

# THE TRANSFORMATION OF THE CZECH REPUBLIC'S JUDICIARY UNDER THE INFLUENCE OF ITS INTEGRATION INTO THE EUROPEAN UNION AND THE DOMESTIC APPLICATION OF THE EU LAW BY CZECH COURTS

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*Abstract* The Czech Republic has become one of the new EU Member States in May of the year 2004. Consequently, the EU Law has become the integral part of the Czech Republic's legal order. Since then, all the state authorities have its obligation to comply with the European Union law and apply it duly within its daily activity. The important role is played at this respect undoubtedly by national courts solving the conflicts of everyday life.

Actually, the Czech Republic is now within its 9th year of its EU membership and it's a very interesting and practical to study how Czech court apply the European Union law within its everyday activity and whether they respect it or not and to which extent. The way as well as the extent of the EU law application by Czech courts on the Czech territory is to be demonstrated on three main areas:

- Application and respect of basic EU Law principles by Czech courts, i.e. supremacy of the EU law, the direct and indirect effects;
- Prejudicial questions' practice in front of Czech courts;
- Issue of Member States responsibility for the infringement of the EU Law.

Thusly, this paper is supposed to give to the readers a general overview about the EU application "style", that is to say the "EU Law life" on the Czech territory itself, in order them to get a basic knowledge on this issue for pure informative as well as law-related comparative reasons.

**Key words:** *supremacy, directives, the Constitutional Court of the Czech Republic, general courts, administrative courts, Court of Justice of the European Union, prejudicial questions.*

## **I. Commitments stemming from the membership of the Czech Republic in the European Union**

The Czech Republic has become one of the new EU Member States in May 2004. As a result of the Czech integration into the European Union, the EU Law has become the integral part of the Czech Republic's legal order. Since then, the Czech courts have its obligation to comply with the EU law and apply it duly within its daily activity as well as to provide to the rights resulting from the EU legal acts proper protection.

Since the admission of the Czech Republic into the European Union it is to be presumed that on the Czech Republic's territory as a result of powers transfer to the EU institutions exists so-called the bipolarity of legal sources, that is to say co-existence of two legal systems; the law created by Czech legislator on the one side and the EU law on the other side. The realization of this bipolarity in the Czech Republic and therefrom resulting the application of the EU law in the territory of the Czech Republic as well as in the other EU Member States is governed by basic principles of the EU law.

First of all, the principle of supremacy, sometimes referred as to primacy or priority is the basic principle upon which is the existence and the functioning of the European Union

built and stems from the jurisdiction's activity of Court of Justice of the European Union (below also as "the Court").<sup>1</sup> After all, according to the Court this principle represents an inherent element of specific nature of the European Community (resp. now the European Union).

The principle of the supremacy means that whatever internal legal act which is in contradiction with whatever EU legal source, cannot be applied by the domestic authority or court. On the contrary, the domestic authority or court has a must to apply fully the EU legal act. Actually and practically that implies so called the "application primacy", as respective domestic legal act that is not in accordance with EU law, can't be cancelled by the domestic authority or court deciding in respective case; the domestic authority or court is not allowed to delete that contradictory act from the legal order, while only and simply it is not going to apply it and shall put it aside; that in favour of full and unconditional application of respective EU legal act.

Following substantial principle of the EU law application on the Member States territory is the principle of direct and immediate effect which has been determined for the first time in the case of the Court "Van Gend en Loos".<sup>2</sup> According to this principle the EU law<sup>3</sup> is to be applied on the Member States territory directly within prior necessary implementation to the internal laws and Member States subjects can claim their rights established by the EU law straight in front of domestic authorities and courts.

The indirect effect<sup>4</sup> is one of the following important principles governing the EU Law application and can be interpreted as the obligation of the Member States to interpret the domestic law in harmony with the EU Law. This principle stems also from the case of the Court and regards especially the directives, as these can not be usually applied directly and hence, tends to ensure efficient enforcement of EU legal norms lacking the direct effect. On the other hand, the EU immediate and direct applicable legal norms<sup>5</sup> don't have any need of this principle for its application; their due application on the territory of the Member States shall be ensured on the basis of the sole existence and realization of the direct and immediate effect principle.

## **II. The EU Law in front of Czech Courts**

The duty to apply the EU Law on the Member States territory concerns all domestic authorities, whose task is to put into practice the EU law in its respective Member States. The important role is played especially by the courts solving the conflicts of everyday life. It can be generalized that the most frequently the EU law appears in front of administrative courts that state upon the conflicts against the decisions edicted in the field of public administration by public authorities and those are nowadays widely bound by the EU Law. It's to be reminded that in the administrative law-related questions, first of all, these are the administrative bodies (authorities) that shall apply – when needed – the EU Law. When all appeal means of the parties taking part at the administrative proceedings are exhausted and the case eventually reaches the administrative court, the latter is obviously compelled to apply it as well. The contact and engagement of the Czech Courts with the EU law in the Czech Republic appears also in several areas of civil and commercial law-related agenda.

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<sup>1</sup> C-6/64, *Flaminio Costa v. ENEL* [1964] ECR 585

<sup>2</sup> C-26/62, *N.V. Algemene Transporten Expeditie Onderneming van Gend en Loos v. Nederlandse Administratie der Belastingen* [1963] ECR 1

<sup>3</sup> not all the EU legal acts are endowed with this principle; For more details see e.g. Svoboda P. *Úvod do evropského práva*. 4th edition. 2011, p. 145-152

<sup>4</sup> Referred also sometimes as harmonic or conformity effect

<sup>5</sup> i.e. EU regulations, decisions and as well usually Treaties' provisions.

Lesser then is presented in the area constitutional, the least then in that criminal-law related issues.<sup>6</sup>

a) The supremacy of the EU law and the direct effect in front of Czech courts

As already suggested, the principle of supremacy as well as the principle of direct and immediate effect constitute the crucial basic principles of the EU law in the sense of its manifestation in everyday's „domestic legal life“ of Member States and mean that (i) any domestic (legal) act entering into the conflict with any EU legal source – this internal legal act must not be applied by respective domestic authority on one side in favour of the full application of respective EU legal norm on the other side as well as that (ii) the EU legal norms shall be applied on the Member States territory directly without necessity of prior transposition into the Member States legal order (immediate effect) correlative with therefore resultating rights of internal individuals to claim their rights established by the EU law directly in front of respective domestic authorities including courts (direct effect).

The Constitutional Court of the Czech Republic („Ústavní soud České republiky“)<sup>7</sup> is the Czech special judicial authority protecting the constitutionality. Even if the Czech Constitutional Court is not considered to be the part of general judicial system, as focused uniquely on the constitutional rights protection, it's deemed to represent – equipped with its de facto authority – the highest judicial body in the Czech Republic.

Therefore, as for the Czech Constitutional Court, it can be stated that this crucial Czech judicial body respects the supremacy of the EU law and its direct effect. In this context, the Czech Constitutional Court leaves fully to the EU law that determines itself the effects of its legal act and that of course in the limits of transferred competences from the CR towards the EU. The determination of the supremacy and direct effect principles as well extent and conditions of these is thus without any futher domestic limits left fully by the Constitutional Court to the will of the EU legislator and the directly applicable law of the EU should directly, straigh enter into the domestic legal order of the Czech Republic. From the constitutional point of view, the internal means of effects of the EU laws in the Czech law, resp. of the direct entrance of the EU law in the Czech legal order is the number 10a of the Czech Constitution.<sup>8</sup> Nevertheless, the Constitutional Court conditions these effects by the the fact that the transferred powers from the Czech Republic to the European Union are performed by the latter in conformity with the respect of the basis of the state sovereignty and doesn't menace the core of the state of law. These limits of the EU law effects in the Czech law are based on the article 1 paragraph 1<sup>9</sup> and on the article 9 paragraph 2<sup>10</sup> of the Czech Constitution.<sup>11 12</sup>

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<sup>6</sup> For more detail see Bobek, M., Bříza P., Komárek J. Vnitrostátní aplikace práva Evropské unie. Vydání 1. Praha: C.H. Beck, 2011 (below as „Vnitrostátní aplikace práva Evropské unie“), p. 121-122

<sup>7</sup> More information about the Constitutional Court of the Czech Republic can be found e.g. on its web site pages [www.concourt.cz](http://www.concourt.cz)

<sup>8</sup> resp. its article 10 paragraph 1 according to which some powers of Czech Republic's authorities can be transferred to the international organization or institutions.

<sup>9</sup> according to which „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 Citizen.“

<sup>10</sup> according to which “Any changes in the essential requirements for a democratic state governed by the rule of law are inadmissible.“

<sup>11</sup> See the decision of the Constitutional Court as of 8 March 2006 Pl. ÚS 50/04, published under the No 154/2006 Sb.

<sup>12</sup> Vnitrostátní aplikace práva Evropské unie, p. 124

It means that within the limit of the transferred powers from „Prague“, resp. the Czech Republic to the EU institutions – if this has happened in accordance with the Constitution and subsequently provided that the transferred powers from the Czech Republic to the European Union are by the latter performed duly respecting the basis of the state sovereignty and doesn't menace the core of the state of law – the Constitutional Court of the Czech Republic as the guardian angel of the does not intervene in the detriment of basic principles of the EU law.

In the decision-making field of the administrative jurisdiction, the EU legal acts as well as the principle of supremacy and direct effect are used abundantly, we can speak nowadays about hundreds of cases. It can be said that it is caused also by the fact that at the level of the administrative law there is a wide range of fields which pertain exclusively to the scope of application of the EU legislator and where thus there is not any more domestic regulation. Consequently, at this respect, the internal authorities apply only the regulations provided with the direct effect. Particularly, it is the case especially in the field of customs, social insurance of the persons migration between the Member States, several aspects of the competition – concretely the cases concerning the union dimension of the unlawful competition behaviour or some asylum questions, etc. The vast majority of the cases dealing there with the cases of the EU law's direct effect has a non-contentious nature. That means the cases where the EU Law will be the only one applicable legal act and as parallel internal legal regulation does not exist any more, at the administrative courts this non-conflictous direct application will have in particular the form of the application of direct effective regulations. On the other hand, there are only several cases when the administrative court identified the direct conflict between the EU law and internal legal acts and subsequently and consequently with the help of the direct effect principle simultaneously with the principle of application supremacy excluded parallel internal legal regulation.<sup>13</sup>

As for the application of the direct effective EU legal acts in the decision-making activity of Czech civil courts, that is to say civil and commercial law cases appears to prevail as the most frequently direct applicable legal act regulation so-called Brussel No I<sup>14</sup> concerning international jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, the application of this regulation in front of this regulation in front of the Czech civil courts is nowadays evaluated in the number of thousands of cases.<sup>15</sup> As for some other very frequently applicable legal norms in front of Czech civil courts, that is to say in civil and commercial-matters at the Czech courts it can be mentioned the Brussel No IIa concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility<sup>16</sup> as well as the regulation creating a European Enforcement Order for uncontested claims.<sup>17</sup> Therefore, it can be

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<sup>13</sup> e.g. decision of the Regional Court in Ústí nad Labem, 15Ca 184/2006, as of the 19 July 2007; or decision of the Municipal Court in Prague, 5 Ca 122/2008, as of 15 July 2009

<sup>14</sup> i.e. Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

<sup>15</sup> In more details see Bončková H., Žondra M. Souhrná zpráva o rozhodovací praxi českých civilních soudů v případech s evropským prvkem (2004-2008). Brno: Nejvyšší soud, 2010, p. 10-13

<sup>16</sup> i.e. Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000

<sup>17</sup> i.e. Council Regulation (EC) No 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims

concluded that the direct application of EU legal acts in civil and commercial matters at the Czech court regards in particular regulations in the field of civil justice cooperation. Similarly – as abovementioned for the administrative jurisdiction – as well in the front of civil court in vast majority of cases we can speak about so-called non-conflictous direct effect. Anyway, from the time to time even here there can be found conflictous situations between the Czech internal law on one side and the EU law on the other side; it concerns especially the cases comprising EU harmonized areas.<sup>18</sup>

**b) Indirect effect in front of Czech courts**

The other aspect that is important within the application of EU law on the territory of Member States is represented by so-called indirect effect principle ; that is to say, as already indicated, the principle reflecting the obligation of Member States as well as of its internal authorities to apply internal law in accordance with the EU law.

The Czech Constitutional Court has accepted more or less very easily this principle and that based on two sources: (i) on one side from the internal perspective, it deals about the provision number 1 alinéa 2 of the Czech Constitution according to which the Czech Republic shall respect its commitments stemming from international law; (ii) as on the other side from the EU perspective, it results from the principle of cooperation (loyalty) laid down in the Treaty on European Union.<sup>19</sup> Thusly, the Constitutional Court has come to a kind of constitutional principle according to which all internal legal acts including those higher constitutional should be interpreted in conformity with the EU integration process. As for the relationships of other courts with regard to the principle of indirect effect, the administrative court apply the conformity principle commonly, especially in the last years also in connection with the fact that Czech courts and judges have more about the EU and its application. The administrative courts have applied the conformity principle till nowadays in hundreds of cases. In the field of civil agenda the indirect effect is also used by courts commonly.<sup>20</sup>

It is to be concluded that the application of the principle of supremacy as well as the direct effect principle is nowadays without huge difficulties accepted by the Czech courts.

**c) Prejudicial questions (References for preliminary rulings)**

The significant reflection into the internal EU law application represents the EU prejudicial questions (references), reps. rulings on that that serves as key instrument to ensure the uniformed application and interpretation of the EU law by courts in the Member States. When any doubt – concerning (i) the interpretation of the Treaties or (ii) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union – is raised before any court or tribunal of a Member State, that court or tribunal may – if it considers that a decision on the question is necessary to enable it to give judgment – request the Court to give a ruling thereon. If such a question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal is not only allowed but has the obligation to bring the matter before the Court.<sup>21</sup>

Then when happens that domestic court – supposed in respective case to apply the EU law – does not know what to do, then asks the Court what to do. This institute of prejudicial question is considered to represent on the territories of Member States as one of the most

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<sup>18</sup> See Vnitrostátní aplikace práva Evropské unie, p. 124-143

<sup>19</sup> Resp. Article 4 alinéa 3 of the Treaty on European Union

<sup>20</sup> In more detail see Vnitrostátní aplikace práva Evropské unie, p. 145-215

<sup>21</sup> Article 267 of the Treaty on the functioning of the European Union

important indicators of the fact whether and how seriously internal judges take the EU law seriously. This institute of prejudicial questions is used often within judicial systems of the EU Member States; within the period 1961-2010 there were raised in front of the Court 7428 prejudicial questions from all Member States. Since the integration of the Czech Republic into the European Union up to the year 2011 Czech court raised 20 prejudicial questions in front of the Court<sup>22</sup> what demonstrates that this „uniform EU application and interpretation’s instrument“<sup>23</sup> is used in a proportional extent within Czech judicial system.

**d) Member States responsibility for the infringement of the EU Law**

The other important point concerning the EU law application by internal courts in the Member States is the issue of the Member States responsibility for the infringement of the EU Law. The institute was established to enable to ensure and enforce on the EU level that Member States comply with their obligations stemming from the EU law for them. Without due fulfilment of obligations stemming from the EU law and due application of EU Law by Member States the achievement of the European Union as international organization could not be efficient.

That is why the EU primary law – in connection with substantial case-law task of the Court – has established the institute of Member States responsibility for the infringement of the EU Law for the case that Member States don’t fulfil their obligation to apply the EU Law on their territories, i.e. don’t implement any directive into national laws or internal authorities and courts don’t apply EU directly applicable law correctly. In this context, it is to reminded that the conditions for the State responsibility concerning the infringement of the EU law were set up by the Court in the case Francovich<sup>23</sup>, what subsequently adjusted in the case Brasserie.<sup>24</sup> This obligation of Member States – to comply with the obligations stemming from the EU law – is enforced by one of so-called direct actions: action for failure to fulfil an obligation<sup>25</sup> that can be brought against Member State by European Commission or other Member State in front of the Court.<sup>26</sup>

Member State is responsible not only for the infringement of the EU law, but also in the case when due to this illegal activity – for which is responsible Member State – is caused any damage to an individual. Member State is responsible for this damage and is compelled to compensate it. Due to the absence of explicit regulation concerning the realization of the responsibility for damages and in accordance with the procedural autonomy of Member States these damages are to be handled by courts of Member States and that pursuant to procedural rules laid down on internal level.

In the Czech Republic the issue of responsibility of the State for damages caused during the exercise of public power due to illegal acts and incorrect official procedure is generally handled by the Act No. 82/1998 Coll.<sup>27</sup> Nevertheless, this Act was adopted before the admission of the Czech Republic in the European Union and thus, did not take into

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<sup>22</sup> In more detail see Annual Report of the Court of Justice of the European Union for 2011. Luxembourg: Publications Office of the European Union: 2012, p. 115 and following and Klíma, Karel et al. *Evropské právo*. 1<sup>st</sup> edition. Plzeň : Aleš Čeněk, 2011, p. 327

<sup>23</sup> C-6/90 and C-9/90, *Andrea Francovich and Danila Bonifaci and others v Italian Republic*, Judgment of the Court of 19 November 1991

<sup>24</sup> C-46/93 and C-48/93, *Brasserie du Pêcheur SA and Factortame*, Judgment of 5 March 1996

<sup>25</sup> See Articles 258-260 of the Treaty on the functioning of the European Union

<sup>26</sup> In more detail see e.g. Hamulák O., Stehlík. *Praktikum práva Evropské Unie. Ústavní základy a soudnictví*, p. 133- 137

<sup>27</sup> Act No. 82/1998 Coll, on responsibility for damage induced within public power exercise or incorrect official procedure

account our integration in the EU in 2004; any special internal Act concerning the responsibility of Member States for damages caused by infringement of the EU law has not been adopted up to now.

At this respect it is to be solved a question whether this Act from 1998 can be used also in order to solve damages caused to individuals by infringement of the EU law. The Constitutional Court of the Czech Republic was dealing with the relationship between the EU law and responsibility for damages pursuant to the Act No. 82/1998 Coll. in its decision from February 9 2011<sup>28</sup>, in which came to the conclusion that the responsibility for damage caused by infringement of the EU law is different from the responsibility of the Czech Republic for damages caused on „internal level“ pursuant to the the Act No. 82/1998 as the concepts of both responsibilities being different.

Nevertheless, the absence of special legal regulation for damage incurred to individuals by infringement of the EU law does not change anything on the fact that the Czech Republic is democratic State of Law that should respect its obligations stemming from the international law and shall not renounce to these obligation just from the reason of this legislative absence on the national law. Obviously, it would violate the principle of loyalty of Member States towards to the European Union and could lead to „denegatio iustitiae.“ According to the position of the Constitutional Court, the obligation of general courts, in particular of the Supreme Court, is – to interpret the Act 82/1998 and to construct its relationship towards the system of responsibility within the framework of the EU Law. This intepretation can not be arbitrary; this arbitrariness would be brought also by lack of due reasoning how and why choosen solution comply with the objective of EU legal regulation.

That implies that in the remaining lack of legislation for damages caused by infringement of EU Law in Czech legislation, internal Czech courts should proceed analogously according to the legal norm being with its content and the objective the closest; what is represented by the Act No. 82/1998 and should also take into account the conditions set by the Court to generate the reponsability of Member State for damage incurred to individual by Member States´ infringement of the EU Law.

Overall, it has to be highlighted at this respect that the case-law of Czech courts with regard to damages enforcement in these questions is for the instance minimal. One of the main reason of this phenomenon is temporal perspective since it takes time generally after the integration to the EU until damages are caused and afterward until the realization of lawsuits at the Czech Courts and eventually at all its instances comes to its end; all the more so in the light of the persisting generally longer duration of the court proceedings in the Czech Republic. Nevertheless, it is clear that the issue of gradually ongoing lawsuits is going to be more and more relevant and that individuals will claim increasingly within the level of the domestic Court the compensation for the damages caused to them by Czech authorities due to EU flawless application or its non-application. In this context, internal courts will be obliged to respect above-mentioned limits laid down by the Constitutional Court as well as respective case-law of the Court of Justice of the European Union.

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<sup>28</sup> Case No IV.ÚS 1521/10

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