

Abstracts

Referencias históricas sobre la Carrera Judicial

Celso Rodríguez Padrón

Judicial Power and the Judicial Profession are not synonymous concepts. The Judicial Profession consists of the body of independent Judges and Magistrates who impart Justice, being exclusively subject to the rule of law. This work presents a brief overview of the history of Spain, focusing on the continuation of the different forms through which the introduction of the Judges is expressed, in other words, the technical training of this body. The process of selection of these Judges and Magistrates from the Early Middle Ages up to our time has evolved until it has taken the form of an authentic Profession, an indissoluble form of the technical elements of the function of judging, which reached its apex in the XX century. The 1978 Constitution and the creation of the General Council of Judicial Power places us in a most interesting moment in the route of the demarcation of the essential concept of Judicial Power: that of its independence.

Reuniones y manifestaciones ante la sede de los Parlamentos

Fernando Sainz Moreno

The rights of meeting and demonstrating before the Chamber are guaranteed by the rules that protect these fundamental rights, but the exercising of them is limited by the constitutional guarantee of Parliament, the «inviolability of the Spanish Parliament», by the prohibition against the demonstrations presenting petitions to the Chamber, and by the public order guarantee inside and outside that place.

It is common for Parliament to adopt special measures to regulate demonstrations before the Chambers. This is generally done by means of the demarcation of «protection zones» around them, and the participation of their

Presidents in the decisions that the governmental authorities take in these zones.

In Spanish law, the President of the Chamber has powers to maintain order within the building, but does not have jurisdiction to intervene in the maintenance of order outside it. This failure sometimes creates confusing situations that could be eliminated by means of the establishing of a protection zone around each Chamber, and by the President being given certain powers in relation to this. However, the adoption of these measures will require legal provision since it affects the rights to meetings and demonstrations.

The Constitution prohibits the direct presentation of petitions to the Chamber by citizen demonstrations, but it does not prohibit a presentation in writing, in compliance with the formal requirements established in the Organic Act regulating the Right to Petition, whether preceded or accompanied by a demonstration.

The audience for those who wish to present a written petition to the Chamber is not regulated under our law, but the first additional provision of the Organic Act 4/2001, states that the possibility of calling for a special audience for the petitioners falls within the Chamber Regulations.

Interpretación, valores y sistema constitucional

Eduardo Aldunate Lizana

The object of the article is to make the consequences of the practice of incorporating the reference to values or to teleological elements in the interpretation of the constitutional text explicit for the constitutional system. It seeks to show how, from the viewpoint of a certain interpretation, based on values, it is possible for the balance between democratic legitimacy and constitutional legitimacy to be weakened to the detriment of the former.

For this reason, it defines the concepts of interpretation (meaning the result of the activity of interpreting) norms (a category located within in the scope of the meaning and that cannot be considered to be the contents of a text, but rather the result of the interpretative activity based on that text) and legal norms (a deontological proposal that makes it possible to assess a form of conduct or a situation according to whether it satisfies the nature contained therein or not).

The introduction of values as normative concerns on the one hand makes it necessary to resolve the conflict between them, to consider them and endow them with a hierarchy, so as to establish what the proper form of behaviour is. And, in any event, constructing a legal norm implies at least the determining of one option between the value of the freedom of one possible form of conduct and another value, before which the former cedes ground.

The consequences of the interpretation from the viewpoint of values are different in the case of constitutional jurisdiction and in the case of ordinary jurisdiction. In the latter case, the procedure whereby the judge arrives at the

reason for his decisions may be criticised, but this does not change the relationship between the jurisdictional function and the legislative function, as may occur in the case of constitutional jurisdiction.

The author considers the Constitution to be an organising framework of institutionalised political power, the basic structure of its competences and the channel through which the political process flows. He reaches the conclusion that the constitutional judge does not have reasons to remove the decision that is raised before him from the political sphere if he uses arguments based on values, and that it is not possible, to associate this with the text by means of objective arguments. It is necessary that this dispute remains open and for it to be resolved by action of democratic forces. Looking at this in another way, the interpretation based on values can lead to damage to the legitimacy of a democratic system that replaces what should be channels for political dispute with dams and locks on the same.

Funcionamiento y eficacia de los Registros de uniones civiles de hecho en España y en otros países europeos

Diego Alonso Herreros

The purpose for which these Registers were created—to serve as a means of evidence—has become weakened by the defects in the requirements for registration, and above all the cancellation of entries, as well as due to the absence of inter-connection between these. This has led to insecurity concerning the veracity of what is declared, since there is no verification of the data, together with frauds that take shape in asymmetries between the registry reality and the extra-registry reality.

In the situation of the dispersal of registries caused by autonomous state action, there is a certain need for uniformity, either by opening up the Civil Register to unmarried partners, or by establishing a Register of national scope that could be the embryo of a future European registry.

Likewise, the extension of goods to registered couples leads to discrimination, not between married and unmarried couples, but rather between the civil unions that are recorded and those that are not.

De nuevo sobre el derecho de enmienda y sus límites. La congruencia entre la enmienda y el objeto del proyecto o proposición de ley a que se refiere. Su deseable proyección sobre las leyes de acompañamiento

Alberto Díaz Romeral Gómez

This study on the *Auto del Tribunal Constitucional*, ATC 118/1999, preliminary ruling number 118/1999 from the Spanish Constitutional Court,

shows once again that every right must have its limits. In this sense, the right to amend a bill must comply with some particular conditions. Among them, the relation that must exist between the amendment and the bill it refers to appears to be particularly important. That is the most important conclusion we can come to after analysing this Auto, which is likely to have some kind of influence on several pending cases before the Court in relation with the so called *leyes de acompañamiento* -those laws that are usually passed with the General budget yearly laws.

Los instrumentos del Derecho de la Técnica: su consideración desde la técnica normativa

Susana Galera Rodrigo

Industrial societies are increasingly requesting protection of general issues as the environment, health and consumer security, for example. This means an important challenge for legal systems, given the fact that these requirements are in direct relation to scientific and technological practices in continuous development and progression.

In the last decades, there has been an important development in the so-called «Technical Law», including in this category those technical rules to which different enforcement power has been given, in some cases binding and in others voluntary. At the same time, particular procedural provisions have been established in order to adopt these technical regulations as well as those ad hoc bodies that are involved in different levels of the regulatory process.

This article focuses on technical rules and technical regulations as well as on the standardisation rules. It further analyses these regulations in view of constitutional requirements regarding the establishment and enactment of binding provisions. It reaches the conclusion that in some cases, these constitutional requirements are not sufficiently satisfied.

Estudios

Celso Rodríguez Padrón: *Referencias históricas sobre la carrera judicial*

Fernando Sainz Moreno: *Reuniones y manifestaciones ante la sede de los Parlamentos*

Eduardo Aldunate Lizana: *Interpretación, valores y sistema constitucional*

Problemas actuales

Diego Alonso Herreros: *Funcionamiento y eficacia de los Registros de uniones civiles de hecho en España y en otros países europeos*

Alberto Díaz Romeral Gómez: *De nuevo sobre el derecho de enmienda y sus límites. La congruencia entre la enmienda y el objeto del proyecto o proposición de ley a que se refiere. Su deseable proyección sobre las leyes de acompañamiento*

Susana Galera Rodrigo: *Los instrumentos del Derecho de la Técnica: su consideración desde la técnica normativa*

Documentos

El Tratado de Libre Comercio entre México y la Unión Europea

Introducción por José Luis Piñar Mañas y María Bellido Barrionuevo

Texto del Tratado

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