

Judicial activism

Abstract

This thesis tries to complexly grasp the phenomenon of judicial activism. The key role for it and its analysis of judicial activism is the theory of separation of powers in the state, without its comprehension it is hardly possible to correctly assess. The first chapter thus focuses on the theoretical concept of separation of powers, its evolution and current standing. Takes a critical stand with present thinkers and suggests rethinking its approach to stress the theory's purpose instead. The second chapter analyses judiciary and judicial system from the functional and institutional approach. Offers its classical definitions yet describes many authors who criticize the affinity of judicial power's activity to the one of state administration. It tries to rebut those opinions with arguments of specific expertise of judges and of its legitimacy. In the third chapter the focus is on the judicial activism. It identifies large dispersion of its definitions therefore uses meta-analysis of Keenan Kmiec for its definition. Firstly, discusses the major change of judicial power in society during the last century and for this reason addresses those most important changes: hypertrophy of law and human rights, and shift of the main interpretational paradigms to natural law emphasis. Consequently mentions the necessity for the shift of the separation of powers' perception, considering that according to the classical view, every contemporary judge would be perceived as activist. The thesis then attempts to do a quantitative and qualitative analysis of the judicial activism. Assumes that Czech judges are generally self-restrained but indicates that especially the Supreme Court tends to be self-restrained selectively and also occasionally enters political discussions with its activist decisions. The thesis also criticizes the casual disputes between the Supreme Court and the highest courts that affects the rights of the plaintiffs. *De lege ferenda* proposes higher transparency and accessibility of the lower court's decisions and the change or revision of the current disciplinary system for judges.