Transition to Democracy in the Czech Republic: from totality to the EU membership

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Your Excellencies, dear Colleagues, Ladies and Gentlemen,

It is with great honour and humility that we stand before such a distinguished audience, grateful for the privilege to share insights into the Czech Republic's journey toward democracy. As representatives of the Law Faculty of Palacký University, we hold dear the core values of integrity, humanity, democracy, and civic duty – principles instilled in our institution since its modern inception. Our commitment to these values has not only gained recognition, including the prestigious Hannah Arendt Prize, but has also guided our pursuit of excellence in teaching and research across various legal domains.

Today, we embark on a collective endeavour to illuminate the intricate facets of our nation's transition to democracy. At first, we will provide an introduction to this transformative process, emphasizing the critical role of prosecuting crimes from the communist past – a challenging but indispensable element of transitional justice. Second, we will then navigate through the Czech Republic's journey into the European Union, illustrating how the EU membership process has served as a catalyst for democratic consolidation in the Central and Eastern European region, guiding the transition from post-communist regimes to stable and participatory democracies. Together, we hope our reflections will contribute to the global dialogue on the intertwined dynamics of justice and democracy. Thank you for the opportunity to share with you this exchange of knowledge and experiences.

1. Prosecution of crimes of communist regime

1.1. Introductory remarks

The prosecution of crimes from the past is a crucial element in the transition to democracy as it promotes accountability, justice, and the rule of law. Addressing historical injustices, such as human rights abuses and crimes committed by authoritarian regimes, signals a commitment to upholding fundamental democratic values. Prosecution not only provides a sense of closure for victims and their families but also serves as a deterrent against future abuses, fostering a culture of accountability. Moreover, holding perpetrators accountable contributes to the establishment of transparent and accountable institutions, crucial for building public trust in the democratic process. By confronting the crimes of the past, a nation can confront its history honestly, learn from mistakes, and lay the foundation for a society that values human rights, justice, and the principles of democracy. According to Elin Skaar (Norwegian expert on democratization and transition), roughly fifty countries had undergone democratic transitions at the close of the twentieth century, with only a third having dealt actively with the legacy of human rights violations. This justifies the focus of this part of the lecture.

Two foundational assumptions frame the subsequent discussion on prosecution of communist crimes. Firstly, it is essential to acknowledge that, despite a shared history of communist rule, Central and Eastern European (CEE) countries varied considerably in their approaches to achieving justice, influenced by diverse factors. Secondly, as exemplified by the case of the Czech Republic, these divergent approaches notwithstanding, CEE countries collectively maintained a commitment to the fundamental principles of criminal justice and the rule of law.

This part of intervention is structured in three segments. Firstly, a very brief overview will be provided of the general context, mentioning foundational insights into the background, scope, and nature of the regime change that significantly influenced the characteristics of the transition process. Subsequently, the principal mechanisms of transitional justice that have been commonly employed across numerous Central and Eastern European countries will be addressed. The concluding section will be focused on issue of prosecuting communist crimes, elucidating two interrelated legal quandaries: the principle of legality and statutory limitations.

In the interwar period, several CEE countries embraced democratic governance, yet the aftermath of World War II witnessed geopolitical shifts. Notably, in 1948, Czechoslovakia experienced a coup d'état, leading to 40 years of communist rule marked by severe crimes committed by the regime. The turning point came in 1989 with the collapse of communist regimes across Europe, prompting radical changes in most nations, except Bulgaria, where the transformation from communism to democracy was more gradual. The Central and Eastern European countries (CEEC) formed a seemingly homogenous group due to shared characteristics like one-party rule, political surveillance, and a planned economy under communist regimes. However, individual experiences varied, influenced by factors such as diverse starting positions in 1989, distinct elite-driven transition approaches, and varying levels of commitment to the overarching transition goals. For instance, Czechoslovakia faced challenges like normalization, with hardliners reluctant to compromise. This divergence in responses underscores the unique and individual nature of the transition processes across the CEEC region.

1.2. Prosecution of crimes committed during the communist rule

Most of the countries, including the Czech Republic, adopted three basic means of transitional justice: access to archives, lustration (i.e. process of screening individuals occupying influential posts in political or economic sphere with the aim to determine whether, and if so, to what extent, they collaborated with the former secret police), and prosecution of the crimes committed during the communist rule.

Let us provide two examples of the crimes committed during the communist past:

- **Milada Horáková (show trials / judicial murder)**

The show trial of Milada Horáková took place in Communist Czechoslovakia in 1950. Accused of conspiracy against the state, Horáková, a democratic politician and human rights advocate, faced a politically motivated trial characterized by staged proceedings and false charges. Despite her courageous defense, she was unjustly convicted and subsequently executed, becoming one of the symbols of resistance against the oppressive Communist regime.

- **Border Shooting Cases**

The so-called border shooting cases referred to incidents involving the use of lethal force by authorities against individuals attempting to cross national borders during the Cold War era. These incidents often occurred in the context of attempts to escape from communist regimes, particularly in countries like East Germany, Czechoslovakia, and Hungary. The border shooting cases were emblematic of the harsh measures implemented to prevent citizens from seeking refuge or pursuing freedom beyond the confines of the Iron Curtain.

Considering the imperative need for justice in this context, pertinent inquiries emerge regarding the justice should be achieved:

- Is it appropriate for the new regime to prosecute acts as crimes even if they did not constitute a crime under the prevailing law at that time?
- Alternatively, should the focus be on prosecuting crimes that were conspicuously neglected under the previous system for political reasons?
- In situations where the statute of limitations for these offenses has lapsed during the transition, do the new authorities retain the capacity to hold perpetrators accountable for their wrongdoings?
- Alternatively, should they, at a minimum, disclose the identities of wrongdoers, or is there a contemplation of adopting a stance of pardon and forgetfulness?

1.2.1. The principle of legality

One of the most troublesome issues in prosecution of crimes of the past concerns the choice of applicable law. Any effort to prosecute communist crimes must conform to the principle of legality: criminal proceedings can only take place when acts were punishable under the law in force at the time when these acts occurred (*nullum crimen sine lege praevia*), whereas criminalization can stem from domestic or international law. The principle of legality is enshrined as an absolute human right in all international human rights catalogues (Article 11(2) UDHR, Article 15(1) ICCPR, Article 7 ECHR, Article 9 ACHR, Article 7(2) ACHPR). Practice and methods in prosecution of the communist crimes adopted across the CEE countries reveal considerable differences and from comparative perspective pose a unique legal laboratory.

In the Czech Republic, the domestic practice very much followed the German pattern, although the approach finally taken was not entirely identical. The basic presumptions adopted both by the Czech and German courts were that all acts must be evaluated on the basis of the domestic criminal law applicable at the material time, i.e. at the time of the commission of the act.[1] Exemplary cases from the Czech Republic and Germany deal with prosecution and punishment of the border shooting of would-be escapees. In German trials, the accused persons (both foot-soldiers, former high-ranking officials and creators of oppressive state policy) referred to the GDR's State Borders Act which provided legal basis for permitted use of firearms against escaping persons. Their *ex post facto* criminalization, they argued, was in breach of the principle of legality.

The Federal Constitutional Court (*Bundesverfassungsgericht*) held that the German domestic law applicable at the material time should have been interpreted in the light of international human rights obligations of the GDR. Had the GDR's followed this entirely foreseeable path, it would not have been necessary to open the cases in 1990s. This line of reasoning was later sanctified by the ECHR. What is important here is the fact that criminalization of given conduct was derived from the domestic law, even though this law was constructively reinterpreted with respect to international legal standards. The practice of the Czech courts shared this preliminary axiom (criminalization on the basis of municipal law), but refused to shift interpretation of the law in force at the time of the shooting at the borders towards international human rights obligations - even though Czechoslovakia was a State party to the ICCPR from 1976.[2] Shooting at the borders, or more precisely at the Czechoslovakian side of the borders, was allowed by national law. Firearms could have been used by border guards after previous warning against persons who attempted to cross borders illegally, certain categories of persons (e.g. dangerous perpetrators of crimes) could have been shot-to-death even without prior notice. No matter how bad and harsh this regulation is from the contemporary perspective, it formed applicable legal

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1 Cf. Bundesgerichtshof, Fifth Criminal Senate, Judgment of 3 November 1992, case no. 5 StR 370/92. *Streletz, Kessler and Krenz v. Germany*. ECHR, Grand Chamber, Judgment, 22 March 2001, para. 19, para. 20. Cf. *K.-H. W. v. Germany* ECHR. Grand Chamber, Judgment, 22 March 2001, para. 17. For the Czech jurisprudence compare e.g. High Court in Prague, Judgment of 1 October 2001 (*Pavel Čada et al.*).

2 Cf. 120/1976 Coll. Quoted in Kühn, Z., *supra*, p. 218.

background of successor trials in the Czech Republic. Therefore, the Czech jurisprudence concerning shooting at the borders penalized only trespass of the law in force at the material time.

1.2.2. Statutory limitations

Another legal obstacle in prosecution of crimes of the former communist regimes concerned issue of statutory limitations. Once again, from comparative perspective, each of the monitored countries used different model how to overcome this hurdle.

In 1993, the Parliament of the Czech Republic adopted act on the illegality of the communist regime and resistance to it (198/1993 Coll.) which provided for suspension of statutory limitations for crimes that had not been prosecuted for political reasons.[3] Soon after adoption of this act, its constitutionality was challenged before the Czech Constitutional Court. Applicants (members of the Czech Communist Party) argued that subsequent suspension of prescription period is in breach of principle of legality (as enshrined in Article 40(6) of the Czech Charter of Fundamental Rights and Freedoms). The Constitutional Court dismissed this argumentation pointing to the fact that "*integral parts of criminal prescription are will, effort and willingness of State to prosecute crimes* […] *if State refuses to conduct criminal prosecution, prescription is senseless: in such cases, prescription is a mere fiction.*"[4] In *Polednová v. Czech Republic*, this approach was endorsed by the ECHR.[5] The conclusion of the Constitutional Court brought about diverse results, different courts and judges adopted conflicting (affirmative and deprecatory) decisions.[6] By the amendment of the Criminal Code (327/1999 Coll.), the Czech Parliament went even one step further and legislated that crimes committed between 1948 and 1989 are excluded from prescription for good.

A wider analysis of the issue in the Central European context would demonstrates varying approaches in the CEE countries, emphasizing their wide margin of appreciation in prosecuting crimes of the past. In conclusion, despite strong and weak points in chosen paths, CEE countries, including the Czech Republic, actively confronted their past, rejecting the notion of pardoning and forgetting. From a legal perspective, they shared the crucial view that disregarding fundamental principles of criminal justice is incompatible with the ideals of the rule of law, reflecting a commitment to the transition to democracy and the rule of law.

2. Transition to democracy and the EU membership

This part of the speech will focus on the transition to democracy of the Czech Republic and will deal with the reintegration to democratic structures of the European Union. The main emphasis will be put on the transformation of Czech law in the process of EU accession and membership as well as the role of judiciary, especially the constitutional one. Definitely, we may not cover all the developments and go into detail but we will try to show the main mile stones in the process.

2.1. The way to the EU

In November 1989 after the Velvet Revolution the Czech Republic had to deal not only with the heritage of previous totalitarian regime and its injustice, it also desired to looked forward. It started to implement economic reforms and to rebuild its legal system in many other areas reaching far beyond

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3 The relevant part of the act provides: "*The period of time from 25 February 1948 until 29 December 1989 shall not be counted as part of the limitation period for criminal acts, if due to political reasons incompatible with the basic principles of the order of a democratic state, a person was not finally and validly convicted or the charges against him were dismissed*."

4 Czech Constitutional Court, Pl. ÚS 19/93, 21 December 1993.

5 *Polednová v. Czech Republic*. ECHR, Appl. No. 2615/10, Fifth Section, Decision on Admissibility, 21 June 2011."

6 For concurring rulings cf. Supreme Court, 4 Tz 44/2002, Decision of 28 February 2002 and Supreme Court, 7 Tz 44/2002, Decision of 28 August 2002. Practice of the Supreme Court was unified and coordinated with the decision of the Constitutional Court only in 2005 – cf. Supreme Court, Grand Panel, 15 Tdo 163/2005, Decision of 7 April 2005.

the necessity to deal with the laws causing injustice. It concerned both the internal changes of the most fundamental laws including the new Constitution (1993)[7] together with the new constitutional Charter of Fundamental Rights and Freedoms (1991)[8], restructuring the Czech judiciary, which resulted into the creation of the Constitutional Court (1991), two new High Courts (1993, 1996) and the formation of the brand-new Supreme Administrative Court (2003).

An integral part of the new direction of the reborn democracy was also the desire to re-integrate into the West-European structures and alliances. This included most prominently **the accession to the NATO (1999)** and **most importantly to the European Union (EU, 2004)**. Especially the accession to the EU was a multilevel process reaching all areas of the organisation of society, including the Czech legal system and enforcement of law. To reach this aim, every candidate state had to go through a difficult accession process. Thus, the Czech Republic as well as other candidate countries from Central and Eastern Europe had to fulfil a number of conditions formulated by the EU at its Copenhagen summit (1993). The so-called **Copenhagen criteria** include:

- stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- a functioning market economy and the ability to cope with competitive pressure and market forces within the EU;
- the ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (the 'acquis'), and adherence to the aims of political, economic and monetary union.[9]

Consequently, the accession of Central and East European countries to the EU was not a hasty process; on contrary, it required a thorough transformation of political systems, economy and legal orders. It is sufficient to say that it necessitated the adoption of thousands of EU regulations, directives and other legal acts. This process included a complete screening of national legislation, its comparison to the EU rules and, accordingly, the legal changes at national level. At the EU level, it was the European Commission who was responsible for the process. It tracked these efforts in individual areas, namely negotiation chapters that comprised over 30 groupings of legislation. It included for example laws covering four freedoms of internal market (free movement of goods, free movement for workers, right of establishment and freedom to provide services, free movement of capital), public procurement, competition law and also judiciary and fundamental rights.[10] All the chapters had to be successfully closed and national laws had to be fully put in line with the EU rules. Finally, the Czech accession had to be approved by all EU countries as well as via referendum in the Czech Republic. It took place in 2003 with the support of 77,3% of voters for accession.[11]

2.2. The principles of EU law and the role of ordinary courts

The accession to the EU in May 2004 was not the end of all indispensable efforts. In this regard, let us shortly focus on the role of Czech courts and the influence of EU law in their decision-making process. First of all, we could remind that the Court of Justice of the European Union (CJEU) – as the court serving for the whole European Union – proclaimed that national courts serve as ordinary EU courts meaning that their primary task is to apply the EU legislation on everyday basis.

This is thanks to the principle of direct applicability and direct effect of EU law, these principles being set up at the beginning of EU integration by CJEU in the famous Van Gen den Loos case.[12] Simply said,

[7] https://www.psp.cz/en/docs/laws/1993/1.html.

[8]https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/Listina_English_version.pdf..

[9] https://ec.europa.eu/commission/presscorner/detail/en/DOC_93_3.

[10]https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/conditions-membership/chapters-acquis_en.

[11] For more see Lebeda, T.: The Referendum on the Accession of the Czech Republic to the European Union, Czech Journal of Political Science, No. 3, 2004, pp. 206-222.

[12] 26/62 NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration, ECLI:EU:C:1963:1.

direct applicability means that whenever an EU law act is adopted, it is directly applicable in all EU Member States without necessity of its further incorporation in national legal orders as is usually required in relation to the international law. The principle of direct applicability is crucial for uniform application of EU law in all Member States, which is essential for proper functioning of EU law. The principle of direct effect of EU law is then regarded as the possibility of individuals to have enforced their rights (as well as obligations being imposed upon them) by national courts. This means that national courts are obliged to apply EU law directly and fully in all disputes, which are in the scope of application of EU law.

These two crucial principles together with the principle of supremacy of EU law over national law (see CJEU decision in Costa v. E.N.E.L.[13]) and their enforcement are inevitably dependent on the willingness of national courts to follow them in individual disputes. From this perspective, national courts stand behind the success of EU law as they accepted these doctrines formulated by the CJEU and were ready to take direct applicability and direct effect for granted. In the time of the Czech accession to the EU, the Czech courts were familiar with these already well set-up principles and, correspondingly, their obligation to apply EU law. Thus, they have had no substantial problem with the requirement to do so.

In case the Czech courts would not be sure about the correct interpretation or validity of EU law, they have at their disposal the preliminary ruling procedure under art. 267 Treaty on the Functioning of the EU (TFEU). They may interrupt the proceedings and refer questions to the CJEU asking about the interpretation and validity of EU law. As the answer of the CJEU is binding upon them as well as other courts in the EU, this procedure becomes a very significant means for unifying the application of EU law in all Member States. It should be added that lower courts are not obliged to use this procedure, whereas the courts of last instance in case of doubts on interpretation and validity of EU law have the duty to refer the questions to the CJEU. This obligation in the Czech judicial structure would definitely concern both Czech supreme courts, although in minor cases this obligation would concern also lower courts.

As for the judicial practice,[14] the Czech courts first used the preliminary ruling procedure in 2007 in a case concerning the concept of "working time" regulated in the relevant EU directives.[15] The question was whether working time includes on-call duty of doctors/physicians present at their work place; the answer of the CJEU was positive in this regard. Since this first, more or less a test case there was a number of preliminary references initiated by all levels of Czech courts except the Constitutional Court. Up to now the lower courts initiated more than 40 references with the first reference in 2007. The Czech Supreme Court (SCC) lodged 18 references with the first reference in 2010 and Supreme Administrative Court (CSAC) formulated 45 references with the first reference in 2008. This number might seem quite substantial; however, as could be read from statistics from other EU Member States, the Czech courts stand below average, though the number of references is growing from year to year. It may be added that in the regional comparison the most active judges in this region come from Poland and Hungary, the numbers being around three time higher.[16] Anyway, from the general perspective it may be concluded that the ordinary courts fulfil well their role in application of EU law and growingly participate in the dialogue with the CJEU.

2.3. Czech Constitutional Court and interaction with the EU law

A special role in the construction in EU judiciary is played by national **constitutional courts**. In case of the Czech Republic, it should be born in mind that the Czech Constitutional Court (CCC) is not part of

[13] 6/64 Flaminio Costa v E.N.E.L., ECLI:EU:C:1964:66.

[14] Stehlík, V. Sehnálek, D.: The Use of the Preliminary Ruling Procedure by Czech Courts: Historical Retrospective and Beyond, Baltic Journal of European Studies, Vol. 9, No. 4, 2020.

[15] See case C-437/05 Jan Vorel v Nemocnice Český Krumlov, ECLI:EU:C:2007:23.

[16] Dřínovská, N., Vikarská, Z.: Evropská zletilost českých (nejvyšších) soudů aneb prvních 18 let předběžných otázek z Brna (Coming of Age of the Czech (Supreme) Courts, or the First 18 Years of Preliminary References from Brno), Časopis pro právní vědu a praxi, no. 1, 2023,vol. XXXI, pp. 9–45.

common judiciary and its main task is to guard constitutionality of Czech law and constitutional conformity of EU law in ultima ratio situations.

Correspondingly, the CCC has been influenced by developments with other constitutional courts in the EU, especially the doctrine of the German Federal Constitutional Court (GFCC). The GFCC is famous for its decision called Solange I (1974)[17] where it set up that the precedence of EU law over German law is conditioned by an adequate standard of human rights protection at the EU level. Otherwise, the GFCC would be ready to disregard the EU law and apply German human rights standards instead. This decision caused that afterwards the CJEU broadly developed the doctrine of human rights as general principles of EU law, which were at the beginning formulated mostly in its case-law. This led to the decision of the GFCC in Solange II (1986)[18] where it proclaimed the level of EU human rights protection as sufficient and the disapplication of the EU law in Germany is not required. Thus, the threat of the distortion of unity in the application of EU law was averted. We could add that the human rights protection was further on increased by changes in the EU founding treaties through the revisions, among others, through the Treaty of Lisbon (in force 2009) by which the EU Charter of Fundamental Rights became legally binding in the whole EU. The last decision of the GFCC which should be referred to is so called Maastricht decision (1993) where the GFCC confirmed its power for *ultra vires* control, namely the control whether the EU does not transgress the transferred competences on the detriment of Germany.

From the Czech constitutional case-law we could shortly refer to four key judgments delivered by the Czech Constitutional Court, namely Sugar Quotas judgment, Arrest Warrant judgment, Lisbon Treaty judgment and Slovak Pensions judgment.

Sugar quotas judgment – setting up principles

The so called Sugar quotas judgment[19] can be regarded as a leading case. It clearly set up that the legal basis for the application of EU law in the Czech Republic is art. 10a of the Czech Constitution through which the EU law penetrates into the Czech legal order. Importantly, the application of EU law has its limits and is in its finality under auspices of the CCC. It means that the conferral of Czech sovereign powers is conditional. The original bearer of sovereignty remains the Czech Republic, sovereignty of which is still founded upon art. 1 par. 1 of the Constitution. According to this article, *the Czech Republic is a sovereign, unitary, and democratic state governed by the rule of law, founded on respect for the rights and freedoms of man and of citizens*. Further on, the CCC is not competent to assess validity of EU law norms (comp. ECJ in Foto-Frost[20]) as well as the CCC accepted that the EU law enjoys precedence over the legal orders of Member States, including the Czech one.

However, the EU law and its implementation must not be in conflict with the principle of the democratic law-based state stated in art. 1 par 1 of the Constitution as well as with art. 9 par. 2 according to which *any changes in the essential requirements for a democratic state governed by the rule of law are impermissible* and par. 3[21] of this article according to which *legal norms may not be interpreted so as to authorize anyone to do away with or jeopardize the democratic foundations of the state*. Thus, in brief, in Sugar Quotas case the CCC formulated the basic position of the Czech constitutional legal order in relation to the EU law which is strongly inspired by judicial decisions in other Member States.

[17] Solange I, BverfGE 37, 291, 29 May 1974.

[18] Solange II, BverfGE 73, 339, 22 October 1986, for more see https://opil.ouplaw.com/display/10.1093/law/9780198743620.001.0001/law-9780198743620-chapter-20.

[19] Pl. US 50/04 - decided on March, 8, 2006.

[20] 314/85 Foto-Frost v Hauptzollamt Lübeck-Ost, ECLI:EU:C:1987:452.

[21] Legal norms may not be interpreted so as to authorize anyone to do away with or jeopardize the democratic foundations of the state.

European Arrest Warrant – euro-conform interpretation of the constitutional rules

In European Arrest Warrant case[22] the CCC dealt with the constitutionality of the EU framework decision setting up the European arrest warrant.[23] The aim of this instrument is to introduce a simplified cross-border judicial surrender procedure for the purpose of prosecution or executing a custodial sentence or detention order.[24] The objection was that according to art. 14 para 4 of the Czech Charter of Fundamental Rights *no citizen may be forced to leave his/her homeland*. The CCC dealt with this clash between the wording of Czech constitutional law rule and the EU law by setting the principle that domestic legal enactments, including the Constitution, should be interpreted in conformity with the principles of European integration and the cooperation between EU and Member State institutions. Correspondingly, if the Constitution and the Charter of Fundamental Rights and Freedoms can be interpreted in several manners, then the CCC will select the interpretation which supports the carrying out of that obligations of the Czech Republic.

Thus, the CCC set up the principle of euro-conform interpretation of the Czech constitutional rules which was applied also in the case concerned and the constitutionality of European arrest warrant was upheld. In principle, the decision is based on the teleological interpretation of the provision concerned, as the provision was included in the Charter as a reaction to the practices of the previous regime, which regularly forced the opposition movement' members out of the country. In the EU the aim and context of the extradition is very different; the EU itself is based on the free movement of persons. In fact, the standards/requirements for criminal proceedings enshrined in the Czech constitutional order are observed, and protection is equivalent in all EU Member States. All Member States are also signatories of the European Convention on Human Rights[25] setting up a common standard of protection.

Lisbon I – status of EU Charter of Fundamental Rights

The third key judgement of the CCC is case Lisbon I.[26] This case concerned the constitutionality of the Lisbon Treaty which revised the constitutional structure of the EU. From a number of issues examined by the CCC we could refer especially to the status of EU Charter of Fundamental Rights that became legally binding by the Lisbon Treaty. The main question in short was how this change will influence the level of protection of human rights in the Czech Republic. According to the CCC, the EU Charter would primarily bind EU bodies and it would bind Czech bodies only in the event of application of EU law. As such, it does not expand the area of application of EU law beyond the framework of the EU powers. EU Charter recognizes the fundamental rights arising from the constitutional traditions common to the Member States and it must, therefore, be interpreted in accordance with these traditions.

Definitely, the protection of fundamental rights and freedoms is part of the material core of the Czech Constitution. In case the standard of protection ensured in the EU would become unacceptable, the bodies of the Czech Republic would once again have to take over the transferred powers, in order to ensure protection of the standard. However, the CCC did not observe anything like that at the that time. Prima vista there is no conflicting provision in the EU Charter and the catalogue of rights in the EU Charter is fully comparable to the set of fundamental rights and freedoms protection in the Czech Republic. In summary, generally, the EU Charter is consistent with the Czech Charter, decisive will be the review in individual cases.

[22] Pl. US 66/04 decided on May 3, 2006.

[23] 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision, OJ L 190, 18/07/2002, p. 0001 – 0020.

[24] https://commission.europa.eu/law/cross-border-cases/judicial-cooperation/types-judicial-cooperation/european-arrest-warrant_en.

[25] https://www.echr.coe.int/documents/d/echr/convention_ENG.

[26] Pl. ÚS 19/08 decided on November, 26, 2008.

Slovak Pensions case – ultra vires decision of the CJEU

Last, we could briefly touch the Slovak Pensions case,[27] which actually came out of the conflict between Czech Supreme Administrative Court (SAC) and CCC dealing with the Czech legislation together with the case law of the CCC on pensions of Slovaks working in the Czech Republic before the split of Czech and Slovak Federation at the end of 1992. The SAC thought that the legislation including principles in the judgments of the CCC breached the requirement of non-discrimination based on nationality as it gave a more favourable treatment to the Slovaks in comparison to citizens who might be in a similar position. To be sure about conformity with the EU law, the SAC initiated preliminary ruling procedure to the CJEU. In its decision,[28] the CJEU found the Czech law discriminatory. However, in the subsequent proceedings the CCC disagreed with the CJEU. Its main argument was based on the fact that the Czech rules concerned are dealing with the past when there was a common federative state of Czechs and Slovaks and the problem is rooted in pre-EU accession. Thus, it is outside the scope of EU law and competence of the CJEU. Correspondingly, the CJEU ruled *utra vires*.

The Slovak Pensions case was the first and up to now the last case where the CCC excluded the application of EU law and ruled openly against the CJEU. It may be added that, although the decision might be considered as a break-through case, in reality its effects were rather small. In between, the Czech legislation changed in favour of all EU citizens to be covered in the pension scheme and the case might be more or less considered to be an example of the attempt of the SAC to overrule the case-law of the CCC via EU law/CJEU then a strong revolt of the CCC against the CJEU.

3. Conclusions

We tried to show some bits on the way of transformation of the Czech legal order from the non-democratic country to the country, which is part of democratic European family. This is a place where the Czech Republic belonged to for many years. This long democratic tradition was violently interrupted by the destruction of democracy after World War II. After the Velvet Revolution in 1989 our country had to first remedy the injustice caused during the long years of oppression and lack of freedom and also had to get rid of the sad heritage of broken legal system. One of the strong impetus for the first issue were the laws on access to communist archives, lustration laws and prosecution of the crimes committed during the communist regime. The latter was then the preparation for the accession to the EU, which is a very close integration of European states based on freedom, democracy and respect to human rights. These efforts caused not only a deep change of the Czech legal order, but also brought in new instruments for protecting democracy as well as participating in the refining of EU legal order. This is being done both in the legislative process at the EU level, and, importantly, through the application of EU law on an everyday basis by Czech ordinary courts as well as Czech Constitutional Court.

It is pleasing to conclude that Czech courts have played this role fairly well. They more and more actively participate in the judicial dialogue with the CJEU through the preliminary ruling procedure. A strong support for fulfilling the EU law obligation could be found also in the judgements of the CCC that accepted the EU law and its precedence over Czech law, ruled on the euro-conform interpretation of Czech constitutional rules as well as accepted the standards of protection of human rights in the EU. At the same time, the CCC – the same as other European constitutional judiciaries – formulated constitutional limits of transfer of powers to the EU. Thus, it became one of the players in the constitutional check-and-balances dialogue in the EU.

[27] Pl. ÚS 5/12, decided on February, 14, 2012.

[28] C-399/09 Marie Landtová proti Česká správa sociálního zabezpečení, ECLI:EU:C:2011:415.