

HOW TO RECONCILE HEALTH LAW AND ECONOMIC LAW WITH HUMAN RIGHTS? ADMINISTRATION OF JUSTICE IN TOBACCO CONTROL DISPUTES

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ABSTRACT

Tobacco companies and tobacco exporting WTO members have initiated an increasing number of disputes in national, regional and worldwide jurisdictions and investor-state arbitrations challenging the legal consistency of tobacco control measures — such as Australia’s “Tobacco Plain Packaging” legislation and regulations — with international trade, investment and intellectual property law. The defendant countries and non-governmental organizations tend to justify tobacco-control measures by invoking public health provisions in international economic law (IEL), domestic constitutional laws, public health legislation, human rights law and the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) ratified by 177 UN member states. This article begins by asking how the fragmented systems of multilevel health, economic and human rights law and governance should be interpreted and coordinated in order to promote their mutual legal coherence. It then explores how multilevel courts should “administer justice” in tobacco control disputes with due regard to their diverse national and international

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jurisdictions, applicable laws and methods of legal interpretation. The article concludes that multilevel judicial administration of justice in tobacco control disputes requires judicial cooperation in applying “constitutional methodologies” (e.g. regarding “balancing” of competing rights, proportionality of restrictions, reasonable judicial justifications promoting “public reason”), mutually “consistent interpretations” (e.g. based on the “integration principle” limiting legal “fragmentation”) and “judicial comity” (e.g. regarding rule of law, respecting “margins of appreciation”, protecting “access to justice”) so as to avoid incoherent judgments. The main lesson from more than 2500 years of legal and political experiences — e.g. since the ancient Constitution of Athens (500 BC) — with collective protection of “public goods” (res publica) demanded by citizens remains the need for limiting abuses of power through multilevel “republican constitutionalism” providing for legal, judicial and democratic accountability mechanisms.

KEYWORDS: *fragmentation, health law, human rights, investment law, justice, legal interpretation methods, tobacco control, trade law, World Health Organization (WHO), World Trade Organization (WTO)*