursuit of these objectives the Konrad-Adenauer-Stiftung works throughout the project region encompassing the entire area of Latin America, Eastern and South-East Asia, Sub-Saharan Africa, South-East Europe, North Africa and the Middle East; whereby the transnational Rule of Law Programme interacts closely with the individual national offices. In a number of cases these offices are able to draw on decades

*Principally, the foundation purely deals with primary legal areas of political relevance, which are specific to the Konrad-Adenauer-Stiftung as a political foundation. Conversely, with the exception of individual KAS national offices on specific occasions, the worldwide Rule of Law Programme does not generally act within fields of ordinary substantive law such as, for example, civil law, criminal law or administrative law. Our areas of focus are:*

- *constitutional law and constitutional courts*
- *fundamental personal and human rights*
- *procedural law*
- *right of integration*

*2008 strategy workshop for heads of the Rule of Law Programme (left to right, Dr. Andreas Jacobs, Dr. Stefanie Ricarda Roos, Dr. Jan Woischnik, Clauspeter Hill, Rudolf Huber, Gisela Elsner, Prof. Dr. Christian Roschmann) in Mexico City*

of experience in promoting the rule of law – the example of South Africa having already been mentioned above.

The Konrad-Adenauer-Stiftung initially opted for a transnational approach in implementing its "rule of law" sector programme, on account of the fact that rule of law reform processes often take a parallel course in the various regions of the world. Constitutional reforms after 1989 throughout the entire Central and Eastern European region have already been comprehensively addressed in the foreword. A further example is the fundamental reform of criminal procedure observed in practically all Latin-American countries since the mid-1980s. In this area, which may be considered a sensitive "seismograph" in terms of the status of rule of law development, there is a clear tendency towards ousting the traditional written "inquisitorial trail" stemming from the colonial period and replacing it with forms of oral hearings based on the rule of law. The prominent power of the judge is being reduced and countered by improvements in the legal status of the defendant. Whereas previously the defendant was essentially a mere object within the procedure instigated against him, the defendant is now considered a subject of the procedure to whom specific rights are guaranteed. In Asia too, such reforms have frequently taken a parallel course in numerous different countries. Accordingly, an intensive confrontation regarding the validity of fundamental personal and human rights has been apparent in this region for a number of years, particularly with respect to the right of ownership. In Africa, discussion along the same lines recently resulted in the establishment of an African Court on Human and Peoples' Rights.

Thanks to its transnational approach, the Konrad-Adenauer-Stiftung is also able to engage and facilitate discussion of themes that quite simply could never be addressed publicly on a purely national level. Thus, the foundation is able to 'focus attention' on such themes and generate problem awareness amongst the decision-makers and within civil society. This applies for all regions. An example of such in Africa is the intensifying discussion concerning the separation of powers in light of an often all-powerful executive that hinders an independent judiciary. In Asia, an example of one of the series of themes that decision-makers, such as judges, will only address within the scope of international forums is the previously mentioned topic of international human rights protection. In South-East Asia, in particular, this raises the sensitive question of coming to terms with the judicial past. Moreover, a further advantage of the transnational approach is that it allows the creation of regional networks of experts. In this manner, in the sense of helping one to help oneself, the Konrad-Adenauer-Stiftung is able to unite experts from individual countries within a region in order that they may exchange knowledge of their respective reform processes. The regular meetings of constitutional judges in Latin America are an example of this. For 15 years, for one week each year, the foundation has been bringing together constitutional court presidents and constitutional court judges from the entire continent. These meetings address a topical key issue, whereby each delegation stages a presentation and describes the progress or barriers being encountered in their respective country in order that resolution strategies can be developed together with assembled colleagues. Many Latin-American constitutional courts only first came into being in the 1990s and have not yet succeeded in sufficiently securing their position within the state power structure. In this respect, being able to exchange ideas with colleagues from other countries is frequently of help. Even the mere participation in such a meeting can often send a clear signal and enhance the structural strength of the delegation in question within the state power structure. It is in this vein that, despite the continually escalating political situation in Venezuela, the foundation has to this day persisted in extending an invitation to the president of the country's constitutional court, although since 2005 this has not been accepted. KAS meetings of constitutional judges are also regularly used to exchange recent judgements and report on reform processes of general interest. Moreover, contributions of particular interest are published in the yearbook of Latin-American constitutional law that the Konrad-Adenauer-Stiftung has brought out for the last 14 years. The meetings also provide an opportunity to directly discuss decisions of the Inter-American Court of Human Rights with the court's president, who is likewise a regular attendee. Overall, the meetings provide a unique forum for the judicial elite of Latin-American countries and ultimately foster stabilisation and professionalisation of constitutional courts that are still in their infancy.

In a similar manner, the annual conferences of Asian constitutional judges have now become a firm element of the Konrad-Adenauer-Stiftung's work on the rule of law. The first convention of this kind took place in Jakarta in September 2003, directly following the foundation of the Indonesian constitutional court. This was followed by meetings in Bangkok, Ulan Bator,

FORMER GERMAN PRESIDENT ROMAN HERZOG WELCOMES

## JURISTS

*At the invitation of the Konrad-Adenauer-Stiftung, high-ranking jurists from Africa, Asia, South-East Europe and Latin America came to Germany in June 2007 for a study trip addressing the "Separation of powers, judicial independence and professional ethics in the judiciary". As such, the event focused on a central aspect of the KAS Rule of Law Programme's work in Sub-Saharan Africa, East/South-East Asia, South-East Europe and Latin America.*

*Left to right: Jan Woischnik (Coordinator KAS Rule of Law), Chief Justice Peter Shivute (President of the Supreme Court, Namibia), Helmut Kitschenberg (Programme Assistant), former German President Roman Herzog, Viorica Costiniu (President of the Romanian Association of Judges), Param Cumaraswamy (former UN special rapporteur on the independence of judges and lawyers, Malaysia), Eduardo Rodríguez Veltze (former State President, former President of the Supreme Court, Bolivia)*

*The foundation guests had the opportunity to meet with representatives of the executive, legislative and judiciary from both federal and regional state levels. Receptions at the Federal Chancellery, Federal Ministry of Justice, German parliament (Bundestag) and Federal Constitutional Court were complemented by visits to the Brandenburg state Ministry of Justice and state parliament (Landtag) and the Potsdam regional court (Landgericht). Further visits encompassed meetings at the German Association of Judges (Deutscher Richterbund) and Max Planck Institute for Comparative Public Law and International Law in Heidelberg.*

*On 1 June 2007, the group was received by former German President Roman Herzog at his residence in Jagsthausen Castle on the occasion of a two-hour meeting followed by a formal dinner. Primary topics at the gathering were the German constitutional court system, issues relating to the election of judges and the development of judicial independence in Germany since 1945. Foundation representatives included Secretary General Wilhelm Staudacher.*

Manila and Seoul, which were hosted by the respective constitutional or supreme courts. Whereas the first two conferences were devoted to general themes and gave delegates the chance to get to know each other and build up trust, since then the themes of "Constitutional Courts and Politics", "Constitutional Jurisdiction between State, Culture and Religion" and "Constitutional Review for Safeguarding Civil, Political and Socio-Economic Rights" have been the subject of discussion. Participants particularly value the collegial atmosphere of these meetings in that they provide a platform for extremely open exchanges, including on critical developments in individual countries. Part of each of these specialist conferences is also reserved for the jurisprudence report; whereby respective judges present specific cases from the previous year, which in their opinion were of landmark importance for the constitutional law of their country. This section is also particularly well received by the participants, given that it allows them to gain an in-depth overview of significant problems being encountered by constitutional justice throughout the region and also affords them a comparative legal perspective. As a result of the regular meetings, the establishment of a union of Asian constitutional courts has recently been decided.

The work of the Konrad-Adenauer-Stiftung to promote the rule of law throughout the world does not pursue a purely technical approach, but rather adopts an explicitly political, dialogue and value-based modus operandi; not least reflected in the instruments employed by the Konrad-Adenauer-Stiftung. The most important pillar of the foundation's work is the implementation of educational initiatives, namely international specialist conferences, seminars, workshops and continuing education events for legal professionals, such as judges and public prosecutors, as well as for law students.

To support these endeavours, regular publications are also issued within the Rule of Law Programme. A selection of current publications is provided at the end of the brochure. Other important components of this educational work are the study and informational programmes organised by the foundation in Germany: these provide participants (decision-makers and multipliers) selected from the stated regions of the world with a regular opportunity to gain first-hand information through dialogue with representatives of the German judiciary and legal ethos. Furthermore, the foundation also grants scholarships to particularly talented law students and young legal practitioners, such as academic employees of constitutional courts.

INDIGENOUS LAW IN

# LATIN AMERICA

*The Twelfth KAS Conference of Constitutional Court Judges in Latin America, 2005, gave indigenous jurists a first-ever opportunity to spend a whole morning presenting and discussing their issues and perspectives with a gathering of the Latin-American continent's judicial elite. The keynote theme of the conference, namely "Constitutional guarantees within the criminal process", provided the ideal platform for this purpose; especially given that in terms of criminal prosecution it is the often archaic seeming customs and practices of the indigenous population that are taken up by the Latin-American media and cause dismay amongst the "enlightened" non-indigenous populace. Indeed, such was the case in the months prior to the conference, for example, in Peru (Collao, Puno) and Bolivia (Ayo Ayo), where a number of instances of brutal lynch-mob justice occurred. The indigenous jurists provided an overall insight into the problems of observing constitutionally guaranteed basic rights within indigenous criminal prosecutions and also reported on the course of indigenous criminal proceedings, from the commission of unlawful acts to sanctions. During the course of the two presentations and subsequent intensive discussion, the following two aspects in particular emerged:*

- *Principally, the overall perception of indigenous jurists is somewhat incompatible with Western enlightened legal tradition in the area of substantive and procedural criminal law – and indeed in many other areas, such as property law and the (in Western eyes) obvious right to private ownership (assertions made here presume a subdivision into the various legal fields of civil law, criminal law and so on, as is standard in Western legal culture, although such fields are generally not recognised in indigenous legal cultures).*

*As such, the indigenous representatives expressly rejected, for example, the idea of imprisonment on the basis that the primary concern of indigenous law is to implement the fundamental principle of creating harmony between individuals, the community, nature and cosmic energy. The purpose of punishment according to the indigenous mindset is to remove the "disruption to nature or the natural order" caused by the commission of the criminal act ("reestablecer el orden de la naturaleza"). This could be achieved, for example, by a bath in cold water, carrying out work for the common good or, in the instance of serious crimes, expulsion from the community. By contrast, a prison sentence would only exacerbate the disruption to the natural order of things and it is for this reason that imprisonment as such would be counter productive.*

- *During the discussion, which was fiercely contested on occasion, the indigenous representatives demonstrated a clear willingness to reach compromises with the Latin-American judicial elite. For example to recognise modern Western-style criminal procedural law. However, this would be conditional upon a principle acceptance or recognition of the contrasting indigenous beliefs by Western-thinking sections of the population. True national unity ("unidad") could only be achieved on this basis, which would indispensably call for a certain legal plurality ("pluralidad jurídica"). If, conversely, no indigenous jurists were invited to consultations to prepare a draft law, as has frequently occurred in the past, fundamental rejection or non-compliance by the indigenous populace could be expected in future.*

*It was argued that "unidad" could, for instance, be brought about in the area of substantive law by making actions such as gossiping ("chisme") or lying ("mentira") – today unknown in Western-enlightened criminal codes – criminal offences that would be subject to at least the prospect of mild punishment in order that the indigenous population could also identify with the law.*

*Following the here albeit briefly outlined positive experiences of the Twelfth KAS Conference of Constitutional Court Judges, indigenous jurists have been increasingly invited to take part in Rule of Law Programme events. Moreover, the 2006 yearbook for Latin-American constitutional law also devoted a specific chapter to indigenous law for the first time.*

# PROMOTING THE RULE OF LAW IN LATIN AMERICA

*Fernando Henrique Cardoso, former President of Brazil, following a speech at a KAS conference in Montevideo, 2007.*

Amongst southern regions of the world, Latin America is able to draw on the longest period of experience in efforts to enhance the rule of law. Indeed, an intensive discussion of the rule of law and judicial reforms began as far back as the 1980s in practically all countries of the continent, and it is here that the Konrad-Adenauer-Stiftung's work on the rule of law also has its roots. The foundation's Rule of Law Programme encompassing entire Latin America was developed at the start of the 1990s on the basis of a precise analysis of the critical symptoms apparent in many countries; symptoms that accompanied these countries in their return to a democratic state embracing the rule of law and called into question the functionability of the central state authorities – namely, the legislative, executive and judiciary. Based on the findings of this analysis a number of educational initiatives in support of constitutional reform processes were implemented, with the primary aim of strengthening constitutional court jurisdiction, developing human rights protection and modernising procedural law in the countries concerned. These activities saw a rapid crystallisation of the thematic profile of the Rule of Law Programme, which, with its comprehensive focus on human rights protection, constitutional law, constitutional courts, procedural law and rights of regional integration, has endured in detail to this day; albeit following a variety of modifications and amendments.

*Left to right: César Landa, then President of the Peruvian Constitutional Court, Herbert Landau, Federal Constitutional Court judge, Gisela Elsner, Head of the Rule of Law Programme/Latin America (Montevideo office).*

Thanks to the quality and efficiency of the educational measures effected, the programme has acquired an excellent reputation in Latin America in respect of all four thematic fields. Indeed, in a number of focal areas – particularly those of constitutional courts and international criminal law – the foundation has developed a significant edge in terms of expertise when compared to other governmental and non-governmental development cooperation protagonists.

The Rule of Law Programme has also taken on a leading role in cooperation with the Inter-American Court of Human Rights – not on the basis of financial aid provided, but rather in the form of joint projects. As such, in 2008, dialogue on the rule of law was initiated between the Inter-American Court of Human Rights and supreme courts in the Central American region; whereby, in cooperation with academic personnel, specific educational modules were drawn up with the aim of bringing the interpretation of national constitutional law in line with the application of international human rights conventions and, in turn, furthering a sustainable improvement in human rights protection through Central American courts. Since 2006, an accompanying journal entitled Diálogo Jurisprudencial has also been published, which presents national court judgements whose ratio

*The Supreme Court of Uruguay in Montevideo. The domed building in the background is home to the office of the Rule of Law Programme/Latin America.*

decidendi rely on international human rights conventions and refer to the jurisprudence of the Inter-American Court of Human Rights. In June 2007, at the invitation of the Konrad-Adenauer-Stiftung, eight judges of the new African Court on Human and Peoples' Rights came to San José to meet their Latin-American counterparts and benefit from their experience.

Through over 15 years of constant activity, the programme has developed a comprehensive, pan-Latin-American contact network encompassing all focal themes. Today, the majority of educational events and professional publications pursue an international approach, making intensive use of existing contacts in the various countries of the region. The resulting synergy effects are of inestimable value, given that discussions and reform processes on the sub-continent frequently run a parallel course in all the various countries without affording any platform for sufficient exchange beyond national borders. By means of a range of regional discussion forums, the foundation brings together academic experts and practitioners from the individual countries, thereby specifically aiding the much-advocated idea of "helping one to help oneself". A clear example of this is the Latin-American Study Group on International Criminal Law. This initiative was launched in 2002 by the Rule of Law Programme of the Konrad-Adenauer-Stiftung (Montevideo) and the Faculty of Law of the Georg-August University in Göttingen, and is the only expert committee in Latin America aiding implementation of the Rome Statute of the International Criminal Court within the region from an academic and comparative law perspective. Members of the study group maintain regular contact with each other and are now being consulted as experts both in their respective home nations and on an international level. Each expert is obliged to regularly compile a brief report on developments in their respective home country, which is then posted on the programme's website. An additional annual publication also presents research work by the study group on a specific area of the Rome Statute and the international criminal law. Criminal law experts from 13 Latin American states are represented within the study group, along with experts from Germany, Italy and Spain. The majority of members are university lecturers, judges, or employees of government authorities or non-governmental organisations working in a legal sphere.

The relatively young democracies in Latin America are dependent to a significant extent on the success of structural reforms concerning the rule of law. These reform processes will require continued assistance and support. From this point of view, German expertise derived from legal doctrine, jurisprudence and legislation appears to be particularly effective and – as experience shows – is also clearly welcomed by the recipient countries. Thanks to its continuity and quality, the international work of the Konrad-Adenauer-Stiftung that commenced in Latin America during the 1960s is highly regarded all the way up to the highest levels of governmental institutions. In turn, such esteem eases access to decision-makers and consequently increases the level of acceptance and effectiveness of Rule of Law Programme activities. The meeting of Latin-American constitutional court judges and the yearbook of Latin-American constitutional law previously referred to provide clear testimony to this, as does the invitation of former Brazilian President Fernando Henrique Cardoso who, in 2007, took to the stand in the Uruguayan parliament in Montevideo before an audience of around 400 to report on the position and prospects of regional integration in Latin America, and particularly the Common Market of the South (MERCOSUR).

In addition to the previously mentioned continuity of presence and in light of the subject areas addressed, the Rule of Law Programme is also similarly characterised by sufficient flexibility in terms of determining regional or country-specific focal points and instruments. Reform processes are difficult to plan; yet advisory services must often be available at short notice when the moment that offers healthy prospects for success arrives. This was the case, for example, in Mexico in 2006 and 2007, when the Mexican constitutional court declared essential parts of a law promulgated following pressure from private media concerns unconstitutional. Prior to this, through dialogue, educational events and pertinent publications, the Rule of Law Programme had highlighted the importance for democracy of a pluralist media market and had provided the Mexican judges with access to related jurisprudence of the German Federal Constitutional Court.

# PROMOTING THE RULE OF LAW IN ASIA

Asia is not only the most highly populated continent in the world and currently home to over half the global population, but is also – for the time being at least – by far the most dynamic. At the same time, a number of existing or looming conflicts with worldwide implications are apparent. Alongside the industrialised country of Japan, the two vast newly industrialised countries of China and India are dominating events in Asia, and also increasingly in other corners of the world.

*Clear contrast: An old city gate and modern office buildings in the South Korean capital Seoul*

Work to promote the rule of law in Asia will only achieve success if the distinct cultural heterogeneity of this continent is taken into consideration. Such heterogeneity has emerged over centuries and has not been diminished by either colonialisation or other developments, some in the wake of global political events. Accordingly, legal traditions and legal cultures in Asian countries are commensurately multi-facetted.

Buddhism, Hinduism and Islam have a varying impact on legal thinking and legal practice in Asia; whereby the exploitation of religion for the purposes of political action and utilisation of the state for religious ends (identification of state and religion) occurs to a differing extent with respect to the religions mentioned.

In this sense, Buddhism is rather moderate; intent on achieving a just social balance within society, Buddhism propagates democratic values such as responsible governance and has a clear tendency towards development. As such, the religion is fundamentally open to democratic social models and the rule of law.

*Head of the Rule of Law Programme in Asia, Clauspeter Hill, presenting the publication "Constitutionalism in Southeast Asia" to Prof. Dr. Victor V. Ramraj, Vice-decan of the Faculty of Law at the National University of Singapore.*

Within the context of the issue here, the caste system is the most significant factor in relation to Hinduism. Specific parameters for the governmental and legal order ensue from the structure of society, for example, in civil law (family and succession law, rights of ownership), which also impact on the structure of the rule of law. Similarly, this challenges the principle of equality in that courts cannot simply disregard these parameters.

Such influences are, however, significantly greater in countries characterised by Islam (Malaysia, Indonesia, parts of the Philippines, Bangladesh, Pakistan, Afghanistan, Central Asia and the Middle East). Religious influences, sometimes with enormous impact, have been observed in these countries and regions and still are to this day. Overall, it is clear that Islamic law, namely Sharia Law, is once again coming to the fore in a number of countries; whereby the effects are not only evident in private law (for example, family and succession law, property, the capital market) but also, and in particular, in criminal law. In Malaysia, for instance, the fundamentally secular constitution was amended a few years ago to introduce Sharia courts at constitutional level, with their authority – quite possibly intentionally – expressed in highly imprecise terms. As a result, access to state courts is denied in many cases regarding fundamental basic rights, while the Sharia courts do not

CULTURAL HETEROGENEITY IN

# ASIA

*The distinguishing factor is the Confucian doctrine with its strict hierarchical attitudes, commonly found in North and East Asia, and also in parts of South-East Asia. However, the compliance is not due to abstract norms supported by broad approval that stem from a democratic mindset, but rather due to standards imposed by authority figures (traditionally: emperors, teachers, fathers).*

*Korea – at least the Southern constituent state – after its long Japanese colonialisation, the Second World War and subsequent civil war, has developed along strong neo-Confucian lines. The first signs of democracy in South Korea only initially became apparent at the end of the 1980s, although since then they have developed into highly successful constitutional structures based on the rule of law. In contrast, the regime in the North has allowed the Confucian social order, marked by obedience and a hierarchic consciousness, to ossify into a totalitarian dictatorship that continues to this day.*

*In China, efforts to develop a constitutional state have been thwarted by communism. Indeed, the Cultural Revolution of Mao Zedong destroyed all signs of such, including, for example, the foundations established under the influence of German and European law that arrived via Japan.*

*Southern Asia and a number of South-East Asian countries have clearly been marked by the British colonial era and continue to pursue the Anglo-Saxon common law tradition to this day – albeit in various different forms. One example being India, where a strong, democratic order based on the rule of law was established as early as 1948, principally preserving the British colonial legal system. However, specific cultural and religious characteristics have become firmly established which are also reflected in the law (such as the caste system that is still effectively maintained to this day). The story is a similar one in Malaysia and Singapore, which gained independence in 1957 but, nevertheless, retained the fundamentals of the Anglo-Saxon legal system (Singapore separated from Malaysia in 1965 and became an independent city state). The former British Crown Colony of Hong Kong, which was only handed back to the Chinese mother country in mid-1997 with special status, still continues to practice common law. However, one cannot presume by any means that British law has been simply copied without change in all these countries. Such law was initially imposed, before then being adapted to the specific characteristics of local cultures and political perceptions during the decades that followed independence in these countries.*

*One particular example is the Philippines, which practiced continental-European law as a Spanish colony to the end of the 19th century, but then completely transferred to the Anglo-American legal framework during the American colonial era (to 1946). Indo-China – namely Laos, Cambodia and Vietnam – is similarly marked by French colonial power; as a result of which positive (written) continental-European law was introduced in the region. The basic principles are still apparent today, albeit that the constitutional core has been eroded by communism.*

*Thailand is one of the very few Asian countries to have avoided colonialisation altogether and, consequently, has never been exposed to direct foreign influence. Nonetheless, the affinity of the monarchs with European and, primarily, French culture, also brought influences to bear on this legal framework; although these traces of European legal culture have since been displaced by a period of military dictatorship and, above all, by indigenous cultural traditions.*

*In the late 1980s and early 1990s, considerable upheavals also occurred in the former Soviet states of Central Asia – including the previously Soviet-dominated countries. However, democratisation processes embarked upon within this context developed, and in some cases continue to develop, in different directions and at a very different pace in the individual countries. For example, while Mongolia quietly introduced a pluralist social order that has already witnessed democratic changes of power on a number of occasions, the Central Asian states have moved towards authoritarian regimes and, in some cases, dictatorships.*

comply with the state-legislated legal system, but rather exclusively pursue Islamic law. Fundamentalist groups regularly exploit religion in order to undermine institutions founded on the rule of law.

As such, individual regions in Asia have greatly differing legal spheres, which, in turn, have been displaced by various cultural, religious or political developments:

- Traditional legal philosophy in feudal states with certain foreign influences
- Common Law and positive rights in former European colonies
- Communism and other totalitarian forms of government
- Religious influences (Islam, Hinduism, Buddhism)

Nevertheless, despite the different starting points and development influences illustrated above, the concept of the rule of law has patently gained significance throughout most of the Asian countries. However, a mindset embracing the rule of law has yet to become a matter of course in legal thinking and only occurs to a limited extent within the everyday course of government.

Indeed, in Asia, the concept of a constitutional state is not primarily considered in terms of the "rule of law", but rather as a system of "rule by law". Frequently, discussion then also centres on the "role of law". As such, it becomes patently clear that a system based on the rule of law is not deemed to be an essential element and prerequisite of democracy, but rather is considered a means to achieve economic development by way of individual growth, with simultaneous restriction of state power – namely by law.

In equal measure, there is often a failure to recognise that the rule of law not only requires an effective and independent judiciary accompanied by clear statutory regulations but, by the same token, a democratically controlled and lawful executive (good governance).

Primarily, the tendency towards juridification (in terms of legal certainty and clarity) is considered a prerequisite for promising economic development. The economic crisis of 1997 and the ever more apparent effects of globalisation have generated vigorous calls for action in the wake of a pragmatic understanding of modern necessity.

At best, human rights in Asia are selectively observed when deemed favourable and are often played off against each other. Indeed, Asia is the only continent devoid of any form of human rights mechanism (human rights commission, court of human rights or suchlike). However, socio-economic rights are now afforded greater consideration than, for example, basic political rights, although this stance is again primarily due to consideration of economic necessity. Thanks to a multitude of non-governmental organisations, which have been indefatigably campaigning for a human rights commission in Asia for years, a number of states have now at least become advocates of such a facility.

In summary, it is clear that Asian countries are indeed seeking practicable methods that would allow them to respond to calls for the rule of law from other regions of the world, while simultaneously protecting unique national qualities – even if in some cases this is simply to preserve the power of the ruling class or party. However, in the race to modernise and internationalise economic systems, grave deficits in terms of controls on state power still remain. Even where the foundations of the rule of law have been laid within constitutional texts, reality tells a very different story. State constitutions are not yet considered in terms of an effective, action-determining basic law to which all state organs and each and every citizen are likewise bound. In the majority of Asian countries, the principle of constitutionalism still requires explanation and internalisation. Moreover, a lack of institutions based on the rule of law – above all an independent judiciary – and secure procedures for law enforcement continue to render democratisation processes susceptible to authoritarian attack.

To date, there is still no regional human rights mechanism in Asia. Since 2001, the KAS has been supporting the network of ASEAN Institutes for Strategic International Studies (ASEAN-ISIS) in its efforts to establish such an institution. A central element of this work is the annual "ASEAN-ISIS Colloquium on Human Rights AICOHR", which provides a platform for those involved to exchange information on the most recent developments in their respective countries. For the first time in 2007, representatives from Africa, Latin America and Europe were also invited in order to report on practical experiences with commissions and courts of human rights in their own respective regions; whereby the aim is to provide Asian delegates with impetus for the establishment of a similar institution in the region of the ASEAN countries.

*Judges and other participants at the Fifth Conference of Asian Constitutional Court Judges in front of the Korean Constitutional Court, with Kang-Kook Lee (President of the Korean Constitutional Court, 6th from right) and Egidius Küris (President of the Lithuanian Constitutional Court and President of the Conference of European Constitutional Courts, 5th from right).*

The ASEAN Charter adopted on 20 November 2007 provides for the establishment of a human rights mechanism without, however, stating specific parameters as to how this should be achieved. As a result, advisory workshops have also been set up in order to draft the structure, composition and modus operandi of such a facility. The strategy institutes will present the commensurate findings to decision makers in their respective countries in the forthcoming year.

The annual conference of constitutional judges yielded an initiative to found a pan-working group comprised of academic staff and a judge from each participating court is currently drafting the statutes for the organisation. In future, this organisation will strengthen the effectiveness of efforts to establish constitutional courts in other Asian countries and institutionally consolidate the network of constitutional judges in Asia. Representatives of the Venice Commission of the Council of Europe as well as the President of the Conference of European Constitutional Courts also attended the last three conferences, in turn facilitating commencement of an Asian-European dialogue on constitutional courts and enabling the valuable experience of a continental organisation of constitutional courts to be imparted to Asian participants.

## INDIA: THE MOST POPULOUS DEMOCRACY IN THE WORLD

*In 1947, India gained independence from British rule. In 1950, India became a Republic and the Constitution came into effect. The Indian legal system had been affected fundamentally by Anglo-Saxon common law. At this time, the Indian population was 350 millions strong, whereas today India has more than 1.1 billon inhabitants. The country has opened to the world economic system and the globalization processes. Cultural and religious violence is however increasing. Countering terrorism has become a main concern of India's security policy. The constitution and the legal system needs to be adapted to the new conditions and challenges. The Konrad-Adenauer-Stiftung is assisting Indian institutions in its process of structural and political transformation based on democracy and the rule of law.*

*Therefore, over the past years, the Konrad-Adenauer-Stiftung together with the Confederation of Indian Bar held a series of "All India Seminars of on Judicial Reforms". The seminars were attended by more than 2,000 participants overall, among them judges of the Supreme Court, High Courts and District Courts from all over India as well as lawyers from all Indian Bar Associations, in particular, distinguished personalities from government and politics. The 2008 conference was inaugurated by Her Excellency Mrs. Pratibha Devisingh Patil, the President of India, Hon'ble Mr. Justice K.G. Balakrishnan, the Chief Justice of India, and Hon'ble Dr. H.R. Bhardwaj, Union Minister for Law & Justice. The seminars consisted of several working sessions which focused on issues like: constitutional guarantees for access to justice, justice delivery system for litigants below the poverty line, India and the Constitution, and delay in disposal of cases, especially delay in trial of criminal cases.*

*Moreover, a Rule of Law curriculum was designed by the JSDP-Partner Network (Joint Staff Development Programme) of the Foundation, to be used in rural areas for legal capacity building. The project contained four main objectives. Firstly, to examine and understand the rule of law as a basis of good governance. Secondly, to introduce the Indian constitutional framework and the Indian legal and judicial system. Thirdly, to discuss methods and tools for application of legal enactments in the delivery of justice and how to access them, and fourthly, to discuss the role of the judiciary as a custodian of fundamental rights.*

# LOCAL KAS

**Dr. iur. Jan Woischnik**
*Rule of Law Coordinator*
*Konrad-Adenauer-Stiftung*
*Klingelhöferstraße 23*
*10785 Berlin*
*Telephone: +49 30 26996-3445*
*Fax: +49 30 26996-53445*
*jan.woischnik@kas.de*
■ *www.kas.de/wf/de/21.41/*

**Dr. iur. Christian Steiner**
*Head of the Rule of Law Programme/*
*Mexico, Columbia, Central America*
*Konrad-Adenauer-Stiftung*
*Río Guadiana No.3 Col. Cuauhtémoc*
*C.P. 06500*
*Mexico City*
*Mexico*
*Telephone: +52 55 5566-4511*
*Fax: +52 55 5566-4455*
*derecho.mexico@kas.de*
■ *www.kas.de/proj/home/home/14/1/*

**Gisela Elsner**
*Head of the Rule of Law Programme/*
*South America excluding Columbia*
*Konrad-Adenauer-Stiftung*
*Plaza de Cagancha 1356, Of. 804*
*11100 Montevideo*
*Uruguay*
*Telephone: +59 82 902 0943*
*Fax: +59 82 908 6781*
*ius.montevideo@kas.de*
■ *www.kas.de/proj/home/home/13/1/*

**Dr. iur. Stefanie Ricarda Roos**
**M.A.L.D.**
*Head of the Rule of Law Programme/*
*South-East Europe*
*Konrad-Adenauer-Stiftung*
*Strada Plantelor 50*
*023975 Bucharest*
*Romania*
*Telephone: +40 21-323 3126*
*Fax: +40 21-326 04 07*
*stefanie.roos@kas.de*
■ *www.kas.de/proj/home/home/103/1/*

**Prof. Dr. iur. Christian Roschmann**
*Head of the Rule of Law Programme/*
*Sub-Saharan Africa*
*Konrad-Adenauer-Stiftung*
*27 Mbaruk Road*
*P.O. Box 66471*
*Nairobi 00800*
*Kenya*
*Telephone: +254-20-2725957/-2718035*
*Fax: +254-20-2724902*
*rsp.kas@gmail.com*
■ *www.kas.de/proj/home/home/104/1/*

**Clauspeter Hill**
*Head of the Rule of Law Programme/*
*East and South-East Asia*
*Konrad-Adenauer-Stiftung*
*34 Bukit Pasoh Rd.*
*Singapore 089848*
*Telephone: +65 6227 2001*
*Fax: +65 6227 2007*
*hill@kas-asia.org*
■ *www.kas.de/proj/home/home/129/1/*

*rule of law programme office (working areas in dark blue)*

*national representation*

*(Stand: 1. September 2009)*

# PROMOTING THE RULE OF LAW IN SUB-SAHARAN AFRICA

Generally, existence of the rule of law in Sub-Saharan Africa is only rudimentary and in some cases absent altogether. This is one of the most significant factors in the overall unsatisfactory development of the region, given that without stable democracies sustainable development, peace and security are simply inconceivable in the long-run and that, conversely, stable democracies are impossible without the rule of law. Corruption, nepotism, mismanagement and the misuse of power all thrive in states devoid of an effective rule of law; giving rise to human rights abuses and poverty, and in turn providing a breeding ground for violence and terrorism.

*Joy over the acquittal of Nigerian Amina Lawal. The 31-year-old had been convicted for becoming pregnant two years after her divorce – considered an act of adultery by the Islamic court. The appeal court acquitted the young mother, who had been sentenced to death by stoning.*

To a great extent, legal systems in African countries bear the hallmarks of their colonial pasts. Anglo-Saxon Common Law forms the basis of the legal order in the former British colonies, whereas continental European (positive) rights dominate in the French, Portuguese and Belgian colonies of yesteryear. In contrast, the German and Italian colonial era has not left any significant features in terms of the legal order. These – initially enforced – legal systems were completely foreign to the indigenous Africans, and remain so to great numbers of the population to this day. Only the educated elite is successfully au fait with the various systems and, all too frequently, uses this knowledge for their own exclusive benefit. Existing constitutions and laws are unknown to large elements of the African population, and where there is rudimentary knowledge of such, it has little or no significance for people at large. Traditional rights remain dominant in many rural regions; to this day, tribal chieftains or other legitimate or illegitimate leaders still decide issues that are the reserve of the law courts according to our understanding. Self-justice and lynch-mob justice by individuals or groups is on the increase in Africa.

During the Cold War many African states placed themselves within the Soviet Union's sphere of influence and, in many cases, consequently introduced a communist or socialist system (including the legal system). As such, a further foreign system was "grafted" onto that of the former foreign colonial era.

Islam is widespread between the Equator and the Sahara and is gaining an ever-greater hold, in turn fostering the penetration of Islamic law, namely Sharia Law. True enough, for the most part, Islam in Africa shows greater moderation and tolerance than in Arabic regions; however, developments in, for example, Nigeria, Somalia or the Sudan nevertheless indicate a tendency towards organising state action in accordance with the Islamic religion. Particularly in terms of criminal law and the relationship between citizens and the state as reflected in administrative law – or the lack of such – but also in terms of private law, legal systems characterised or influenced by Islam are demonstrating effects that are incompatible with our expectations of the rule of law and human rights.

The above examples illustrate a situation that gives rise to considerable potential for conflicts (including violent conflicts) that, in turn, could well diminish the rule of law and development as well as foster even greater abuse of human rights and poverty.

The interplay of these factors is hampering development of systems based on the rule of law in practically all African countries. The rule of law mindset is an alien concept for broad sectors of society and neither registers as a natural element of thought amongst the population or as a guiding principle for governmental state conduct. In addition, where religious tensions exist or threaten, the concept is overshadowed by religious and emotional sentiment that often destabilises rule of law philosophy. Consequently, in the perception of the majority of Africans and, above all, the political and economic elites, the law has no value in itself. On the contrary, the law – in this context perhaps statutory law would be a better term – is quite simply an instrument to enforce personal interests and claims or frustrate the interests and claims of others. Ultimately and above all, the law is a means of controlling and implementing power, which generally lies in the hands of the state president conventionally regarded as the "big man" in African tradition. As a result, a rule of law system barely figures as an essential element of democracy and development or as a prerequisite for such.

Nonetheless, irrespective of these constitutional deficits, it is clear that the rule of law issue is increasingly gaining importance. That the so-called "third wave of democratisation" has also registered in Africa is apparent, not least, in the new objectives and programmes of the African Union and, above all, the New Partnership for African Development. To date, this has primarily concerned declarations of intent. However, the 11 judges of the new African Court on Human and Peoples' Rights originally due to begin its work in 2008 have now been nominated and sworn in. Evidently, the idea is gaining ground that without a minimum standard of constitutional rule of law, Africa will not succeed in achieving positive political, economic and social development.

The collapse of the Soviet Union and the resulting end of the Cold War brought far-reaching changes for the majority of African states. Whereas to that point African states and regimes had received support solely on the basis of their allegiance to the West or the East, they were now increasingly being confronted with calls for democracy, respect for human rights, good governance, the rule of law and independent responsibility. In a number of cases, development aid was and still is dependent on achieving progress in these areas. South Africa represents the one exception in this respect – purely for the reason that the end of Apartheid roughly coincided with the end of the Cold War. Most African states only acknowledged this new situation reluctantly, with the primarily authoritarian regimes seeing a threat to their monopoly on power. Those countries that did react initially attempted to do so purely with cosmetic reforms. Nonetheless, at the same time, organisations developed within the realm of civil society that began to demand real reform.

In the recent past, certain African countries have made concerted efforts to introduce democratic reforms, good governance and the rule of law. In addition to South Africa, Mozambique, Ghana and Tanzania are of note in this respect. Generally, as a result of such efforts these countries have also achieved a certain level of economic growth. Yet, against this background, there is cause for alarm where China declines to attach any conditions to its aid, in turn giving hope to certain African governments that a return to the uncritical times of the Cold War is on the horizon. Attempts to reform in these countries will barely touch on the areas of legal security and the rule of law.

As such, practically all African countries – including South Africa to some extent – share the following similarities in terms of their constitutional frameworks for the rule of law:

- Insufficient separation of powers
- Lack of independence of judiciary
- Minimal control on government action
- Constitution (to the extent that a constitution commensurate with international requirements exists) inconsistent with constitutional reality
- Failure to observe human rights
- Corruption within governments, executives and the judiciary
- Insufficient provision of personnel and resources for courts
- Limited access to courts and legal aid for broad sections of society
- Lack of legal certainty due to confusing and incoherent court judgements

Pressure to achieve improvements in these areas is not only being exerted externally, that is, by international institutions and donors. Opposition groups, civil society organisations, churches and universities are also progressively calling for these requirements, with the result that internal pressure on governments is also increasing in a whole host of countries; in turn giving rise to one of the most promising openings in terms of rule of law activities undertaken by the Konrad-Adenauer-Stiftung.

RULE OF LAW

# SUB-SAHARAN AFRICA

*As reference to a specific example of an activity: in September 2007 the Rule of Law Programme in Africa organised an international professional conference in Mombasa/Kenya on "The State of Rule of Law in Sub-Saharan Africa", which was of landmark importance for the future work of the Konrad-Adenauer-Stiftung. Leading constitutional protagonists from 16 African states representing the judiciary, legislative, civil society and the media, as well as government agents and members of the legal profession, gathered to examine the status of constitutionality in the Sub-Saharan region and to exchange knowledge of current problems, experience and progress in this field (see photo above).*

*During the conference it became clear that in many Sub-Saharan African countries the goal of achieving an independent and effective judiciary represents one of the greatest challenges en route to greater constitutionality. An interminable backlog of outstanding cases at the courts, inadmissible procedural delays, overburdened courts, deficient legal foundations and corrupt judicial employees were highlighted as barriers in the same measure as the significant government and political influence still being exerted over judges and public prosecutors in a number of cases. Moreover, the participants also recognised that in many places citizens were not being guaranteed access to the courts, for example, owing to a lack of financial resources, long journeys or poor accessibility. Indeed, instances of self-justice and recourse to traditional "non-justice systems" were particularly high in precisely those areas where effective legal protection could not be assured or a certain measure of mistrust in the judicial system existed.*

*Nonetheless, there were still a number of positive aspects to report in terms of judicial systems in Sub-Saharan Africa; one being the so-called small claims courts recently introduced in Kenya. These are courts that, using a quick and efficient process, handle the more straightforward civil-law cases involving smaller financial sums. Namibia has also taken action to reduce the backlog of outstanding criminal cases by setting up its own specially trained unit within the public prosecutor's office. In Niger, judges are now obliged to provide an explanatory statement in the event of overlong processes. Other countries reported that the procedure of appointing judges was being reformed in order to guarantee judicial independence. Other states are still without any statutory authority – such as a constitutional court – which would be able to declare unconstitutional laws null and void and effectively "quash" unlawful judgements. In this connection, the positive example of the Constitutional Court of South Africa and the possibility of a supraregional African court were discussed. In summary, it is clear that constitutional efforts must focus on further reform of the justice system, including the promotion of an independent legal profession.*

*Another major theme of the conference was corruption, which was deemed by all participants to be a decisive barrier to enhancing the rule of law. Emmanuel Akomaye, Director of the Economic and Financial Crimes Commission (EFCC), Nigeria, reported on the subject and presented EFCC approaches and its results to date. Transparency International recently highlighted the EFCC as a positive example in the fight against corruption. The path taken by Nigeria serves as an impulse for many participants in terms of dealing with corruption in their own country.*

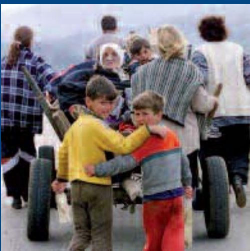
*The conference also helped to sharpen awareness of the fact that rule of law is not confined to the judiciary, criminal law or government institutions. As such, it became clear that reforms to achieve statehood based on the rule of law should not simply be interpreted in terms of a top-down strategy. On the contrary, rather than simply being a passive recipient, to the greatest possible extent civil society also needs to be included in reform efforts as an active engineer.*

*To conclude the conference, in working groups the participants developed potential solutions and methods to further establish the rule of law as a fundamental value in Africa. In this connection, the central protagonists were identified and their tasks defined. An additional working group also drafted proposals for further judicial reforms that could contribute to social and economic growth in the future. In this respect, the participants recommended that constitutional reforms must also consider the problems of poverty, illiteracy, the increasing spread of AIDS and armed conflicts in order to serve as drivers of social and economic development.*

# PROMOTING THE RULE OF LAW IN SOUTH-EAST EUROPE

The Konrad-Adenauer-Stiftung Rule of Law Programme has been operating in South-East Europe since 2006. In addition to the two most recent member states of the European Union, namely Bulgaria and Romania, the countries of the former Yugoslavia together with Albania and the Republic of Moldova represent the second essential area of focus in South-East Europe. In the face of the many differences characterising the South-East European countries, the decision to initiate the sector programme in this region was actually based on a factor common to all these states; namely that they are all currently in an ongoing process of transition from a totalitarian or authoritarian single-party state into a democratic constitutional state based on the rule of law. The post-communist/socialist system transformation is being decisively influenced and accelerated by the efforts of South-East European states to fulfil the European Union accession criteria, or in the case of Bulgaria and Romania, the so-called post-accession criteria. These criteria provide a rough framework for transition countries to develop the rule of law; whereby the "political" accession criteria encompass institutional stability, existence of a democratic system based on the rule of law, respect for human rights, as well as respect for and protection of minorities. In addition, the "acquis criterion" requires that these countries incorporate the total body of community law (Acquis Communautaire encompassing approximately 80,000 pages of legal texts) into domestic law.

www.kas.de



The law forms the basis upon which to accomplish European economic and political union. First and foremost, the European Union (EU) is a community based on the rule of law that pursues its widely-defined integration goals within the scope of an independent legal system of higher authority. Integration will only succeed where community law is afforded uniform authority and application in all member states. The greatest challenge to achieving this does not lie in formulating the appropriate statutory texts: on the contrary, these are already in place in the majority of new EU member states and (potential) accession candidate countries. Significantly more important is the creation of common standards of value, legal convictions and a common legal culture. Otto von Bismark coined the phrase: "With bad laws and good civil servants it's still possible to govern. But with bad civil servants even the best laws can't help." Indeed, this quotation astutely reflects the situation in many new EU member states and (potential) accession candidate countries where, as previously, personal relationships and interests frequently continue to prevail over objective standards. State philosophy in the modern sense, encompassing abstract, objectivised standards which apply equally to each and every individual, does not enjoy the same historic entrenchment in South-Eastern European transition countries as is the case in Northern or Western Europe. As such, these countries will only succeed in developing and consolidating a rule of law system with a change in perception and mentality.

Enter the foundation's rule of law initiatives in South-East Europe: in the two new EU member states of Bulgaria and Romania, which acceded to the EU on 1 January 2007, the Rule of Law Programme primarily centres on improving and changing mentality and awareness in the areas pertinent to the formation and consolidation of the rule of law; namely, "reform of the judicial system" and "combating corruption". As previously, these

areas reveal deficits in terms of the development of an independent, impartial system of administration and justice (including personnel structure and policy), the judiciary's treatment of high-ranking corruption cases (of which only the slightest few have resulted in conviction to date), and in Bulgaria, the criminal prosecution and sanctioning of contract killings as well as the continued inconsistency of jurisprudence and frequently unsound quality of court decisions in many areas. In both countries there is a certain lack of political will to resolutely implement the statutes, reform programmes and action plans that were determined in the run up to EU accession. Prior to EU accession in 2007, pressure for action exerted upon the Bulgarian and Romanian political powers also particularly emanated from abroad. However, following accession to the European Union this pressure has now waned considerably. Amongst other things, by means of political reporting on its Rule of Law Programme the foundation is now endeavouring to make a political impact in the areas of judicial reform and the fight against corruption in the post-accession phase. Following Bulgarian and Romanian accession to the EU, practically all the international institutions concerned with judicial development cooperation withdrew from the two states. As such, the Konrad-Adenauer-Stiftung is the only international organisation operating a specific Rule of Law Programme in these countries.

Development of democratic structures based on the rule of law in the South-East European transition countries primarily requires the creation of modern state constitutions entrenching the key institutional and material elements of a democratic state governed by the rule of law. The countries forming the focus of the Rule of Law Programme in South-East Europe differ in this respect as regards their respective stages of development: Bulgaria and Romania adopted new constitutions back in 1991, shortly after the collapse of the communist regime. In the run up to EU accession, these were then amended in a number of areas – including those pertaining to the judiciary. In Romania, owing to contradictions in the constitution and a lack of clarity, particularly in relation to state organisation and the limits of power of state organs, efforts to effect a fundamental reform of the 1991 constitution are currently being pursued. The Konrad-Adenauer-Stiftung supports such reform efforts, including through its Rule of Law Programme. A reform of the constitution is also being prepared in Bosnia and Herzegovina. This reform was necessitated by the fact that, although the 1995 Dayton Agreement established the institutions constituting supremacy of the rule of law, the Agreement no longer provides the constitutional and administrative framework required by the country to achieve the necessary progress within the EU integration process. The fundamental objective of this constitutional reform is to strengthen and ensure the effective functioning of both the state and all its commensurate institutions. Moreover, the constitutional reform is also endeavouring to effect constitutionally guaranteed protection of human rights for all citizens of Bosnia and Herzegovina, irrespective of their ethnic origin.

Significant developments in the area of constitutional law have also recently been achieved in the Republics of Kosovo, Montenegro and Serbia: indeed, in April 2008, just two months after the declaration of independence, the parliament of Kosovo adopted a constitution that also affords particular protection to minorities. Six months previously, on 22 October 2007, the parliament of the Republic of Montenegro adopted its long-contested constitution – the first since the country gained independence in 2006. The constitution not only effects revision of the controversially discussed question of judicial independence, but for the first time also provides for individual complaint before the constitutional court, as indeed does the new Serbian constitution of autumn 2006. This is an essential factor in terms of strengthening the constitutional courts in the countries of South-East Europe, which are still in their infancy.

Constitutional courts represent the "innermost core of a state founded on the rule of law". Accordingly, the objective of the Rule of Law Programme in South-East Europe is to sustainably foster development and consolidation of effective constitutional courts in the transition countries, primarily pursuing this goal through supporting the work of such constitutional courts. Based on the belief that recognition of constitutional courts is decisively determined by the quality and consistency of their decisions, the Rule of Law Programme is effecting a number of projects in South-East Europe aimed at improving the quality of constitutional court jurisprudence. As previously stated, these efforts include the publication of translations of important decisions of the German Federal Constitutional Court into Albanian, Macedonian and Bosnian/Croatian/Montenegrin/Serbian. In addition, the Rule of Law Programme is preparing a "German-Bosnian Judicial Commentary on the Jurisprudence of the Constitutional Court of Bosnia and Herzegovina," and is also working in close cooperation with judges from various constitutional courts throughout South-East Europe.

PROMOTING THE CONSTITUTIONAL REFORM IN

# BOSNIA AND HERZEGOVINA

*Bosnia and Herzegovina (BaH) emerged from the 1992–1995 war as a highly complex and fragmented state. Although the Dayton Peace Agreement concluded in 1995 reestablished the sovereignty of the country under an international military and civilian presence, the constitution contained within the Dayton Agreement created two largely autonomous entities. As such, the classification as a federation is anything but straightforward given the fact that BaH, comprising the Federation of Bosnian and Herzegovina (with 51% of state territory) and the Republic of Srpska (with 49% of territory), has only started taking decisive steps on the road to statehood in the last thirteen years under supervision of the international community.*

*Given that fundamental constitutional reform is imperative for the long-term stability and development of Bosnia and Herzegovina, since 2001, the Konrad-Adenauer-Stiftung office in Bosnia and Herzegovina has concentrated on – what was previously taboo – dialogue regarding the structure of the state set out in the Dayton Agreement. Even though the Dayton constitution has already been effectively updated by decisions of the constitutional court and ordinary legislation, these interpretations and supplements are far from sufficient.*

*Consequently, the foundation has attempted to support the constitutional reform process in an advisory capacity with various measures. Indeed, through the preparation of expert reports and studies, individual consultation with the parties, two constitutional conferrals at the highest level, and a whole host of other specialist seminars in Bosnia and Herzegovina, the foundation has rendered an important service in terms of increasing objectivity and professionalism while also stabilising emotions within the discussion process. In this respect, three studies commissioned by the foundation are of particular note:*

- *In 2005, the KAS commissioned three of the country's most respected legal academics to prepare a paper on the constitutional reality. As such, for the first time, constitutional experts from the three constituent peoples (Bosniaks, Bosnian Serbs and Bosnian Croats) came together to analyse the status quo. The study: "Dayton Ten Years On – Bosnia and Herzegovina's Progress to a European Future", reveals the constitutional changes which have occurred de facto and illuminates those that are necessary for the country's further integration into European structures.*
- *In 2006, Prof. Dr. Otto Luchterhandt (Hamburg University) compiled a short study on constitutional reality in Bosnia and Herzegovina in which he highlighted the unfinished nature of the state and warned of centrifugal forces within the country.*
- *In 2007, the foundation published an analysis of the April 2006 reform package (rejected in parliament by only a brief margin) that it had commissioned from Dr. Matthias Hartwig of the Max Planck Institute for Comparative Public Law and International Law. The analysis evaluated the reform package positively but also recommended various improvements.*

*These academic works formed the basis of various party consultations organised by the KAS. In spring 2005, senior representatives of the SDA, HDZBiH and PDP met for the first time to discuss possible changes to the constitution. Only having received EPP observer status in December 2004, these parties, each respectively the main representative of the three constituent peoples of the country, subsequently gathered at the Konrad-Adenauer-Stiftung in Cadenabbia – far-removed from daily politics – to begin cooperation.*

*One year later the first mutually-drafted reform proposal was already available for analysis. Consequently, in mid-2006 and once again in Cadenabbia, chairs of the most important parties represented in parliament met for the first time with constitutional experts and diplomats from Germany and the EU, thereby affording consideration to the desire of local protagonists for greater responsibility on the part of the EU and its member states within the constitutional reform process. The invitation by the KAS extended not only to the Chair of the Bosnia and Herzegovina Presidency, the three chairs of the House of Representatives, the President of the Republic of Srpska, the chairs of the SDA, SDP, PDP, SDS and presidium members of the HDZBiH und SbiH, but also senior representatives from the EU and the USA. In this manner, the Konrad-Adenauer-Stiftung succeeded in bringing together all the protagonists decisively involved in the constitutional reform procedure. Notwithstanding, the reform package was still rejected one month later. After a continuation of the reform consultations had been temporarily prevented by the election campaign and elections of 1 October 2006, the KAS took up the theme once again in spring 2007. The basis of discussions that have been ongoing since the middle of 2007 is the afore-mentioned expert report by the Max Planck Institute.*

The second central theme of the Konrad-Adenauer-Stiftung's work on the rule of law in South-East Europe focuses on promoting an independent, impartial and integral judiciary. Professional and personal independence of judges is an indispensable prerequisite for an effective judicial system embracing the rule of law and, at the same time, is also a fundamental human right that is guaranteed in South-East European countries by means of both constitutional and ordinary domestic law as well as the European Convention on Human Rights (ECHR). Accordingly, Article 6 (1) ECHR states that: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." However, legal provisions alone will not suffice as an effective safeguard for judicial independence and impartiality; of far greater importance is the practical application, during which such provisions are exposed to serious jeopardy from all sides. The pertinent factor is for judges to be aware of such threats and reflect on how they can protect themselves from negative influences and conflicts of interest. In this respect, the Rule of Law Programme provides support through various measures on the subject of "Factors of pressure and conflicts of interest in the judiciary". One example being the commensurate seminars for judges run by the foundation in 2006 in seven juridical districts of Romania in cooperation with the Society for Justice, a Romanian non-governmental organisation; which provided the majority of seminar participants with the first opportunity of their professional careers to express opinions with their colleagues as to why they are afforded judicial independence and how they could protect it. Particularly notable regarding these seminars is that the organisers gathered around one table representatives from all the governmental and non-governmental institutions tasked in some way with guaranteeing the independence of the judiciary: namely, non-governmental organisations, the Ministry of Justice, the supreme magistracy and the judiciary. Such exchanges are of paramount importance in the South-East European transition countries for the very reason that the relationship between government and non-governmental institutions continues to be an unnatural one and because the culture of dialogue on the (rule of) law is developing but slowly. The former Romanian Minister of Justice, Monica Macovei, also personally attended one of the workshops in Romania and discussed with the other judges present how judicial independence could be better protected in Romania. The result of the seminars was an 80-page manual for judges, which addresses all individuals and institutions with a duty to guarantee judicial independence and impartiality, including political officeholders. The manual is available in both Romanian and English.

## INITIATIVES TO IMPROVE THE QUALITY OF THE JUDICIARY IN SOUTH-EAST EUROPE

*As previously, the reputation of the judiciary amongst the populations of the South-East European transition countries remains at a low ebb. There are various reasons for this, not least the lack of popular trust in the jurisprudence of the courts, which commonly results from court judgements that are unclear and often barely comprehensible. Against this background, the Rule of Law Programme in South-East Europe has responded with "Training of Trainers" seminars for judicial trainers at national judicial training institutes in the region. The first training seminar of this nature was held in autumn 2007 in cooperation with the Romanian "National Institute of Magistracy", the country's national judicial training institution, and focused on the technique of drafting civil law judgements. Accordingly, 15 judicial trainers from seven countries within the region gathered in Bucharest to receive ongoing training in their task as trainers, exchange knowledge and training materials with their colleagues and form joint networks. The second "Training of Trainers" seminar was also held in Bucharest in autumn 2008 and focused on the technique of drafting criminal law judgements.*

**Strengthening constitutional courts in South-East Europe**

*The relationship between policy makers and regulatory constitutional courts is not always without tension. Indeed, it presents the fledgling constitutional courts of South-East Europe with particular challenges: in terms of the separation of powers, where does one set the boundaries for constitutional courts? In other words: where does action by a constitutional court cease to be permissible regulatory control and become illegitimate interference with the authority of the legislative? At the invitation of the Rule of Law Programme, former German Federal Constitutional Court judge and professor of law at the Humboldt University in Berlin, Professor Dr. Dieter Grimm, discussed this issue with Bulgarian legal practitioners, academics and politicians within the scope of a workshop on "Constitutions, Constitutional Courts and Constitutional Interpretation at the Interface of Law and Politics" in Sofia (Bulgaria) on 11 November 2007, using actual jurisprudence of the Federal Constitutional Court as an example.*

One of the traditional areas of activity and central concerns of the Konrad-Adenauer-Stiftung is that of coming to terms with the past and addressing both the communist/socialist era and the culture of public remembrance. To this end, throughout South-East Europe the Rule of Law Programme supports initiatives for "Reconciliation with the past from a legal perspective" in all programme countries – both nationally and regionally. A focal element of the foundation's work in this area lies on political and legal aspects of reconciliation with the past; thereby, primarily examining the question of how the past can be addressed and overcome through rights and laws and within the limits incumbent upon a state affording supremacy to the rule of law.

In the countries of the former Yugoslavia, there is little political or popular will to address the socialist past and lay it to rest through application of the law – Macedonia, whose parliament unanimously adopted a lustration law in January 2008, represents the exception in this respect. Memories of the recent war-torn past are omnipresent in the popular consciousness of the countries of the former Yugoslavia, and coming to terms with such is a pressing task. Regarded in this light, precious little scope remains for reconciliation and, therefore, coming to terms with the pre-war socialist past. Thus, above all in the countries of the former Yugoslavia, the Konrad-Adenauer-Stiftung is also aiding measures aimed at legal reconciliation with the recent period of civil war.

The law of criminal procedure is often deemed a "seismograph of the state constitution". In shaping the law, the state is tasked with an eminent political decision in terms of weighing collective interests against those of the individual. Of all state intrusions into the personal freedoms of the citizen, the legal consequences provided for under criminal law have the most decisive impact. Thus, the manner in which criminal procedure actually balances such interests is symptomatic of the relationship between the state and the individual prevailing within any given community. Considered in this light, it becomes clear why promoting a law of criminal procedure commensurate with rule of law principles is also one of the objectives of the Rule of Law Programme; not least given that safeguarding the freedom and rights of individuals and citizens in the face of state authority in all its guises is the essence of the rule of law per se. Thus, fostering such protection is the primary task of the Rule of Law Programme; including, and especially, in the countries of South-East Europe.

In the interests of strengthening civil rights in the face of state authority, German EU Council Presidency during the first six months of 2007 also focussed its attentions in the area of justice on defining minimum requirements applicable throughout Europe for the rights of defendants and those accused in criminal proceedings. The Rule of Law Programme supported this initiative with a major regional project: accordingly, on behalf of the Rule of Law Programme, renowned criminal law experts from programme countries analysed the domestic legal situation in terms of the law of criminal procedure in their own countries. The outcome, a comprehensive publication encompassing around 250 pages, was presented and discussed at a regional conference in Bucharest in May 2007 in the presence of German Ministry of Justice representatives, the Romanian Justice Minister, the Romanian Assistant Chief Public Prosecutor as well as prominent politicians, legal practitioners and academics.

With the exception of Bulgaria and Romania, the programme countries of the South-East Europe Rule of Law Programme are not yet members of the European Union. Nonetheless, the Rule of Law Programme consciously supported the EU Council Presidency initiative with a regional project encompassing all programme countries, for the very reason that the Konrad-Adenauer-Stiftung wishes to aid these countries in adapting their respective legal systems to European rule of law structures. Legal reforms being implemented for this purpose in all South-East European countries must not become detached from legal developments occurring on the European level. Indeed, in her introduction to the comparative legal study, German Federal Minister of Justice, Brigitte Zypries, expressly welcomed the regional approach pursued by the Rule of Law Programme: "The study by the Konrad-Adenauer-Stiftung […] also extends … to those countries that are not yet members of the European Union and, thus, simultaneously reminds us that Europe extends beyond the 27 EU member states. [The study] is a valuable contribution to the European discussion process on minimum rights within criminal proceedings [...]. Safeguarding civil rights is not purely a European task; rather it is also a task of national policy makers, legislators and the judiciary …" – consequently, important target groups of the Konrad-Adenauer-Stiftung Rule of Law Programme in South-East Europe.

*European flags at a university in Bucharest on the occasion of Romanian accession to the EU.*

JUDICIAL RECONCILIATION WITH THE PAST IN

# SOUTH-EAST EUROPE

*A feature common to both Germany and the countries of South-East Europe is that they continue to be confronted with the consequences of the totalitarian or authoritarian regimes that existed in these countries in the second half of the 20th century. Post-communist/socialist system transformation will only succeed where these countries are successfully able to face up to and reconcile the past and the impact of their communist or socialist regimes. On the basis of this conviction, at the start of 2008, the Konrad-Adenauer-Stiftung invited ten specialists from South-East Europe (including parliamentarians, presidential advisors, government spokespeople and academics) to come to Berlin for a one-week study and dialogue programme on the subject of "lustration". The focus of the domestic programme centred on the nature of the – primarily judicial – measures implemented by Germany following reunification in order to reconcile the past and the consequences of the illegitimate communist regime in the former GDR.*

*Marianne Birthler, Federal Commissioner presiding over archives of the former East German state security service, welcomes a group of politicians and jurists from South-East Europe who have been invited to Germany by the foundation to gain insights into reconciling the past.*

**In order to address this issue, the agenda included the following:**

- *Dialogue and a tour of the archives of the Office of the Federal Commissioner (BstU) that presides over the records of the Ministry for State Security of the former GDR*
- *Discussions with former and current members of the German Bundestag from West and East Germany and former civil rights campaigners*
- *Tour of the central Ministry for State Security (MfS) remand centre in Berlin-Hohenschönhausen, including a meeting with a former political prisoner, and tour of the research and memorial centre in Normannenstrasse (Stasi museum)*
- *Meetings with the former deputy director and spokesperson of the Central Registry of State Judicial Administrations (Zentralen Beweismittel- und Dokumentationsstelle) in Salzgitter (which was tasked with investigating and gathering evidence on killings committed on the inner-German border, wrongful conviction on political grounds, mistreatment during imprisonment, kidnapping and political persecution in the GDR), in addition to meetings with academics and personnel of the Konrad-Adenauer-Stiftung.*

*Despite all the scepticism – including on the part of participants – that exists in terms of achieving successful "lustration" in the South-East European states, one factor clearly revealed by the "lustration" study and dialogue programme is that for all the difficulties and limits encountered in overcoming the past and affording justice, reconciling the past is imperative for the development of a democratic society. "If we fail to reconcile the past", stated the Montenegrin delegate, "it will catch up with the present in the form of trauma." This applies in the same measure for all the countries of South-East Europe, which, indeed, have not undertaken any comprehensive overhaul of the elite. Representatives of the old nomenclature still retain high-ranking political and state offices. As such, the past has a direct impact on the present. There is no 'perfect method' for reconciling the communist or socialist past of a country; it is a complex process that affects individual and social domains in equal measure.*

# SELECTED PARTNERS OF THE KONRAD-ADENAUER-STIFTUNG

Generally, the Konrad-Adenauer-Stiftung works in cooperation with a number of local partners. These partners include legal practitioners (regional human rights court judges, national constitutional court judges, judges presiding at supreme or other courts, public prosecutors and lawyers), organs of the judiciary and governmental control organisations (above all, supreme magistracy offices and judicial councils, constitutional and supreme courts, ombudsman organisations and offices of chief public prosecutors), professional legal associations (professional associations of the magistracy, judges and lawyers), employees of judicial institutions and the administration of justice, police officers and security service personnel, university lecturers (above all, in law faculties and independent academic institutes), judicial academies and other judicial training facilities, parliamentarians (particularly members of legal affairs and legislative committees), members of the government and ministerial employees (above all, justice and interior ministries), political parties, functionaries of various integration associations, employees of non-governmental organisations working in a constitutional sphere, churches, religious organisations and, last but not least, the media. The following presents examples of particularly important Rule of Law Programme partners.

## SUB-SAHARAN AFRICA

### The African Court on Human and Peoples' Rights, Arusha/Tanzania

This court of justice has pan-African jurisdiction and was established through an additional protocol to the African Charter on Human and Peoples' Rights. Its primary task lies in strengthening and extending the protective mandate of the African Commission on Human and Peoples' Rights. However, Burkina Faso is the only state to formally afford the right for individuals to file actions. Constituted on 25 January 2004 upon ratification of the additional protocol by 15 states of the African Union, the court is domiciled in Arusha, Tanzania. A resolution by members of the African Union dating back to 2004 stipulates the merger of the court with the African Court of Justice. On 22 January 2006, the Executive Council of the African Union elected the court's eleven judges for a six-year term; these judges come from Burundi (President), Mali (Vice President), Rwanda, Algeria, Lesotho, Libya, Senegal, South Africa, Uganda, Ghana and Burkina Faso.

- *www.africa-union.org*

### The Kenyan Section of the International Commission of Jurists, Nairobi/Kenya

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) was founded in 1959. A non-governmental and non-profit organisation registered in Kenya with members primarily stemming from the legal profession and the judiciary, the Commission is a National Section of the International Commission of Jurists headquartered in Geneva. The ICJ Kenya is tasked with promoting and protecting the rule of law, democracy and human rights in Kenya and the East Africa region.

- *www.icj-kenya.org*

## ASIA

### Institute for Strategic and Development Studies ISDS, Manila/Philippines

The ISDS is the most important security and foreign affairs consultancy institute in the Philippines. Founded in 1991, the Institute not only plays a leading role in the network of ASEAN consultancy institutes, but may also be regarded as the driving force behind the protection of human rights in South East Asia. The Institute is headed by Dr. Herman Kraft. Holding ministerial rank and currently an advisor to the Philippine President Gloria Macapagal Arroyo, Prof. Dr. Carolina Hernandez also serves the institute as its founding president.

- *www.isdsphilippines.org*

### Asian Law Institute ASLI, Singapore

The Institute was founded in 2003 by thirteen prestigious law faculties in East and South-East Asia to create an institutionalised platform for the mutual exchange of information on the very different legal systems within the region. In addition to an annual conference, the institute also runs a number of academic exchange programmes for graduates and lecturers. While the Presidency rotates from faculty to faculty, the day-to-day business is managed by the director, associate professor Gary Bell, a Canadian lecturer of international law at the National University of Singapore.

- *http://law.nus.edu.sg/asli*

**Center for Asian Legal Exchange CALE, Nagoya/Japan**
The Center was founded in 2002 at Nagoya University to provide academic guidance and support for the wide variety of consulting programmes in Japan, above all in Asian transition countries. In addition to research work on developing individual legal systems, the Center addresses the problems of the transferability of legal principles and systems within transition processes. The current Director is Prof. Dr. Aikyo Masanori, whose work primarily focuses on legal culture and constitutional law from comparative perspectives.
- *http://cale.nomolog.nagoya-u.ac.jp*

**German-Chinese Institute of Law, Nanjing/China**
The Institute was founded in 1989 as a joint initiative of the Universities of Göttingen and Nanjing aimed at fostering dialogue between the two legal cultures through cooperation in science, research and legal practice. Initially, efforts centred on civil and commercial law; however, in recent years activities have been expanded to encompass public law. The Institute also boasts the largest German-language law library in the People's Republic of China. The Directors are Prof. Dr. Christiane Wendehorst (Göttingen) and Prof. Dr. Jiandong Shao (Nanjing), while the Chinese Deputy Director is former KAS scholarship holder Dr. Xiaomin Fang.
- *http://lehrstuhl.jura.uni-goettingen.de/kontakte*

## LATIN AMERICA

**CAJ, Lima/Peru**
The Comisión Andina de Juristas is devoted to strengthening the rule of law in the Andean region (Venezuela, Columbia, Ecuador, Peru, Bolivia and Chile), focusing primarily on human rights and democracy. Providing consulting for both governmental and non-governmental organisations by way of educational and informational initiatives, the CAJ also issues publications on themes addressed by its work. An additional goal of the organisation's activity is to create networks of organisations working in these fields within the Andean region that will, in turn, foster improved dissemination of information on the status of human rights protection. Amongst the projects that have been implemented in cooperation with the CAJ over a number of years, perhaps the most important is the further education course for professors, lawyers and representatives of non-governmental organisations in the Andean region (Curso Regional Andino de Derechos Humanos) working in the area of human rights protection.
- *http://www.cajpe.org.pe*

**FORES, Buenos Aires/Argentina**
The non-governmental organisation (NGO) Fores was founded in Buenos Aires over 25 years ago, but works throughout the whole of Argentina and Latin America. Indeed, in terms of legal reforms, Fores is the oldest "think tank" in Argentina. In essence, the central concerns of the NGO focus on strengthening the rule of law, forming opinions on legal subjects of public interest, ongoing training for judges and lawyers, legal security and access to justice. As such, Fores conducts studies in these areas to aid improvement of the judicial system, provides technical support to the judiciary and its associated institutions and also provides further training for newly-qualified professionals, judges and judicial officers. In addition, Fores is active in public relations, issuing information and opinions on important legal subjects. Since 2003, the Konrad-Adenauer-Stiftung Rule of Law Programme has organised various activities in South America in conjunction with Fores; of particular note in this respect are the workshops for judges in individual regions of Argentina and Uruguay that address the issues of legal ethics and the relationship between the judiciary and the media.
- *http://www.foresjusticia.org.ar/*

**Inter-American Court of Human Rights, San José/Costa Rica**
In the event of human rights violations, the Inter-American Court of Human Rights domiciled in San José, Costa Rica, has the authority to call to account those members states of the American Convention on Human Rights that are subject to the jurisdiction of the Court. In terms of the dispute procedure, individual complaints from citizens or non-governmental organisations must first be lodged with the Inter-American Commission on Human Rights headquartered in Washington, which initially attempts to effect an amicable resolution between the alleged victims of human rights abuses and the states involved. In addition, member states may also call upon the Court to clarify specific questions of interpretation of the human rights convention. The Rule of Law Programme in Latin America has been working with the Court for a number of years, thereby providing a bridge between national (constitutional) courts and the Inter-American judicial panel. Since 2004, the Court of Human Rights has also been a regular participant at the annual meetings of Latin-American constitutional court judges.
- *http://www.corteidh.or.cr/*

**Instituto de Investigaciones Jurídicas (UNAM), Mexico City**

One of the most important academic partners of the Rule of Law Programme in Mexico is the prestigious legal research institute of the UNAM national university in Mexico City. With over 70 full-time academics working in 15 different areas of law, the Institute is the largest legal research facility in Latin America, whose expertise is also in great demand outside Mexico. The Rule of Law Programme endeavours to ensure that political decision-makers utilise this comprehensive expertise, whereby, in addition to jointly organised educational initiatives and publications, the services of the experts are repeatedly called upon in both Mexico and other Latin-American countries. The Institute also boasts a virtual library in which publications of the Rule of Law Programme are also held.

- *http://www.juridicas.unam.mx/*

## SOUTH-EAST EUROPE

**Bulgarian Lawyers for Human Rights (BLHR), Sofia/Bulgaria**

The Bulgarian Lawyers for Human Rights Foundation (BLHR) is a non-profit organisation striving to ensure the sustained implementation of international standards of human rights protection in Bulgaria. Founded in 1993 by five lawyers with various legal focuses, BLHR is the first facility of its type in Bulgaria and, indeed, Central and Eastern Europe. Today, BLHR works together with over 25 renowned lawyers and addresses human rights protection issues within the Bulgarian administration of justice, including, in particular, aspects of European human rights. Furthermore, BLHR also advises the Bulgarian government with respect to judicial reform. The foundation has been working with BLHR since 2007, amongst other things, on a project to promote administrative courts.

- *http://www.blhr.org*

**Center for Democracy and Human Rights (CEDEM), Podgorica/Montenegro**

The Center for Democracy and Human Rights (CEDEM) was founded on 2 July 1997 as a non-governmental organisation tasked with boosting awareness and the significance of successful democratic transition, investigating and analysing transition processes, supporting the transition process in Montenegro, and helping to strengthen civil society and the democratic process as a whole. The Konrad-Adenauer-Stiftung has been working with the CEDEM since 2003, and since 2005 in terms of the Rule of Law Programme.

- *http://www.cedem.cg.yu*

**National Institute of Magistracy (INM), Bucharest/Romania**

The National Institute of Magistracy (INM) is Romania's national educational institute for judges and public prosecutors (magistracy), and is a member of the European Judicial Training Network. The Konrad-Adenauer-Stiftung has been working with the INM since 2007.

- *http://www.inm-lex.ro*

**Society for Justice (SoJust), Bucharest/Romania**

Society for Justice (SoJust), a Romanian non-governmental organisation, is an association of legal practitioners that joined together in 2005, in particular, for the purpose of enhancing both the independence of the judiciary as well as professionalism and integrity in the exercise of legal professions in Romania. The central objective is to aid genuine and comprehensive reform of the legal professions and legal training. To this end, SoJust prepares reports, studies and draft legislation that endeavour to improve the judicial system in the public interest. In addition, SoJust also strives to facilitate public debate of legal themes and promote active civic commitment in relation to the Romanian judicature. The Konrad-Adenauer-Stiftung has been working with SoJust since 2006.

- *http://www.sojust.ro*

# CURRENT PUBLICATIONS (SELECTION)

## SUB-SAHARAN AFRICA

**Judiciary Watch Report Vol. 6**
**Regional and Sub-Regional Platforms for Vindicating Human Rights in Africa, Pub.: George Mukundi Wachira, The Kenyan Section of the International Commission of Jurists and the Konrad-Adenauer-Stiftung, Nairobi, 2007**

In this collected volume of the Judiciary Watch Series, a publication of KAS in conjunction with the Kenyan Section of the International Commission of Jurists, various institutions concerned with furthering human rights in Africa are presented and subjected to critical evaluation. The analysis encompasses the pan-African court of human rights and various regional human rights courts, whereby the question of potential conflicts of jurisdiction between them is also addressed.

**Judiciary Watch Report Vol. 5**
**Reinforcing Judicial and Legal Institutions: Kenyan and Regional Perspectives, Pub.: The Kenyan Section of the International Commission of Jurists and the Konrad-Adenauer-Stiftung, Nairobi, 2007**

A publication of the Judiciary Watch Series, which is published by the KAS in conjunction with the Kenyan Section of the International Commission of Jurists. The content addresses the independence of the judiciary in East Africa.

The subject matter of the discussion concerns institutions exercising judicial roles such as courts, public prosecutors and corresponding statutory mechanisms, particularly those of constitutional rank. In this respect, the focus lies on a critical evaluation and proposals for strengthening these institutions and mechanisms.

**Judiciary Watch Report Vol. 4**
**The African Human Rights System: Towards the Co-Existence of the African Commission on Human and Peoples' Rights and African Court on Human and Peoples' Rights, Pub.: Frans Viljoen, The Kenyan Section of the International Commission of Jurists and the Konrad-Adenauer-Stiftung, Nairobi, 2006**

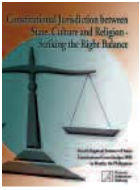
This volume of the Judiciary Watch Series pursues a critical evaluation of the structure of human rights in Africa and analyses the various guises and aspects of pertinent legislation and institutions tasked with implementing human rights, above all, in relation to jurisdiction, procedure and functions of integration.

## ASIA

**Foreign Investment – Its Significance in Relation to the Fight against Poverty, Economic Growth and Legal Culture**
**Pub.: Konrad-Adenauer-Stiftung, Singapore, 2006**

The English-language edition of the original German KAS publication "Auslandsinvestitionen – Ihre Bedeutung für Armutsbekämpfung, Wirtschaftswachstum und Rechtskultur", which consolidates the results of an international conference organised in Germany by the foundation in November 2005. Contributions deal with issues of development policy and the effects of global investment flows on the economies and legal cultures of recipient countries.

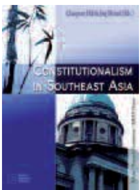
By causing investors to recognise rule of law standards in their home countries, such standards are also transferred to recipient countries and thereby bring about commensurate requirements for reform, particularly as regards lawful action on the part of the executive and an independent judiciary. Against this background, the content of the book is of particular significance in terms of legal development. The aim of the English language edition is to open up these topics to an international circle of readers.



**Constitutional Jurisdiction between State, Culture and Religion – Striking the Right Balance**
**Pub.: Konrad-Adenauer-Stiftung, Singapore, 2007**

The book comprises lectures presented on the occasion of the Fourth Conference of Asian Constitutional Court Judges held in Manila at the end of 2006 and primarily serves as a documentation of this series of events. In addition to lectures on the subject of the conference itself, the work also includes reports by participating courts detailing actual cases from their jurisprudence of the previous year.

Many countries in the Eastern, Southern and South-East Asian region are home to multireligious or multi-ethnic societies. As a result, the constitutional order is tasked with guaranteeing a fair balance between the frequently differing interests of individual sectors of the population; whereby interpretation and application of these requirements in individual cases ultimately falls to the constitutional and supreme courts of the countries in question.



**Constitutionalism in Southeast Asia**
**(Vol. 1: Constitutional Documents and ASEAN Charter; Vol. 2: Reports on National Constitutions; Vol. 3: Cross-Cutting Issues), Clauspeter Hill/Jörg Menzel, Singapore 2008**

This three-volume publication documents the constitutions of ten South-East Asian countries, each with an introduction providing insight into the constitutional history and essential structural elements of the constitutional order. In the third volume, examples of cross-cutting issues of constitutional law are discussed in greater depth – in some cases, also including a comparative law perspective.

In a number of cases, this represents the first publication of constitutional documents in a thoroughly proofed English translation. As such, for a number of the countries concerned the publication also evidently provides the first systematic introduction to its constitutional order. Overall, the publication clearly demonstrates the increased significance of constitutional law in this region. Moreover, thanks to the comprehensive reference for further reading, it serves as both an academic reference and a basis for further research in this field.

## LATIN AMERICA

**Anuario de Derecho Constitucional Latinoamericano 2007**
**13th Edition, Volumes I and II., Pub.: Konrad-Adenauer-Stiftung, Montevideo, 2007**

Contributions by Latin-American and European jurists on the subject of constitutional law and additional fields of focus of the Rule of Law Programme.

**Jurisprudencia latinoamericana sobre Derecho Penal Internacional – Con un informe adicional sobre la jurisprudencia italiana**
**Pub.: Konrad-Adenauer-Stiftung and Department of Foreign and International Criminal Law of the Institute of Criminal Law and Criminal Justice, Faculty of Law, Georg-August University of Göttingen, Montevideo, 2008**

Fifth publication, including contributions by members of the Latin-American Study Group on International Criminal Law on the jurisprudence of national courts in light of international criminal law and the jurisprudence of organs of the Inter-American human rights protection system with respect to serious human rights abuses.

**Bases para la reforma del proceso penal**
**Santiago Garderes, Gabriel Valentín, Montevideo, 2007**

Analysis of efforts to date to reform Uruguayan criminal procedure and fundamental proposals for its future reform.

**Revista de Derecho, Vol. 2**
**Pub.: Konrad-Adenauer-Stiftung and Universidad Católica Dámaso Antonio Larrañaga, Montevideo, 2007**

Professional legal journal with contributions by Latin-American authors on various legal subjects.

**Ética judicial y sociedad civil – Técnicas de incidencia**
**Héctor Chayer, Montevideo, 2008**

Analysis of the contribution by civil society in raising awareness of ethical standards within the judiciary.

**Reforma de los medios electrónicos – ¿Avances o retrocesos?**
**Pub.: Rudolf Huber, Ernesto Villanueva, Mexico, 2007**

In this work, the authors employ a clear format to illustrate the importance of statutory reforms in relation to radio, television and telecommunication. The text provides a brief overview of the legal situation to date, the implications of reforms, political and legal issues, and the advantages and disadvantages of such reforms.

**Experiencia de México ante la Comisión Interamericana de Derechos Humanos**
**Fabián Sánchez Matus, María del Mar Monroy García, Mexico, 2007**

Systematic analysis of all cases and reports of the Inter-American Commission on Human Rights concerning Mexico.

**Instrumentos internacionales sobre derechos humanos aplicables a la administración de justicia**
**Florentín Meléndez, San Salvador/ Mexico, 2006**

Special textbook for legal administrators on the application and interpretation of international human rights conventions.

**Derecho Internacional Público**
**Matthias Herdegen, Mexico, 2005**

Translation of the successful textbook on international law adapted for a Latin-American readership, with the kind support of the C.H. Beck publishing house.

## SOUTH-EAST EUROPE

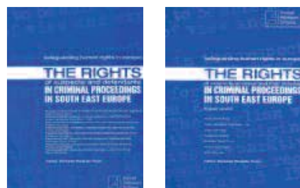
**Factorii de presiune i Conflictele de Interese în Justiie – Ghid pentru Judectori/ Pressure Factors and Conflicts of Interest in the Judiciary – Handbook for Judges**
**Dana Cigan, Cristi Danile and Horaius Dumbrav; Rule of Law Programme South East Europe, Konrad-Adenauer-Stiftung and Societatea pentru Justiie (SoJust) (Pub.), Iai/Bucharest, 2007**

This handbook stems from a series of seminars for Romanian judges on "Pressure Factors and Conflicts of Interest in the Romanian Judiciary", which the Rule of Law Programme/South-East Europe organised in Romania in 2006. The handbook defines the ideas of "independence" and "impartiality" of the judiciary, including in light of the jurisprudence of the European Court of Human Rights. It also describes instruments and mechanisms for the protection of judicial independence and impartiality. The authors of the work are all Romanian judges and members of the "Society for Justice", an NGO active in legal affairs.

The handbook has been published by the Rule of Law Programme/South-East Europe in both Romanian and English, and is targeted at all individuals and institutions duly charged with guaranteeing judicial independence, including political officeholders.

**Lustration and Consolidation of Democracy and the Rule of Law in Central and Eastern Europe**
**Vladimíra Dvořáková; Anđelko Milardović; Rule of Law Programme – South-East Europe, Pub.: Konrad-Adenauer-Stiftung and Centar za politoloka istraivanja (CPI), Zagreb, 2007**

This publication is the result of a specialist international conference on "Lustration and Consolidation of Democracy and the Rule of Law in Central and Eastern Europe" organised by the Rule of Law Programme/South-East Europe in conjunction with the Political Science Research Centre Forum, Zagreb, and held in Zagreb (Croatia) on 24 May 2007. The work comprises contributions on the subject of "transitional justice" by lustration experts from Albania, Bosnia and Herzegovina, Croatia, Romania, Serbia, the Czech Republic and Hungary; and is published in English.




**Safeguarding Human Rights in Europe: The Rights of Suspects and Accused in Criminal Proceedings in South East Europe – Vol. I (original languages) and Safeguarding Human Rights in Europe: The Rights of Suspects/Accused and their Defense in Criminal Proceedings in South East Europe – Vol. II (English translation)**
**Stefanie Ricarda Roos, Rule of Law Programme – South-East Europe, Pub.: Konrad-Adenauer-Stiftung, Bucharest, 2007**

This comparative legal study stems from a regional project implemented in 2007 by the Rule of Law Programme/South-East Europe in support of the German EU Council Presidency as regards the area of justice, aimed at promoting minimum standards within criminal procedure. In the text, renowned criminal (procedural) law experts from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Montenegro, Romania and Serbia analyse the respective municipal law of procedure concerning the rights of defendants and the accused as well as their defence under criminal procedure. This comparative legal study is available in the original languages (Vol. I) and in an English translation (Vol. II).

## MIDDLE EAST

**Islam und Rechtsstaat – Zwischen Scharia und Säkularisierung/Islam and the Rule of Law – Between Sharia and Secularisation**
**Pub.: Birgit Krawietz/Helmut Reifeld, Sankt Augustin, Berlin 2008**

Contributions from the conference of the same name on the range of topics: “Perception of Justice in Islam”, “Constitutionality and Constitutionalism” and “Religious v Secular Law”.

IMPRINT

**Published by**
Konrad-Adenauer-Stiftung
Rathausallee 12
53757 Sankt Augustin
Germany
Telephone: +49 2241/246-0
Fax: +49 2241/246-2591

Tiergartenstraße 35
10785 Berlin
Germany
Telephone: +49 30/26996-0
Fax: +49 30/26996-3261
Email: redaktion@kas.de

**Responsible representative**
Dr. Gerhard Wahlers
Deputy Secretary General
Konrad-Adenauer-Stiftung

**Editing**
Dr. Jan Woischnik
Rule of Law Coordinator
Konrad-Adenauer-Stiftung

**Layout**
SWITSCH KommunikationsDesign,
Cologne, Germany

**Printing**
Paffenholz GmbH
Bornheim, Germany

**Photo credits**
Konrad-Adenauer-Stiftung e. V.
GaToR-GFX/fotolia, dpa Picture-Alliance

All sections of this work are protected by copyright. The use of such, particularly with respect to duplication, translation, microfilming and storage within, or processing by, electronic systems, is not permitted in any event without the consent of the Konrad-Adenauer-Stiftung e.V.

© 2009, Konrad-Adenauer-Stiftung e.V.,
Sankt Augustin/Berlin

www.kas.de

Konrad
Adenauer
Stiftung