

## **Abstract**

The purpose of the thesis is to analyze the concept of the freedom of artistic creation and expression in the European Union law, in particular its recognition in primary law, above all in the Charter of Fundamental Rights of the European Union (Charter), and in the case law of the Court of Justice of the European Union (CJEU). Considering that interpretation of human rights and fundamental freedoms in the EU law is greatly based on constitutional traditions of EU member states and on the approach to these rights established within the Council of Europe, this thesis also deals with the conception of the freedom of artistic expression in constitutions of EU member states and in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as interpreted by the European Court of Human Rights (ECtHR). While relevant case law of the CJEU is only fragmentary, it refers systematically to the extensive case law of the ECtHR, which provides comprehensive theory of the freedom of artistic expression in Europe and provides for studying the evolution of the conception in time.

The core method of research used in this thesis is the analysis of different sources of primary and secondary EU law, national law and case law; the thesis refers namely to the case law of the CJEU and ECtHR, Constitutional Court of the Czech Republic and courts of other EU member states. Czech and foreign secondary sources are also used. These sources are studied and compared.

The thesis is composed of five chapters. Chapter One focuses on definitions of the subject matter of the freedom of artistic expression – the art itself. In order to define it, it analyzes relevant texts of theorists of art and esthetics.

Chapter Two deals with the protection of human rights in the EU. It is divided into two subchapters. Subchapter 2.1 describes the development of the position of human rights in the *acquis communautaire* before the adoption of the Charter, and subchapter 2.2 presents their recognition in the Charter, which is part of the primary law since the Lisbon Treaty came into effect. Subchapter 2.2 consists of two sections; one of them characterizes the Charter with emphasis on the freedom of art, the other explains the relationship between the Charter and the ECHR.

Chapter Three explores the freedom of expression and the freedom of artistic creation in the EU law in general, including the case law of the CJEU.

Chapter Four studies the question of constitutional traditions of EU member states, which are one of the sources of EU conception of human rights. This chapter includes a subchapter describing the protection of the freedom of artistic expression in constitutional orders of these

states.

Chapter Five examines the freedom of artistic expression in the ECHR and in the case law of the ECtHR. It is subdivided into two subchapters. Subchapter 5.1 concentrates on the interpretations of Article 10 of the ECHR by the ECtHR. Subchapter 5.2 addresses the part of the case law which concerns directly the freedom of art. It consists of four sections; each of them corresponds to certain legally protected values which are most often in collision with the freedom of artistic expression.

The Conclusion summarizes the analysis of the above mentioned sources. It points out that the case law of the ECtHR concerning the freedom of artistic expression is an inadequate source of inspiration for the EU concept of this freedom, although it is referred to in Explanations to the Charter and in the case law of the CJEU. Considering that the freedom of artistic expression is a significant value in constitutions of EU member states and that EU law declares explicitly that this fundamental right should be protected, it can be argued that the partially inconsistent and often restrictive interpretation of this freedom by ECtHR should be assessed carefully by CJEU in its decision making.