

LAW TALK

Administrative Law and Practice – International and Cambodian Perspectives (I)

at Rock Royal Hotel & Resort

21-23.02.2013 IN KEP PROVINCE

Background Information

The support for the development of the legal system in Cambodia has been one of the main priorities of the work of Konrad-Adenauer-Stiftung for many years. One of the essential elements of such a process is a flourishing discussion between different generations on legal topics. Such discussion has been difficult in Cambodia for many years due to its historical legacy and the legal vacuum during and in the aftermath of the Khmer Rouge regime. Legal discourse is therefore still not well developed in Cambodia today. It seems particularly important to help the emergence of a culture of legal discussion in the spirit of academic freedom, and the Law Talks were designed as one element of such support.

The Law Talks started in 2008, initially in formal cooperation mainly with the Senate, now also with various law faculties. Until today eight law talks have been held.

For the next round of Law Talks conducted in Kep Province the topic “**Administrative Law and Practice – International and Cambodian Perspectives**” has been selected.

Over the last decade’s legislators and governments in many Asian Countries had to cope and are still coping with the rapid economic development and established new legal norms and systems focusing on private law, civil codes, enterprise law, investment laws etc. At the same time governments – central, provincial and local have been struggling to regulate the entrepreneurial activities vital for the economic development of their countries while limiting the undesirable effects of that development, such as exploitation of those with less bargaining power, and growing corruption. This has required administrative rules which provide guidelines for governing the private and economic activities of citizens. The relationship between the state and its citizens has become more of a focus for policy makers and legislators. Administrative law seeks to strike a balance between the constitutional guarantees of the rights of individuals and the legitimate interest of the society as a whole. Administrative Law has not only developed in countries traditionally adhering to the statutory law of Continental Europe, but also in common law jurisdictions. There are however significant differences in the approach of the two legal traditions. Asian countries, including Cambodia have developed regulations that set out legal requirements and grant certain rights to the citizens. Nevertheless those legal rules

are often not complemented by clear procedures which are to be properly applied and enforced by relevant authorities.

Administrative Law in Cambodia

As mentioned, Administrative Law is still in need of further development in Cambodia. Whereas in recent years comprehensive codifications have been adopted in the fields of private law and criminal law, such general laws are lacking in administrative law. Some administrative principles and concepts for administrative procedures can be found in various laws with regard to specific topics, but no general regulations are in place. In order to allow a systematic development of administrative law, such regulations or at least principles need to be discussed. In France, where there is no general codification of administrative law, they have been developed through court decisions and academics over time. In Germany the system developed in a similar way, but later parts of general administrative law were codified. In other countries comprehensive codifications can be found. Comparison shows that there are various approaches to systematization, but every developed legal system needs to find some way to develop administrative law on the basis of generally acknowledged principles guided by the ideas of rule of law, basic rights and effectiveness. Therefore, discussion of these questions needs to continue in order to prepare for further work on those general aspects and on a more systematic approach to administrative law and administrative procedures in Cambodia.

Objective of the Law talk

- Promoting increased understanding on the international perspectives, principles and the relevance of Administrative Law
- Promote a better understanding on the current status of administrative law reform in Cambodia

Expected results

- Recommendations for a harmonised and effective Complaint Management System in Cambodia
- Recommendations for Reform Priorities and Reform Sequence of Administrative Reform in Cambodia

Program

| Time | Session/Content | Moderator |
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| DAY I, 21.02.2013 | | |
| 07:30 | Departure from Phnom Penh to Kep Province | |
| 11:00 | Check in the Rock Royal Hotel in KEP | |
| 12:00 | Welcome Lunch at Hotel La Veranda Hotel (or other) | |
| DAY I, Thu, 21.02.2013 | | |
| 13:45-14:00 | Registration | |
| 14:00-14:10 | Opening Remarks <ul style="list-style-type: none"> ▪ Judge Marc Spitzkatz, Director, Rule of Law Program, Asia, Konrad-Adenauer-Stiftung | |
| | <u>Session I</u> Rule of Law Principles and Overview of Administrative Law Reform in Cambodia | <u>Moderator:</u> Professor Hor Peng , Director of the National University of Management |
| 14:10-14:30 | “Principles of Administrative Law: Some Comparative Perspectives” <ul style="list-style-type: none"> ▪ Dr. Jörg Menzel, Professor of Law, University of Bonn | |
| 14:30-15:00 | “Aspects of Administrative Law and Reform in Cambodia” <ul style="list-style-type: none"> ▪ RA Kai Hauerstein, CIM Advisor to the General Secretariat of Council for Legal and Judicial Reform and Lawyer in Germany | |
| 15:00-16:00 | Questions and Answers | |
| 16:00-16:15 | Coffee Break | |
| | <u>Session II</u> International and Regional Examples of Administrative Law (I) | <u>Moderator:</u> Professor Hor Peng , Director of the National University of |

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| | | Management |
| 16:15-16:35 | <p>"The European Code of Good Administrative Behaviour - a good practice for Cambodia ?"</p> <ul style="list-style-type: none"> ▪ Prof. Tanel Kerikmae, Professor of European Law, University of Tallin, Estonia | |
| 16:35-17:00 | <p>"Development of Administrative Law in Thailand"</p> <ul style="list-style-type: none"> ▪ Dr Ruthai Hongsiri, President, Administrative Court - Chiangmai, Thailand | |
| 17:00-17:30 | QA | |
| 17:30 | End of Day One | |
| 18:30 | Dinner | |
| DAY II, 22.02.2013 | | |
| 08:00-08:45 | <p>Continue Session II Discussion</p> <p>Which lessons (structures and procedures) from Thailand and Europe could be useful for the further development of Administrative Law in Cambodia?</p> | |
| | <p><u>Session III</u></p> <p>Analyzing Administrative Law and its current and potential future Components in Cambodia (I)</p> | <p><u>Moderator:</u></p> <p>Professor Kong Phallack, Dean, Law Faculty, Pannasastra University</p> |
| 08:45-09:10 | <p>Part A – An Administrative Code for Cambodia?</p> <p>"Drafting, adoption, and implementation of an Administrative Code – Advantages and Challenges for Cambodia"</p> <ul style="list-style-type: none"> ▪ Prof. Hor Peng, Rector of the National University of Management (NUM) | |
| 09:10-09:30 | <p>Part B – Complaint Mechanisms (I)</p> <p>"Status of Complaint Mechanisms at national level – Achievements and</p> | |

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| | <p>Challenges”</p> <ul style="list-style-type: none"> ▪ <u>Dara Khlok</u>, Head of Division, Human Rights and Arbitration, Council for Legal and Judicial Reform | |
| 09:30-10:00 | <p>Part B – Complaint Mechanisms (II)</p> <p>“Status and Mandates of existing Complaint Mechanisms at sub- national level in Cambodia – Achievements and Challenges”</p> <ul style="list-style-type: none"> ▪ <u>Chea Bunheng</u>, Deputy Director of Local Administration Department of the Ministry of Interior | |
| 10:00-10:15 | Coffee Break | |
| 10:15-12:00 | <p>Focus Group Discussion</p> <p>“Towards a harmonised and effective Complaint Management System in Cambodia”</p> <p>-</p> <p>Challenges and Solutions- Developing Recommendations for the national and sub national Level</p> | <p><u>Moderator:</u></p> <p>Mr. Soth Sang Bonn, Director of the Human Resource Department, Senate</p> <p>Denis Schrey, KAS Cambodia</p> |
| 12:00 | Lunch | |
| 13:30 | Dinner | |
| 13:30-14:00 | Presentation of Groups Recommendations | <p><u>Moderator:</u></p> <p>Professor Meas Bora, Vice-Rector of CUS University</p> |
| 14:00-14:30 | <p>Part C – State Liability</p> <p>“Administrative Liabilities in Cambodia: State Liabilities – How can citizens claim damage for unlawful (administrative) actions –Achievements and Recommendations for reform steps in Cambodia”</p> <ul style="list-style-type: none"> ▪ <u>Yan Vandeluxe</u>, Senior Advisor, Parliamentary Institute of Cambodia (PIC) | <p><u>Moderator:</u></p> <p>Professor Meas Bora, Vice-Rector of CUS University</p> |
| 14:30-15:00 | <p>PART D – Institutionalised Administrative Law structures</p> <p>“Administrative Courts and Alternatives: A Comparative Perspective”</p> | |

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| | <ul style="list-style-type: none"> ▪ <u>Dr. Jörg Menzel</u>, Professor of Law, University of Bonn | |
| 15:00-15:45 | Questions and Answers | |
| 15:45-16:00 | Coffee Break | |
| 16:00-16:30 | <p>Part E- Law on Access to Information</p> <p>Presentation of the Draft Law on Access to Information – Implications for administrative transparency, accountability and public service orientation</p> <ul style="list-style-type: none"> ▪ <u>Leos, Raymond</u>, Advisor to the National Assembly in Cambodia ▪ Complementary comments by <u>Lukas Gundermann</u>, Senior Advisor to the Cambodian Senate | <p><u>Moderator:</u></p> <p>Professor Hor Peng, Director of the National University of Management</p> |
| 16:30-17:00 | QA | |
| 17:00-18:00 | <p>Final Group Discussion on the status of Administrative Law Reform in Cambodia- Recommendations for Reform Priorities and Sequence of Administrative Reform in Cambodia</p> <p>Input Statement</p> <p>Policy framework concerning an comprehensive administrative law system; current status on administrative adjudication and outlook</p> <ul style="list-style-type: none"> ▪ <u>Dara Khlok</u>, Head of Division, Human Rights and Arbitration, Council for Legal and Judicial Reform (10 min) <p><u>Key Guiding Questions for Final Discussion:</u></p> <p>Civil Procedure Code in analogy? Administrative Court Procedure Act? Other options?</p> <p>How does administrative adjudication fit into the unified court structure provided by the Constitution?</p> <p>How does the Royal Government of Cambodia want to address this issue? Status Law on the Organization of Courts and other policy initiatives.</p> <p>What institutional and procedural options (from other countries) are available?</p> | <p><u>Moderator:</u></p> <p>Dr. Jörg Menzel, Professor of Law, University of Bonn</p> |

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| 18:00 | <ul style="list-style-type: none"> ▪ Closing Remarks <p>Mr. Denis Schrey, Country Representative, Konrad-Adenauer-Stiftung, Cambodia</p> | |
| 18:30 | Dinner | |
| DAY III, 23.02.2013 | | |
| Departure of participant after breakfast | | |
| DAY III, 23.02.2013 | | |
| 08:00-10:00 | <p><i>Meeting of the potential Authors of the LAW Book on "Introduction to Cambodian Administrative LAW (I)"</i></p> <ul style="list-style-type: none"> - <i>Agreeing on Contents of the Law Book</i> - <i>Agreeing on Timeframe and Budget/Honoraria</i> - <i>Agreeing on Deadline for Submission of Articles</i> <p><i>Venue: La Veranda Hotel (tbc)</i></p> | |
| 11:00 | <i>Check out and departure</i> | |

***** General Information for speakers:**

- The whole workshop will be in English
- Generally, each presentation shall be max. 20 minutes (!!!)
- Equipment for power point presentation will be available in the workshop venue.