

Identity and Universality of Legal Cultures in Eastern Europe

Abstract

Submitted thesis explores the topic of possible approximation among East European legal culture and common law legal culture. As an indicator supporting or dismissing the trend in question serves a qualitative as well as quantitative analysis of the comparative argumentation in the case law of constitutional courts of five East European countries: Russia, Hungary, Poland, Romania and the Czech Republic.

Firstly, the thesis explains the concept of legal culture, underlines its critique and introduces it as a fitting theoretical framework for a detailed study of constitutional comparative argumentation. The comparative argumentation and its theoretical outline are in the center of the subsequent part of the thesis which also tries to describe effects of socialist legal culture on legal argumentation before courts in the region of Eastern Europe. The comparative argumentation is then introduced as a relatively important but also an overlooked method of legal argumentation, at least in the region in question. Following these findings, the occurrence and methodological quality of comparative analysis in the case law of constitutional courts is established as a suitable indicator of potential approximation of examined legal cultures.

The central part of the diploma theses consists of a case study of constitutional comparative argumentation in the case law of constitutional courts in the above-mentioned East European countries. The thesis relies in this regard on available academic papers and books. The broader context of the development of constitutional courts in the region is also included in this part, together with the outline of relevant shifts in political power affecting the functioning of constitutional judiciaries in recent years. Conclusions of the case study are then presented and analyzed as they show notable deficiencies in methodological approach to the comparative argumentation on part of East European constitutional courts as well as the lack of attention which is paid to the topic in legal academia. The concluding part of the thesis points out to mounting differences between studied legal cultures and lays out possible future developments of this trend.

Key words: Legal Culture, Comparative Legal Interpretation, Constitutional Judiciary