

## ABSTRACT

The aim of this thesis is to analyse the protective function of constitutional rights as compared to the traditional defensive function. Whereas the defensive function of constitutional rights requires that the state does not interfere with and respect the constitutional rights of the individual, the protective function requires the state to act to promote and protect constitutional rights. The problematic is examined primarily through the case-law of three foreign supreme jurisdictions, i.e. the Supreme Court of the United States of America, the Federal Constitutional Court of the Federal Republic of Germany and the European Court of Human Rights. In the broader perspective the thesis aims to assess the approach taken by the Czech Constitutional Court in relation to this problematic. The protective function of constitutional rights is explored through the perspective of the individual and through the perspective of the system.

The thesis is divided into four chapters. In the first chapter, the author clarifies fundamental theoretical concepts used in the thesis. The positive and negative concept of constitutional rights is closely connected to the two concepts of freedom as developed by I. Berlin in his famous essay *Two Concepts of Freedom*. The protective function also represents a specific legal construction which is why the first chapter examines R. Alexy's analytical and structural theory of constitutional rights. The second chapter compares the American and German approach to the protective function of constitutional rights. The chapter primarily analyses the case-law relating to the protective function and the underlying doctrines. The analysis is complemented by a normative examination of the different views of the individual and the society. The third chapter contains an analysis of the doctrine of positive obligations of the European Court of Human Rights. The author firstly explains the basic argument underlying the doctrine of positive obligations and subsequently subjects it to a critical analysis. The author concludes that from the perspective of the individual the approach taken by the ECHR is by far the most effective and advantageous for the individual. However, from the systemic perspective the approach taken by the ECHR is rather problematic and the thesis highlights the most problematic aspects.

The fourth chapter deals with the case-law of the Czech Constitutional Court. It also explores the influence of foreign doctrines. An important current interaction between the Czech Constitutional Court and the ECHR in the field of rights of victims of crimes is

highlighted. The author reaches the conclusion that compared to the American and German legal practice there is not yet a clear and settled approach to the protective function in the Czech legal order. The lack of a settled national approach may also explain the current optimistic approach towards the doctrine of the positive obligations of the ECHR by the Czech Constitutional Court.