

Reverse Discrimination in the Community Law Context

Gabriela Machačková

The final thesis discusses the issue of reverse discrimination, which arises when nationals/products of a Member State are disadvantaged because they are subject to a national regulatory measure, while foreign (EU) nationals/products are protected from that national measure by virtue of European Community (EC) law. It examines the question of scope of EC Law, specifically focusing on the extent to which nationals of a Member State who have never exercised their Community rights can claim their rights by applying the Treaty establishing the European Community.

It addresses the question of extension of the scope of EC law to cover purely internal situations in which no inter-State element is present, and to which the fundamental freedoms (free movement of goods, services, persons and capital) do not apply.

First, it reviews the development of European Court of Justice case-law on reverse discrimination and situations which can be regarded as purely internal. The time frame discussed in the thesis ranges from the late 1970s until the present. Reverse discrimination and purely internal situations are analysed in terms of the examples of the Court's jurisprudence. Secondly, as Union Citizenship has been introduced by the Maastricht Treaty, some authors suggest that this difference of treatment is no longer acceptable. Union citizenship and an unjustified violation of the general principle of equality are presented as possible reasons for breaking the wholly internal rule and thus for the prohibition of reverse discrimination.

Thirdly, the thesis presents a description of reverse discrimination cases from Germany, Italy, France and the Czech Republic and their solutions at a national level by using the principle of equality laid down by the Constitution. The instruments at Community level designed to address reverse discrimination are also introduced.

Finally, it is concluded that the formal position of the Court of Justice has always been that reverse discrimination is not a difference in treatment that is prohibited by EC law, since it does not impede the achievement of its aims, and thus falls outside the scope of EC law. Reverse discrimination is, according to the Court, a necessary evil of the system of multi-level governance and, if at all, should be dealt with at Member State level. However, the Court has ruled in purely internal situation cases to advise the national courts how they should treat reverse discrimination cases.