

INTERPRETATION AND APPLICATION OF EUROPEAN LAW IN CONSTITUTIONAL COURT OF THE CZECH REPUBLIC CASE LAW

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I. General Role of Constitutional Courts and Introductory Remarks about the Constitutional Court of the Czech Republic

The fact that in the legal environment of the Czech Republic (CR) national, international and European law are present, and it is true also about the European Union (EU) individual states, determines the complexity of the current legal systems. In the legal order, quite naturally, both theoretical and practical questions of mutual relations, preferences or possible conflicts among the above legal systems arise. Under such circumstances, both legal interpretation and use of interpretative overbridging principles have its high importance. The fact that the CR has acceded to the existing EU legal system both enabled to use previous experiences of member states and predetermined possible solutions.

Judicial interpretation has its place among different types of interpretation. Although its role in individual states differs, constitutional judiciary has significant role in the process of legal interpretation. It is important to stress that substantial role of constitutional courts in relation to the EU law was not supposed in the early stages of the European integration. It won its way later on the basis of decision making activity of some constitutional courts. The role of constitutional courts was connected with their role as a guardian of state sovereignty and rule of law state. Generally, the relation between constitutional case law and the Court of Justice of the European Union (ECJ) case law can be characterized as complicated, theoretically difficult and developing in the course of time. After the Lisabon Treaty, role of constitutional courts is strengthening together with national identity concept development.

As far as the real role of constitutional judiciary in individual member states, it depends both on legal regulation and factual position of constitutional courts. There is no uniform approach of constitutional courts towards the EU law issues in the European context. In a very simplified manner, it is possible to speak about three models. The first one is that constitutional courts do not deal with the EU law issues, the second one, they deal with them only in restricted extent, e.g. from the point of view of human rights or constitutionality, and the third one, they review the EU law as quasi constitutional one.

Generally, constitutional courts can review most often conformity of the EU founding treaties or their amendments with constitutional order of the respective country or the constitutionality of both the transfer of national powers to the EU and its extent. They can also comment on the obligation to refer a preliminary question either from the side of constitutional court or ordinary court or express overbridging principles of mutual relation between national law and the EU law.

In order to answer the question which particular issues related to the European law can be adjudicated by the Constitutional Court of the Czech Republic (CC of the CR) and in what extent, it is necessary to come out from the CR Constitution and the Act No. 182/1993 Col., on the Constitutional Court. Under Art. 83 of the Constitution, the CC of the CR is the judicial body responsible for the protection of constitutionality. Generally, the CC of the CR has very broad powers both in the sphere of abstract and concrete review. The abstract review is the review of norms under Art. 87 par. 1 letter a) and b) of the Constitution. The concrete review covers the review of individual constitutional complaints of natural and legal persons under Art. 87 par. 1 letter d) of the Constitution. Nevertheless, the very essential power in this context is the preventive review of international treaties under Art. 10a and Art. 49, the new power effected before ratification of the reviewed treaties introduced by the amendment of the Constitution 395/2001 Coll., so called „Euro-Amendment“ of the Constitution.

Herein, it is possible to characterise the CC of the CR as belonging to the courts endowed with strong competences; both preventive review of international treaties, abstract review and individual constitutional complaint are available. Generally we can speak about high standard of constitutional review in the CR. Furthermore, the Czech CC belongs to the so-called active courts which can be demonstrated at least by number of adjudicated cases and their relevance. Under Art. 89 par. 2 of the CR Constitution, the Court's decisions are binding on all organs and institutions.

If this contribution will speak about the CC of the CR case law related to the EU law, it will have in mind such decisions which deals in some way either by the relation between EU law and constitutional law or by the transfer of international obligations following from the accession of the CR into the EU, irrespective of type of proceedings. The following text will follow the CC case law development in

relation to the European law. The full text of all decisions cited below is available in English language at CC of the CR web page www.usoud.cz.

II. The References to the EU Law in the Constitutional Court of the CR Case Law before the Entrance into EU

By way of introduction it is possible to mention briefly that the CC of the CR case law had reacted to community law by means of some references even before the entrance into the EU. For example, in its judgment III. ÚS 31/97 „Abuse of Dominant Position“, the CC in connection with interpretation of abuse of dominant position has pronounced that it is not possible to consider as unconstitutional that interpretation which came out from the competition rules regulated by the Treaty Establishing EC. The CC has explained that both this treaty and the EU Treaty come out from the same principles and values on which also the constitutional order of the CR is based.

Further on, in its judgment Pl. ÚS 39/01 „Sugar Quota II“, the CC either referred to relevant ECJ case and indicated that „it cannot be overlooked that one of the main motivations for introducing a production quota system for some agricultural and food products was the creation of a framework which is applied in the European Union. Radical intervention by the CC against production quota systems would be a step toward a conception of domestically guaranteed fundamental rights which would not hold up after the CR’s entry into the European Union, which is being prepared“.

It is possible to state that the CC’s approach can be considered as logical and well-founded when taking into account in its decision-making the forthcoming entrance into the EU and the process of approximation of law in the sphere of competition law and agricultural quotas which was under way. Besides that, the CC of the CR demonstrated its evident interest to deal with the EU law issues in the future.

III. The EU Law in the Constitutional Court of the CR Case Law after the Entrance into the EU

A. Introducing of Particular Issues in Relation to the EU law

After the entrance of the CR into the EU, i. e. after 1 January, 2004, mainly the experts has awaited the reaction of the CC of the CR to some particular questions related to the EU law. It is possible to make examples of some some of these questions:

- What will be the CC of the CR approach to the EU law? Will it be reviewing the EU law? If yes, by which manner and in what extent? What will be the referential criteria for such review?
- On which constitutional basis will the EU law work in national legal order (including questions related to Art. 10 and Art. 10a of the CR Constitution)?

- Can the CC of the CR refer a preliminary question to the ECJ? Is there an ordinary court's obligation to refer a preliminary question?
- Will be the CC of the CR formulating the interpretative principles in relation to the EU law?
- Is the Lisbon Treaty in conformity with constitutional order of the CR?
- Can the existing CC case law be considered as settled or uniform?

As far as the above questions, at the moment it is possible to state that the CC of the CR has pronounced upon them in several decisions, very often even repeatedly. The CC complied with this task in relatively very short period of time, especially when we take into account the complexity of raised questions. It is appropriate to stress that overall number of CC decisions related to the EU law questions is not very numerous as it follows from the Table 1 specifying the overview of most important CC decisions related to the EU law. In years 2006 – 2010 the CC of the CR has dealt with about ten significant decisions related to the EU law, i. e. in average 2 or 3 decisions a year.

Table I. Overview of most important CC of the CR decisions related to the EU law

„Sugar Quota III“	8 March, 2006	Judgment Pl. ÚS 50/04
„Burden of Proof – Discrimination“	26 April, 2006	Judgment Pl. ÚS 37/04
„European Arrest Warrant“	3 May, 2006	Judgment Pl. ÚS 66/04
„Reimbursement of Medications“	16 January, 2007	Judgment Pl. ÚS 36/05
„Squeeze Out“	27 March, 2008	Judgment Pl. ÚS 56/05
„Lisbon I“	26 November, 2008	Judgment Pl. ÚS 19/08
„Non-Applicability of Contested Provision“	2 December, 2008	Resolution Pl. ÚS 12/08
„Ordinary Court Obligation to Refer“	8 January, 2009	Judgment II. ÚS 1009/08

a Preliminary Question“		
„Lisbon II“	3 November, 2009	Judgment Pl. ÚS 29/09
„State Responsibility for Damage Caused by the EU Law Violation“	9 February, 2011	Judgment IV. ÚS 1521/10

The following text based on the CC case law enumerates by transparent manner adjudicated questions and principles expressed in individual decisions. So far, the CC was dealing with different aspects of relation to both the EU law and EU organs. It is rational and logical to deal with individual decisions in chronological order. The reason is that the late decisions both follow up and confirmed the earlier ones. In this connection the principle of binding force of CC decisions is important (see Pl. ÚS 11/02).

B. Individual decisions relating to the EU Law in the Constitutional Court of the CR case law

1. “Sugar Quota Regulation III“, Pl. ÚS 50/04

The judgment Pl. ÚS 50/04 was dealing with the complaint of group of deputies proposing the annulment of some provisions of government regulation laying down the allocation of individual production quotas as a merit. The complainants expressed their conviction that the newly adopted Regulation No. 364/2004 Sb., in particular §§ 3 and 16 thereof, was unconstitutional and substantively discriminatory in relation to certain producers.

Historically, this was the first decision of the CC of the CR dealing with EU law. This decision has attempted to answer the greatest possible number of questions related to community law. Nevertheless, it has brought not only answers but it has also raised some new questions and provoked discussion. Especially the issue of interpretation of Art. 10 and Art. 10a of the Constitution and explanation of quotas implementation by means of government regulation were subject of experts discussion.

From the CC reasoning, it is possible to deduce the acceptance of the application precedence principle (but not a doctrine of absolute preference over the all constitutional law), conditional conferral of powers to EU organs and recognition of current level of protection of fundamental rights within Community as comparable with protection provided in the CR. The CC has adjudicated the meritum of the case in light of both principles following from community and national law. Also the possibility of the CC to refer a preliminary question, assessment of criteria resulting from ECJ case law and interpretation of Art. 10 and Art. 10a of the Constitution were elaborated. The

following text will specify some important parts of the above judgment.

Applicational precedence of community law

The CC has started with the question of the degree to which it is authorized to adjudge the constitutional conformity of legal norms tied up with the EU law. It stated that it is not competent to assess the validity of community law norms. Such questions fall within the exclusive competence of the European Court of Justice. Community law norms enjoy applicational precedence over the legal order of Member States of the EU.

Not doctrine of absolute precedence

Then the CC has stressed that even several high courts of older member States (Germany, Italy, Ireland, Denmark) have never entirely acceded to a doctrine of the absolute precedence of community law over the entirety of constitutional law. They retained a certain reserve to interpret principles such as the democratic law-based state and the protection of fundamental rights. Therefore, it should be also the obligation of the CC, the judicial body for the protection of constitutionality of one of the recently acceded Member States, to express its view on these issues.

Transfer of certain powers

The CC has explained that Art. 10a, which was added to the Constitution of the CR by Constitutional Act No. 395/2001 Sb. (the „Euro-Amendment“ to the Constitution), constitutes a provision that makes possible the transfer of certain powers of Czech state organs to international organizations or institutions, thus primarily to the European Community and its organs. At the moment, the powers of all relevant national organs are restricted to the extent of the powers that are being exercised by EC organs, regardless of whether they are powers of norm creation or powers of individual decision-making.

Conditional conferral of a part of the CC powers

Nevertheless, in the CC's view, this conferral of a part of its powers is a conditional conferral, as the original bearer of sovereignty, as well as the powers flowing therefrom, still remains the CR, whose sovereignty is founded upon Art. 1 par. 1 of the Constitution of the CR. In other words, the delegation of a part of the powers of national organs may persist only so long as these powers are exercised in a manner that is compatible with the preservation of the foundations of state sovereignty of the CR, and in a manner which does not threaten the very essence of the substantive law-based state.

Referential framework for the CC, interpretation by means of community law principles

The CC added that although its referential framework has remained, even after 1 May 2004, the norms of the CR's constitutional order, it cannot entirely overlook the impact of community law on the formation, application, and interpretation of national law. In other words, in this field the CC interprets constitutional law taking into account the principles arising from Community law.

Current standard for the protection of fundamental rights

In the CC's view, the current standard for the protection of fundamental rights within the Community cannot give rise to the assumption that this standard is of a lower quality than the protection accorded in the CR, or that the standard of protection markedly diverges from the standard up till now provided in the domestic setting by the CC.

Interpretation of Art. 10a of the Constitution

The CC also has interpreted Art. 10a of the Constitution of the CR and it explained that it operates in two directions: it forms the normative basis for the transfer of powers and is simultaneously that provision of the Czech Constitution which opens up the national legal order to the operation of Community law, including rules relating to its effects within the legal order of the CR

The preliminary question

The CC has dealt with the question as to whether it can be considered a court in the sense of Art. 234 of the EC Treaty, or in which type of proceedings, and although it has not adjudicated this question in detail, it did not excluded such possibility in the future.

2. „European Arrest Warrant“, Pl. ÚS 66/04

The group of both senators and deputies sought the annulment of Criminal Law and Criminal Procedure Code provisions which implemented European Arrest Warrant in accordance with Framework Decision on the European Arrest Warrant. According to complainants, the contested provisions enabling the CR to surrender its own citizens to other Member States of the European Union were in contradiction with Art. 14 par. 4 of the Constitution of the CR.

Judgment Pl. ÚS 66/04, so called European Arrest Warrant, came in very short time period after the judgment Pl. ÚS 50/04 and reiterated some of its conclusions. In this judgment, the CC coped especially with the third pillar issues (not more topical at the moment due to abolition of pillar system by the Lisbon Treaty) and with difficult question whether the amendment of Constitution was necessary in order to extradite a citizen to the criminal prosecution in other member state. In this connection, the CC clarified the concept of interpretation in conformity with European integration principles.

Third pillar issues

Generally, it is possible to remark that implementation of the third pillar to legal order was problematic as the Maastricht Treaty disunited system in relation to the implementation of obligations in community and European union law whereas the European Arrest Warrant come under union law. Consequently, the framework agreements did not entail direct effect and the obligation to implement them was not enforceable by the ECJ. Also the CC dissenting opinion pointed to the problematic character of the framework agreements and asserted that the framework agreements were, by their nature, intergovernmental agreements. The problem solving had been seen in

the removal of pillar structure which was finally effected by the Lisbon Treaty.

Interpretation in conformity with the process of European integration

In this case, Art. 14 par. 4 was subject of adjudication. The first sentence of Art. 14 par. 4 of the Charter provides that every citizen has the right to freely enter the Republic. The second sentence provides that no citizen may be forced to leave his homeland. The CC explained that the prohibition on “forcing one to leave his homeland” can be interpreted either broadly or narrowly.

Then the CC continued that from Article 1 par. 2 of the Constitution, in conjunction with the principle of cooperation enshrined in Art. 10 of the EC Treaty, follows a constitutional principle according to which national legal enactments, including the Constitution, should whenever possible be interpreted in conformity with the process of European integration and the cooperation between European and Member State organs. It follows therefrom that interpretation must be selected which supports the fulfillment of those obligations, not one which would hinder their fulfillment. These conclusions apply as well to the interpretation of Art. 14 par. 4 of the Charter.

3. „Reimbursement of Medications“, Pl. ÚS 36/05

The group of senators proposed the annulment of a provision of the Act on Public Health Insurance due to its conflict with Art. 36 par. 1 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter „Charter“) and with community law (Art. 6 par. 2 of the Directive 89/105/EEC relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of national health insurance systems). The complainants claimed that authorized persons were denied the right to judicial protection.

This judgment is another CC of the CR contribution related to the EU law. The review in subject matter was realized firstly from the point of view of Art. 36 of the Charter and then from the point of view of relevant provisions of EU directive. Thus, the CC of the CR came to the same conclusions in both respects.

Interpretation of EU general principles corresponding to fundamental rights

In its Judgment No Pl. US 50/04 the CC explained that Community law could not serve as a referential criterion for its adjudication of the constitutionality of domestic enactments. On the other hand, the European Communities, just the same as is the CR, are law-based communities. The European Communities are constructed on the respect and esteem for the essential attributes of a law-based state. As can be deduced from the jurisprudence of the European Court of Justice, its interpretation of general legal principles corresponding to

the fundamental rights contained in national constitutional catalogues, is quite similar to the CC's approach.

The European Court of Justice has already twice resolved analogous issues concerning the level of reimbursement of cost of medicines by the national health insurance system. Decisions on inclusion in a list, are covered by Art. 6 of the Directive, so that they must be accompanied by the procedural safeguards contained therein. The CC had to take this line of argument into account when interpreting Art. 36 par. 1 or par. 2 of the Charter. Under the existing legal situation, the interested persons also cannot obtain judicial protection. The same deficiencies of which the European Court of Justice were critical in relation to the Directive are also evident in the provisions under review in relation to the Charter of Fundamental Rights and Basic Freedoms.

4. „Squeeze Out“, Pl. ÚS 56/05

A group of senators sought the annulment of §183i to §183n of the Commercial Code which regulated the right to buy out securities, (the “buy-out right” or “squeeze-out”). The complainants objected a whole range of legal regulation defects, at the first place the conflict with the legal regulation of the buy-out of securities as contained in the European Parliament and EC Directive 2004/25/EC, so called the “Thirteenth Directive”.

The CC of the CR referred to its previous case law and reiterated that it is not competent to review community law as its reference point of view is constitutional law. The non-use of statute that is inconsistent with the EU law is in the jurisdiction of the ordinary courts. Therefore, the CC left aside the part of complaint alleging the conflict with community law.

Constitutional order as a reference point of view, jurisdiction of ordinary courts

Before the CC reviewed the complaint, it had to deal with the part of the petitioner's filing, which is based primarily on an alleged conflict between the regulation of the right to a forced buy-out and the Thirteenth Directive. Here, the CC referred to its previous case law (judgments Pl. ÚS 50/04, Pl. ÚS 36/05) and reiterated that the reference point for review of the constitutionality of statutes under Art. 87 par. 1 letter a) and Art. 88 par. 2 of the Constitution of the CR is the constitutional order. The CC does not have jurisdiction, in such proceedings, to review whether domestic law is consistent with community law. The community law as directly applicable law. The non-use of a statute that is inconsistent with the law of the Community is in the jurisdiction of the ordinary courts, which, in cases of doubt about the application of the law, have the opportunity, or obligation, to turn to the European Court of Justice with a preliminary issue under Art. 234 of the TEC.

5. „Obligation of Ordinary Court to Refer a Preliminary Question“, II. ÚS 1009/08

In its constitutional complaint, the complainant objected that several of its fundamental rights have been violated, in particular, its right to fair process under Art. 36 par. 1 of the Charter. According to the complainant, the violation of its right to fair process also occurred in view of the 9th paragraph of the Preamble to Directive 2001/83/EC, which emphasized the protection of innovative firms from being disadvantaged. This violation consisted in the fact that it was denied the opportunity to be a party to the administrative proceeding on the registration of the medicinal product.

Judgment II. ÚS 1009/08 followed up the previous CC case law in the sphere of the EU law (reference framework of CC review, binding character of community law). Moreover it developed right and obligation of ordinary court to refer a preliminary question. In relation to last instance court, the CC concluded that under certain circumstances, i. e. if the last instance court does not refer a preliminary question voluntarily, it violates the right to a lawful judge.

The obligation to refer preliminary question

In consequence of the CR's accession to the EU, Czech courts acquired the entitlement, and in certain circumstances also become subject to the obligation, to address the European Court of Justice („ECJ“) with preliminary questions. On the basis of the third subparagraph of Article 234 of the Treaty establishing the European Community, a Member State court, against whose decisions there is no judicial remedy under national law, is obliged to refer a preliminary question to the ECJ.

Right to lawful judge

CC hold that although the referral of a preliminary question is a Community law matter, the failure, in conflict with Community law, to make a reference may, in certain circumstances, also entail a violation of the constitutionally-guaranteed right to one's lawful judge. A violation of the right to one's lawful judge comes about in the case where a Czech court (against whose decision there is no longer any further remedy afforded by sub-constitutional law) applies Community law but fails, in an arbitrary manner, that is, in conflict with the principle of the law-based state (Art. 1 par. 1 of the Constitution of the CR), to refer a preliminary question to the ECJ.

The CC asserted that it deems as arbitrary action such conduct by a court of last instance applying a norm of Community law where that court has entirely omitted to deal with the issue whether it should refer a preliminary question to the ECJ and has not duly substantiated its failure to refer, including the assessment of the exceptions which the ECJ has elaborated in its jurisprudence. In other words, it is a case where the court entirely fails to take into consideration the existence

of the peremptory rule, which is binding on it, contained in Article 234 of the Treaty establishing the European Community.

6. „Non-Applicability of Contested Provision“, Pl. ÚS 12/08

The ordinary Court in connection with its decision-making activity claimed in the proceedings before the CC (Art. 95 par. 2 of the Constitution) the annulment of a provision of the Act on the Operation of Radio and Television Broadcasting, on the basis of which the Council for Radio and Television Broadcasting rejected on the merits party's to proceeding request to be granted a license to digital broadcasting. The contested provision precluded the grant of a license to broadcast radio and television programs to an entrepreneur responsible for a network of electronic communications. According to the petitioner, such a restriction was both in conflict with Art. 26 par. 1 of the Charter enshrining the freedom to engage in commercial or other economic activity and with some provisions of the EU law.

Non-application of contested provision

The CC has explained that it leaves entirely to the discretion of the ordinary court whether it will concern itself with reviewing the conflict with European Community law of the statutory provision which it should apply or will focus on the review of its conflict with the constitutional order of the CR. If it primarily focuses on the review of the conflict with European Community law and asserts, as in this case, that the statutory provision under review is in conflict therewith, it must draw from its conviction the consequences in accord with the Court of Justice's jurisprudence, that is, that the contested provision not be applied.

Ordinary court's obligation to justify its conclusion related to the EU law

The CC has explained that it is in principle not within the CC's competence to interfere with an ordinary court's considerations as to whether its conclusion on the conflict of the contested provision with European Community law is well-founded or not. It does, however, draw attention to the fact that such conclusion must be duly reasoned, otherwise it could become the subject of review on the part of the CC, in the context of a proceeding on a constitutional complaint, as to whether the court's interpretation of the decisive legal norms is foreseeable and reasonable, whether it corresponds to the settled reasoning of judicial practice, or whether, on the contrary, it is an arbitrary interpretation which lacks meaningful reasoning, whether it diverges from the bounds of the generally (consensually) accepted understanding of the affected legal institutes, alternatively whether it does not represent an extreme or excessive interpretation.

Prohibition to restrict already achieved procedural level of protection

The CC stipulated in its previous case law the requirement that no amendment to the Constitution may be interpreted in a sense in

consequence of which the already achieved procedural level for the protection of fundamental rights and freedoms would be limited (see Judgment No. Pl. ÚS 36/01), which requirement also projects into the limits to the transfer of powers to the European Union on the basis of Art. 10a of the Constitution. Nevertheless, provided in the instant case the Municipal Court did not apply the contested provision, it would not be due to its conflict with a human rights convention, rather due to its conflict with provisions of European Community law, which has an entirely distinguishable character. Moreover, that law operates in the CR legal order on the basis of Art. 10a of the Constitution (see Judgment No. Pl. ÚS 50/04), and not Art. 10, as do human rights conventions, to which the above-cited judgment relates. Thus, one cannot state that according applicational primacy to European Community law, on the basis of the Court of Justice's jurisprudence, would create a procedural disparity that is in no way justified and which would thereby impinge upon the substantive core of the Constitution.

7. „Lisbon I“, Pl. ÚS 19/08

A group of senators claimed to review the conformity of the Lisbon Treaty with the Constitution, both as a whole and individual provisions thereof. Here, the CC of the CR has dealt for the first time by preventive review of international treaty. First, the CC has to address procedural questions related to this type of review. Then, judgment Pl. ÚS 19/08 summarized previous case law related to the EU law and dealt with issues raised by complainants. Above all, it is appropriate to stress that the CC interpreted in this judgment assessment related both to the interpretation of transfer of powers including its limits and substantial core of Constitution, as it is cited below. Only marginally it is also possible to remark that even the German Federal Constitutional Court which adjudicated the Lisbon Treaty later on, referred in its decision to that part of the Czech CC decision related to the control of transfer of powers.

Delegation of certain powers of CR bodies and concept of sovereignty

The CC explained that a simple linguistic interpretation of Art. 10a par. 1 of the Constitution permits delegating only “certain powers of bodies of the CR.” That indicates that Art. 10a clearly can not be used for an unlimited transfer of sovereignty; in other words, based on Article 10a one can not transfer powers, the transfer of which would affect Art. 1 par. 1 of the Constitution to the effect that it would no longer be possible to speak of the CR as a sovereign state. Thus, the concept of sovereignty, interpreted in the context of Art. 1 par. 1 of the Constitution and Art. 10a of the Constitution, clearly shows that there are certain limits to the transfer of sovereignty, and failure to observe them would affect both Art. 1 par. 1 and Art. 10a of the Constitution.

Substantive core of the Constitution

The point of reference for permissibility of a transfer of powers from the CR to an international organization is, especially, respecting the material core of the Constitution under Art. 9 par. 2 (see Pl. ÚS 19/93). This means, in particular, protection of fundamental human rights and freedoms, as they are enshrined in the Charter of Fundamental Rights and Freedoms, in the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, in other international treaties in this field, and in the settled case law of the CC of the CR and the European Court of Human Rights.

Conditional conferral of powers

By the accession of the CR to the EU, on the basis of Art. 10a of the Constitution of the CR, there was a transfer of powers of national bodies to supra-national bodies. At the moment when the Treaty establishing the EC, as amended by revisions and the accession treaty, became binding on the CR, the transfer of the powers of national bodies that, under primary EU law are exercised by EU bodies, to those bodies. The CR lent these powers to EC bodies. This conferral of partial powers is a conditional conferral. (further on see Pl. ÚS 50/04).

8. „Lisbon II“, Pl. ÚS 29/09

Judgment Lisbon II, dealing again with objections to Lisbon Treaty filed by a group of senators, answered some other procedural questions in the proceedings on preventive review of international treaties with constitutional order (e.g. interpretation of *rei iudicatae*, time limit for submitting a petition to open proceedings on the conformity of an international treaty with the constitutional order). As far as review of merits, the CC mainly reiterated its previous case law, especially judgments Pl. ÚS 19/08, Pl. ÚS 50/04 and Pl. ÚS 66/04 (sovereignty of the state, transfer of certain competences of state, functionality of EU institutional framework). The judgment has also clarified some notions in the Lisbon Treaty when adjudicating their conformity with the constitutional order.

Sovereignty of the modern state

The CC pointed out that, in a modern democratic state governed by the rule of law, the sovereignty of the state is not an aim in and of itself, that is, in isolation, but is a means for fulfilling the fundamental values on which the construction of a democratic state governed by the rule of law stands. The CC also concluded that the transfer of certain state competences, that arises from the free will of the sovereign, and will continue to be exercised with the sovereign's participation in a manner that is agreed upon in advance and is subject to review, is not a conceptual weakening of sovereignty, but, on the contrary, can lead to strengthening it within the joint actions of an integrated whole.

Table 2: Overview of principles related to the EU law in the Constitutional Court of the CR case law

<p>Applicational precedence of the EU law norms over the legal order of member states</p>	<p>Pl. ÚS 50/04, Pl. ÚS 56/05, Pl. ÚS 12/08</p>
<p>Not doctrine of the absolute precedence of Community law over the entirety of constitutional law; keeping a certain reserve to interpret principles such as the democratic law-based state and the protection of fundamental rights.</p>	<p>Pl. ÚS 50/04</p>
<p>Conditional conferral of powers to the EU organs, not the doctrine of absolute primacy; the delegation of a part of the powers of national organs may persist only so long as these powers are exercised in a manner that is compatible with the preservation of the foundations of state sovereignty of the CR, and in a manner which does not threaten the very essence of the substantive law-based state.</p>	<p>Pl. ÚS 50/04, Pl. ÚS 66/04, Pl. ÚS 19/08, Pl. ÚS 29/09</p>
<p>Constitutional order as a referential criteria for the adjudication of constitutionality for the CC of the CR</p>	<p>Pl. ÚS 50/04, Pl. ÚS 66/04, Pl. ÚS 36/05, Pl. ÚS 37/04, II. ÚS 1009/08</p>
<p>The current standard for the protection of fundamental rights within the EU cannot give rise to the assumption that this standard is of a lower quality than the protection accorded in the CR,</p>	<p>Pl. ÚS 50/04, Pl. ÚS 29/09, Pl. ÚS 19/08</p>

Interpretation in conformity with the principles of European integration and the cooperation between Community and Member State organs, that interpretation must be selected which supports the fulfillment of EU obligations, not one which would hinder their fulfillment.	Pl. ÚS 66/04, Pl. ÚS 56/05, Pl. ÚS 19/08
Interpretation of general legal principles contained in ECJ jurisprudence corresponds to fundamental rights contained in constitutional catalogues	Pl. ÚS 50/04, Pl. ÚS 36/05
CR's allegiance to the European legal culture and to its constitutional traditions	
Right and obligation of ordinary court to refer a preliminary question	II. ÚS 1009/08
Right to lawful judge, possible violation of the constitutionally-guaranteed right to one's lawful judge under specific circumstances and the concept of arbitrariness leading to a violation of the right to one's lawful judge	II. ÚS 1009/08
Ordinary court's obligation to justify its conclusions related to the EU law	Pl. ÚS 12/08

Conclusion

In conclusion, it is possible to summarize briefly several findings following from the above decision making activity of the CC of the CR towards the EU law. Firstly, it is possible to state that the CC of the CR can be ranged among European courts that approach the European law in active manner. Till now, several important conclusions, assessments and principles related to the EU law were formulated, some of them repeatedly. In principle, with regard both to number of decisions and the extent of adjudicated questions it is possible to speak about development towards settled CC case law in relation to the EU issues, this also with reference to the CC doctrine of binding force of its own decisions (Pl. ÚS 11/02). At the same time, another development, specification, clarification and deepening of CC case law in relation to the EU law can be expecting, also in connection with the interpretation of the Lisbon Treaty. Although the concept of national constitutional identity was not clearly established by the CC, there is clear tendency towards it. Besides others, it is very important that the CC paid its attention to the questions of interconnection between its EU related case law and constitutional concepts already expressed previously in the CC settled case law (democratic-law based state, protection of fundamental rights, material core of the Constitution, prohibition to restrict already achieved procedural rights, sovereignty of the state).

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