

Justiciability of Economic, Social and Cultural Rights

Abstract

The thesis focuses on the issue of justiciability of economic, social and cultural rights. The aim of the thesis was to examine to what extent these rights can be subject to judicial review. Furthermore, the aim was to find out which rights are most often successfully enforced before the courts and whether some of these rights are more justiciable than others in this respect. To achieve these objectives, a primarily qualitative method was chosen to analyse specific cases that have had a very significant impact on the development of judicial enforcement of economic, social and cultural rights. A quantitative method is also marginally used, which examines the representation of these rights in the constitutions of states and its relationship to their justiciability.

The thesis is divided into three chapters. The first chapter focuses on explaining the key concepts on which the thesis then builds. First, the thesis analyses the nature of human rights and their interdependence. This chapter also describes the concept of justiciability, which is practically analysed later in the thesis. In addition to justiciability in general, the thesis then focuses specifically on the justiciability of human rights.

The second chapter focuses on economic, social and cultural rights, examining their development and characteristics. This section also mentions the major instruments that enshrine economic, social and cultural rights, with an emphasis on the International Covenant on Economic, Social and Cultural Rights. This legal document analyses the nature of the specific obligations that economic, social and cultural rights impose on States and is therefore discussed in more detail in the thesis.

The third chapter is the core of this thesis. It discusses the national and international practice of enforcement of socio-economic rights. First, the thesis introduces selected case law from South Africa and India, as these countries have contributed greatly to the development of the justiciability of economic, social and cultural rights. Next, the thesis analyses other important cases at the national and international level, and these cases have influenced the enforcement of socio-economic rights. Subsequently, the thesis touches upon the enforcement of socio-economic rights to aid civil and political rights as it is one of the options through which socio-economic rights can be sought to be recognised. The thesis also analyses the factors influencing how these rights are adjudicated and also summarises the nature of adjudication of economic, social and cultural rights

Key words: justiciability, the nature of economic, social and cultural rights, decisions of courts on economic, social and cultural rights