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## The European Dimension of the Constitution of the Czech Republic

The process of integrating the countries of Central and Eastern Europe into the European Union, made possible by the Maastricht Treaty in the early 1990s, was formally commenced after the EU summit in Copenhagen in 1993. The European Council approved a set of criteria in June 1993 and undertook to accept new members if the individual countries met them. These criteria included political ones: rule of law, stability of institutions guaranteeing democracy, human rights, and respect for minorities and economic criteria such as the existence of a functioning market economy and the ability to measure up to competitive and other pressures of the market in the EU, including compliance with the goals of the political, economic, and monetary union. The Association Agreement between the Czech Republic and the European Communities<sup>1</sup> was signed on 4 October 1993 in Luxembourg and, after ratification, entered into force on 1.2.1995. It contained a so-called suspension clause allowing for the unilateral amendment of the European Agreement if, while performing this agreement, the Czech Republic fails to respect “democratic principles and human rights, as well as the principles of a market economy.”<sup>2</sup> The European Commission introduced an annual evaluation report and monitored the transformation of political and economic institutions in detail. Criteria for accession to the European Union were extended post facto to include a requirement for harmonizing the laws of candidate countries with EU law, a fact which exhibited itself in increased legislative activity in the interest of ensuring a timely and smooth integration process that usually meant the mechanical approval of government bills presented to parliament<sup>3</sup> to harmonize national law with the legal framework of the EU without thorough prior political debate.<sup>4</sup>

The Czech Republic officially submitted its application to the European Union in January 1996, was included in the list of the first six candidates for extension of the

<sup>1</sup> European agreement establishing association between the EC and members states as one party and the Czech Republic as the other party (Communication by the Ministry of Foreign Affairs of the Czech Republic No. 7/1995 Coll.).

<sup>2</sup> M. Tomášek a kol., *Právo Evropské unie*, Praha 2013, p. 47.

<sup>3</sup> The share of acts in transformed regulations amounted to about a quarter.

<sup>4</sup> M. Tomášek a kol., *Právo Evropské unie...*, p. 214.

European Union in July 1997, and, later, based on an intergovernmental conference, was officially invited to accede to the EU. The European Union was extended to include ten new members on 1 May 2004, one of these was the Czech Republic.

The most important issue that was resolved by all of the countries striving to accede to the European Union was the manner in which constitutionally confirming the transfer of the competences of the state to the union or its bodies was ensured and what the consequences of this would be. The Europeanization of national institutions meant that candidate countries had to search for and find a constitutional basis for the transfer of powers to an international organization; simultaneously, the need was anticipated for the resolution of the issue of the level of the preservation of their sovereignty and the transformation of national law.<sup>5</sup>

It took almost three years of effort to amend the Constitution of the Czech Republic until Parliament finally approved the government bill for the Constitutional Act, promulgated under no. 395/2001 Coll., commonly referred to as the Euro Amendment to the Constitution.

This amendment to the constitution in particular led to change to Art. 1 of the Constitution of the Czech Republic, this being by supplementation of paragraph 2, which constitutionally declares the general legal principle of compliance with the obligations ensuing for the Czech Republic from international law.<sup>6</sup> This means not only compliance with obligations which the Czech Republic has contractually assumed, but also obligations consisting in compliance with the standards of customary international law, in particular those that are *ius cogens* in nature.<sup>7</sup> The explanatory memorandum for the amendment to the constitution emphasized the fact that constitutional confirmation of the obligation of the state and all of its bodies to comply with the obligations ensuing from international law also relates to unilateral legal acts of the Czech Republic performed outwardly. These obligations also include the binding decisions under international law of certain international organizations and institutions, in particular the rulings of the European Court of Human Rights.<sup>8</sup> At the same time, by declaring this principle, the constitution made it a part of the constitutional characteristics of the Czech Republic as a democratic constitutional state, which constitutionally confirms the binding nature not only of its own law, but also international

<sup>5</sup> Compare V. Jirásková, *Ústavní základ, na kterém se členské státy vzdaly svých kompetencí a způsob jejich předání Evropské unii (komparativní výklad)* [in:] V. Pavlíček a kol., *Suverenita a Evropská integrace*, Praha 1999; *eadem*, *Role Parlamentu ČR a legislativa EU* [in:] *Europeizace národních právních řádů*, ed. L. Tichý, Praha 2000, pp. 54–61; *eadem*, *Ústavní podmínky přistoupení k EU v zemích střední a východní Evropy* [in:] *Ústavný poriadok Európskej unie a jeho vplyv na ústavu a zákony členských štátov*, ed. L. Mokrá, Bratislava 2007; P. Mlsna, *Reflexe komunitárního práva v ústavách stredo-evropských štátů*, "Časopis pro právní vědu a praxi" 2008, č. 1, pp. 22–30.

<sup>6</sup> The constitution-makers made no secret of the fact that the source of inspiration for the constitutional statement was Art. 9 of the Constitution of the Polish Republic and Art. 5 (4) of the Constitution of the Swiss Confederation.

<sup>7</sup> P. Mlsna, J. Kněžínek, *Mezinárodní smlouvy v českém právu*, Praha 2009, p. 176.

<sup>8</sup> Sněmovní tisk č. 884, Poslanecká sněmovna Parlamentu, III. volební období, 2000.

law.<sup>9</sup> But as the doctrine states, direct incorporating effects cannot be inferred from it, but above all interpretative effects, this concerning a rule of interpretation that the interpretation of the other provisions of the Constitution of the Czech Republic must be governed by.<sup>10</sup>

While adjudicating on the constitutional conformity of the European Arrest Warrant,<sup>11</sup> the Constitutional Court refers to Art. 1 (2) of the constitution and the principle enshrined therein of respecting international obligations. In combination with Art. 10 of the Treaty Establishing the European Community, it based its decision on the principle of loyal cooperation and made an institutional rule of it for the interpretation of Czech law in accordance with the objectives of European integration.<sup>12</sup>

Change to the relationship between Czech law and international law was expressed by the reformulation of Art. 10 of the Constitution of the Czech Republic, meaning significantly strengthening the monistic component of this relationship. According to the regulation to date, a dualistic approach was taken toward the majority of international treaties and the monistic concept was only taken as a point of departure for the group of international treaties on human rights and basic freedoms, introduced as a special category of international treaties by Constitutional Act No. 23/1991 Coll.<sup>13</sup>

The new version of Art. 10, representing a general reception provision, determined four conditions, the meeting of which leads to all international treaties determined by type in Art. 49 of the Constitution becoming part of the Czech system of laws and thus being directly incorporated into it. According to this provision, the consent of Parliament to ratification is required for agreements regulating the rights and obligations of persons, alliance agreements, peace and other political treaties, agreements which lead to membership of the Czech Republic in international organizations, economic agreements of a general nature, and agreements on other issues, the regulation of which is reserved by law.

For an international treaty to become part of the body of laws, the Constitution requires cumulative meeting of the following conditions: a) the promulgation of the international treaty in the manner determined by law; b) the consent of Parliament to ratification; c) ratification by the President of the Czech Republic; d) the binding nature of such an agreement for the Czech Republic. By meeting these conditions,

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<sup>9</sup> *Ibid.*

<sup>10</sup> V. David, P. Bureš, M. Faix, P. Sladký, O. Svaček, *Mezinárodní právo veřejné s kasuistikou*, 2. vyd., Praha 2011, p. 126.

<sup>11</sup> Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States 2000/584/JHA.

<sup>12</sup> O. Hamulák, *Eurozatykač, tři ústavní soudy a dominance práva Evropské unie*, Olomouc 2011, pp. 89–90.

<sup>13</sup> Compare § 2 of the provision of Act No. 23/1991 Coll., which introduces the Charter of Fundamental Rights and Basic Freedoms as a constitutional act of the Federal Assembly of the Czechoslovak Federal Republic "International agreements on human rights and basic freedoms, ratified and promulgated by the Czech and Slovak Federal Republic, are generally binding within its territory and take precedence over the law." Regarding the historical reasons for creation of this narrow category of agreements, compare J. Malenovský, *Mezinárodní právo veřejné. Obecná část*, Brno 1993, p. 73.

the international treaty gains application priority over the law, although in a standing subordinate to constitutional acts.<sup>14</sup> The standards of international law are transposed into national law without their losing the form of international law.<sup>15</sup>

An amendment to the Constitution of the Czech Republic, Constitutional Act No. 395/2001 Coll., led not only to the constitutional confirmation of the relationship between Czech law and international law, but also to the possibility of the transposition of certain powers of the constitutional bodies to an international organization or institution, which created a sufficient constitutional basis for European integration, a legal foundation on which it was possible to implement the accession of the Czech Republic to the European Union.

If Art. 10 of the Constitution expresses the relationship between international and domestic law, then Art. 10a is the definition of Czech law in terms of competence regarding community law. It does not speak of any application priority or the transposition of community law to national law, and it does not include any exhaustive or demonstrative list of transposed competences, but it concerns the constitutional delegation of power and the constitutional competence to transfer certain powers of a sovereign state to an international organization or institution. And because the transfer of the powers of a sovereign state is concerned, then if the Constitutional Act so determines, the constitution-makers reserve the option to replace such consent by Parliament with sovereign consent, the consent of the people given in a referendum. The consent of Parliament to ratify such an agreement requires a constitutional majority. It is thus clear that the transfer of powers to an international organization or institution is the defining characteristic of the agreements which, due to their fundamental importance, require the consent of Parliament to ratification, an approved constitutional majority, i.e., a three-fifths majority of all deputies and a three-fifths majority of all senators present. This ensures the constitutional consent of the majority to restrict exercising sovereign power, to the transfer of not all, but only certain attributes of exercising of the powers of a sovereign state.<sup>16</sup> The bounds of such transfer are given by constitutional order (Art. 112 of the Constitution), and, in particular, by the material core of the constitution, articulated in Art. 9 (2) by the categorical prohibition of change to the fundamental requirements of a democratic constitutional state.

The basic point of departure for the relationship between the Czech constitutional order and the European constitutional order, but also its relationship to international law, as already mentioned above, is Art. 1 (2) of the Constitution.<sup>17</sup> This can be regarded as value orientation open to international constitutional order and European law.<sup>18</sup> This is at the same time universal, as opposed to Art. 10 of the Constitution that relates only to a certain type of international treaty, though only being a declaration of the

<sup>14</sup> J. Kysela, Z. Kühn, *Aplikace mezinárodního práva po přijetí tzv. euronovely Ústavy ČR*, "Právní rozhledy" 2002, č. 7, p. 311.

<sup>15</sup> M. Bobek, P. Bříza, J. Komárek, *Vnitrostátní aplikace práva Evropské unie*, Praha 2011, pp. 414–415.

<sup>16</sup> P. Mlsna, J. Kněžínek, *Mezinárodní smlouvy...*, p. 190.

<sup>17</sup> "The Czech Republic meets all of the obligations ensuing for it from international law."

<sup>18</sup> M. Bobek, P. Bříza, J. Komárek, *Vnitrostátní aplikace...*, p. 413.

fact that the obligations of the Czech Republic under international law already ensue from international law. The explanatory memorandum on the government bill states that this provision should not mean the full effect of all international obligations.<sup>19</sup>

Art. 10a of the Constitution of the Czech Republic then confirms the special category of international treaties without intentionally or explicitly mentioning the European Union,<sup>20</sup> in general allowing the transfer of certain powers to basically any international organization or institution, among others, for example, the International Criminal Court.<sup>21</sup> International treaties on such transfer of powers require the consent of Parliament by ratification with a constitutional majority,<sup>22</sup> or by a decision by Parliament in the form of approval of a constitutional act that such consent by Parliament will be replaced by sovereign consent in a referendum.

In order to answer the question of how the law of the European Union operates and acts in the Czech system of laws, a decisive factor is the interpretation of the relationship of Arts. 10 and 10a of the Constitution of the Czech Republic. There is a considerable amount of inconsistency among constitutional lawyers as regards this issue. One group of opinions of legal authorities in the academic world assumes that Article 10 of the Constitution is an interpretative provision, a set of all international treaties according to the criteria specified here, and agreements which transfer certain powers of the authorities and bodies of the Czech Republic to international organizations or institutions are only a subset of these international treaties. From this, they draw the conclusion that the application priority of international treaties in general relates also to these agreements.<sup>23</sup>

The second group of authors ascribes not only competence effects to Art. 10a of the Constitution, but implicitly also incorporation effects, whereas the method of incorporation, the relationship toward national law is, in their opinion, determined by the very law that should be incorporated.<sup>24</sup> Together with the transfer of certain powers, according to these opinions, legislative power was thus transferred to an external entity that itself, within the framework of powers transferred in this manner, determines the content of regulation of legal relations and effects in the national system of laws. "This is to say that community law, be this primary or secondary, is applied with all of its specific consequences not due to the fact that the domestic constitution so

<sup>19</sup> V. Sládeček, V. Mikule, R. Suchánek, J. Syllová, *Ústava České republiky. Komentář*, 2. vyd., Praha 2016 (čl. 1 odst. 2 Ústavy), p. 16.

<sup>20</sup> Compare for example Art. 7 (2) of the Constitution of the Slovak Republic or Art. 23 (1) of the Constitution of FRG.

<sup>21</sup> Rome Statute of the International Criminal Court, promulgated under č. 84/2009 Sb. m. s. Compare J. Kratochvíl, *Římský statut Mezinárodního trestního soudu není v rozporu s Ústavou*, "Právní rozhledy" 2007, roč. 15, č. 15, pp. 537–543.

<sup>22</sup> Art. 39 (4) of the Constitution of the Czech Republic.

<sup>23</sup> J. Malenovský, *Mezinárodní smlouvy podle čl. 10a Ústavy ČR*, "Právník" 2003, č. 9, pp. 841–854; *idem*, *Ve věci ústavního základu působení komunitárního práva uvnitř ČR nebylo řečeno poslední slovo*, "Právní rozhledy" 2004, roč. 12, č. 6, pp. 227–229.

<sup>24</sup> Z. Kühn, J. Kysela, *Na základě čeho bude působit komunitární právo v českém právním řádu?*, "Právní rozhledy" 2004, roč. 12, č. 1, pp. 23–27.

determines, but because community law itself so determines. [...] It is absolutely essential for the domestic constitution to speak of incorporation, the direct effectiveness and priority of community law, as the reason for the direct effectiveness and priority does not lie in the domestic constitution but in the community 'constitution'.<sup>25</sup>

This opinion was also adopted by the Constitutional Court, when, in its ruling on Sugar Quota III, it refused to judge the issue of the validity of standards of EU law and referred to the fact that the European Court of Justice is responsible for such judgement, saying that "associated with transfer of certain powers to the EC is also loss of freedom on the part of the Czech Republic to determine the national effects of community law, which are derived in the areas in which this transfer occurred directly from community law. The provisions of Art. 10a of the Constitution thus in fact have an effect which works in both directions: i.e. they create a normative basis for transfer or powers and at the same time it is this provision of the Constitution which opens up the national system of laws to the effects of community law, including rules relating to its effects inside the system of laws of the Czech Republic."<sup>26</sup> The Constitutional Court thus accorded a two-way effect to Article 10a of the Constitution and at the same time, evidently inspired by the similar German ruling on Solange I and II, the conditional nature of powers conferred and the possibility of their reclamation by the national authorities of the Czech Republic if the exercising of conferred powers were to be in conflict with the fundamental (immutable) essentials of a democratic constitutional state.

By means of the Euro Amendment, Article 10b of the Constitution modified cooperation of the government and Parliament in issues of the European Union. The transfer of certain powers of the Czech Republic to the European Union, including part of its legislative powers, also led to a significant extent to the reduction of the powers of Parliament. It is said that half of the current Czech legislation is affected by the legal acts of the Union.<sup>27</sup> Increasing the legitimacy of decision-making processes on the level of the European Union is domestically constitutionally supported by strengthening the control functions of Parliament in the field of the European agenda and also deepening the information obligation of the government in relation to both chambers of Parliament. The Chamber of Deputies and the Senate create committees for European affairs, the decisions of which are recommendatory in nature for the government, and the government should take these into consideration when formulating its standpoint for negotiations in the bodies of the European Union. The rules of procedure of both chambers of Parliament formulate the institution of the so-called bound mandate, according to which the government must request the prior consent of Parliament in exhaustively determined cases and without which it cannot express consent on behalf of the Czech Republic when voting in the Council. Each chamber of Parliament has the right to veto the consent of the government separately. Both the rules of proce-

<sup>25</sup> Z. Kühn, *Ještě jednou k ústavnímu základu působení komunitárního práva v českém právním řádu*, "Právní rozhledy" 2004, roč. 12, č. 10, p. 396.

<sup>26</sup> Pl. ÚS 50/04.

<sup>27</sup> P. Rychetský, T. Langášek, T. Herc, P. Mlsna a kol., *Ústava České republiky. Ústavní zákon o bezpečnosti České republiky. Komentář*, Praha 2015, p. 156.

dures also regulate the institution of so-called parliamentary reservation, the subject of which is an obstacle to issuance of the final standpoint of the government during negotiations in the Council until the process of granting prior consent by Parliament is concluded.<sup>28</sup>

The Euro Amendment also brought fundamental change to the powers of the Constitutional Court (Art. 87 [1] a and b, Art. 87 [2], and Art. 88 [2] of the Constitution) and of the general courts (Art. 95 [1] and [2] of the Constitution). The powers of the Constitutional Court were extended to include the performance of checks on the harmony of international treaties in accordance with Art. 10a and Art. 49 of the Constitution with the constitutional order, this concerning preventative checks, characteristic for the constitutional system with a specialized and concentrated constitutional judiciary. According to this provision, a petition filed with the Constitutional Court can only be used to seek review of a limited range of international treaties, so-called presidential treaties, and the actively legitimized entities entitled to submit such a petition in the individual stages of the ratification process are, according to the provisions of amended Act No. 182/1993 Col. on the Constitutional Court, either one of the chambers of Parliament as a whole or a group of at least 41 deputies or 17 senators or the Czech President. The submission of such a petition constitutes an obstacle to the completion of a ratification process that is already underway and, after proceedings have been held, the Constitutional Court issues a ruling stating either that the international treaty or part thereof is in conflict with constitutional order and specifies the provisions of constitutional order that the treaty is in conflict with. Such rulings prevent the ratification of international treaties until such time as such a discrepancy is remedied. If the Constitutional Court comes to the conclusion that the international treaty is not in conflict with constitutional order, it will then issue a ruling stating that ratification is also not in conflict with constitutional order. Apart from the claimant, the Parliament, the Czech President, and the government are also participants in proceedings with the Constitutional Court.

The decision about the accession of the Czech Republic to the European Union was made by means of a referendum.<sup>29</sup> An effort to weaken criticisms of the "undemocratic nature" of the European Union led in particular the Commission to call on candidate countries to take advantage of the possibility of involving citizens in decision-making about issues of accession to the EU and consulting them about such a step.<sup>30</sup>

Under Art. 2 (2) of the Constitution of the Czech Republic, power is given to a constitutional act to determine cases when people acting as the sovereign can exercise state power directly.

<sup>28</sup> Compare § 109b (3) on the Rules of Procedure of the Chamber of Deputies (zák. č. 90/1995 Sb.) and § 109b (3) on the Rules of Procedure of the Senate (zák. č. 107/1999 Sb.).

<sup>29</sup> Constitutional Act No. 515/2002 Coll. (úst. zák. č. 515/2002 Sb.), on the Referendum on accession of the Czech Republic to the European Union.

<sup>30</sup> Ch. Lequesne, *Napomáhá evropská integrace konání referend?* [in:] *Demokracie v Evropě. Příspěvky k tématu demokratického občanství v Evropě*, eds. M. MacDonagh-Pajerová, Ch. Lequesne, Praha 2006, p. 70.

Parliament used this possibility, and the first ever constitutional act on a referendum conceived this as an obligatory and decisive referendum.<sup>31</sup> Its subject was accession to the European Union, whereas the conditions subject to which the Czech Republic would accede to the European Union were contained in the Treaty of Accession. The wording for the referendum was: Do you agree to the Czech Republic becoming a member state of the European Union on the basis of the Treaty of Accession to the European Union?

As far as the determination of conditions for the validity of the referendum are concerned, the constitutional act was very liberal, and was based on the premise that the decision on accession should be a matter for active citizens to make, and, for this reason, the votes of voters who abstained from voting would not be added to the votes cast against accession. The consent of an absolute majority of participants was thus sufficient to ensure the validity of the referendum without participation being determined by a minimum number of citizens entitled to vote.<sup>32</sup> The decision in the referendum was regarded as sufficiently legitimate, and its positive outcome replaced the consent of Parliament to the ratification of the Treaty of Accession. The power to declare the referendum and announce its results was entrusted to the Czech President. Conditions for exercising voting rights, details about the proposal, declaration, and performance of the referendum and the announcement of its results were left to the law.<sup>33</sup> Judicial review of the procedure for the performance of the referendum and its compliance with the constitutional act on the referendum and the act issued to perform it was entrusted to the Constitutional Court.

Voting on the accession of the Czech Republic to the European Union also necessitated the provision of access to the Treaty of Accession of the Czech Republic to the EU to the public before voting in the referendum. The act determined the obligation to make the treaty available to all for viewing at municipal offices at least 21 days before the referendum was to be held.

The referendum was held in June 2003 and 55.21% of citizens entitled to vote participated, of which 77.33% voted in favor of accession of the Czech Republic to the European Union. The new power to approach the Constitutional Court with a petition asking it to review the harmony of an international treaty with constitutional order was not exercised by the authorized entities and, upon the ratification of the Treaty of Accession of the Czech Republic to the European Union, the constitutional presumption regarding its harmony with the constitutional order of the Czech Republic became an irrefutable constitutional presumption at the moment of ratification and a check a posteriori is ruled out in view of the principle of *pacta sunt servanda*.<sup>34</sup>

<sup>31</sup> Compare Constitutional Act No. 515/2002 Coll., on the Referendum on accession of the Czech Republic to the European Union.

<sup>32</sup> Several candidate countries determined a condition for minimum participation by their citizens for the validity of the referendum, e.g. Lithuania, Hungary, Poland and Slovakia.

<sup>33</sup> Act No. 114/2003 Coll. (zák. č. 114/2003 Sb.), on Performance of a referendum on accession of the Czech Republic to the European Union.

<sup>34</sup> For more details regarding the course of the referendum on the accession of the Czech Republic



The Euro Amendment also adopted a tried and tested instrument of diffuse constitutional justice, constitutionally confirming that judges are bound by law and an international treaty that is part of the national system of laws and also empowers the general courts to judge the conformity of a different legal regulation with the law or such an international treaty, without at the same time entrusting them with derogating powers to annul such regulations due to their non-conformity. If any discrepancy is discovered in an act or other legal regulation, the principle of application priority comes into play and the judge uses the provisions of the international treaty (Art. 10 of the Constitution). Only if the court comes to the conclusion that the act which should be used is in conflict with constitutional order does it submit the matter to the Constitutional Court. Derogating powers are thus, in this case, unless the act is annulled by law-makers, only given to the Constitutional Court, only due to the conflict of such an act with the constitutional order, the legal definition of which is contained in Art. 112 of the Constitution. If an exhaustive list of international treaties is not included by Article 112 of the Constitution in the constitutional order, then support for the derogating effects of a ruling of the Constitutional Court for alleged and possibly also established nonconformity of national regulations with an international treaty is questionable. The ruling of the Constitutional Court No. 403/2002 Coll. adjudicating a petition for the repeal of two provisions of the Act on Bankruptcy and Settlement, also includes a conclusion, by means of which the Constitutional Court interpreted the term constitutional order extensively, this being with the support of Art. 1 (2) and indirectly also Art. 95 (2) of the Constitution, including in the term constitutional order also ratified and promulgated international treaties on human rights and fundamental freedoms, in an attempt to preserve their reference aspect for the evaluation of national law. "Constitutional enshrinement of general incorporation standards, and thus overcoming of the dualistic concept of the relationship between international law and national law, cannot be interpreted in the sense of removal of the reference aspect of ratified and promulgated international treaties on human rights and fundamental freedoms for evaluation of national law by the Constitutional Court, this being with derogative effects."<sup>35</sup> The Constitutional Court thus extended its derogative powers and also entered into the autonomous space that is reserved for law-makers.<sup>36</sup>

The Constitutional Court had until that time avoided answering the question as to whether it regards itself as judicial authority and thus whether the provisions of Art. 234 of the Treaty Establishing the European Community apply to it, entitling, but also obliging, the national court of last instance to submit preliminary questions to

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to the EU, see EU. J. Jirásek, *K prvnímu referendu v České republice*, "Acta Universitatis Palackianae Olomucensis, Facultas Iuridica" 2003/2004, č. 5–6, pp. 255–266.

<sup>35</sup> Ruling Pl. ÚS 36/01, announced under no. 403/2002 Coll.

<sup>36</sup> Ruling of the Constitutional Court No. 403/2002 Coll. caused unusually fierce controversy. Compare for example J. Filip, *Nález č. 403/2002 Sb. jako rukavice hozená ústavodárci Ústavním soudem*, "Právní zpravodaj" 2002, č. 11; Z. Kühn, J. Kysela, *Je Ústavou vždy to, co Ústavní soud řekne, že Ústava je?*, "Časopis pro právní vědu a praxi" 2003, č. 3; P. Holländer, *Dotváření Ústavy judikaturou Ústavního soudu* [in:] *Deset let Ústavy České republiky, východiska, stav, perspektivy*, ed. J. Kysela, Praha 2003, p. 122 ff.

the Court of Justice of the European Communities in issues of the interpretation of community law. For the time being, it seems rather that the majority of judges at the Constitutional Court tend to regard both supreme courts as such authorities. Such a position does not, however, prevent the Constitutional Court from issuing rulings in issues in which objection is made to the alleged breach of the right to a fair trial within the meaning of Art. 36 of the Charter of Fundamental Rights and Basic Freedoms, consisting in the opinion of the claimant in breach of the obligation to approach the European Court of Justice with the preliminary question. Also, in my opinion, in the interest of ensuring the uniformity of Community law before the national courts, the Constitutional Court will be exposed to pressure by the European Court of Justice, which is, in accordance with Art. 220 of the Treaty Establishing the European Community, the defender of Community rights, for it too to use the institution of preliminary questions in justified cases not yet resolved by the case law of the European Court of Justice.

The consequences of proceedings on the harmony of international treaties with constitutional order are extremely important. At the same time, however, they are also relatively less frequent. In two of its rulings,<sup>37</sup> the Constitutional Court dealt with the harmony of the Treaty of Lisbon. In both substantive rulings, it came to the conclusion that the given treaty is not in conflict with the constitutional order of the Czech Republic.

The Senate first approached the Constitutional Court in April 2008. In the petition, it stated that it believes that certain provisions of the Treaty relate directly to the standards of the constitutional order of the Czech Republic and, in view of the fundamental changes which the Treaty brings with it and which in the opinion of the Senate affect substantive features of nationhood, it seems necessary to review whether the Treaty is in compliance with the constitutional nature of the Czech Republic as a sovereign, unified, and democratic constitutional state and whether any change will occur to the fundamental requirements of a democratic constitutional state, something which is impermissible in accordance with Art. 9 (2) of the Constitution. The Senate also requested the examination of the compliance of the individual provisions of the Treaty with the Constitution of the Czech Republic. The Czech President also made comprehensive statements regarding the petition by the Senate, regarding it as essential for the Constitutional Court to provide a clear answer to the questions formulated by him before ratification, e.g., whether the Czech Republic will remain a sovereign state even after the Treaty of Lisbon comes into force or whether consent to ratification of the Treaty of Lisbon should be the subject of a referendum the same as in the case of the accession of the Czech Republic to the European Union.

The Constitutional Court dealt with the petition by the Senate in a comprehensive manner, the whole ruling being structured into 218 points, concentrating on those provisions of the Treaty of Lisbon, the compliance of which with the constitution was explicitly called into doubt by the claimant and came to the conclusion that the Treaty of Lisbon changes nothing about the basic concept of existing European integration

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<sup>37</sup> Pl. ÚS 19/08 and Pl. ÚS 29/09.

and that the Union would remain a specific organization of an international nature even after the Treaty of Lisbon comes into force. The most important finding for review of the Constitutional Court was however that the Union is based on the values of respect for human dignity, freedom, and democracy, a materially understood rule of law, and respect for human rights, and the constitutional court found nothing in the Treaty of Lisbon that would lead it to take any essential action. The verdict was then that the articles of the Treaty of Lisbon in question and the Charter of Fundamental Rights and Basic Freedoms of the European Union are not in conflict with the constitutional order.<sup>38</sup>

The ruling was announced in the Collection of Acts on 23 December 2008 and, in accordance with Act No. 182/1993 Coll. on the Constitutional Court, became enforceable on this date. This removed the obstacle preventing Parliament from completion the ratification process. The Chamber of Deputies expressed its consent to the ratification of the Treaty of Lisbon in February 2009 and the Senate did so in May 2009.<sup>39</sup> The Czech President did not, however, immediately ratify the treaty and said that he would wait for a petition being prepared by a group of senators for submission to the Constitutional Court. The Constitution does not determine any deadline for ratification and Václav Klaus had already procrastinated in the past with the ratification of certain international treaties, the consequences of which in fact seemed to be a sort of presidential veto of the ratification process. However, the head of state does not have such powers and such a course of action by the head of state shows defiance of the will of a democratically elected parliament.

The group of 17 senators did not submit their petition to the Constitutional Court asking the court to review conformity of the Treaty of Lisbon until 29 September 2009 with extensive argumentation and questioning of the conformity of the Treaty of Lisbon with the constitutional order as a whole as well as the alleged non-conformity of its individual articles. The Czech President again provided his statement on the issue in his capacity as a participant in these proceedings, emphasizing that he had not received answers to his questions posed during the previous proceedings and formulating them again with the conclusion that the Constitutional Court must provide a direct answer to all of the questions. He proposed "that the Constitutional Court provide a clear, specific ruling with detailed justification of the conformity of the Treaty of Lisbon as a whole with Article 1 (1) of the Constitution, or with Article 2 (1) of the Charter of Fundamental Rights and Basic Freedoms, and that it state whether the Czech Republic will remain a sovereign, unified, and democratic constitutional state based on respect for the rights and freedoms of the human being and citizen after ratification of the Treaty of Lisbon."

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<sup>38</sup> Compare the Ruling of the Constitutional Court Pl. ÚS 19/08 of 26 November 2008 on the issue of the petition for evaluation of conformity of the Treaty of Lisbon, amending the Treaty on the European Union, and the Treaty on the Establishment of the European Community with constitutional order, published under no. 446/2008 Coll. (č. 446/2008 Sb.).

<sup>39</sup> In the Chamber of Deputies, 125 deputies of the 197 deputies present voted for consent to ratify, and 54 of the 79 senators present in the Senate voted for this.

Before actually discussing the petition, the Constitutional Court had to deal with several procedural issues, an objection of bias, and the obstacle to *rei iudicatae*. It stated that the task of the Constitutional Court is not to answer questions, but to provide an authoritative ruling. It also provided very specific statement regarding the restriction of the possibility of the unconstitutional abuse of proceedings on the conformity of international treaties with the constitutional order, whereas it stated that misuse of judicial procedures to create obstructions in an effort to prevent the ratification of international treaties may be punished using the procedural means which the Constitutional Court has at its disposal.

It also dealt extensively with the issue of deadlines for submission of petitions for the instigation of proceedings and also deadlines for ratification by the Czech President and came to the conclusion that instigation of proceedings on the conformity of international treaties by a group of senators, group of deputies, or the Czech President must be limited by the same deadline in which it is necessary to ratify the international treaty, i.e., a deadline without undue delay.

In its actual review of the issue, the Constitutional Court then refuted all doubts on the part of the claimants regarding the non-conformity of the Treaty with constitutional order and stated that all formal obstacles to its ratification have been removed. The Czech President ratified the Treaty of Lisbon immediately after the announcement of the ruling of the Constitutional Court.

The ratification process commenced in January 2008; however it was unusually long and was accompanied by several obstructions and conflicts, but it did, on the other hand, contribute toward the definition of the relationship between constitutional law and European law, and the definition of the nature and the standing of international treaties in accordance with Art. 10a of the Constitution in constitutional order and also toward the clarification of the standing of the Constitutional Court during preventative checks on the harmony of these treaties with the constitutional order, including procedural rules.

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## Summary

Jiří Jirásek

### The European Dimension of the Constitution of the Czech Republic

Constitutional Act No. 395/2001 Coll., an amendment to the Constitution of the Czech Republic, led not only to constitutional confirmation of the relationship between Czech law and international law, but also to the possibility of the transposition of certain powers of constitutional

bodies to an international organization or institution, which created a sufficient constitutional basis for European integration and the legal foundation on which it was possible to implement the accession of the Czech Republic to the European Union.

**Keywords:** Czech Republic; European Union; Constitution; Constitutional Court.

## Streszczenie

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### Europejski wymiar Konstytucji Republiki Czeskiej

Zmiana Konstytucji Republiki Czeskiej, dokonana ustawą konstytucyjną nr 395/2001, doprowadziła nie tylko do konstytucyjnego potwierdzenia stosunku prawa czeskiego do prawa międzynarodowego, ale także umożliwiła przekazanie organizacji lub instytucji międzynarodowej niektórych kompetencji organów konstytucyjnych. Stworzyło to wystarczającą podstawę konstytucyjną dla integracji europejskiej, a więc podstawę prawną, która umożliwiła Republice Czeskiej przystąpienie do Unii Europejskiej.

**Słowa kluczowe:** Republika Czeska; Unia Europejska; Konstytucja; Sąd Konstytucyjny.