Fourth session of legal monitoring (13.11.2008)

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On November the 13th, 2008, the 4th session of legal monitoring organized by the Chair of East Asian Law proceeded in providing information on a particular area of Chinese law. Being the first session of the legal monitoring series during the winter semester 2008/09, the meeting delivered introductory insight into dispute settlement in China.

As a guest speaker Prof. Dr. Chi Manjiao gave a lecture on the Chinese legal system of settlement of civil and commercial disputes. The professor currently teaches international law at Xiamen University Law School and International Economic Law Institute, being also an arbitrator of the Xiamen Arbitration Commission.

The lecture started with a brief distinction of the three types of dispute settlement: mediation, arbitration and litigation. Due to historical reasons, there is no long tradition of dispute settlement in China, for little attention used to be paid to matters of business law. In the last years though, an accelerated progress of the arbitration and litigation environment can be observed.

In the private environment, mediation as a way of settling conflicts used to be quite efficient. Going to court for civil matters is not popular in Chinese society and civil procedure law emphasizes trying to reach a settlement first before filing a lawsuit. However, mediation does not meet the demands of business disputes, for the persons involved often do not have the required knowledge. Additionally, the legal regime of mediation is not very well developed in China.

The history of Chinese arbitration began in the early years of the PRC. Until the 1980s, the legal system of arbitration was merely an imitiation of the litigation rules. As in the court system, there were hierarchy of institutions and a system of appeals. Parties were not allowed to choose an individual arbitrator, the arbitrators being official appointees. All this changed when in the mid-eighties the state council issued new rules for CIETAC, the China International Economic and Trade Arbitration Commission, disposing the commission's completely offical status. CIETAC established connections to foreign institutions and real arbitration rules were produced. During the nineties, legal concepts like finality of the award, party autonomy and no institutional hierarchy were implemented into arbitration law. Problems relating to the application of foreign arbitration systems occured when in the late nineties Hong Kong and Macao were returned to the PRC. Not until 2001 regarding Hong Kong, and 2008 regarding Macao, the respective Supreme Courts reached an agreement on the recognition of arbitration awards gained in the different jurisdictions. The general influence of foreign and international law on the Chinese arbitration system was intensified by the PRC joining the World Trade Organization in 2001. Although there are over hundred different arbitration commissions in China, the CIETAC is still the most important one.

The lecture concluded with a short introduction to several litigation matters. As mentioned civil litigation is still not very popular in China. This is true especially in disciplines like family law. However, litigation is an important issue in commercial affairs. The basic rules of litigation are constituted by civil procedure law and administrative procedure law (although litigation against government organs rarely occurs).

The Chair of East Asian law is indebted to Professor Chi for delivering this interesting and rewarding lecture. In conclusion, the study group got off to an interesting start in its first meeting of the semester, allowing participants, hopefully including numerous guests, to expect further interesting exchanges in the future.