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The Balance between Disclosure of Celebrities Privacy in Family Life in the Media and Freedom of Expression in the Jurisprudence of Judicial Courts

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Abstract

Private life of athletes, artists, and politicians is always fascinating. Because of this and also, people's curious spirit and neglect of some these celebrities cause details of their family life are published. Advocates of publishing such news, say that privacy of the celebrities is fewer than others, but the opponents believe that anyone has the exclusive privacy and the law must protect it. Judicial jurisprudence shows in most cases, this publishing has no social benefit. In contrary, sometimes their behavior gives the right to pry into their life based on the freedom of expression. This analytical–descriptive study shows that the conflict between the freedom of expression and the right to privacy sometimes exists and any legal system has resolved the conflict somehow.

Keywords

Celebrities, Privacy, Media, Fame, European Convention on Human Rights.

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Independence of the Judiciary of the Islamic Republic of Iran in Recruitment

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Abstract

Since the formation of the State in its modern sense in Iran and the Constitutional Revolution, the concept of the independence of the judiciary has been consolidated in our fundamental laws, but remarkable differences have been made regarding how it should be realized in accordance with the time periods and rules established at the constitutional level and the ordinary laws. The process of independence of the Judiciary, which is considered as an integral part of administrative autonomy, should be viewed as a historical process. In this process, the judiciary has evolved from the state of the judiciary system under the executive power into an independent entity with more limited relation to the executive power. Constitutional developments also reflect this progress. However ordinary laws have been lagged behind this progress which is founded by the Constitution. So, some of the recruitment rules of judges still contain provisions in force that are drafted under the Constitution of 1906. Procrastination in updating the laws has led to the initiative of the judiciary's code of conduct. Meanwhile, efforts have been made by the judicial authorities to submit legislative bills to parliament.

Keywords

Institutional Independence, Independence Recruitment, Judicial Appointments, Recruitment of Non-Judicial Employee, Constitution.

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Judicial Procedure of International Criminal Court for Selecting Referred Cases

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Abstract

The International Criminal Court (ICC) applies primary and secondary selection criteria for referred cases. According to its statute, it first considers the benefits of the realization of justice by the criteria related to determining jurisdiction, admissibility, and acceptability. The purpose of this paper is to examine the Court's procedure to establish the primary and secondary selection criteria. In this article by using the descriptive-analytical research method, we try to answer this question that what is the role of ICC in preventing and combating crimes committed in international and domestic armed conflicts and the realization of justice. The secondary criteria applied to each case by prosecutor after examining the above-mentioned acts are due to the interpretation of the Statute of the Court. The Court has jurisdiction to hear many cases, but due to limitations such as the budget, the States' cooperation in gathering evidence and the status of the victims, it selects final case between referred cases.

Keywords

International Law, International Criminal Court (ICC), Security Council, Jurisdiction, Admissibility and Acceptability.

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Impact of Human Rights Requirements on Safe Pregnancy and Childbirth

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Abstract

Maternity is one of the most delightful experiences of a woman's life. However, for many reasons, it can turn into a terrible experience for the mother and even lead to her death. Many factors affect mortality and endangering mothers' health including economic and social conditions, different types of discrimination, cultural grounds, and traditions of different regions of the world. What is indisputable is the link between the right to maternal health and the fundamental principles of human rights. In the present study, while identifying the most basic of these principles, we will respond to the fundamental question on impact of the application of human rights requirements on safe pregnancy and childbirth.

Keywords

Fundamental Principles of Human Rights, Right to Health, Period of Pregnancy and Childbirth, Causes of Maternal Mortality, Maternity.

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Survey on the Conditions of the Closed Session in Iranian Parliament (Issue of the Article 69 in Iranian Constitution)

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Abstract

Legislative power is one of the main pillars of the Iranian legal system in the Constitution. So, holding an open session in the parliament is one of the important measures to protect the rights and public freedoms, knowledge of the current affairs, and to monitor the performance of the representatives. Meanwhile, if holding an open session in the parliament endangers national security, it will certainly influence the country. This research aims to explain the causes and factors of formation of a closed session with a descriptive-analytical method and in the light of the analytical analysis of Article 69, parliament's negotiation on Constitutional review and the conditions envisaged in other laws determine the formation of the closed session of the parliament. Finally, some suggestions to reform the legal system formed a closed session is provided.

Keywords

Article 69, Closed Session, Constitution, Parliament.

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The Delimitation of the Seabed and Subsoil of the Caspian Sea on the basis of the Principle of Equity

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Abstract

One of the most alive and to be sure, complicated political and legal events in the Caspian Sea region is the unresolved issue of its legal regime. The Caspian Sea as a closed sea has had a volatile history in terms of its legal regime and for the time being one cannot see a clear vision for solving its legal regime problem. The Caspian States have reached a consensus on the issues of environment and territorial as well as the special fishing zone, but the complex Caspian marathon in the exclusive economic zone and also continental shelf of the sea remains unsolved. In this regard, if we look at the Islamic Republic of Iran's position on the legal status of the Caspian Sea, we will see that Iran refers to the "principle of equity" as a basis for the division or delimitation of the Caspian Sea to restore its lost rights. This article tries to examine the meaning of the principle of equity as an element of natural justice and to elaborate on the practice of the International Court of Justice regarding the delimitation of the continental shelf. We try to reach an accurate understanding of this term and its scope to reach a definite idea on the delimitation of the seabed and subsoil of the Caspian Sea.

Keywords

Principle of Equity, Delimitation, Natural Justice, Caspian Sea, Continental Shelf.

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The Role of International Court of Justice in Establishment of International Rule of Law

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Abstract

The rule of law means to limit arbitrary power and protect fundamental individual rights and freedoms, so this is one of the democracy foundations. The rule of law in international level is an instrument for preservation of international peace and security and also promotion of human rights. Due to the structure and realities of international community, the rule of law applies differently in international level in comparison with civil law. The rule of law in international level means limitation of sovereignty and authorities of States by legal rules. ICJ as a principal judicial organ of the UN takes fundamental role in establishment and preservation of rule of law in international community. ICJ aside from the settlement of conflicts has diverse tools for establishment and reinforcement of international rule of law. This research is seeking to review and explain of ICJ's methods for the establishment and reinforcement of international rule of law.

Keywords

International Rule of Law, International Law, International Court of Justice, Legal Rules, Judicial Review.

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Obedience of Domestic Law to the Rules and Norms of International Law

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Abstract

The good and efficient setting of communication between actors in international community requires careful examination of these relationships. The relationship between domestic and international order and domestic legal obligations to obey the norms and rules of international law is one of the subjects discussed in law, international relations and politics. However, this subject has not received much attention in our legal literature. Study of commitment of domestic law to obey the rules and norms of international law with a descriptive-analytical approach is the subject of this article by using related references. Our finds show: experts tried on documenting the internal legal obligation to obey the norms of international law by introducing various foundations. Domestic legal systems approach (Constitutions, precedent, and practice) are mainly based on the principle of the sovereignty of nations and the lack of obligation to obey the norms of international law. While international law (international documents and international judicial procedures) issued order to obey the norms of international law in many cases. The difference in approach of domestic law and international law leads to the supremacy of international law over domestic law and the obligation to obey with the norms of international law with reasons like globalization and internationalization of public law, protection of the rights and freedoms of citizens and requirements of international life.

Keywords

Obedience, Globalization, Domestic Legal System, International Law, Rights and Freedoms.

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The State Immunity Defence after Accepting Referring the Dispute to International Arbitration

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Abstract

The principle of State immunity is one of the incontrovertible rules of customary international law and waiver of immunity is one of the accepted exceptions on this principle. Acceptance of referring the dispute to international arbitration by the State shall be certainly deemed waiver of jurisdictional immunity in respect of that State. However, such an act shall not be deemed a waiver of execution immunity of the arbitration award and refraining from this immunity needs to separate waiver. Apart from execution immunity, it is difficult to find commercial nongovernmental properties of Defendant State. However, solutions such as diplomatic protection, insurance, agreeing to modify or change the terms of payment, sale or transfer to the third person and pressures from the international community and State of nationality of applicant by the removal or suspension of trade tariffs can help to execution of arbitration award.

Keywords

Enforcement of Arbitration Award, International Arbitration, State Immunity, Execution Immunity, Jurisdictional Immunity.

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Role of Judges in Consolidation of Fundamental Rights with an Emphasis on the Decisions of the Constitutional Court

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Abstract

The necessity of protecting the Constitution as the supreme law at the top of the legal principles pyramid, stresses the need for establishment of the constitutional courts to ensure this order. Due to the differences between the legal systems in the world, their types of proceedings are different as well. Ensuring compliance of the ordinary laws with the Constitution and supporting the fundamental rights and freedoms of the people are the main duties of this organization. The present article studies judgments of the constitutional courts in some countries to explain the role of the constitutional magistrates in development of the people's fundamental rights. Accordingly, the people's right of complaint about violation of their rights to the constitutional magistrate, the magistrates' interpretation, a priori control, and publishing the decisions play an essential role in this regard. In other words, the constitutional magistrate is like a switchman that keeps the train of constitutional laws in its real track and does not let the public authorities to deviate it

Keywords

Fundamental Rights, Constitutional Judge, Constitutional Court, Protection of the Constitution, Supervision.

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Bilateral Investment Treaties on the Ups and Downs of the Conclusion and Validity in the European Union

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Abstract

The specificity of the rules governing the European Union and the foreign competence of the Union to conclude the international treaties has led to the two independent legal systems regarding bilateral investment treaties between the member States of the Union and third countries; a regime based on the domestic law in the framework of international law and the EU based regime. The conflict between the competence of the Union and its member States to conclude bilateral investment treaties creates ambiguities which can affect the validity of these treaties. Also, the assumption of the supremacy of Union rules with the effect on the validity of bilateral treaties between the Member States and third countries drew the assumption of the violation of international law and the international responsibility of the Union and the Member States. Although some rules of Union law contain some approaches in this regard, there are still challenges in concluding and validity of these treaties at the Union level, which could be a sign of instability and unsafety, as the main components in the attracting foreign investment in EU. In this paper, we are going to examine the challenges and their legal approaches at the EU level.

Keywords

European Union, European Court of Justice, Foreign Investment, European Commission, Bilateral Investment Treaties.

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A Particularized Assessment of the Concept of Historic Waters in International Law of the Sea

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Abstract

The discourse of development of State jurisdiction in the sea in the early twentieth century led to the doctrine of historical waters in international law of the sea. Accordingly, the doctrine of historic waters was considered by the United States government for the first time in the North Atlantic Arbitration Court (1910). In the convention on the territorial sea and the contiguous zone and convention on the law of the sea, there are no regulations concerning the historic waters. The absence of a single concept of historic waters led to the emergence of conflicts at the international level. So, in this regard, the fundamental question is what is the concept of historic waters in international law of the sea? According to requirements of historic waters seem that historical waters are those waters which coastal State applied effectively and consistently its sovereign rights over them and such rights have consistently been explicitly or implicitly recognized by the States. In the end, regarding the importance of historic waters in international law of the sea, deserving to be formed international conference with the aim to codification and development of regulations governing historic waters.

Keywords

Continuity, Exercised Authority, Requirements of Historic Waters, Foreign Acquiescence, Concept of Historic Waters.

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The Pattern of the Parliamentary Regime in a System based on Divine Sovereignty and Vilayat-e Faqih in Islamic Republic of Iran

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Abstract

The Vilayat-e Faqih system stems out of divine sovereignty and the parliamentary system is based on the high role of the people's representatives. Although, the combinations of these two encounter problems, since divine sovereignty is one of the oldest forms of sovereignty and today many people in the world have religious beliefs, the combination of this theory with the achievements of human wisdom is a good solution for today's governments. The research question is what are the characteristics of the parliamentary regime in divine sovereignty-based system in Islamic Republic of Iran? The research method in this study is descriptive-analytical. Based on the findings of this study, the present regime is a special system that is not fully compliant with any of the categorizations. As it may be named as a Velaei System of semi-presidential and semi-parliamentary system, it could be turned into a native "Velaei Parliamentary Regime", which is more compatible with divine sovereignty. In fact, with the separation of the religious duties from other Vilayat-e Faqih duties, and the redefinition of these "other duties" as well as the use of a semi-party system (instead of full party system), the conditions for the parliamentary system could be provided.

Keywords

Divine Sovereignty, Political Structure, Parliamentary Regime, Presidency, Vilayat-e Faqih.

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Prevention and Compensation for Environmental Damage in Nuclear Spent Fuel Management

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Abstract

Nuclear spent fuel due to radiation and high temperature requires systematic and scientific management. Given the objectives of various international instruments, in particular, the “Convention on the Safety Management of Fuel Used and the Radioactive Waste Management” to protect the individual and the environment in relation to the risks and damage caused by the management of spent fuel, the present paper explains assessing the obligations of States for preventing environmental damage caused by the management of spent nuclear fuel and thereby respond to one of the requirements for the development of nuclear energy use. Finally, this paper deals with weaknesses in preventing and compensating for environmental damage, such as incompleteness, the universality of these regulations and the complementarity of the responsibility of States in compensation.

Keywords

Prevention, Nuclear Damage, Spent Nuclear Fuel, Management, Environment.

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Saudi Arabia's Military Attack on Yemen from the Perspective of International Humanitarian Law

Seyed Asghar Jafari*

Abstract

Yemen has faced more than three years of serious violations of many humanitarian principles by the Saudi regime and its allies. The global community has been waiting for the reaction of international institutions and governments, especially the UN Security Council, but they remained silent in the face of blatant violations of humanitarian law. This paper aims to identify the most important violations of humanitarian law by Saudi Arabia during armed conflicts in Yemen. The research was conducted in a descriptive-analytical method. Research result shows that Saudi Arabia has violated many of the principles and regulations of international humanitarian law during the attack on Yemen, including restrictions on the choice of any methods and means of warfare, as well as the prohibition of attacks on civilians and residential areas. Therefore, this State has an international responsibility and should be prosecuted by the International Criminal Court.

Keywords

Humanitarian Law, Saudi Arabia, Geneva Conventions, Armed Conflicts, Yemen, Geneva Conventions.

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Compensation for Damages of Environmental Crimes in International Law and Iranian Law

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Abstract

Environmental crime is facing a lot of challenges, which makes it impossible to rectify the damage caused by them as simple crimes. The first is that it is sometimes an environmental offender is government (such as dam construction by government) or powerful companies (such as those that produce transgenic products) that act behind wealth lobbies. Second, the victims of environmental crimes are so high that they cannot be compensated for the usual damages, such as victims of air pollution, haze, and unhealthy drinking water. Finally, environmental compensation is based on the theory of pure responsibility, while civil responsibility in Iran's Legal System is based on the theory of fault and therefore does not have the necessary dynamics to compensate environmental damages. Nevertheless, in both international and Iranian law, the compensation for environmental damages is on one hand, restorative and on the other hand is based on criminal and State-based views. Hence, the offender obliged to restore the situation to the former state and otherwise be obliged to compensate for the losses. But in the event of an inability of the offender, the government is compensating for the damage caused by the Environmental Fund.

Keywords

Environmental Crimes, Compensation, Civil Responsibility, International Law, Iranian Law.

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