

Judicial self-restraint in the judicature of the Constitutional Court of the Czech Republic

Abstract

The thesis deals with the role of the judicial self-restraint in the judicature of the Constitutional Court of the Czech Republic. Besides the theoretical definitions is the pivotal part of the thesis practical section that is focused on the analysis of pre-selected decisions of the Constitutional Court with respect to the judicial self-restraint.

The first chapter contains definition of the theory of separation of powers as basis for the judicial self-restraint and its subcategories. Part of this chapter is oriented at the judicial power itself, which is crucial for the thesis.

The second chapter provides definitions of key concepts – principal of judicial self-restraint, priority of the constitutionally conformal interpretation, political question doctrine and judicial activism, as it is called. These concepts are defined from the points of view of the angloamerican legal system as well as czech legal system. In the second chapter are also stated possible factors that may lead to the judicial activism and to the judiciary state, as it is called. The chapter afterwards describes the judicial interpretation and application of law in the context of the judicial self-restraint and provides relevant historical context.

The third chapter deals with the Constitutional Court and its role in the constitutional system, because key content of the thesis is the analysis of its judicature. The chapter also reviews the Act no. 182/1993 that regulates the Constitutional Court from the perspective of the judicial self-restraint principle. For example, which institute or instrument in the Act may be seen as restraining.

The fourth chapter is focused on the analysis of pre-selected case law of the Constitutional Court. The selection was oriented to most current decisions so that their relevance was as high as possible. Three specific categories of the principle of judicial self-restraint resulted from the selection and thus form three subchapters. First category forms the principle of the priority of the constitutionally conformal interpretation. Other two categories are categories that carry the so-called political question - firstly in the field of tax law and secondly in the field of social security law. In the chapter that analyzes decisions in the field of social security law is also defined so-called rationality test.

Based on the analysis of the pre-selected case-law, the Constitutional Court's decision-making was evaluated and the research questions were answered.

Key words: [separation of powers, judicial self-restraint, political question doctrine, the Constitutional Court of the Czech Republic]