

Public goods and the Principle of Minimal state Intervention; An Evolutive Interpretation of Article 11 of the International Covenant on Civil and Political Rights

Ahmad Fallahi *

DOI: 10.22096/hr.2025.2038163.1678

Received Date: 11/08/2024 - Accepted Date: 30/01/2025

Abstract

Article 11 of the International Covenant on Civil and Political Rights states: No one can be imprisoned just because he is unable to fulfill his contractual obligation. In the common understanding, this article has been interpreted as a guarantee preventing the imprisonment of debtors or the prohibition of imprisonment due to non-fulfillment of contractual obligations. The question is whether it is possible to consider the subject and purpose beyond its appearance in the form of an evolutionary interpretation? In this article, it has been stated that article 11 seeks to identify the justified border of government intervention. The purpose of this article is that the government should not use criminal means in matters based on private law and what is not in the framework of public goods. This article, as a fundamental rule in criminalization, has declared one of the impermissibility of government intervention and has limited the scope of criminal intervention to issues that are related to public goods and has emphasized the guarantee of individual freedom and security against unjustified government intervention. At the same time, relying on a unified interpretation of this article and other linked documents, it should be said that guaranteeing the public order is a necessary and not a sufficient condition for criminalization.

Key words: public goods; criminalization; interpretation; transformation; covenant; purpose.

* Assistant Professor of Criminal Law and Criminology, Faculty of Humanities and Social Sciences, University of Kurdistan, Sanandaj, Iran.
Email: a.falahi@uok.ac.ir



Bibliography

- Arendt, Hannah. *Miane gozashteh va ayandeh*. Translated by Saeed Moghadam. Tehran: Akhtaran, 2009. [In persain]
- Ashworth, Andrew, and Lucia Zedner. *Preventive justice*. New York: Oxford university press, 2014.
- Ávila, Humberto. *Theory of Legal Principles*. Translated by Ali Shojaei. Tehran: Samt, 2018. [In persain]
- Baderin, Mashood A, Manisuli Ssenyonjo. *International human rights law; Six decade after the UDHR and beyond*. London: Ashgate, 2010.
- Bois-pedian, Antje Du, Magnus Ulvang and Petter Asp. *Criminal law and the Authority of the state*. Swansea: Oxford and Portland, 2017.
- Bowman, Michael J, and Dino Kritsiotis. *Conceptual and contextual perspectives on the modern law of treaties*. New York: Cambridge university press, 2018.
- Chandler, David. *Rethinking human rights; critical approach to international politics*. London: Palgrave, 2002.
- Dorr, Oliver, and Kirsten Schmalenbach. *Vienna convention on the law of treaties; A Commentary*. New York: Springer, 2012.
- Draft international covenant on human rights. United Nations, 1955.
- Evilliger, Mark. *Commentary on the 1969 Vienna convention on the law of treaties*. Leiden: Martinus Nijhoff publishers, 2009.
- Fa Lo, Chang. *Treaty interpretation under the Vienna convention on the law of treaties; A new round of codification*. New York: Springer, 2017.
- Fitzmaurice, Malgosia, and Panos Merkouris. *Treaties in motion; the evolution of treaties from formation to termination*. New York: Cambridge university press, 2020.
- Ford, Richard. "Imprisonment for debt." *Michigan law Review* 25. No.1 (Nov 1926): 24-49.
- Gerards, Janneke. *General principle of the European convention on human rights*. New York: Cambridge university press, 2019.
- Hollis, Duncan B. *The Oxford Guide to Treaties, second edition*. New York: Oxford university press, 2020.
- Joseph, Sarah, and Melissa Castan. *The international covenant on civil and political rights; cases, materials and commentary*. New York: Oxford university press, 2013.
- Letsas, George. *A theory of interpretation of the European convention on*

- human rights*. New York: Oxford university press, 2007.
- Linderfalk, Ulf. *On the interpretation of treaties*. New York: Springer, 2007.
- Loughlin, Martin. *Mafhoume sisasi ghanoun*. Translated by Mohammad Rasakh. Tehran: 2023. [In persain]
- M.Taylor, Paul. *A commentary on the international covenant on civil and political rights*. New York: Cambridge university press, 2020.
- Mazzeschi, Riccardo Pisillo. *International human rights law; theory and practice*. New York: Springer, 2021.
- Mousavi Mojab, Seyed Doraid and Maryam Mohazab. *Jastarhaee dar jameahshenasi kayfari*. Tehran: Markaz matbuoat va entesharat ghoveye ghazaeyeh, 2020. [In persain]
- Nowak, Manfred. *U.N. Covenant on civil and political rights; CCPR Commentary*. Kehl am Rhein: N.P.Engel publisher, 2005.
- Passerin d'Entreves, Alexander. *Ghanoune tabiee; moghademae bar phalsafaeh ghanoun*. Translated by Henry Malkami. Tehran: Pileh, 2021. [In persain]
- Popa, Liliana E. *Patterns of treaty interpretation as anti-fragmentation tools*. New York: Springer, 2018.
- Reservation to the convention on the prevention and punishment of the crime of genocide, advisory opinions. 28 May 1951.
- Schabas, William A. *The European convention on human rights; A commentary*. New York: Oxford university press, 2015.
- Shelton, Dinah. "Challenges to the future of civil and political rights." *Washington and Lee law Review* 55, No.3 (1998): 669-686.
- Sontag, Sosan. *Against Interpretation*. Translated by Majid Akhgar. Tehran: Bidgol, 2015. [In persain]
- The United Nations standard minimum rules for the treatment of prisoners (the Nelson Mandela Rules).
- Troper, Michel. *Phalsafeh hoghough*. Translated by Morteza Kalantarian. Tehran: Agah, 2007. [In persain]
- Zamani, Seyyed Ghasem. "International Standards of Human Rights and Imprisonment for Inability to Fulfill a Contractual Obligation in Iran." *International law review* 23, no. 35 (2006): 71-87. [In persain]
- Zoller, Elisabeth. *Daramadi bar hoghough omoumi*. Translated by Seyyed Mojtaba Vaezi. Tehran: Jangal, 2017. [In persain]