SUMMARY

DEBATE
Constitutional guarantees, press and criminal law

STUDIES

ACTUALITY

FREEDOM OF INFORMATION AND CRIMINAL PROCEEDINGS ONGOING

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ABSTRACT

From the adverse effects of journalistic information about individual rights and the proceedings, the limits to the right on information within the law and the constitutional case law are analyzed in order to being applied to the protection of the proceedings. Regarding this, the general interest, which legitimizes the information about the criminal proceedings, does not cover any information about concrete data, either the dissemination of any image, being obligatory a ponderation, which compels to reflect on the publicity of the oral hearings, amongst others.

KEY WORDS

Right to information, criminal proceedings, information about judicial acts, information about the oral hearings.

PARALLEL TRIALS, RIGHT TO THE PRESUMPTION OF INNOCENCE AND THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

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ABSTRACT

The Strasbourg Court has dealt with the phenomenon of «parallel trials» or «trials by the press» from two complementary approaches: on one hand, by taking into account the rights of those persons which could be affected by press campaigns (privacy rights, right to the presumption of innocence); on the other, by evaluating the negative effects of those campaigns on the efficient operation of the justice system, and on the guarantees of the impartiality of courts. The Court has on several occasions considered that information given by the authorities and reproduced by the press affirming the culpability of the accused represented a violation of the right to the presumption of innocence.

KEY WORDS

Human rights, freedom of expression, impartial tribunal, right to privacy, presumption of innocence.

CRIMINAL JUSTICE IN THE DIGITAL ERA

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ABSTRACT

This article explains the basic principles of the criminal justice model of the Constitutional State, based on the establishment of limits to State punitive powers and procedural and material guarantees. Among the organic guarantees, special attention is given to judges, as impartial institutional subjects whose democratic legitimacy derives from the proper exercise of their function and their subjection to public criticism. The reasons for the collapse of the public criticism model in the digital society and the liquidation of the criminal model in a society which suffers from a strong economic and institutional crisis, exemplified in a case of mediatic relevance (The Wolfpack) are analyzed below. Finally, some institutional measures are proposed.

KEY WORDS

Constitutional state, criminal system, digital society, judge, process, judicial independence, presumption of innocence, victims, mass media, postmodernity.

FUNDAMENTAL RIGHTS AND THE JUDICIARY IN THE CASE LA MANADA

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ABSTRACT

The sentence handed down in the criminal order in the case of La Manada raises various questions related to the constitutional scope. The first is related to the subjection of the sentencing court to the principles of independence and responsibility and, therefore, to the principle of neutrality. The sentence does not offer reproach to these principles. However, it shows a remarkable incoherence between the facts that it declares proven and the criminal classification attributed. On the other hand, the content of the dissenting vote raises the question of the judge's freedom of speech when exercising judicial functions and forces to question the system of selection of judges in Spain. Finally, the social impact of this ruling encourages reflection on two issues: the pathology of so-called parallel trials and the responsibility of some media, especially regarding the protection of the rights of the personality and the presumption of innocence of the processed; and on the role of the audiovisual regulatory authorities to avoid the excesses of irresponsible information.

KEY WORDS

Judicial independence, judicial neutrality, dissenting vote, freedom of judicial speech, parallel judgments, presumption of innocence, audiovisual, regulatory authorities.

THE INTERACTION BETWEEN MEDIA AND CRIMINAL POLICY IN MASS DEMOCRACIES

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ABSTRACT

Against explanations that interpret that no penal policy is dominated by the power of public opinion, it is proposed a multi-causal explanation of the role played by the media in penal debates. The different factors that determine their level of influence are examined. And it is concluded that, in the short term, the media only influence political decisions in criminal matters when they establish alliances with certain lobbies. This situation is neither frequent nor stable. However, even when such situations do not occur, the media continues to have an important role, when delimiting the scope of what seems to be possible to say or to defend, as an argument or as a proposal. It is concluded, therefore, that it is necessary to pay attention to the problems of access to media, journalistic ethics and training, and the communication strategy for anti-punitivist movement.

KEY WORDS

Penal populism, public opinión, lobbies, media, legislative process.

MUCH MORE HEAT THAN LIGHT? VICES AND VIRTUES OF PUBLICITY OF INFORMATION WITHIN THE CRIMINAL POLITICS

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ABSTRACT

Publicity is usually seen as a precondition for healthy public policy. In crime policy, however, its contribution seems to be predominantly troublesome. Based on a true episode, the paper shows how the incentives of both political organizations and information producers converge in a defective kind of publicity and an equally flawed reaction to it (section 1); next, a description of the effects of these phenomena on crime policy in the last decades is advanced (section 2); finally, pointing the main role played by symbolic legislation on this process, the paper stresses the importance of the study of legislation as a process and not just a product, and takes criminal law theory to task for not paying enough attention to it, proposing a broadening of the subject matter of our discipline (section 3).

KEY WORDS

Crime policy, mass media, symbolic legislation.

DISTORTED CRIMINAL POLITICS AND MASS MEDIA

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ABSTRACT

In this work, the latest trend of the Spanish legislation of basing punitive reforms on societal demands is analyzed. In this way, the role of the role of Criminology in the framework of a penal system designed to protect legal goods has been forgotten. Public opinion has a role that it is not capable of filling: it supplies the political legislator with guidelines that do not follow traditional law, but rather follow the economic demands of mass media. In this way, it endangers the coherence of legal order. This observation is not intended to criticise the positive role that mass media has when it acts impartially, objectively and professionally.

KEY WORDS

Criminal politics, social demands, mass media, parallel trials, public opinion, general prevention.

PUBLICITY OF JUDICIAL PROCEEDINGS AND VICTIM'S PRIVACY: AN APPROACH FROM THE STATUTE OF VICTIMS OF CRIME

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ABSTRACT

The right to freedom of information and the principle of publicity of judicial proceedings are configured as fundamental rights which, together, allow compliance with the democratic requirement of control of the functioning of the Administration of Justice. However, these guarantees do not have —despite their transcendental role in every Social and Democratic State of Law— an absolute character, but can be limited by other rights of equal fundamental rank, such as the presumption of innocence, the right to defence and the principle of contradiction or the right to privacy, both of the accused and of the victim. Given the impossibility of affirming a priori the preference of some over others, it is necessary to proceed to a balancing of the interests at stake in each specific and particular case. Precisely, the right to privacy of the crime victim is one of the fundamental rights that can counteract the exercise of freedom of information and the publicity of the process; this is specifically the purpose of these pages, taking as a reference the Statute for victims of crime.

KEY WORDS

Right to freedom of information, publicity of judicial proceedings, secrecy of investigations, closed-doors trials, right to privacy of the crime victim, Statute for victims of crime.

LEVELS OF LEGITIMACY

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ABSTRACT

The *Clapper* case seems to have created a special, heightened tier of standing for national security cases. Suits regarding this issue are dismissed and the statute challenged is kept in force without a ruling on the merits. The doors of the courthouse are shut and, as a result, the Court declines to resolve or even address crucial constitutional questions raised by a policy, provided it is designed to further national security. In adopting this new, tiered approach, the Court has failed in its responsibility —as essential in times of war as well as peace— to hold the legislative and executive branches accountable to the law.

KEY WORDS

Judicial review, national security, fundamental rights, war on terror.

ON CERTAINTY AND THE UNAVOIDABLE MISTAKE ABOUT AN ELEMENT OF THE CRIME

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ABSTRACT

Mistake' is just one of those concepts whose meaning is often taken for granted by many scholars. Nevertheless, that meaning is far from being clear. In this paper, the Author discuss from the perspective of the philosophy of language and epistemology, the meaning of «certainty» and «mistake». Then, some consequences are drawn in order to interpret the criminal defence of mistake in the Spanish Penal Code. In the last part of the paper, the Author analyses if it is possible to speak of an objectively unavoidable mistake about an element of the crime.

KEY WORDS

Criminal Law, philosophy of language, philosophy of science, epistemology, mistake of fact defence.

MONEY LAUNDERING AND CRIMINAL LAW PRINCIPLES

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ABSTRACT

This paper draws attention to the legal excesses to which the literal application of the current configuration of the crime of money laundering may lead to, as it is configured as a type of supra-crime of an economic nature. This is a consequence of the deficient technique employed in its legal definition, which is itself a symptom of a questionable increase in the use of criminal law in this field, particularly since the wording of article 301 of the Spanish Criminal Code was introduced by Organic Law 5/2010. The result is a criminal offence without limits that violates legal principles and generates unacceptable punitive excesses, and a use and abuse of the criminal offence of money laundering that oversteps the requirements of international agreements and that must be corrected.

KEY WORDS

Money laundering, legal excess and punitive excess, financial/economic crime, international agreements, corrective criteria.

ADMINISTRATIVE JUSTICE AND ALTERNATIVE DISPUTE RESOLUTIONS METHODS: UTOPIA OR REALITY?

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ABSTRACT

Administrative Law remains one of the few legal areas in which the role played by *Alternative Dispute Resolution (*ADR) is still limited. Despite the growing role played by ADRs tools in many legal sectors across the world, Administrative Law is still plenty of obstacles as regards to its use in this important area. The specific nature of Administrative law and of the Administration, the non-disposable nature of administrative matters, the special nature of the relationship between the Administration and citizens as well as the traditional opposition to/negation of the possibility to review the activity of the Administration to third persons other than judges underline this negative attitude towards the use of ADRs in this field. However, the traditional way to solve administrative disputes through the double option of claiming before the Administration itself or referring to State courts is becoming insufficient. In so far it is considered that they are unable to afford a sound, flexible and quick response to this category of disputes, characterized by its growing number and complexity and by the changes undergone in society and the administrative structures. This inability to grant timely, certain and affordable relief to citizens, is favoring a change in the traditional attitude maintained towards ADRs and fosters the use in some jurisdictions of certain ADRs mechanisms —consensus, negotiation, mediation, arbitration— to tackle administrative disputes. Certainly, its use is still limited. A long way ahead remains, but for the first time the scenario of Administrative justice seems to be changing and ADRs tools are recognized a role to play, although still embryonic, in this specific, complex and evolving area.

KEYWORDS

Administrative Justice, Administrative law, ADR.

THE PROTECTION OF THE FUNDAMENTAL RIGHT TO AN EFFECTIVE APPEAL ACCORDING TO THE DIRECTIVE 2013/32/EU: REFLECTIONS ON THE AFFAIRE *ND & NT VS. SPAIN*

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ABSTRACT

This article analyses the difficult interpretation and application of the fundamental right to an effective remedy in the juridical framework of Directive 2013/32/EU of the European Parliament and of the council of 26 June 2013, on common procedures for granting and withdrawing international protection. The Directive clearly explicates that any no European citizen foreign who stays in the European Union territory, has the right to: access to the proceedings established in order to seek international protection; have procedural guarantees sufficient for fallowing the whole procedure in each stages and, if necessary, appeal a negative decision before the judge or the tribunal (*vid.* whereas n. 25). On the contrary, the right to stay in the member State's territory, competent to analyses his/her request, is not absolutely guaranteed. The European Union legislator, therefore, indirectly justifies the execution of «premature» orders of devolution and expulsion. The first consequence of this legal gap is a breach of art. 13 of the European Convention on Human Rights. For these reasons, the right to an effective remedy stands out as the protagonist of the recent European Court of Human Rights' jurisprudence. That is proved by its last sentence condemning Spain for having returned a Malaysian national and a foreign person, originating in Ivory Coast, who had crossed irregularly the frontier between Morocco and Spain in Melilla town (judgment *N.D. and N.T vs. Spain*).

KEY WORDS

International Protection, Procedure Directive, devolution and expulsion, fundamental right to an effective remedy_Ceuta and Melilla.