

**Democracy in Supranational
Regimes:
Constitutional Courts Position**

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German Constitutional Court

- **The EU=an association of sovereign national states.**
- **An association which exercises public authority on the basis of a treaty.**
- **Its fundamental order...is subject to the disposal of the Member States alone.**
- **In it, the citizens of the states remain the subjects of democratic legitimization.**
- **Germany's participation in the EU is voluntary and aims at securing peace and strengthening the possibilities of shaping policy by joint cooperation action.**

German Constitutional Court (cont.)

- **The (German) Basic Law does not grant the German state bodies powers to transfer sovereign powers in such a way that their exercise can independently establish other competences for the EU.**
- **It prohibits the transfer of competence (to the EU) to decide on its own competences.**
- **For this reason, withdrawal from the EU ...may...not be prevented by other Member States or the autonomous authority of the Union.**

German Constitutional Court (cont.)

- Whoever relies on integration must expect the independent opinion-formation of the institutions of the Union.
- What must therefore *be tolerated* is a tendency towards maintaining the *acquis communautaire* and to effectively interpreting competences along the lines...of implied powers.
- It is...constitutionally required *not to agree* dynamic treaty provisions with a blanket character (allowing the EU) to violate the Member States' constitutional identity which is not amenable to integration.

German Constitutional Court (cont.)

If an imbalance between character and the extent of sovereign powers exercised and the degree of democratic legitimisation arises in the course of the development of the European integration, it is for the Federal Republic of Germany due to its responsibility for integration, to work towards a change, and if worse comes to worst, even to refuse to further participate in the EU.

BVerfG, 2 be 2/08 vom 30/6/2009, Absatz-Nr. (1-421)

http://www.bverfg.de/entscheidungen/es20090630_2bve000208en.html

Czech Constitutional Court – The Role of the Court

- **The creation of a list of competences that cannot be transferred (to the EU) and the definition of ‘substantive limits to transfer of competences’ should be left to the legislature because this is a political question, which provides the legislature wide discretion.**
- **The Constitutional Court can only review such decisions after they are made.**
- **Restraint and judicial minimalism prevail over the demand for absolute legal certainty.**

Czech Constitutional Court – Democracy in the EU

- **The court is ready to intervene when the conditions for transfer of competences to the EU (set by Lisbon Treaty I judgment) are not respected.**
- **‘Representative democracy’ at 10(1) TEU means a combination of EU and national processes.**
- **‘European democracy only entails achieving a delicate balance between the national and European dimensions of democracy’.**
- **The court mentions the EU parliament and Council as sources of democratic legitimacy.**

Czech Constitutional Court – Democracy in the EU (cont.)

- **The current balance of powers evolved over time, reflecting the will of EU peoples, but can be changed by amending the Treaty.**
- **The democratic process on the Union and national level complement and condition each other.**
- **The existence of elements of representative democracy on the Union level does not exclude realisation of the same elements anticipated by the constitutional order of the Czech Republic, nor does it mean surpassing the limits of transferrals of competences given by Article 10a of the Constitution.**

Czech Constitutional Court – Democracy in the EU (cont.)

- **Sovereignty of the state in a modern democratic state is not an aim in itself...but it is a means to fulfill the fundamental values upon which the construction of the democratic state based on the rule of law stands.**
- **The EU has advanced most in the concept of shared – “pooled” sovereignty...it constitutes a *sui generis* entity which can hardly be subsumed into classical categories of constitutional theory.**

Czech Constitutional Court – Democracy in the EU (cont.)

- **The key manifestation of sovereignty of the state is also a possibility to further dispose of its sovereignty (or part of it), or to transfer some competences temporarily or permanently.**
- **The Czech application for accession to the EU notes: “...the Czech Republic has irrevocably come to the conclusion that within the context of modern European developments the exchange of a part of its national sovereignty for a shared supranational sovereignty and co-responsibility is an inevitable step to be taken for the benefit of its own country and the whole of Europe”.**

Czech Constitutional Court – Democracy in the EU (cont.)

- In Lisbon I judgment the Czech Constitutional Court recognized the functionality of EU institutional framework, noting that its position may change in the future if it appears that this framework is demonstrably non-functional. The Court stressed that in this sense, not only the text and context, but also future application of the Lisbon Treaty would matter.**

Czech Constitutional Court – Democracy in the EU (cont.)

- **The Czech Const. Court may review whether any act of EU bodies exceeds the powers that the Czech Republic transferred to the EU under Article 10a of the Constitution.**
- **However, the Court assumes that such a situation can only occur in exceptional cases as abandoning the identity of values or exceeding the scope of conferred competences.**

**Lisbon II case as translated by Dr. Jan Komarek:
<http://www.usoud.cz/file/2506>>.**



Thank You

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