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COMMUNICATION RIGHTS, DEMOCRACY AND LEGITIMACY: THE EUROPEAN UNION

Doctoral Thesis

Julia Hoffmann

Summary

In its totality, the present work seeks to relate the discourse around communication rights to the specific debate about democratic legitimacy and to elaborate its relevance by specifically focusing on the nature of the emerging polity of the European Union (EU). Empirically it aims at identifying the most salient measures taken at EU level that impact communication rights of its citizens and, more specifically, at providing a critical analysis of the incorporation and development of one of the most important of communication rights in EU law and policy; the right to information.

This aim is achieved by means of several separate theoretical as well as empirical investigations, which have been compiled in the present work.

The first part of the dissertation seeks to clarify the concept of “communication rights”. It starts from a historical perspective to sketch the development of the international political and scholarly discourse. Subsequently, different perspectives on the concept are critically discussed and the dissertation’s conceptual frame of reference situated in the debate.

The second part of the dissertation links the concept of communication rights to ongoing scholarly debate concerning the legitimation of supranational rule-making such as within the EU. The debate surrounding the “democratic deficit” is briefly outlined. Subsequently, assumptions and requirements of conceptions of democracy that emphasize the civic competence to exercise communicative power as a yardstick for legitimate rule-making and their application to the specific case of the EU are presented. It concludes by arguing for the recognition of communication rights as essential entitlements of European citizens and their incorporation in European legal and policy instruments.

In a third part, the most relevant areas of EU policy and law which affect some of those rights are identified and the recently proposed European Communication Policy is analyzed in this light.

Having established the relevance of communication rights for the future of European integration, one of these rights, the right to access to information, will be examined more

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closely by means of two separate case studies. This choice is guided by two considerations. Firstly, the right to information will be argued to be the most basic of all communication rights, without which no form of democracy can be viable. Secondly, it is this right, which has come to the forefront of recent discussions and legal developments within the EU structure as a consequence of its perceived legitimacy crisis, accelerated by the most recent obstacles faced by the ratification of its *Constitutional Treaty*. It is also one of the rights that have come under pressure after the events of 9/11 and the counter-terrorism measures that have since been taken.

The first case study will comprise the legal developments around the right to access to documents in Community law.

Lastly, the role of the right to information in its relation to requirements of fair trial will be considered specifically in cases of individuals and groups suspected of financing terrorism whose financial assets have been frozen by (implementing) EU measures and who are subsequently seeking to challenge their inclusion in “terrorism blacklists”.