Abstracts

STATUTE OF THE JUDGE AND FREEDOM OF SPEECH

Luis AGUIAR DE LUQUE

The exercise of the jurisdiction has been traditionally associated to the recognition to the titular of that function, the members of the juridical career, of a specific statute that, among others elements, involves a restriction of basic rights. Even if in the Constitution continues beating a model of juridical career bureaucratized, and that text incorporates explicit restrictions for the exercise of certain rights (art. 127), those limits must be contextualized in the frame of the Welfare and Democracy State that Constitution consecrates. The objective of this article is to reinterpret the judicial regime of the freedom of speech for Judges and Magistrates under these considerations.

EUROPEAN LIBERTY OF MOVEMENT AND PUBLIC ORDER IN SPAIN

Ascensión ELVIRA PERALES

Liberty of movement is one of the classis European liberties, which offers a new significance thanks to European citizenship. This liberty can be restricted because of a public order reason, according to European law, specifically according to the meaning offered by the Court of Justice. Application of Community law in Spain afforded transparency, not only to the processes of expulsion of European citizens, but also to those of other foreigners.

ELECTIONS ON MARCH 9, 2008 AND THE EQUAL VOTE

María GARROTE DE MARCOS

Parliament electoral system has been frequently criticized for the scarce proportionality generated by its mechanism of converting votes into seats. The

difference between the electoral lean obtained by a political party and the parliamentary representation it actually achieves, was once more revealed in the last elections celebrated on March 9, 2008. Such circumstance shows incoherence with the constitutional framework in which the parliamentary electoral system is embedded as it jeopardizes the right of equal vote and the right of equal access to public functions and public duties.

The right of equal vote encompasses a double meaning within its constitutional regulation: the formal and the material. The formal refers to the right of political participation and it is related to the method of seats apportionment among the electoral constituencies, according to their population or their number of registered electors. The material meaning is only required by the proportional electoral systems, and it is related with the mechanism of transforming votes into seats. Our electoral system openly disregards both aspects of the right of equal vote. This paper intends to analyse the origin and the scope of the mentioned inequalities of representation, referred to March 9 elections, and proposes some solutions oriented to lessen these undesirable effects.

RIGHT OF SANCTUARY AND GENITAL MUTILATION OF WOMEN

Ana María VALERO HEREDIA

The present article defends the necessity of reinterpreting and putting into practice the reasons or causes of persecution in the Geneva Convention relative to the estatute of refugee of 1951 from a perspective of gender, because that is the tendency in administratives practices and in juridical resolutions in different countries nowadays. Women suffer a kind of persecution with features linked to theirs sex, and this should be the base to reexamine the interpretation given until now to concepts like "persecution", "way" of persecution or "agents of persecution".

As is known, the section 2 of letter A of the article 1 of Geneva Convention establishes as causes of persecution "the race, the religion, the nacionality, the membership of a determinated social group and the political opinions" and the execution of refugee estatus should be based in some of these causes. Then, the article tries to determine in which of these causes can be framed the protection to women that run the risk of suffering genital mutilation in their countries.

THE TERRITORIALITY OF THE JURIDICAL ORGANIZATION: REALITY AND POSSIBILITIES.

Fernando FLORES GIMÉNEZ

This article describes and exposes critically the "picture in slow movement" that reflects, today, the reality of the decentralization of the juridical organization in

Spain. This decentralization stresses on a few dimensions of this organization, the process dimension, that related to the government of the Judges, and that referred to the management of the Justice Administration. To this one is dedicated the mayor part of the analysis. This article concludes underlining the intelligent combination of the three elements that, in the author's opinion, the public service of the Justice needs to be modern: the reorganization, the coordination and the decentralization.

REFLECTIONS ON THE TEACHING AND RESEARCH OF CONSTITUTIONAL RIGHT IN THE 30TH ANNIVERSARY OF SPANISH CONSTITUTION

Itziar GÓMEZ FERNÁNDEZ

Thirthy years of life for the Spanish Constitution. Thirty years of life for the discipline associated with its study and exegesis: The Constitucional law. And these thirty years place our discipline in a maturity, autonomy and consolidation degree, never had before. That allows us to have the necessary temperance and self-confidence to think about the object of analysis and about the methods of work on this scientific discipline, without fear of losing our signs of identity. This article confronts these considerations.

SMALL PRINT OF A NATIONALIZATION: REPSOL YPF OR EVO MORALES DILEMMA

Pablo ZAPATERO MIGUEL

States are competing to attract foreign direct investment worldwide. This scenario poses critical challenges to the way developing nations are designing and implementing public policies. Under this context, Bolivian government has challenged several foreign corporations by developing a rather peculiar regulatory model ("nationalization without expropriation") that deeply re-regulates oil production and distribution in its territory. As a direct result, a plurality of public and private actors is playing different cards in a multi-level game at both the global and domestic scales. The present case of study explores the modern limits of domestic public policies in the age of globalization. By doing so, it tackles some puzzling issues concerning the protection of private interest (private power) by proxy states (public power).

UNCONSTITUTIONALITY OF CRIME OF NEGATION OF GENOCIDE. CRITICAL COMMENT TO CONSTITUTIONAL COURT SENTENCE 235/2007, NOVEMBER 7TH.

María Lidia SUÁREZ ESPINO

The analysis pretends to introduce a reflection on the recent decision of Spanish Constitutional Court that declares unconstitutional the foresight of

the article 607.2 of the Penal Code that typify as crime the negation of genocide, because the Court understands that this behaviour, as long as it doesn't contain insults would be protected by the freedom of speech.

The article presents some arguments in favour of the constitutionality of this penal consideration when in those declarations, even not being insults, exists a clear intentionality of trivializing or minimizing cruel crimes, since that would suppose a disrespect to the dignity of the victims of those horrific events.

On the other hand, that would suppose to go against the opinion of a lot of countries of our environment that typifies as crime the negation of genocide and against the recommendations of International Organizations to which Spain belongs. In addition, that restriction of the freedom on speech should be among the faculties of limitation of the freedom of speech that is permitted by article 10.2 of CEDH that establishes as purpose that would legitimate the restriction of the freedom of speech the protection of others rights.

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