

Constitutional Court: Negative Legislator?

Abstract

This diploma thesis deals with the question whether the Constitutional Court of the Czech Republic can be considered as a mere negative legislator in connection with deciding on proposals for annulment of laws or their individual parts according to Art. 87 par. a) of the Constitution or whether the Constitutional Court departs from this position and how. The diploma thesis is divided into theoretical and practical part, while the author seeks to rely mainly on the actual decision-making practice of the Constitutional Court.

In the theoretical part, the thesis deals with the concept of the negative legislator and its origin in the ideas of Hans Kelsen. Kelsen's concept of constitutional justice as a negative legislator is presented. In the following subchapters, the theoretical part is devoted to acquainting the reader with the decision-making of the Constitutional Court on petitions to annul laws or their individual parts. The thesis also describes the binding of judges in decision-making and their binding for other subjects.

In the practical part, the thesis is divided into six individual chapters, each of which deals separately with one type of decisions that the Constitutional Court deviates from its position as a negative legislator. In each chapter is analysed in detail one substitute decision selected by the author, and except the last chapter, is then supplemented with similar decisions, in order to generalize the issue.

This concerns in particular the practice of adopting special types of statements by which the Constitutional Court expresses its legal opinion directly in the verdict part of the judgment. There are three chapters devoted to these statements. The second chapter dealing with interpretative statements, the third chapter dealing with academic statements and the fourth chapter discussing additive statements.

The fifth chapter then analyses the judgments by which the Constitutional Court postpones the enforceability of its derogatory judgments. At the same time, through an excursion in chapter 5.4. shows that the findings of the Constitutional Court can fulfil the characteristics of even more type decisions presented by the thesis.

In the sixth chapter the thesis deals with the findings containing the proposals of the Constitutional Court *de lege ferenda* and in the last seventh chapter the thesis deals with the judgment file no. Pl.ÚS 12/10.

In conclusion, the author summarizes his view that the Constitutional Court cannot be viewed solely through the lens of a genuine negative legislature, since it goes beyond the

dichotomy of granting or rejecting a petition to repeal the law, adding however, that it is necessary to treat the mentioned cases individually in terms of assessing the conduct.

Key words: constitutional court, negative legislator, derogation