

The role of the judiciary in preventing and compensating for environmental damage in the Iranian legal system

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Abstract

Having a healthy environment is one of the fundamental rights which are taken into Account in the constitution. In addition to private persons who are obliged to prevent environmental pollution, governmental organizations are responsible for protecting the environment too. Environmental protection requires observance of a series of principles in operation and an effective basis for environmental liability. The role of the judiciary in this area includes inclusive and active monitoring and prevention, inclusive and active prosecution and effective judicial remedies. This research seeks to answer the following questions with a new and comprehensive approach: What are the plaintiff and defendant in environmental claims? What is the competent authority to deal with environmental claims? What are judicial remedies? What mechanisms are necessary for effective protection of the environment? This article tries to answer to these questions through collecting data from various legal sources with descriptive-analytical method.

Keywords: Judiciary, environmental damage, basic principles of environmental protection, environmental claims, judicial remedies.

Transparency of Law Principle and its Position in the European Court of Human Rights Procedure and Iranian Criminal Law

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Abstract

Making transparent and unambiguous laws is one of the requirements of good governance and consequences of “rule of law”. The necessity of making such laws as Transparency of Law principle is one of the important elements of “the quality of the law principle”. This is a post legality principle which is derived from European court of human rights Procedure which has practised for a considerable time and has assured rights of subjects of law against the legislator and lawmakers. In spite of recognizing transparency of law principles in judgments of European Court of Human Rights and its direct effects on restriction of liberties, has been neglected in Iran; Because the quality of law principle has not been recognize in Iranian law.” The silence of the Constitution to guarantee such principle, has paved the way for making ambiguous criminal laws due to different substantial and procedural reasons. Lack of attention to requirements of law transparency especially in legislation process, has not only deprived Iranian citizens from legal guarantees against ambiguous legislation, but also it has practically helped legislators to determine and design strategies of jurisprudential sources referred to in principle 167 of the Constitution in order to make the ambiguity transparent; a solution which is against itself and finally leads to a new challenge to the current ambiguity.

Keywords: The quality of law, Transparency of law principle, European court of human rights, principle 167 of the Constitution, Article 220 of Islamic penal Code.

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Review of the Custom Application approach in the interpretation In Judicial Law based on Imamiyah jurisprudence

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Abstract

The custom Both orally and practically is the usual habit and behavior of humans. Custom in any legal school of thought can play a significant role in three areas: creating legal rules, interpretation of legal rules and enforcement of legal rules (particularly, based on the legal positivism foundations). But the main question is that the reference to custom in order to interpretation should be done. By what principles and strategies to ensure justice to the community. It seems that it is inevitable for the judge as an interpreter of the law to apply the legal rules to facts of the case through the recognition of temporal or local, oral or practical and general or special customs. In the process of interpretation of a legal rule, an important role should be given to the recognition of the competent authority who lays down the rule and also the subjects of law or law followers. In many cases, such a custom is laying down the rule and intention of the legal rule is the customary meaning of the text (both in determining the legal rule and the facts of the case). As a result, determining the scope of the customary truth along with the legal truth is a base that may authorize the judge referring to the custom as an obligatory necessity. Therefore, in the process of interpretation, one can assume the existence of a customary truth, legal truth or religious truth for a word, and what can guide the judge will be the determination of the scope of each one of these truths as an authoritative judgement which settles the dispute.

Keywords: Legal rule, intellect, oral custom, legislative rights.

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Economic efficiency and government intervention in the contracts

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Abstract

At first, the economic efficiency has been brought up in economics and then developed as a superior normative purpose and value in another areas such as law. Accordingly, many areas including the free market, the contracts and their related laws have been formed with regard to this normative purpose and its implications and are going to obtain the most interests and achievements, while they spend the least level of resources. emphasizing the assumptions such as existence of full competition in the market and full information and rationality of the parties, the classic economists believe that market performs its role without government intervention and achieves economic efficiency. But, incorrectness of classic economics assumptions and failure of the free market, the contracts and the law governing them, proved failure. Therefore, with regard to importance of the economic efficiency, it must obtained by another way. It is exactly the government intervention in the contracts through some rules of the nature of public law; a method which is subject of criticism. Of course, its negative effects are reducible and therefore economic efficiency in the contracts can be achieved through the government intervention. In this article, different viewpoints about the issue will be discussed.

Keywords: Economic efficiency, Government intervention, Contracts, public law, market economy.

Protection of consumer rights in time-sharing contracts

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Abstract

Time sharing contracts or interval ownership is an almost new institution which entered to our legal system In order to developing tourism. the consumers' rights is significantly affected as a result of Complex nature of these contracts on the one hand, and the consumer's weak position against the strong professional traders on the other. In Iran, Many companies Resort to this method to transfer buildings that have been provided for this purpose. In spite of the acceptance of this institution in Iranian Law, appropriate regulation in this regard has not been passed; while, In most European states specific regulations has been enacted in this regard. After a brief explanation of the legal nature and definition of time-sharing contracts and clarifying the notion of consumer, in this paper specific regulations required for protection of consumer rights, including: right to awareness of contract, right to withdraw, right to choose freely, prohibition of advance payment, has been studied with respect to EU Directive 2008/122, as a document which has followed by many European states experienced in this type of contracts.

Keywords: interval ownership, protection of consumer rights, trader, European union.

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The right of the victim in determining the punishment and the manner of its implementation

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Abstract

Victim is a person who sustains material or moral harm. Victimology seeks to find ways to improve the rights of the victim, and emphasizes the participation of the victim in the process of criminal justice. Although identification of the victim's right to compensation for the crime and the provision of material and spiritual needs in the criminal process has gradually become a major concern of the victim, Paying attention to the victim's comments and his hearing requests and hearing his/her comments in the process of determining punishment and the manner of its implementation are controversial issues. An important question is that what are the limitations and scope of this right? Answering to this question in this article will be analyzed from the perspectives of victimization, and also relying upon the Iranian's rules and jurisprudence, jurisprudential foundations, and a comparative study of some states. In general, accepting the victim's right to determine the punishment and the manner of its implementation is relatively acceptable in some countries, including Iran. Although this right has some restrictions.

Keywords: victim, primary victim, second victim, revenge, punishment, victim's authority, punishment reduction, conditional release, suspension of sentence, postponement of sentence, semi-liberation system, amnesty, time lapse, subsidiary and supplementary punishment.

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A Comparative Study of Father's Financial Rights in Iranian and French Law

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Abstract

The authority of father and grandfathers over the child in Iranian law has led to the recognition of various privileges enabling them to intervene in the financial affairs of the child. Iranian civil law has accepted the authority of grandfathers in parallel with the authority of father without recognizing any right of this kind for the mother of the child. Before the 1970 reform in France, the position of French civil law was the same as the current Iranian law but under the said reform, the "Paternal Power" was replaced by "Parents' contribution and cooperation" in the management of the child's property.

The present study aims to compare the advantages and disadvantages of the two different ways of managing child property in Iranian and French law in order to identify the financial rules for adopting a father's presidential pattern in the family or a "parents' collective management" pattern and also to determine the extent to which the paternalistic theory of the absolute authority of the father or grandfather to manage the child's property is based on the true interest of the child in the current era.

Keywords: Financial Management, Municipal Property Management, Paternal Power, Parental Authority.

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Judicial Institutional justice of judge in Imamiyah jurisprudence and Iranian law

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Abstract

Justice, in the Islamic worldview, is one of the most important virtues a judge should possess. Particularly, Article 158 of the Constitution of the Islamic Republic of Iran provides that one of the duties of the president of the Judiciary is the requirement of most qualified, generous, honest and authentic judges. Also, in accordance with Article 163, the terms of office and the general conditions for the performance of the duties of judge are determined by law. There is a consensus among Islamic jurists about justice as a precondition for judges. But there are some differences among them as to the concept and criteria of justice. Some of the Islamic jurists emphasise on "minimal proof-needed justice" criteria and others on "maximal proof-needed justice" criteria. However, due to the complexity of the proof-needed justice and its rarity, the "justice clause to the proof-needed justice" can be considered as a valid criteria which has a position over the "minimal proof-needed justice". Considering the importance of the judiciary, there is no difference between Islamic Jurists and judges in possessing the former Criteria of justice.

Keywords: judge, proof-unneeded justice (it is based on jurist justness when there is no need his justice be vindicated), proof-needed justice (The principle is based on unjustness of jurist and his justice needs to be vindicated), Imamiyah Jurisprudence.

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The scope of the right to revolution and its Relation to the Baghy Offence

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Abstract

The rights to revolution, uprising, disobedience and rebellion have discussed in religious and natural law. This right, after entering into human rights and citizenship documents, has discussed by jurists and scholars of politics. Historically the existence of this right has provided an important justification for various revolutions, and we are still referring to this right for many political developments like the Tunisian Revolution. Relying upon requirements of democracy in the current human rights as well as the rights of citizens in many Western states, the remarks of this right are quite evident. In religious law, there are different views in this regard. One of points of view in this respect belongs to Shia which recognizes this right. The present paper, by descriptive-analytical method, considers the nature and foundation of this right in a comparative study between Western origins (focusing on American law) and Islam and also takes it to account its reflection on the sources of the constitutional law of the Islamic Republic of Iran.

Keywords: right to uprising, the right to revolution, constitutional law of Iran, Western.

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