

First part: Public law

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“Constitutionalism in an Islamic Republic – The Principles of the Afghan Constitution and the Conflicts between Them”

Regarding the new Afghan constitution adopted in 2004, this article discusses the different basic principles characterizing the newly established constitutional order of Afghanistan. The latter comprises essential legal guidelines such as Islamic republicanism, democracy, the unitary structure of the state, the rule of law and the validity of human rights. Apart from describing fundamental characteristics and implications of these principles, the author also examines their mutual relationships as well as possible tensions between them. In the course of this, the text especially highlights thinkable conflicts between Islamic law and the enforcement of human rights and democratic standards. Starting from analyzing potential legal conflicts, which revolve around apostasy in Islam the author, concludes that punishments for individuals abandoning their Muslim beliefs are unconstitutional in Afghanistan. This emphasizes the author's basic findings after which the Afghan constitution is based on a moderate interpretation of Islamic law excluding radical fundamentalist viewpoints. In sum, the author argues that Islamic republicanism and the other fundamental principles are equal, compatible and have to be balanced in order to sustain the Afghan constitutional system.