

## „Understandings of the *Rule of Law* in Various Legal Systems of the World“

*The project examines different understandings of the Rule of Law and their specific normative implications in various legal systems of the world. Brief country reports shall illustrate the different understandings of the Rule of Law in reference to the particular legal and constitutional discourse of each country. Presented side by side, the country reports shall allow for comparison and reveal similarities and dissimilarities. The reports will be complemented by comparative analyses on the Rule of Law within different (legal-) cultural contexts. The country reports as well as the comparative texts will be published online on the internet in a wiki-style format, thus offering the possibility for interested readers to discuss the texts and to participate in their further development. All the texts will be in English.*

### 1. Country Reports

The country reports are the core element of the project. They will be provided by various authors with a distinct insight into the specific legal system. The reports shall be brief and informative (round about 10.000 characters, three pages). In order to manage the inconsistency of the relevant literature and to achieve comparability, it seems reasonable to ensure the structural consistency of the country reports by using the following template:

#### Rule of Law-Template

- The report starts off with a brief drafting of the **“sound”** that characterizes the specific discourse and relevant material. In the case of Brazil, this could be the observation that authors generally agree that the Brazilian legal system provides for an exemplary conception of the Rule of Law, but only “in theory”, as large parts of the country – the Amazonas region as well as the major cities – are not within the reach of the statutory jurisdiction.
- Then the specific **understanding of the rule of law** shall be illustrated. Is the Rule of Law understood as a constitutional rule or principle, and what is the specific normative content? How is the rule of law conceived of, and which traditions are referred to? Is the Rule of Law a term used by the courts or is it merely a matter of academic consideration and dogmatics? In the case of Germany e.g. a number of different constitutional rules and principles are merged under the terms *Rechtsstaat* and *Rechtsstaatlichkeit*.

Continuing from here, the following institutions and their relevance within the constitutional setting shall be assessed:

- To what extent are the **government and the executive branch** bound by law?
- What is the **specific concept of the law**? Which body is in charge of making legal norms, and which means secure their consistent interpretation? Are the laws solely enacted by a parliamentary assembly or are there executive regulations like the “Ukas” of the Russian president, and what is the status of non-parliamentary regulations? Are there any social norms like custom or convention or like religious norms considered “law” and how does the legal order deal with them?
- **Judicial review**, with special regards to the question of an **independent judiciary**. In a German understanding, the obligation and the judicial verifiability of the adherence to the law are the

two core elements of *Rechtsstaatlichkeit*. How is the judicial review system organised? If there are forms of non-state conflict resolution like traditional social courts or modern forms of arbitration, what is their status compared with the judiciary?

- Does the specific understanding of the rule of law include **additional normative elements** – besides the obligation to adhere the law and judicial review –, and on which normative grounds are they based? In the German example, a **more substantive or “thicker” conception of the rule of law** includes the principle of proportionality (*Verhältnismäßigkeitsgrundsatz*) into the Rule of Law. The principle restrains the government’s scope of action in respect of individual human rights and freedom, its origin is the historically developed idea of freedom and the ideal understanding of the relation between the state and society.

A **more formal or “thinner” conception** of the rule of law, however, would not include such additional substantive elements. Please note, if the difference of more formal or substantive conception of the Rule of Law is discussed explicitly in the specific discourse.

- **Conclusion** or short summary.
- Short list of **further reading**.

**The following legal systems will be included in the examination so far:**

Legal Cultural Area	Country	Author
Continental Europe	Germany	Dr. Matthias Koetter
	France	Dr. Matthias Koetter
	Italy	N. N.
Common Law	United Kingdom	Dr. Matthias Koetter
	United States	N. N.
Eastern Europe	Russia	Ilja Skrylnikow
	Poland, Ukraine	N. N.
	Bosnia-Herzegovina	Ellen Fischer
	Turkey	N. N.
Islamic context	Pakistan	Dr. Athar Minallah (t.b.c.)
	Afghanistan	Hatem Elliesie
	Egypt	Hatem Elliesie
	Lebanon	Dr. Cordelia Koch
	Iran	via Dr. Tilmann Roeder
Africa / Post-Colonies	Ethiopia	Judit Y. Mengesha, Hatem Elliesie
	Nigeria	Judit Y. Mengesha
	Sudan	Hatem Elliesie
Latin America	Argentina	Prof. Pablo Riberi (t.b.c.)
	Brazil	Prof. Leonardo Martins (t.b.c.)
	Bolivia	Aline Hirseland
Asia	China	Prof. Robert Heuser
	Japan	N. N.

## **2. Additional Texts**

The country reports will be complemented by comparative analyses that shall develop further materials from political and cultural sciences (also written in English, round about 30.000 to 40.000 characters or 10-12 pages). The texts may either be cross-country comparisons of legal systems and reports on cultural areas, e.g. "The Rule of Law in Constitutions of Countries with an Islamic cultural background" or "The European Understanding of the Rule of Law". The texts may also compare the development of the idea of Rule of Law from a cultural or philosophical historical perspective.

## **3. Presentation**

Country reports and additional texts will be published online on a wiki-style webpage, which is provided by the Freie Universitaet Berlin (see <http://www.cedis.fu-berlin.de/web20/wikis/index.html>). Thus, the reports and texts will be easy to find and access, and the wiki format allows for cross-linking the contents and it enables readers to discuss and join in expanding the information, to modify the pages or add completely new ones. At least at the beginning, changes and additions carried out by the readers will be subject to the approval by the administrators of the online-project. At the best, the project will evolve into an expanding forum with content contributed not only by its initiators but by a broader reader/writer community.

Publishing the original contents in a classical format like e.g. in a book is not the plan so far, but may be considered at a later point.

## **4. Schedule**

The texts shall be published online on the internet by the end of 2009.