

Proceedings on the repeal of an Act before the Constitutional Court, with focus on the review of whether the Act was adopted in the constitutionally prescribed procedure

Abstract

The thesis deals with the judicial control of constitutionality with a specific focus on the review of the constitutionality of the legislative procedure. The first part of the thesis deals with the general definition of the constitutional judiciary, the position of the Constitutional Court in constitutional system of the Czech Republic and the definition of basic concepts that must be unconditionally known for the next parts of the thesis. The first part of the thesis concludes with a reflection on the topic whether the Constitutional Court really maintains its role as a predominantly negative legislator.

In the second part, the thesis focuses on the description of the current legislation on court proceedings of the repeal of an Act or its individual provisions. The main topic of the second part of the thesis deals with the special effects of the decisions of the Constitutional Court in this type of proceedings and the question about binding nature of its reasoning. The author describes, for example, the specific effects of these decisions in horizontal relations or their effects on the specific proceedings from which the proposal to repeal the Act or its individual provisions arose. In more detail, the author also focuses on the issue of the practice of renewing the validity of previously repealed legal norms, where the Constitutional Court appropriates a competence that has no support in the constitutional order or in the legal regulation.

However, the dominant part of this diploma thesis is the analysis of selected decisions of the Constitutional Court concerning the review of the legislative procedure and the subsequent evaluation of its conclusions by the author of the thesis, including confrontation of these conclusions with the opinions of other authors. In this part, author tries to systematically divide these decisions into certain comprehensive subchapters, which are always introduced by a short theoretical basis necessary for understanding the issues that the Constitutional Court dealt with in its review. In evaluating selected decisions, the author focuses mainly on their development over time and consistency in the decision-making of the Constitutional Court.

At the end of the thesis, in addition to his commentary on selected parts of this thesis, the author tries to recommend to legislators some amendments to the rules of the legislative process, which he considers appropriate in connection with the decisions of the Constitutional Court.

Key words: Constitutional Court, repeal, legislative procedure