



Synthèse / Summary / Kurzfassung / резюме

**RÉPUBLIQUE TCHÈQUE/ CZECH REPUBLIC/ TSCHECHISCHE/
REPUBLIK ČESKÁ REPUBLIKA**

**The Constitutional Court of the Czech Republic
Ústavní soud České republiky**

Anglais / English / Englisch / английский

XVIITH CONGRESS OF THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS

Role of the Constitutional Courts in Upholding and Applying the Constitutional Principles

SUMMARY

*** Constitutional Court of the Czech Republic ***

A) THE ROLE OF THE CONSTITUTIONAL COURT IN DEFINING AND APPLYING EXPLICIT/IMPLICIT CONSTITUTIONAL PRINCIPLES.

Within its case-law, the Constitutional Court of the Czech Republic regularly refers to the constitutional principles. Some of these principles are explicitly determined in the Constitution, some of them are of an implicit nature. According to the Constitutional Court, the constitutive principles of democratic society are thus placed, within the Constitution, above the legislative competence and, thus, “ultra vires” of the Parliament. The principles invoked by the Constitutional Court are mostly related to the rule of law. According to the Constitutional Court, the rule of law, aims at establishing and maintaining a materially fair state of affairs. The rule of law is both an important element of democracy and a prerequisite for unimpaired exercise of the fundamental rights by individuals.

Moreover, the Czech constitutional order knows and commonly applies a number of general legal principles which are not explicitly comprised in the legal regulations. The principle that ignorance of law is no excuse and the principle of non-retroactivity, not only in the field of criminal law, can serve as examples of the above. Further examples include the interpretation rules *a contrario*, *a minore ad maius*, *a maiore ad minus*, *reductio ad absurdum*, etc. These principles are also regarded as source of constitutionality by the Constitutional Court of the Czech Republic.

The Constitutional Court plays the key role in defining constitutional principles. Even though some scholars have served on the Constitutional Court as its justices, the general involvement of university scholars was not prevailing. Rather than relying on analysis of the specific methods used by these scholar-justices, the constitutional principles were formulated especially on the basis of the German constitutionalism. *Travaux préparatoires* were not decisive in the creation of the Constitution in this respect.

The Constitutional Court have already dealt with the legal nature of constitutional principles in its judgements. Constitutional principles are reflected not only in abstract or specific review of norms, but also in the course of protection of fundamental rights of individuals. These fundamental rights form part of the objective order of values as the positive State obligation to make them an integral part of the legislation. Under the given conditions the Constitutional Court derived that Constitution inherently includes further principles (such as the principle of proportionality, and many principles following from the rule of law), even if they are not stated explicitly.

One of the most frequently applied principle in proceedings on constitutional complaints is the principle of prohibition of arbitrariness; one of the most frequently applied principle in proceedings on review of legal rules is the principle of non-retroactivity of legal rules.

B) CONSTITUTIONAL PRINCIPLES AS HIGHER NORMS? IS IT POSSIBLE TO DETERMINE A HIERARCHY WITHIN THE CONSTITUTION? UNAMENDABLE (ETERNAL) PROVISIONS IN CONSTITUTIONS AND JUDICIAL REVIEW OF CONSTITUTIONAL AMENDMENTS.

The Constitution of the Czech Republic contains no algorithm determining the hierarchy or order of constitutional principles, either in relation to the other parts of the normative text or among the principles themselves. Even the Czech Constitutional Court did not pay systematic attention to the taxonomy of principles in its case-law and if it did indeed attribute greater weight to any of the principles, compared to some other principle or provision, this was always done in a specific case and without any attempt to establish settled interpretation in terms of legal theory.

The Constitution sets out the fundamental values of State in basic provisions. However, they are not provided in the form of a list and are not even defined in detail. Constitutional Court has neither provided any final enumeration of the essential principles, but explicitly accepted their existence. The application of constitutional principles by the Constitutional Court thus serve especially as a guideline and interpretation tool for the parties to the proceedings and subordinated courts.

The Czech Constitution may be supplemented or amended only by constitutional laws and thus each amendment or supplementation of the constitutional order requires the consent of a qualified majority of both chambers of Parliament. Art. 9 (2) of the Constitution provides that any changes in the essential requirements for a democratic state governed by the rule of law are impermissible. Those essential requirements constitute the material core of the Constitution. There is, however no mandatory list of provisions, principles or requisites that must not be changed.

The Constitutional Court does not supervise over the process of amending the Constitution, as it lacks either consultative or interpretation powers for evaluation *a priori* of laws, and the less so of constitutional laws. In accordance with the principle of separation of powers the Constitutional Court does not interfere with the process of creating constitutional laws, but it reserved a right to intervene in case of interference with the material core of Constitution. The Constitutional Court reviewed the constitutionality of a constitutional law only in a single case (Judgement File No. Pl. ÚS 27/09 of 10 September 2009), which is in details analysed in the National Report.

There is no circumstantial evidence of a serious discussion in the Czech Republic whether or not has the Constitutional Court power of review over constitutional amendments. The only single case of intervention against the constitutional amendment in 2009 raised a temporary debates, but the authority of the Constitutional Court to examine conformity of constitutional laws with the material core of the Constitution has not been questioned.