Court/Tribunal: Constitutional Court of the Czech Republic
Case: *Judgment on the Lisbon Treaty (II)*
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On November 3, 2009, the Constitutional Court of the Czech Republic issued its opinion in case Pl. ÚS 29/09. In this case, the Court revisited issues dating back to the Czech Republic's negotiations and ultimate signature of the Treaty of Lisbon. The Treaty of Lisbon consists of two main parts: one amending various provisions of the Treaty on the European Union; and the second amending various provisions of the Treaty establishing the European Community. The Czech government approved negotiation of the Treaty of Lisbon with resolution no. 1367 in December 2007. the treaty was signed by representatives of European Union member states later that month and signed by the Prime Minister of the Czech Republic in January 2008.

In light of the fundamental changes that the Treaty of Lisbon adds, a group of Czech senators believed that it was necessary to review the treaty and determine: whether it was consistent with the constitutional characteristics of the Czech Republic, particularly substantive elements of statehood, sovereignty, and democracy; and whether the treaty in any way materially changed the Czech constitution's indispensable requirements for a democratic state governed by the rule of law, which would be in violation of Art. 9. Par 2, and thus unconstitutional.

The Court's opinion contained five rulings:

1) Most significantly, the Court ruled that numerous provisions of the Treaty of Lisbon amending the Treaty on European Union (also known as the "Treaty of Maastricht") and the Treaty Establishing the European Community (also referred to as the "Treaty of Rome") were not in conflict with the constitutional order of the Czech Republic, nor were either of the treaties as a whole.

2) The Court denied a petition requesting the Court to review the Treaty of Maastricht as a whole and the Treaty of Rome as a whole to determine whether they were in conformance with the Czech constitution.

3) The Court denied a petition that it review the constitutionality of Article Two, Article Four and Article 216 of the Treaty on the Functioning of the European Union.

4) The Court denied a petition to issue a finding that "the Decision of the Heads of State or Government meeting within the European Council on the concerns of the Irish people on the Treaty of Lisbon…" was "an international agreement" which required the approval of both chambers of the Czech parliament in accordance with the Czech constitution.

5) The Court denied a petition that it open proceedings to review whether the recent Treaty of Lisbon and the Treaty of Rome conformed to the requirements of the Czech constitution.

Procedural Standards

Under Art. 87 par. 2 of the Czech Republic's Constitution, the Constitutional Court has the authority to decide issues regarding the constitutional interpretation of an international treaty under Art. 49 and Art. 10, which states that Parliament's consent is necessary to ratify an international treaty that transfers powers to an international organization or institution. Only upon the Court's decision can the treaty be ratified.

Burden of Proof- For the purpose of Constitutional review, the petitioner must state and name the act or individual provisions which they seek to annul, and the grounds for the alleged unconstitutionality.

Scope of the Constitutional Court's Review- The Constitutional Court is bound by the scope of the specific provisions contested by the petitioner and is not authorized to exceed this scope. Review of a treaty can only be commenced at the moment when an international treaty is presented to Parliament for approval. The Court determined that since the Treaty of Lisbon is merely an amendment rather than a completely new, independent treaty that would replace its predecessor, it is not subject to review by the Constitutional Court.

Based on these procedural standards, the court analyzed four general types of provisions in the Treaty of Lisbon:

1. Provisions taken from the existing treaties, as interpreted by the European Court of Justice;
2. Provisions taken from the existing treaties, but which were partly modified;
3. Disparate provisions that annul existing treaty provisions;
4. Provisions that are completely new and have no equivalent in the existing treaties.

In the event that there is a clear conflict between the domestic Constitution and European/international law (treaty) that cannot be resolved by any reasonable statutory interpretation, the Constitution of the Czech Republic will trump international law. However, if there are several possible interpretations, the court must select the interpretation that best complies and abides with the Czech Republic's responsibility and acceptance of its EU membership. Additionally, the Court uses the "whole act" approach of statutory interpretation, meaning that it takes all provisions and interprets them together, so as not to take them out of the context of the entire constitutional functionality in which they were formulated and drafted. Furthermore, the Court is cognizant of the guiding principle of protecting certain inherent, inalienable, non-prescriptive, and non-reparable fundamental rights and freedoms of individuals. However, in accordance with the principle of *pacta sunt servanda,* states are required to show deference towards international norms to whose creation they contribute.

The Petition

The case was initiated by a group of senators who believed that the treaties at issue, both as a whole and because of specific articles of those treaties, conflicted with provisions in the constitution of the Czech Republic which established the Czech Republic as a sovereign state. In the senators' view, these conflicts prohibited the Czech Republic from giving up elements of its national sovereignty to the transnational European Union. In addition to their arguments that the treaties as a whole violated Czech sovereignty, the senators objected to provisions in the treaties which, among other things, gave the EU the right to sanction member states for violations of the EU's core values and which promoted objectives such as enhanced cooperation among member states and common defense and immigration policies. The senators also objected to the regulation of withdrawal from the EU.

Briefs

The Constitutional Court received briefs from the Chamber of Deputies (the lower house of the Czech legislature), the Senate (the upper house of the Czech legislature), the government and the president.

The Chamber of Deputies noted that the Constitutional Court had already issued one decision on the Treaty of Lisbon in November 2008 and that the Court had "implicitly concluded that ratification of the Treaty will not affect the Czech Republic as a sovereign state governed by the rule of law". The Chamber of Deputies did not express disagreement with the Court's previous ruling or suggest a new position that it wished to see the Court adopt in 2009.

The Senate observed that it had ratified the Treaty of Lisbon in May 2009, following considerable debate about the Treaty's constitutionality, debates in which the petitioners had participated. Furthermore, the government, during the course of their negotiations with the EU, generally declared that the treaty had been reasonably analyzed, including the provisions at issue in this case, and determined that it was consistent with the constitutional order. However, the Senate's brief concluded by acknowledging that under the constitution, the Constitutional Court's ruling would be the final word on the petition.

The government, too, remarked that the Constitutional Court had already reviewed the issue of the Treaty of Lisbon's constitutionality once and found it to be acceptable, and expressed skepticism that another petition on the subject should even be allowed. The government responded to the petitioners' allegations of unconstitutionality and argued that the treaties and individual articles at issue were not in conflict with the constitution.

The president expressed support for the petitioners' views and observed that in the past, the Constitutional Court had only considered individual sections of the Treaty of Lisbon, and never the treaty as a whole. He presented the Court with a number of questions regarding conflicts between several documents which establish EU governing law and

the Czech constitution, questions which he stated were not answered satisfactorily when he raised them during the Court's 2008 review of constitutional issues associated with the country joining the EU.

The Court's Ruling

The Constitutional Court's analysis begins with an analysis of the *res judicata* issue. The Court concluded that while *res judicata* prevented it from ruling on the questions from the 2008 case a second time, the new petition presented different constitutional questions.

Both the earlier questions and those now presented to the Court, however, arose from the debate on the larger issue of whether the Czech Republic could ratify the treaties at issue. The Court was willing to review the challenged treaties as a whole because the petitioners did state specific grounds for why, taken as a whole, those treaties did not conform to the Czech constitutional order.

The substance of the Court's opinion draws heavily on the Constitutional Court's opinion in Pl. ÚS 19/08, issued in November 2008. The Court rejected the petitioners' argument that the Treaty of Lisbon as a whole was insufficiently comprehensible and clear for it to conform with the Czech constitutional order, holding that Parliament had adequately understood both the Treaty of Lisbon and the treaties it was amending. The Court also held that the relevant treaties- international treaties which laid the foundation of the EU and "express its values and objectives"- used language that was more common and universal than that found in the legislation the Constitutional Court normally reviewed.

In its main holdings, the Court rejected the petitioners' claims that the treaties infringed on Czech sovereignty, citing its holding in Pl. ÚS 19/08 that the Czech Republic had not actually relinquished any of its sovereignty to the EU, having described the power sharing relationship as a "conditional loan" of national powers to the EU. The Court also noted that the Constitutional Court of the Czech Republic retained the power to act if an exercise of EU power were to go against the core values of the Czech Republic's constitution. The Court rejected claims that the treaties' statements of core European values and objectives, such as commitment to a common defense, the acceptance of refugees by Member states, and a requirement that a European Union Commission Member display "European commitment," were aspects of shared sovereignty which the Czech constitution did not permit. The Court also held that the provisions for withdrawal from the EU found in the EU constitution did not infringe on Czech sovereignty and would not, as the petitioners argued, lead to a situation wherein the Czech Republic's withdrawal from the EU might be contingent upon consent by the EU.

In the opinion's final holding, the Constitutional Court refused to recognize a decision by a meeting of EU heads of state regarding the concerns of the Irish people on the Treaty of Lisbon as an "international treaty." Following from this decision, the Court refused to consider an additional claim submitted by the petitioners founded on this alleged "international treaty."

With regard to the major issues, the Court essentially agreed with the government's opinion: the Treaty of Lisbon, particularly its amendments to the Treaty Establishing the EU, can only be applied to fill the gaps where there is no specific provisions that are necessary to enable the EU to carry out its basic functions and objectives as laid out in previously ratified treaties; that Art. 10a only addresses laws previously enacted; and the "gaps" referenced will only be filled by the EU upon a unanimous vote in which the Czech Republic would be able to cast its vote for approval.