

Conflict of Human Rights, Theory and Practice

*Amir Maghami**

*Farzane Yazdkhasti***

DOI: 10.22096/HR.2023.547092.1430

[Received Date: 18/01/2022 - Accepted Date: 30/05/2022]

Abstract

When rights are recognized for people, but the simultaneous application of two rights causes damage to one or both rights, we face the problem of conflict of rights. There are three main approaches to solve such conflict: The first approach is to create meta-rules such as conflict resolution rules, which provide indicators to the public and finally to the judge to clearly understand the priority of one right over another. The three main forms of meta-rules are balancing, equilibrium and hierarchy. The second approach is to accept six criteria to resolve human rights conflicts, which have been used repeatedly by the European Court of Human Rights. From these six criteria, one or more criteria can be used depending on the situation governing the conflicting rights. The third approach is to apply the minimum restriction criterion. This means that any method that imposes the least amount of restrictions on two rights is the best method of conflict resolution. This article evaluates the possible solutions with a descriptive-analytical method by explaining the theories and relying on the jurisprudence of the European Court of Human Rights.

Keywords: Conflict; human rights; social interest; European Court of Human Rights.

*Assistant professor, Department of Law, Faculty of Administrative Sciences and Economics, University of Isfahan, Isfahan, Iran.

Email: a.maghami@ase.ui.ac.ir

** Lecturer, School of Law, Islamic Azad University, Isfahan (Khorasgan) Branch, Isfahan, Iran.

Email: f.yazdkhasti@yahoo.com



Bibliography

- Arosemona, Gustavo. "Conflicts of Rights in International Human Rights: A Meta-Rule Analysis." *Global Constitutionalism* 2, Vol. 1 (2013): 6-36.
- Bayat Komitaki, Mahnaz, and Mehdi Balavi. "The Method Of Resolving The Conflict Of Individual Rights And Collective Interests In The European Court Of Human Rights", *Legal Research Quarterly* 77 (2016): 319-344. [In Persian]
- Berlin, Isaiah. *Four Essays on Liberty*. Oxford: oxford university press, 1969.
- Berms, Eva. *Conflicts between Fundamental Rights*. Brussels: Intersentia, 2008.
- Berms, Eva. "Conflicting Human Rights: An Exploration In The Context Of The Right To A Fair Trial In The European Convention For Protection Of Human Rights And Fundamental Freedom." *Human Rights Quarterly* 27, no. 1 (2005): 294-326.
- Case Of Eweida And Others V. The United Kingdom, European court of human rights, 2013.
- Chassagnou and others v. France, 1999.
- Donnelly, Jack. *Universal Human Rights in Theory and Practice*. London: Cornell university press, 2013.
- Galliberg v. Sweden. april 2012.
- Goodhart, Michael. "Neither Relative Nor Universal: A Response To Donnelly." *Human Rights Quarterly* 30, no. 1 (2008): 183-193.
- Green, Alexander. "An Absolute Theory Of Convention Rights: Why The ECHR Gives Rise To Legal Rights That Cannot Conflict With Each Other." *UCL Jurisprudence Review* 16 (2010).
- Gunn, Jeremy. "Deconstructing Proportionality in Limitations Analysis." *Emory International Law Review* 19 (2005): 485-498.
- Hachette Filipacchi associates v. France- 71111/01, 2007.
- kayacan, Nur, and Saar Derya. "How to resolve conflicts between fundamental constitutional rights." http://jean-monnet-saar.eu/?page_id=67.
- Locke, John. *Two Treaties of Government*. London: Baldwin-printer, 1824.
- Maghami, Amir, and Nadia Attaran. "The Balance between Celebrities Privacy in Family Life in the Media and Freedom of Expression in the Jurisprudence of Judicial Courts", *Public Law Quarterly Studies* 49, no. 2 (2019): 311-331. [In Persian]

- Meron, Theodor. *On a Hierarchy of International Human Rights*. London: Cambridge university press, 2017.
- Mill, John Stuart. *On liberty*, Canada: Batoche Book Limited, 2001.
- Nikouiy, Majid. "Human Rights and Rawls's the Law of Peoples: A Critical Approach", *The Judiciary Law Journal*, no. 79 (2012): 125-153. [In Persian]
- Otto-premiger-institut v. Austria, 1994, Pretty v. the united kingdom, 2002.
- Rasekh, Mohammad. "The Life Conflict, An Overview Of Abortion Theories", *Legal Research Quarterly* 38 (2003): 165-207. [In Persian]
- Rivers, Julian. "Proportionality and Variable Intensity of Review." *Cambridge Law Journal* 47, no. 2. (2006): 174-207.
- Rubio Dosamantes v Spain, application no. 20996/10. 4.5.2017
- Seyyed Fatemi, Seyyed Mohammad Ghari. "The Right to Life", *Legal Research Quarterly* 31-32 (2000): 150-166. [In Persian]
- Seyyed Fatemi, Seyyed Mohammad Ghari. *Contemporary human rights, an introduction to theoretical issues: concepts, foundations, territory and sources*. Tehran: Shahr Danesh Legal Studies and Research Institute, 2012. [In Persian]
- Smet, Stijn, and Eva Brems. *When Human Rights Clash At The European Court Of Human Rights: Conflict Or Harmony?*. Oxford: Oxford University press, 2017.
- Smet, Stijn. "Freedom Of Expression And The Right To Reputation: Human Rights in Conflict." *International Law Review* 26, no. 1 (2010): 183-216.
- Steiner, Hillel. *An Essay on Rights*. Hoboken: Wiley-Blackwell, 1994.
- Stone Sweet, Alec, and Jud Mathews. "Proportionality Balancing and Global Constitutionalism." *Columbia Journal of Transnational Law* 47, no. 72. (2009): 68-149.
- Sumner, Leonard Wayne. *The Moral Foundation of Rights*. Oxford: Oxford University Press, 1987.
- Vonhannover v. Germany (no.2), 2012.
- Xu, Xiaobing, and George Wilson. "On Conflict of Human Rights." *The University of New Hampshire Law Review* 5, no. 1 (2006): 31-57.
- Zucca, Lorenzo. *Constitutional dilemmas conflict of fundamental legal rights in Europe and the USA*. Oxford: Oxford University Press, 2008.