

abstracts

The History and Development of Macau's Statutes

Celina Veiga de Oliveira

(pp. 7)

Throughout the four centuries in which the Portuguese have been in Macau, the territory's Statutes have undergone changes as a reflection of historical events in both China and Portugal.

The original establishment of the Portuguese in Macau for predominantly trading purposes led to them effectively administering the territory although there are differing opinions from Portugal and China as to how Macau was settled.

The effective administration, the result of compromise between the two nations, was replaced from the late eighteenth century onwards by a reaffirmation of Portuguese authority in the territory at a time when China's power was beginning to weaken.

China's desire to return Macau to its original territorial demarcations means that the former Portuguese colony is now in the process of transition.

The continuity of Macau's legal system in the Basic Law of the future Special Administrative Region

Jorge Costa Oliveira

(pp. 21)

The author assesses the continuity of Macau legal system in the Special Administrative Region of Macau and the limits to this principle. As limits and relevant issues connected to the principle, the author specifies the following: (i) [the laws shall continue] basically unchanged; (ii) the Basic Law's conformity to the Joint Declaration; (iii) the relationship between national laws and the laws of Macau; (iv) the localization of the laws; (v) the continuity of the international agreements applied to Macau; (vi) the control of the basic legality; (vii) the interpretation of the Basic Law; (viii) other conditionings of the continuity principle, namely the divulgation and popularization of the law and the localization of the legal professionals.

The author conclusions are as follows: (i) the principle of the continuity of Macau legal system is inserted in the Sino-Portuguese

Joint Declaration and in Macau Basic Law; (U) the fundamentals for this principle are the legal certainty and to maintain the sphere of protection of fundamental rights in Macau; (iii) to keep the laws basically unchanged means not to change the essential content of them; (iv) whenever the Basic Law is not conform with the Joint Declaration it cannot be applied by the Courts or the Executive; (v) the legislative acts will continue with the same status (qua tale) in the Special Administrative Region (SAR); (vi) only on exceptional cases can national laws be extended to the SAR; (vii) the localization of the laws, albeit being a political priority, is not binding on Portugal considering the different texts of the Sino-British and the Sino-Portuguese Joint Declarations; (viii) all international agreements will remain, except if they will be denounced; (ix) although in some cases the SAR Courts will have to refer previously to the PNCPC, the interpretation of the laws will continue to be the task of the judges and the judges solely.

The Political Structure of the Macau Special Administrative Region Basic Law

Xiao Weiyun

(pp. 61)

This article offers a synthetic approach to the political structure of the Basic Law taking into account the principles and political structure of the Special Administrative Region of Macau as far as regards the slogan of «One country, two systems», the spirit of the Sino-Portuguese Joint Declaration, the territory's actual situations and social and economic development. There is also an introduction to the characters, powers and duties of the executive, legislative and judicial bodies in the future Special Administrative Region of Macau.

Macau's Political System within the Basic Law — Separation and Supremacy in the face of the legislative system

Paulo Cardinal

(pp. 79)

The second draft of the Basic Law for Macau on its chapter IV — Political Structure, does more than just legislate over the political system.

Concerning the Political System this is influenced by the Portuguese and Chinese Joint Declaration, the Hong Kong Basic Law and the different cultures and political and juridical values of the PRC.

Outlining the Political System main characteristics, we may say that we find several rules disregarding the Joint Declaration, separation of powers between the Executive and the Legislative with Executive strongly predominating. Also, it's not easy to find out what is the «Government» and if it has legislative competence.

The Basic Law — An Important Guarantee for the Basic Rights and Freedoms Enjoyed by Macau's Residents

Luo Weijian

(pp. 103)

The basic rights and freedoms enjoyed by Macau's residents and how these have been dealt with in the Basic Law is a matter of great interest to the population of Macau. The Drafting Committee of the Basic Law has devoted a chapter to this issue which has been handed over to a specialised group responsible for drawing up the draft.

Shortfalls in the Basic Law

Ng Kuok Cheong

(pp. 115)

The article deals with a general overview of Macau's Basic Law with particular emphasis on the shortfalls which in the author's opinion exist in the fundamental legal principles on which it has been based, the political system and the guarantees of human rights. According to the author, the latter have been covered with very superficially with the abolition of many guarantees such as the right to life, right to protection in an emergency and the right to hold collective negotiations.

The Regulation of Professional Activities in the Macau Special Administrative Region's Basic Law

Zong Guanyao

(pp. 125)

The regulation of the various professional activities is stipulated in Macau's Basic Law. The author presents an explanation of how this field is regulated at present and what the future legislation holds in store.

Principles of Penal Law and Penal Rights and Procedures for Residents in Macau within the Context of the Basic Law

Maria Leonor Assunção

(pp. 129)

The need to maintain the basic features of the legal system previously in force in Macau enshrined in the Sino-Portuguese Joint Declaration means that the Basic Law of the Special Administrative Region of Macau should correspond to the basic principles or structures of this same legal system. The text should be interpreted in such a way as to maintain the meaning of these principles and permit as little interference as possible in the legal protection of residents in Macau.

The fact that the provision made in article 87 of the Basic Law of the Special Administrative Region of Hong Kong stating that the

principles and legal rights in force in Hong Kong prior to the handover will be maintained, is not included in the Draft Basic Law for Macau does not necessarily imply that the opposite will occur.

The Death Penalty and the Basic Law

Chio In Fong and Zhao Guoqiang

(pp. 141)

The authors of this article demonstrate that there are major doctrinal differences in the application or prohibition of the death penalty without a final decision having been reached. Consequently, neither those in favour nor those against the death penalty can regard their opinion as predominant.

Administrative Region will be responsible for approving or prohibiting the death penalty.

The Basic Law and the Criminal Law

Jorge Godinho

(pp. 153)

*The article is an analysis of the Draft Macau Basic Law focusing on criminal law issues: article 23rd is acceptable in what concerns the enactment of laws regarding crimes against the State but poses many questions on the prohibition of international political contacts; the death penalty is not explicitly rejected, which opens the door for its reinstatement and breaks a cultural and legal tradition started when this penalty was abolished in Macau, back in 1870; the current debate about the death penalty is unsubstantiated since there is, for many detailed reasons, no need for it; the life and general confiscation sentences are also not explicitly rejected; the principle *nullum crimen sine lege* is deficiently stated. The challenges posed by the coming enactment of a new Criminal Code are mentioned.*

The 14th National Congress of the Chinese Communist Party and the Basic Law in the Context of the Principle of «One Country, Two Systems»

Ho Kuong Choi

(pp. 171)

In the author's opinion, the 14th National Congress of the Chinese Communist Party was an extremely significant event which, along with the theories of Deng Xiaoping and the new figures emerging in the Politburo, will influence not only China but also the future development of Hong Kong, Taiwan and Macau.

Education in the SARM Basic Law: Analysis and Commentary

Cheong Chi Meng

(pp. 177)

Based on the current situation of education and the Sino--Portuguese Joint Declaration on the Question of Macau published in

July 1991 and the Draft of the Basic Law for the future Special Administrative Region of Macau published in March 1992, the author compares and examines educational methods, systems, evaluation and professional training both now and in the future.

Some Comments on the Basic Law

Leong Kam Chun

(pp. 185)

In the article the author's view is that most of the opinions and concerns of the population of Macau were not taken into consideration in the drafting of the Basic Law. Included in these points are the direct election of the Executive Leader and increases in the number of members of the Legislative Assembly appointed through direct election. These and other opinions which have been ignored have, in the author's view, far-reaching implications for Macau and the local community.

