

Abstracts

The first amendment to the United States Constitution and access to sources of government information. SUSANA SÁNCHEZ FERRO

It concerns the amendment that regulates freedom of expression and information or, in its own wording, freedom of speech and of the press. It analyses the evolution of the US Supreme Court's jurisprudence which, from initially denying that the first amendment protects the right to information, it goes on to establish in subsequent sentences that, in some measure, the amendment does indeed protect such right, at least partially. It studies the reasons put forward by the Court and the restrictions on the exercise of the right, which are based on the starting point of the jurisprudence: the publicity of the criminal law process. It is completed with an analysis of the jurisprudence carried out by the doctrine as well as with the debate on the limits of the right of access to government information. The lack explicit reference to this right in the American Constitution is contrasted with its treatment in European constitutions, particularly the Spanish one.

Confidentiality in health data. ANTONIO TRONCOSO REIGADA

Based on the constitutional framework - the right to live, to receive healthcare and to privacy- it analyses the treatment of personal data in healthcare services, the regulatory legislation on the medical history of patients and the protection of their health data: Organic Laws 15/1999, dated 13th of December, on the Protection of Personal Data and 41/2002, dated 14th of November, the basic regulatory law on the autonomy of patients and the rights and obligations in the sphere of medical information and documentation. It follows with an analysis of the responsibility relative to the data files of public and private healthcare services and the data protection principles relative to automated and manual data files.

Considerations on the aggravated Constitution reform procedure. PIEDAD GARCÍA-ESCUADERO MÁRQUEZ

The announcement made by the President of the Spanish Government at the start of the legislature of his intention to consider a constitutional

reform and the report by the Spanish State Council on such reform lead the author to analyse the range of problems arising from the succinct regulation on the aggravated reform established in article 168 of the Spanish Constitution. Thus, the author examines the time restrictions for the reform and the inexistence of material restrictions, including implicit ones, to arrive at the sphere of application of the aggravated reform. The author lists, analyses and suggests solutions to the numerous procedural problems that will arise: the reform initiative, the «principle» of the reform, the qualification, the taking into consideration procedure, the participation of the Senate, the dissolution of the initial parliament, the nature of the elections and of the second legislature, the ratification of the principle, the elaboration of the articulated text, the two-thirds majorities, the solving of possible discrepancies between Congress and Senate, the referendum, the promulgation, the control over the Constitutional Court, etc.

From extradition to the Arrest and Handover Warrant; the first instrument for judicial co-operation in the field of criminal law within the European Union. DIANA MARCOS FRANCISCO

The European Arrest Warrant is a procedural instrument that replaces extradition between EU countries, which, as part of the third pillar, is established through Council Framework Decision dated 13th of June 2002. It is defined as the judicial resolution dictated by a Member State with a view to the arrest and handover by another Member State of a wanted individual, for the purpose of bringing criminal action against him/her or enforcing a sanction or a prison sentence. The article analyses the process that gave way to the adoption of the Framework Decision as well as the novelties introduced in the legal systems of the Member States: exclusive judicial competence; the judicialization of the handover and of the competent judicial authorities; the partial abolition of the double incrimination principle; the abolition of the principle that prohibits the handing over of nationals and the exception of the principle of speciality. Likewise, it addresses the problems derived from its application by the courts in ordinary practice.

Turkey on the path to European Union accession. TATSIANA USHAKOVA

The work analyses the main challenges facing Turkey for its accession to the European Union (human rights, the Cyprus issue as well as the economic and structural aspects) and the obstacles that the European Union must overcome to integrate a new member of the size and characteristics of a society like the Turkish one (overcoming the internal political crisis, the institutional reform, the economic cost). All of which from the starting point of Turkey's commitment to Europe, the difficult balance between western and eastern worlds and the extremely long path covered since the status of associated country to official accession candidate. The future accession of

Turkey highlights the difficulties entailed in its integration into Europe although, bearing in mind the point already reached in bringing the two sides together, the process now seems irreversible.

Constitutional implications of the political swings in some Latin American countries (2005/2007). LUIS AGUIAR de LUQUE and FERNANDO REVIRIEGO PICÓN

The liberal constitutionalism model seems incapable of responding to the complex and extremely contrasting socio-economic realities in many Latin American countries. On another front, these countries often attribute thaumaturgical powers to their constitutional texts. However, constitutional reforms take place based on criteria that are not always in line with the values of a liberal-constitutional democracy and materially constitutional texts are adopted which, to a large extent, condition or anticipate the final result of reforms. The documents presented and analysed refer to three parallel and closely interconnected processes in Andean countries: the constitutional reforms in Bolivia and Ecuador and, in Venezuela, the coexistence of a constitutional reform process under study and the law that empowers the President to legislate in a practically single-handed manner. Although these countries present different characteristics they are illustrative of the adaptation difficulties of the constitutional processes in progress: left swing; commitment to policies that promote social justice; claiming national sovereignty in relation to exploiting natural resources and joint foreign co-operation and action initiatives in the face of the lack of satisfaction generated in the region by North American policy.

Cuadernos de Derecho Público

27: ENERO - ABRIL 2006



MINISTERIO
DE ADMINISTRACIONES
PÚBLICAS

Estudios

La primera enmienda de la Constitución de los EEUU y el acceso a las fuentes de información gubernamental

Susana Sánchez Ferro

La confidencialidad de los datos de salud

Antonio Troncoso Reigada

Problemas actuales

Consideraciones sobre el procedimiento agravado de reforma de la Constitución

Piedad García-Escudero Márquez

De la extradición a la Orden de Detención y Entrega; primer instrumento de cooperación judicial en materia penal en el ámbito de la Unión Europea

Diana Marcos Francisco

Turquía en camino hacia la adhesión a la Unión Europea

Tatsiana Ushakova

Documentos

Implicaciones constitucionales del giro político en algunos países iberoamericanos (2005/2007)

Introducción por Luis Aguiar de Luque y Fernando Reviriego Picón

Bolivia: Ley especial de convocatoria a la Asamblea Constituyente (marzo de 2006); Ley de convocatoria a referéndum nacional vinculante a la Asamblea Constituyente para las autonomías departamentales (marzo de 2006); Reglamento General de la Asamblea Constituyente (febrero de 2007)

Ecuador: Decreto de convocatoria a referéndum sobre la instalación de una Asamblea Constituyente (enero de 2007); Estatuto de elección, instalación y funcionamiento de la Asamblea Constituyente (marzo de 2007)

Venezuela: Ley que autoriza al Presidente de la República para dictar Decretos con rango, valor y fuerza de ley en las materias que se delegan (enero de 2007); Decreto de constitución del Consejo Presidencial para la Reforma de la Constitución (enero de 2007)

Abstracts

INAP



9 788411 382847