



**Groningen, Ghent, Uppsala, Turku**  
**Annual Legal Research Network Conference 2008**  
30-31 October 2008, hosted by the University of Groningen

**Fundamental Rights, Privatization and Private Power**

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April, 2008

**Abstract**

There is a close connection between the classical public/private divide and traditional understanding about the scope of application of human rights and constitutional rights. According to the traditional approach, international human rights and the national fundamental rights protect individuals only against state action but not against “misuse” of private power.

However, in recent international discourse, the adequacy of this classical approach has been widely questioned both from constitutional and human rights perspectives. Especially, contemporary socioeconomic tendencies such as globalization and privatization have made it more and more evident that also different kinds of transnational private actors, entities and regimes can seriously threaten individuals’ fundamental rights. In the field of human rights law it has been asked to what extent human rights obligations should be imposed on transnational corporations and other powerful non-state actors. On national and comparative levels, the constitutional accountability of the exercise of private power is also under a growing interest worldwide. The main challenge is to update and reconfigure the concept of constitutionalism to match with the changed social and economic reality, especially the growing importance of private power.

On a general level, it seems to be rather easy to recognize that there can be a genuine need for the protection of fundamental rights at least in certain kinds of private relations. However, difficulties and disagreements seem to arise as soon as the discussion moves on

to more concrete legal questions about how to implement this protection, and how extensive and effective the protection should be.

From a comparative point of view the current Finnish situation has some interesting features and prospects concerning the issue of constitutional accountability of private power. In general, both the text and the preparatory works of the Finnish Constitution (1999) recognize the idea that constitutional rights are applicable not only in vertical relations between the state and the individual but should have normative effect in horizontal relations as well. Moreover, some constitutional scholars have suggested that fundamental rights should be protected at least in such private relationships in which the parties are manifestly unequal. On the other hand, some legal scholars seem to resist the idea of broadening the horizontal effect of fundamental rights. Apparently, there are good reasons to expect an interesting struggle between “verticalists” and “horizontalists” in the near future.

In addition to comparative and jurisprudential approaches the paper presents Finnish case law concerning the issue of horizontal effect of fundamental rights.

Keywords: Fundamental rights, Horizontal effect, Privatization

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