

Abstract of the submitted book

Human Rights in the practice of ordinary courts

The presented monograph deals with the protection of fundamental rights by Czech ordinary courts. Many have noted that courts play an important role in the effective protection of human rights. Despite the declared importance of the application of fundamental rights in lower courts, this issue has not yet been much subjected to legal research. Published studies focus only on the observance of human rights by apex courts, ie constitutional and supreme courts. It is therefore not clear to what extent human rights are actually applied at the primary level of judicial systems. The research presented in this book is focused on Czech courts of first and second instance, ie district, regional and high courts. The basic research question is how these courts play their role in protecting fundamental rights.

The first part of the book discusses the ways in which fundamental rights can be applied by ordinary courts. Readers will find answers to a wide range of questions that arise in practice in the application of fundamental rights in judicial decision-making. This part of the book is theoretical, analytical. It builds on existing academic analysis of the topic but presents its own answers to the questions.

Chapter II discusses concepts such as constitutionally conforming interpretations of laws; answers the question of when a court can exercise human rights directly and when only indirectly through a statute; or when human rights can be used in relations between private entities.

It is concluded that direct application of fundamental rights by ordinary courts is generally possible only in vertical relations. However, the essential requirement that the protection of fundamental rights be effective in practice requires that fundamental rights also operate in horizontal relations. In the vast majority of cases, this can be achieved by the method of indirect effect, ie by a constitutionally conforming interpretation of sub-constitutional rules. Private law contains enough vague terms to enable constitutionally conforming interpretation and application of sub-constitutional rules. In the exceptional case of a real human rights gap in the law, which cannot be bridged by a constitutionally conforming interpretation, it is possible to turn to the Constitutional Court within the framework of a specific review of constitutionality. In the Czech context, therefore, it is not generally necessary to resort to the problematic inference of obligations for persons of private law directly from fundamental rights.

Chapter III then follows with an analysis of issues related to the application of international treaties by ordinary courts. In addition to the Charter of Fundamental Rights and Freedoms, international treaties are an important source of human rights law. One of the declared conditions for the application of the provisions of an international treaty is that it is self-executing. The chapter argues that self-executing nature of an international treaty concerns only Article 10 of the Constitution, the part of the sentence after the semicolon, and has no bearing on the question of whether the international treaty is part of the Czech legal system. It is also submitted that self-executing nature has no effect on whether a given provision of an international treaty can act as a reference of constitutionality of a statute at the Constitutional Court.

The following Chapter IV deals in general with the principle of subsidiarity, which is the theoretical basis of the main research presented in this book. The current trend in the international protection of human rights is subsidiarity. Subsidiarity is also applied in a number of national jurisdictions in the relationship between apex courts and lower courts. Subsidiarity has two aspects: the obligation of

lower courts to apply human rights directly (positive subsidiarity) and the corresponding deference of higher courts to this application (negative subsidiarity). The principle of subsidiarity therefore implies, inter alia, that human rights should be applied not only by apex courts, such as constitutional or supreme courts, but by all courts, including courts of first instance. The second part of the book, beginning with Chapter V, addresses the question of how subsidiarity of human rights works in practice and how human rights are actually applied at the primary level of judicial systems.

Chapter V presents the results of an empirical analysis of decisions of district, regional and high courts. It examines whether subsidiarity in the relationship between the Constitutional Court and general courts exists. The hypothesis is that there is a dependence between general courts using human rights in justifying their decisions and the outcome of proceedings before the Constitutional Court. Specifically, in the case of the application of fundamental rights by ordinary courts, the Constitutional Court is less likely to find that fundamental rights have been violated. Statistical analysis of hundreds of decisions of Czech courts confirmed this hypothesis. The findings indicate that subsidiarity does work in practice. The results provide a reason to support the practice of apex courts, such as the Constitutional Court, which insist on positive subsidiarity and seek that even the lowest courts pay attention to human rights. If ordinary courts apply human rights in their decisions, it is less likely that the Constitutional Court will repeal their decision on the grounds that human rights have been violated.

Chapter VI then deals specifically with the use of human rights by ordinary courts in criminal proceedings. It examines why the results of the empirical analysis on the dependence between the application of human rights by ordinary courts and the decision of the Constitutional Court were less convincing in criminal proceedings than in other types of proceedings. This would suggest that, from the point of view of the Constitutional Court, criminal courts erroneously use human rights more often than civil courts. The research here uses the statistical analysis of decisions as in the previous chapter, but also findings from semi-structured interviews with criminal judges, especially from regional courts. It was found that criminal judges do not work too much with fundamental rights or the case law of the Constitutional Court or the European Court of Human Rights. Thorough consideration of the human rights dimension of the case in question with reference to relevant case law is exceptional.

The last Chapter VII tried to identify factors that influence the use of human rights by ordinary courts. It does so by statistical analysis of the data collected. The most robust factor identified was education. Judges with higher education than just a master's degree tend to use human rights more. It was also found that human rights are more often used by administrative courts. In contrast, use in criminal and civil courts does not differ. No correlation was found between the use of human rights and the age of judges.