

Abstract

Comparison of affirmative actions in the constitutional and legislative practice of USA, India and Czech Republic.

The focus of the thesis is the affirmative action (also referred to as positive discrimination) as a tool to achieve equality and justice in the society. The principle of equality is the core thesis of our constitutional system and is a basic criteria for the interpretation and application of the valid laws and statues, therefore any actions attempting to modify the equality with the aim of achieving fairness are evoking such a controversy and need to be pondered very carefully. The purpose of the text is to find different legislative and constitutional methods of their imposing, and evaluate the efficiency of these various approaches. Second aim is to reason their justification in correlation to fairness and justice within the legal system and other society members.

The work is divided into 12 basic chapters. The first chapter deals with the notion of equality as a legal category. The evolution of its legal content during the time and changing social and economic conditions. In its second part the chapter examines the basic different types of equality from formal equality to the equality of results.

The second and third chapter deal with the specific approaches to the goal of achieving equality and fairness and selects an affirmative action as one of the key, though controversial tools. The third chapter provides legal and philosophical definition of the positive discrimination, lists the arguments of its supporters as well as opponents and investigates the reasons why affirmation is being introduced into the legal systems of many multicultural and social diverse countries.

Chapter four and five focus on the legislative anchoring of positive discrimination, their inclusion in the constitution or being enabled by different statues and precedents. A large part of chapter five is dedicated to the description of different implementation approaches of affirmation into the everyday activity and decisions within the concerned countries.

Chapter six introduces the comparative part of the paper, where including the following 2 chapters a comparison model is built to outline the differences in implementation and legislative approach of India and USA to the positive discrimination. India is being

presented as a country with long tradition of positive discrimination with an aim to overcome backward cast system. The actions themselves found the explicit articulation in the articles of Indian constitution and constitute a highly developed portion of the Indian legislative as well as precedential law. The chapter 8 is dedicated to the chronological evolution of affirmativism within United States of America, being documented mostly by individual precedents.

Chapter nine and ten list the most important international and European legislative pieces dealing with equality and discrimination as a tool to achieve fairness. Listed are also the key forming decisions of the European courts.

Chapter eleven focuses on the possibilities of positive discrimination within the Czech legal framework. Presents the latest legislative change, resulting in adoption of Anti-discriminatory bill, lists the relevant judicial precedents and outlines the opportunities for the tool enabled by other statutory provisions within our labour or civic law system.

In the last chapter the key findings are summarized, which shall conclude the justification of the positive discrimination as an efficient tool to achieve fairness and equality. The part deals with core implementation requirements for the actions in general and points out the latest trends in their implementation, which focus on very precise distinction as opposed to general, blind implementation, and summarizes the achieved positive results in overcoming the equality gaps within India and USA.