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| Työn nimi) Arbetets titel) Title From Francovich to Köbler and beyond: The evolution of a State liability regime for the EC. | | | |
| Oppiaine) Läroämne) Subject European Law – State liability in damages | | | |
| Työn laji) Arbetets art) Level Master's Level (LL.M.) | | Aika) Datum) Month and year August 2005 | Sivumäärä) Sidoantal) Number of pages 104 (81 pages of text) |
| Tiivistelmä) Referat) Abstract <p>The aim of this paper is to present the evolution of the Francovich doctrine within the European legal order. The first part deals with the gradual development of the ECJ's case law on State liability in damages for breach of EC law. Starting from the seminal Francovich and Brasserie du Pêcheur, the clarification of the criteria set by the Court is attempted with reference to subsequent case law, whereas issues concerning the extent and form of the compensation owned are also mentioned.</p> <p>The second part concerns one of the more recent developments in the field, namely State liability for breaches of Community law attributed to national judiciary. The Court's ruling in Köbler is examined in connection with two other recent judgments, namely Commission v. Italy of 2003 and Kühne & Heitz, as an attempt of the ECJ to reframe its relationships with national supreme courts and appropriate for itself the position of the Supreme Court in the European legal order.</p> <p>The implications on State liability claims by the ruling in Commission v. France of 1997 constitute the theme of the third part, where it is submitted that Member States can also be held liable for disregard of Community law by private individuals within their respected territories. To this extent, Schmidberger is viewed as a manifestation of this opinion, with fundamental rights acquiring a new dimension, being invoked by the States, contra the individuals as a shield to liability claims.</p> <p>Finally, the third part examines the relationship between the Francovich doctrine and the principle of legal certainty and concludes that the solutions employed by the ECJ have been both predictable and acceptable by the national legal orders.</p> | | | |
| Avainsanat) Nyckelord) Keywords State liability, damages, Francovich, Köbler, Schmidberger. | | | |
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