

Human rights, European Union and Constitutional Discourse

Abstract

This thesis deals with human rights within the case law of the ECJ. Purpose of this thesis is to denominate and analyze situations of application of human rights in ECJ's case law, especially from the point of view of critique of rights. For such purpose the thesis is divided into six main sections. First section delimits the foundation of (i) liberal theory of human rights, which gives foundations to the contemporary mainstream human rights discourse and (ii) basic notions of critique of rights. The first chapter thus create conditions for understanding of arguments developed in the following sections of this thesis. The second sections briefly describes evolution of case law of the ECJ in the field of human rights protection, particularly landmark decisions of the ECJ, in which it afforded protection to human rights as general principles of the Community law. The third section follows the second section and tries to analyze the human rights case law of the ECJ from the point of view of their recognition as general principles of the Community law. This thesis reflects the self-evident nature of human rights within the Community law and argues that despite the self evident presuppositions of human rights the has been quite selective when defining human rights and that the reasoning of its judgements reflects rather than natural character of human rights politics within which a necessity to consider particular interests arises. The fourth section examines basic presupposition of human rights resting in that they pose limits on power. The section aims at case law of the ECJ and use of the balancing test from a formal point of view. Purpose of the section is to elaborate use of the proportionality principles. In the fifth section this section aims again at the balancing test, however from a material point of view i.e. analysis of cases, when principles of protection of human rights on one hand and protection of common market freedoms on the other hand clash together. The six section is based upon the summarization of the conclusions within the previous chapters in relation to a process of integration of the European Union.

Key Words:

Human Rights, European Union, Critique of Rights, ECJ