



Der Europäische Gerichtshof: Zur Ökonomik judizieller Governance (German Edition)

Klaus Zapka

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?Anfangs schlossen die Mitgliedstaaten durch umfassende Verhandlungen einen konsentierten Vertrag. Zentraler Gegenstand ihrer kooperativen Übereinkunft ist zum einen die Vollendung des Binnenmarktes, die mit der unbehinderten Faktor- und Gütermobilität deutlich liberalen Grundsätzen entspricht. Zum andern beinhaltet der Unionsvertrag normative Elemente, die für bestimmte Politikbereiche eine Mobilitätsfreiheit explizit ausschloss. In etlichen Bereichen wie der Gesundheits- oder Lohnpolitik erhielt die EU zudem kein Mandat. Beide Elemente spiegeln mithin ein pareto-optimales Unionsrecht wider. Allerdings löst der nicht-kooperative EuGH normative Absprachen im heterogenen Integrationsraum dann auf, wenn sie wirtschaftsliberalen Grundsätzen widersprechen. Diese gravierende Intervention brachte dem EuGH den rechtsstaatlich bedenklichen Vorwurf einer „Politischen Justiz“ ein. Gleichwohl ist der EuGH (judifizierende Governance) in einen unabdingbaren Kontext eingebunden und zu bewerten: Die EU ist unter der Zielsetzung einer Marktintegration konzipiert, wobei die Forcierung von Markt- und Konkurrenzmechanismen ein wesentliches Systemelement dieses Prozesses repräsentiert. Governance zielt auf die Herstellung von Qualität ökonomischer Leistungsfähigkeit ab. Der EuGH folgt notwendig diesem Konzept, um Zielkonflikte zugunsten grundsätzlicher Paradigmen aufzulösen. Der Gerichtshof vollzieht keinen systemischen Paradigmenwechsel und ist nicht als politischer Akteur zu definieren.

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