

The Necessity for Interpretation of the Constitution in the Light of its Specifications

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Abstract

Historical concerns about the violation of the separation of powers and abuse of authority to interpret the law and claiming that the law is comprehensive, cause doubts in recognition of the establishment of interpretation of the law, in particular, the interpretation of the Constitution. To the extent that some believe to the absolute negation of the interpretation of the law by any authority other than the legislator. Reflecting on the realities of practical implementation of the Constitution shows regardless of the uncertainty, and conflict outlined in the provisions of the Constitution and the natural defects of the law, there are some special features in the Constitution, creating the necessity, importance and the need for additional and distinctive interpretation of the Constitution than other laws and regulations in the legal system. Generality, abstraction, stability, and moral nature of the provisions of the Constitution, along with the specific place and function of this law, are among these special features. To these should be added poverty of resources and literature of fundamental rights to the specialized literature of other branches of law.

Keywords

Abstraction of the Constitution, Interpretation, Stability of the Constitution, Moral Nature of the Constitution, The need for Interpretation, Constitution, Generality of the Constitution.

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The Role of Biotechnology in Development of International Environmental Law

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Abstract

Biotechnology allows exploitation of biomass and biodiesel in providing fuel through protecting biodiversity and developing novel strategies including strategies for removal of water, soil and weather pollutants; and it provides opportunities for development of international environmental law by providing opportunities for utilization of exploitability of genetic materials resulting from fossilized remains of extinct flora and fauna species aiming at simulation of extinct species. Through providing alternative strategies instead of traditional methods for protection of environment and prevention of any damaged incurred on it, it can significantly help the development of international law in this respect. While biotechnology plays a significant role in the development of international environmental law, the unknown poisonous composites, allergic responses, and unpredictable genetic pollutions resulting from supplying poisonous organism due to intervention in existing organisms can pave the way for destruction and pollution of the environment. The positive consequences of this technology and its negative effects are determinants accelerating the change in international society attitude towards the significance and the necessity of protection of the environment, finally leading to increased development of international environmental law. Focusing on the advantages and disadvantages of biotechnology, this study is concerned with how biotechnology can serve the development of international environmental law. While the positive aspects of biotechnology shouldn't be ignored, it is necessary to give due attention to its consequences and effects.

Keywords

Environmental Strategies, Principles of International Environmental Law, Sustainable Development, International Law, Biotechnology.

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The Right to Happiness in Compensation of the Natural Rights of Veterans and Devotees

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Abstract

The right to happiness is one of the natural rights of man. Since an important part of the right to happiness and perfection of man is realized when a person has the physical and mental health, therefore, the natural rights of no one can be ignored or the origin of it is eliminated. What has been mentioned is the hypothesis of this article. Therefore, our hypothesis is that the natural rights of every human being provide the natural foundation of his happiness and the violation of these rights through the violation of his rights or the temporary barrier to using it or causing permanent harm to its source that exists inside the human being in the form of natural and instinctive laws leads to the need for double compensation. In some situations such as the recent one, government on behalf of the community must compensate for the loss of the natural right of the victim through positive discrimination in the long term. Given the special privileges for those who have sacrificed themselves for the sake of bliss, can be proven in two ways: human rights and citizenship rights. This article focused on veterans and devotees in the Iran-Iraq war.

Keywords

Devotion, Iran, War, Natural Rights, Happiness, Pleasure.

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Distributive Justice, Efficiency and Termination of Employment Contract

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Abstract

Termination of an employment contract is one of the most important sections of a labor contract. Since, how an employment contract terminates is related to a fair distribution of job security. Also, the quality of termination of an employment contract has a strong relationship with efficiency theory. Therefore, the legislator in developing a legal system governing the termination of the employment contract must endeavor to maintain distributive justice and efficiency while establishing a balance between them. In the present article, we intend to explain how to ensure distributive justice and efficiency and to establish a balance between them in developing a legal system governing the termination of employment contract with respect to Iran's labor code and moreover, we will see that due to wide- spreading use of temporary employment contract and the risk of not renewing of the mentioned contracts at the end of work, permanency of labor contract principle, and hence fair distributive of job security has been altered. Also, the complexity of formalities of firing workers has destroyed the efficiency; therefore, there is no balance between efficiency and distributive justice, in important cases of the termination of employment contract in Iran's labor law.

Keywords

Firing an Employee, Job Security, Labor Law, Employer, Employee.

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Right to Die in International Human Rights Instruments

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Abstract

None of the international human rights instruments and most domestic laws have explicitly recognized the right to death. However, in the European Court of Human Rights and even some domestic Courts, according to other rights and freedoms in these documents, individuals claim to have this right and sometimes these claims lead to the recognition of this right and the change of national law. This article seeks to answer the question of whether the right to die for people has been recognized in the precedent of European Court, with the emphasis on the European Convention on Human Rights, which is the source of the right and duty for this Court. In the meantime, to what extent do governments have the power to restrict the rights and freedoms that are in fact the foundation of the right to die?

Keywords

Principle of Subsidiarity, Right to Privacy, Right to Die, Margin of Appreciation Doctrine, European Court of Human Rights.

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Review of Policymaking and Health Laws in the United States

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Abstract

Communities' health has always been a major concern for every government but without an effective legal framework, protection of community health is not possible. It should be noted that governments have a lot of authorities in the field of public health. These authorities allow them to modify, enact and implement the relevant legislations. America's health care system has identified and classified rules and every day the types and numbers of therapists and independent and affiliated government agencies are added. Despite the few numbers of these rules, they have addressed the health of American citizens comprehensively. The competent regulators of the health sector should, while respecting and considering the considerations, have a comprehensive, coherent, holistic and purposeful approach to ensure the public health of citizens and as a result, to increase their level of satisfaction. Since the US is often regarded being in the vanguard of the health regulation and health policymaking in the world, we endeavor to study its laws, regulations and policies in this article.

Keywords

United States, Health, Policymaking, Laws, Regulations.

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States Immunity in the Light of the Responsibility to Protect Doctrine

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Abstract

State immunity roots in the sovereignty and equality of States. Namely, the immunity means the impossibility of exercising the jurisdiction of domestic Courts over foreign States. Following the developments of the human rights, interventions have made in the internal affairs of States under the responsibility to protect doctrine that created challenges on the State sovereignty, and has raised in mind the question of whether the responsibility to protect doctrine will be a barrier for the implementation of the principle of the State immunity? In answering this question, by the separation of the procedural rules from the substantive rules can be seen the procedural rules such as State immunity do not conflict with the substantive rules governing the nature of the claim. The real source of the human rights litigation is, ignoring the forum State to enforce its jurisdiction in relation to the human rights cases, and to the extent that is concerned to the human rights violations, the State immunity and jus cogens values do not conflict with each other.

Keywords

State Sovereignty, Responsibility to Protect Doctrine, Jurisdiction, Jus Cogens Norms of the Human Rights, State Immunity.

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Aspects of the Right to Free Religious Expression in the Precedent of International Human Rights Bodies

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Abstract

Freedom of religion has various dimensions, from freedom of having a belief as a subjective matter to freedom of express the belief in personal and social life, as an objective matter. The first aspect of this right is visible prima facie in the right to do religious rites and benediction. Also, the rights to religious clothing and use religious symbols represents the link between freedom of religion and freedom of speech. The right to assembly that generally recognized, is useful to enjoy religious freedom. The right to religious education and proselytization are other aspects that religious believers sue it, seriously. Swearing on the religion is another aspect of the freedom, too. This article surveys these aspects with an analytical-descriptive method in the precedent of European Court of Human Rights and concludes that despite the fact that some of them are not specified in international instruments, the Court protects the development of the right to freedom of religion by its precedents.

Keywords

Freedom of Religion, Freedom of Religious Expression, Religious Rites, Religious Assemblies, Proselytization, Religious Clothing, Human Rights.

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Comparative Study of Legal Particularism vis-à-vis International Law: American Exemptionalism vs. European Union Pluralism

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Abstract

Universalism is defined as applying the rules of international law equally for all states or entities, while particularism is defined as a situation wherein a state or an entity seeks to apply its particular values and norms even if they are assumed against or inconsistent with the universal rules. The particularistic states or entities seek to find the means and methods through which they can have the possibility of escaping the dominance of international law wherever they find the international law against their interests and values, or at least they can bring it to their own accord. As two key actors in international relations, the EU and the US by adopting positions and practices that differ from the universal rules have institutionalized a particularistic approach to international law. The US and the EU take advantages of similar practices in their own particularistic approach. Applying double standards, using alternative interpretations and unilateralism are some examples of such practices. American Particularism is based on sovereignty and the reliance on military power and this has led the US particularistic approach suffers from the exemptionalism. In contrast, the European Union, with an emphasis on the independence of the EU legal order and legal pluralism, has displayed a purposeful and moderate Particularism. Explaining the similarities and differences between the United States and the European Union, the current study rejects unjustified Particularism in international law and assesses the EU approach and function more moderate.

Keywords

Legal Particularism, Legal Universalism, Legal Pluralism, Exemptionalism, Double Standards.

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Developments of Recognition in Creation of New States: Case-Study of *Daesh*'s Claim to Create an Islamic state

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Abstract

Recognition is also influenced by the development process of international law, especially the practice of States, international organizations and Courts show such developments. Through the evolution of the recognition process, a new criterion has emerged in the context of the creation of new States. In fact, today having classic criteria of international law by one entity alone cannot necessarily cause creation of a new State. Islamic self-proclaimed state, established by *Daesh*, has taken steps to acquire constituent elements of the State and seeks to exercise sovereignty in the areas under its control and to have effective control. In this article, the classic criteria for creation of new States are compared with *Daesh*'s claim to establish an Islamic State, then, according to the contemporary criterion of "legitimacy" for creation of a new State, we will address the requirements of States regarding recognizing of *Daesh*. Then, these questions are answered whether *Daesh* has the traditional elements of Statehood? What criteria are required for recognition? In response to these questions, it is concluded that, in spite of *Daesh*'s attempt to apply the classic criteria of the creation of State, this violent entity is merely a criminal extremist. The mere having these criteria will not lead to the creation of a new State, and, moreover, recognizing it as a new State would violate international human rights and also the fundamental rules of international law.

Keywords

Creation of New States, International Law, *Daesh*, Recognition, Legitimacy.

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Concept of Invocation to International Responsibility with Emphasis on the Draft Articles of International Law Commission (2001)

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Abstract

The injured State from an internationally wrongful act can invoke to the international responsibility of the State that committed it. Even State other than an injured State may invoke to the international responsibility of the State which breached obligation in cases where the nature of the breached obligation is erga omnes. According to Draft Articles on Responsibility of States for Internationally Wrongful Acts 2001, an invocation is an act with a relatively formal character and distinctive than concepts such as protest or criticism and the origin and nature of the breached obligation don't affect on the possibility of invocation. Any deadline is not determined for the invocation to international responsibility, but the defendant State can prove non-invocation as the basis for waiver. The injured State must declare to responsible State its claim and when invoking State is acting on the basis of diplomatic protection, it must respect the rule of the nationality of claims and rule of exhaustion of local remedies. This article, by clarifying the concept of invocation, attempts to determine the position of it in the realm of responsibility international law and relations between States.

Keywords

Invocation, Erga Omnes, Injured State, State other than an Injured State, International Responsibility of State.

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A Comparative Study on Powers and Duties of Labor Inspectors in ILO's Standards and Iran's Legal System

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Abstract

Labor law emerged to protect workers after the industrial revolution and soon found international aspects too. International Labor Organization (ILO) was recognized as the main organ for the protection of workers' rights at international level. The organization found it necessary to supervise the implementation of labor regulations and attempted to design a legal system for this purpose. It is clear that without taking appropriate measures toward employers' violations, passing labor standards would not be meaningful. Consequently, the labor inspection system was developed as one of the most important parts of the labor law. In Iran, health and labor inspectors are responsible for implementing laws and regulations and have powers and duties in this regard. This article attempts to answer this question: to what extent the powers and duties of labor inspectors in Iran compatible with International Labor Organization standards. Results show although these two systems are similar, but some obscurity concerning inspector's powers reduce the efficiency of labor inspection in Iran. Final remarks provide proposals to solve the problem.

Keywords

Labor Inspection, Labor Law, International Labor Organization, Worker, Employer.

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