

CONSTITUTIONAL COURT'S INDEPENDENCE IN THE CONTEXT OF POLITICAL TRANSFORMATION. THE CASE OF THE CZECH REPUBLIC AND POLAND

1. Introduction

The political transformation process in Central-Eastern Europe, which started at the time of the collapse of communism after 1989, has been in the legal dimension primarily relating to constitutional changes which constituted the basis for transformation of other areas of the law. Implementation of new, democratic constitutions also involved the creation of special authorities which would safeguard the fundamental civic rights and freedoms guaranteed in them. Imitating the solutions successfully implemented in Western Europe and in other regions of the world,¹ post-communist countries established constitutional courts to assume that safeguarding role. In Poland that authority was named the Constitutional Tribunal. Its Czech counterpart was given the name of the Constitutional Court.

The establishment of these organs of constitutional review was aimed at guaranteeing the legal correctness of the democratization process and ensuring that the attempts to vet the former political system would stay within the democratic standards of the rule of law.

The appropriate functioning of the courts' constitutional control was, therefore, dependent on the highest possible level of political impartiality of its members. For this reason, the crucial matter related to the workings of the Constitutional Tribunal in Poland and the Constitutional Court in the Czech Republic was to implement such guarantees for judges' independence that would ensure free and autonomous rulings, even in cases

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¹ A. Deryng, *Trybunał Konstytucyjny jako organ władzy sądowniczej w Polsce (The Constitutional Tribunal as a governing body of judiciary in Poland)*, GeA 2014/2, p. 94–96.

which raise strong social controversies. It is therefore worth investigating what solutions for guaranteeing independence of the constitutional judges were implemented in both countries.

2. The role of the constitutional court at the time of political transformation

The constitutional court's independence requires guarantees especially in the time of political transformation. This is related, among others, to the realization of the so-called transitional justice process. This phenomenon can be encountered not only in post-communist Central-Eastern Europe, but also in every country which makes a transition from one socio-political system to another.² In the context of Poland and the Czech Republic, transitional justice is a process in which democratic governments emerge after the period of communist authoritarian regimes and need to tackle the human rights violations the former authorities are responsible for. Simultaneously, that process also encompasses the social debate on the interpretation of the past, the level of its acceptance or rejection as well as the methods of imposing accountability acceptable in a democratic system.³

In this context, some difficulties of philosophical nature appear: is it possible to “overcome” the past which is irreversible?⁴ Theoretically, in the name of the *lex retro non agit* principle, one should limit retribution only to a nullification of the effects of past activity which still occur in the present. It seems that certain deviations from this principle are necessary in case of making accountable the perpetrators of human rights violations who acted in accordance with the law of the previous system. Another question is the following: is there a boundary between violations of the law that can be fixed and those which we have to consider as a

² G. Skąpska, *Rozliczenie łamania praw człowieka w przeszłości. Analiza kulturowa (Settlement of human rights violations in the past. Cultural analysis)*, IeL 2003/1, p. 71ff.

³ M. Krotoszyński, *Lustracja w Polsce w świetle modeli sprawiedliwości okresu tranzyty (Lustration in Poland in the light of the models of transitional justice)*, Warsaw 2014, p. 15–26.

⁴ T. Snarski, *Sprawiedliwość transformacyjna, filozofia prawa i rozliczanie przeszłości przez demokratyczne państwo prawa (Transitional justice, the philosophy of law and the settlement of the past by the democratic state based on the rule of law)*, PiS 2010/2, p. 215.

part of the unjust past which cannot be amended? One should choose a sensible demarcation between the two, as amending some of the injustice is clearly not possible to be borne by the state, for instance payouts of compensations for Polish Borderland's properties confiscated in the tsarist period. All these doubts are also associated with difficulties of legal nature that consist in choosing proper instruments that both accommodate the need for a restoration of just social relations (remedy for victims, punishment for perpetrators, nullifying unjust privileges) and obey democratic standards at the same time.

Constitutional courts need to face all the problems mentioned above and can decide upon them solely on the basis of a particular system of values: only such systems allow to decide, for instance, which factors take precedence: rights acquired in the communist period or social justice, which demands to deprive the people linked with former regime of their privileges. The fundamental value that has to be taken into account, therefore, is justice. The axiology of the adopted constitution should therefore be crucial for any constitutional court and an appropriate interpretation of the constitution in the light of natural law enables to adequately balance equivalent values in case they are in a conflict.

This way the system of values contained in constitution becomes on the one hand the basis of the accountability process, as the source of understanding of justice which needs to be implemented (for example: the impunity of perpetrators and humiliation of victims have nothing to do with the rule of law and this state of affairs needs to be amended). On the other hand, it functions as a boundary that limits imposing accountability to the confines of the rule of law. This way, accountability is not simple retaliation but it is rather a rational and responsible restoration of justice.

3. Guarantees of a constitutional court's independence

3.1. Poland

The first Constitutional Tribunal in the Polish history has been instituted by virtue of the March 26, 1982 law amending the Constitution of the Peoples' Republic of Poland.⁵ However, it was not until 1985 that the law on the Constitutional Tribunal⁶ was implemented, and the court started its activity only in 1986.⁷ Under the legal system of the Peoples' Republic of Poland, it did not have the right to interpret the law, but in the period of the transformation it took over this competence from the Polish Council of State when the latter had been disbanded and replaced by the president as the head of State. During the first period of its functioning, both in the Peoples' Republic of Poland and after 1989, the *Sejm*, the lower house of parliament, had the right to reject the Tribunal's judgment by a majority of 2/3 of votes. However, the 1997 law on the Constitutional Tribunal, which adapted existing regulations to the legal system mandated by the Constitution of the Republic of Poland,⁸ took away the Tribunal's right to interpret laws as well as the *Sejm's* right to reject the Tribunal's judgments. That move confirmed the constitutional principle of the definitive character of Tribunal's rulings.

The contemporary Constitutional Tribunal's primary competences include the constitutional control of laws in a hierarchic legal system, processing constitutional complaints, reviewing the constitutionality of the aims and activities of political parties and settling conflicts of competence between the central constitutional authorities of the state.⁹

⁵ Act of 26 March 1982 on the amendment of the Constitution of the People's Republic of Poland (Dz.U. 1982 item 83).

⁶ Constitutional Tribunal Act of 29 April 1985 (Dz.U. 1985 item 98).

⁷ Z. Czeszejko-Sochacki, *Przebieg prac nad utworzeniem polskiego trybunału Konstytucyjnego (The course of work on the creation of the Polish Constitutional Tribunal)*, PS 1994/3, p. 45ff.

⁸ Constitutional Tribunal Act of 1 August 1997 (Dz.U. 1997 item 643). Because of the subject area of the article concentrated on the transformational period, the analysis concerns only the law of 1997, leaving aside the acts of 2015 or 2016.

⁹ M. Banaś, *Rola Trybunału Konstytucyjnego w funkcjonowaniu polskiego reżimu politycznego w świetle Konstytucji z 1997 r. (The role of the Constitutional Tribunal in the functioning of the Polish political regime in the light of*

The provisions on the Constitutional Tribunal are located in the eighth chapter of the Constitution,¹⁰ devoted to courts and tribunals, in the articles 188–197. This, in combination with Article 10 (2) (“the judicial power shall be vested in courts and tribunals”) makes it a part of the judiciary, and the distinction between courts and tribunals emphasizes its autonomy and independence, situating it outside the court system that exercises justice in the understanding of Article 175 (1) of the Constitution.¹¹ Article 173 of the Constitution defines both courts and tribunals as authorities that “shall constitute a separate power and shall be independent of other branches of power”. That attribute of independence is reflected both in the legal status of the judges of the Tribunal and in the relations of the Tribunal with other state institutions.

The independence of the Constitutional Tribunal judges is to be guaranteed by their 9-year-long term of office without the possibility of re-election, but, as the Articles 6 and 7 of the law on the Constitutional Tribunal stated,¹² with the possibility to retire or to return to their former post or an equivalent one. The post of a Constitutional Tribunal judge can be assumed by a person distinguished by their knowledge of the law and is eligible to be chosen as a judge of the Supreme Court or the Supreme Administrative Court. According to Article 195 (3) of the Constitution judges are not allowed to combine their mandate with affiliation to any political party or trade union. They are also not allowed to perform public activities incompatible with the principles of the independence of the courts and judges. Judges are chosen individually by the *Sejm* by an absolute majority in the presence of at least half of the statutory number of MPs and the candidacies are submitted to the *Sejm* by the organ which brings together the *Sejm*’s speaker and deputy speakers or the group of at least 50 members of parliament. The nominated judges take an oath of

the 1997 Constitution), PPK 2015/1, p. 27–48.

¹⁰ Constitution of the Republic of Poland of 2 April 1997 (Dz.U. 1997 item 483).

¹¹ B. Banaszak, *Pravo konstytucyjne (The constitutional law)*, Warsaw 2008, p. 115.

¹² In the text of the Constitution Tribunal Act of 1997.

office before the President of Poland.¹³ The head of state also appoints the President and Vice-President of the Constitutional Tribunal from among the candidates proposed by the General Assembly of the Judges of the Constitutional Tribunal.

The judges of the Constitutional Tribunal are independent and are bound solely by the constitution while exercising their duties. The organizational aspects related to the functioning of the Constitutional Court, by virtue of Article 197 of the Constitution, are left to be specified by law. When performing their tasks, judges enjoy immunity: a judge of the Constitutional Tribunal cannot be held criminally responsible or arrested without prior consent granted by the Tribunal. The only exception is for cases when a judge has been apprehended while committing an offence and when their detention is necessary for securing the proper course of proceedings. In such a situation the President of the Constitutional Tribunal may order an immediate release of the person detained.

The law on the Constitutional Tribunal contained (in Article 11¹⁴) the exhaustive list of cases in which the mandate of a judge may be terminated. It can be the consequence of: the expiration of the term of office, death, refusal to take an oath of office, incapacity for performing duties confirmed by a medical report, conviction with a legally valid judgment, or removal from post as the result of disciplinary proceedings. That disciplinary action can be instigated in case a judge breaks the law, infringes on the dignity of their office, or commits an unethical act which subverts trust towards them.

Also the Constitutional Tribunal's relations with other authorities speak to its independence. It is worth noting that, upon a motion of the *Sejm* speaker the Tribunal has the competence to decide on the President of the Republic of Poland's temporary inability to hold office and, consequently, to decide to entrust the president's duties to the *Sejm* speaker. Furthermore, it should be added that the Constitutional Tribunal's judgments

¹³ A. Zoll, *Sposób wyboru sędziów Trybunału Konstytucyjnego (The method of selection of judges of the Constitutional Tribunal)*, REPiS 2016/1, p. 45.

¹⁴ In the text of the Constitution Tribunal Act of 1997.

are final and generally applicable, so none of the public authorities has the right to bring an appeal against its verdicts.

It should be noted that in 2015 the new Constitutional Tribunal Act¹⁵ has been implemented and in 2016 two other laws were introduced: on the status of judges of the Constitutional Tribunal¹⁶ and on the organization and proceedings before the Constitutional Tribunal.¹⁷ The provisions of the aforementioned laws introduce significant changes concerning the guarantees of the independence of judges of the Constitutional Tribunal, including the length of the term of office of the President of the Court, the selection procedure of candidates for a judge, the disclosure of the property of the judges, the disciplinary measures against the judges. These issues, however, are beyond the scope of this article and, in view of the controversies related to the period of political transformation, are only signaled and their discussion requires a separate elaboration.

3.2. The Czech Republic

The Czech's Constitutional Court was instituted by virtue of the Constitution of the Czech Republic from December 12, 1992.¹⁸ Relevant provisions were included in the fourth chapter, related to the judiciary, in Articles 83–89. The Czech constitution entered into force on January 1, 1993 and since that moment, when the Czech Republic formally became an independent state after the division of Czechoslovakia, one can speak of the beginning of the Constitutional Court's functioning.

The establishment of the Constitutional Court was a culmination of a process of constitutionalization and democratization which had been taking place on the territory of the contemporary Czech Republic since

¹⁵ Constitutional Tribunal Act of 25 June 2015 (Dz.U. 2015 item 1064).

¹⁶ Act of 30 November 2016 on the Status of the Judges of the Constitutional Tribunal (Dz.U. 2016 item 2073).

¹⁷ Act of 30 November 2016 on the Organisation of the Constitutional Tribunal and the Mode of Proceedings Before the Constitutional Tribunal (Dz.U. 2016 item 2072).

¹⁸ Constitution of the Czech Republic of 16 December 1992, No. 1/1993 Sb., as amended by constitutional acts No. 347/1997 Sb., No. 300/2000 Sb., No. 395/2001 Sb., No. 448/2001 Sb., No. 515/2002 Sb., No. 319/2009 Sb., 71/2012 Sb. and No 98/2013.

the Habsburg monarchy.¹⁹ The first Constitutional Court in Czech history was established in 1920 by virtue of the law introducing the Constitutional Charter of Czechoslovakia, though its activity has been assessed negatively.²⁰ After World War II, the idea to establish a constitutional court occurred at the time of the 'thaw' of 1968 and the process of democratization by federalization. The 1968 constitutional law of the Czechoslovak Federation,²¹ which provided for the creation of two sovereign republics, Czech and Slovak, which would form a federal state, also provided for establishing a constitutional court. However, it had never been created because the bill never entered into force.

It wasn't until the post-1989 political transformation that the first post-war constitutional court in Czech history was created. In 1991, soon after the Charter of Fundamental Rights and Freedoms²² was mandated, the Constitutional Court of the Czech and Slovak Federal Republic was established by virtue of the law from February 1991.²³ The court was to safeguard the civic rights and freedoms enshrined in the Charter. The activity of the Court, although intensive, lasted only one year, because on 1 January 1993 the division of the Czechoslovak Republic into two independent states took place and the Constitutional Court affiliated to the federal structure ceased to exist. As it was pointed out, along with the implementation of the Constitution of the Czech Republic on 1 January 1993 the new Constitutional Court was established. The law

¹⁹ S. Grabowska, *Sądy konstytucyjne w wybranych państwach europejskich (Constitutional courts in selected European countries)*, Rzeszów 2008, p. 45.

²⁰ A. Czyż, *Sąd Konstytucyjny Republiki Czeskiej (Constitutional Court in the Czech Republic)* [in:] *Sądowictwo konstytucyjne w państwach Grupy Wyszehradzkiej. Perspektywa politologiczno-prawna (Constitutional judiciary in the Visegrad Group Countries. Political-legal perspective)*, eds. M. Barański, A. Czyż, R. Rajczyk, Katowice 2015, p. 51.

²¹ Constitutional Act Dated October 27, 1968 on the Czechoslovak Federation, 143/1968 Coll.

²² Charter of Fundamental Rights and Freedoms – resolution of the Presidium of the Czech National Council of 16 December 1992 on the declaration of the Charter of Fundamental Rights and freedoms as a part of the constitutional order of the Czech Republic. Constitutional act No. 2/1993 Coll. as amended by constitutional act No. 162/1998 Coll.

²³ Constitutional Act of February 27, 1991 on the Constitutional Court of the Czech and Slovak Federal Republic, No. 91/1991 Coll.

which regulated its functioning was adopted in July 1993²⁴ and soon the President of Czech Republic Vaclav Havel nominated the first panel of judges.²⁵

The competences of the contemporary Czech Constitutional Court include, above all, the following: assessment of the compliance of the rules of law with higher acts, reviewing constitutional complaints, ruling on certain issues related to holding the office of MP, senator or president, solving conflicts of competence which are not reserved for other authorities.²⁶

As Article 83 of the Czech Constitution indicates, the Constitutional Court is a judicial authority that focuses on constitutional review, but, as the Czech legal literature emphasizes, it is not the part of the court system.²⁷ Its adherence to the judiciary, affirmed by the inclusion of regulations concerning the Court in the constitutional Chapter “Judicial Authority”, lets the Court enjoy the attribute of independence. It is also confirmed by Article 81 of the Constitution, which states that “The judicial power shall be exercised in the name of the Republic by independent courts”.

Among basic constitutional guarantees of the Czech Constitutional Court’s independence one can note a long term of office of the court’s judges: 10 years. However, this safeguard is weakened by the possibility of re-election.²⁸ Requirements for judges restrict the pool of candidates to persons with professional legal experience and political independence. Article 84 of the Constitution lists the requirements for candidates: any citizen who is eligible to be elected to the Senate (which means candidates must be at least 40 years old), graduated from a law faculty and has been a practicing lawyer for

²⁴ Constitutional Court Act of 16 June 1993, 182/1993 Sb., as amended by Acts No. 331/1993 Sb., No. 236/1995 Sb., No. 77/1998 Sb., No. 18/2000 Sb., No. 132/2000 Sb., No. 48/2002 Sb., No. 202/2002 Sb., No. 320/2002 Sb., No. 114/2003 Sb., No. 83/2004 Sb., No. 120/2004 Sb., No. 234/2006 Sb., No. 342/2006 Sb., No. 227/2009 Sb., No. 404/2012 Sb., and No. 275/2012 Sb.

²⁵ *History of the Constitutional Court of the Czech Republic*, <http://www.usoud.cz/en/history>, 27.12.2016.

²⁶ K. Skotnicki, *System konstytucyjny Czech (Czech constitutional system)*, Warsaw 2000, p. 53–54.

²⁷ M. Kruk, *Sąd Konstytucyjny Republiki Czeskiej (Constitutional Court of the Czech Republic)* [in:] *Sądy konstytucyjne w Europie (Constitutional Courts in Poland)*, eds. J. Trzciński, K. Budziło, vol. 2, Warsaw 1997, p. 65–89.

²⁸ A. Czyż, *Sąd...*, p. 53.

a minimum of ten years. Furthermore, candidates should be of impeccable character, cannot belong to any party or political movement and may not hold any other political office (president, MP). The election procedure entails cooperation between the executive and legislature: the President's nomination of a judge is subject to Senate approval. Taking of the oath of office by a new judges marks the start of the performance of their functions. The President also appoints the President and Vice-President of the Constitutional Court from among all the Court's judges.

Judges are independent in exercising their duties. While passing a ruling, they are bound only to constitutional acts and the ratified international agreements related to basic human rights and freedoms, as well as, to a certain extent, to the law on the Constitutional Court that governs, pursuant to the Constitution's mandate from Article 88, the rules of court proceedings. Additionally, judges' freedom is guaranteed by their immunity: in line with Article 86 of the Constitution, judges cannot be criminally prosecuted without the consent of the Senate, and their arrest is possible only if they are apprehended while committing a criminal act or immediately thereafter (with the restriction that the Chairperson of the Senate may object to the arrest and the Senate makes, at its nearest sitting, the definitive decision on whether a judge may be criminally prosecuted).

Paragraph 7 of the above mentioned law on the Constitutional Court contains an exhaustive list of cases in which a judge's mandate expires. Except the expiration of the term of office, the list includes: resignation by means of a declaration made before the President, loss of eligibility for Senate elections, when a conviction in a criminal case against a judge for committing a deliberate act becomes final, or when the Court announces termination of the term of office as a result of the disciplinary proceedings. As indicated by Paragraphs 143 and 144, such decision of the Court can be made when a judge remains a member of a party or political movement, engages in profit-making activity which is incompatible with holding the office or when a judge has not participated in court works for a period exceeding one year.

The position of the Constitutional Court and its independence is also designated by its relations with other public authorities. Above and beyond its constitutional control tasks it also plays a role which in other countries is usually ascribed to the Tribunal of the State: in line with Article 87 of the Constitution, the Constitutional Court tries constitutional charges brought by the Senate against the President of the Republic in the case of high treason. Furthermore, it decides on a President's petition seeking the revocation of a resolution of the Assembly of Deputies and the Senate on the President's inability to hold office or a vacancy of his office.²⁹ Additionally, the Constitutional Court has a power of cassation, which makes it able to abolish definite judgments of other authorities, even the Supreme Court.³⁰ It is worth pointing out that the judgments of the Constitutional Court have a definite character and are binding for all other institutions and persons, so there is no possibility to appeal against its rulings.

4. The Polish and Czech constitutional courts on transitional justice

Bearing in mind the constitutional guarantees of Polish and Czech constitutional courts judges' independence, it is worth investigating whether or not their judgments hampered the transitional justice process.

The Polish Constitutional Tribunal acted like an arbiter which accepted as constitutionally appropriate some aspects of reckoning with communism, but at the same time clearly exerted pressure on the lawmaker to implement regulations which are precise and compatible with citizen rights. The comments to its rulings, in the light of the Constitution, justify the use of the specific instruments of transitional justice, such as lustration, re-privatization or imposing accountability for the so-called communist crimes.

In one of its judgments the Constitutional Tribunal voiced the following opinion: "The transition from an authoritarian state to a state based on the rule of law can exceptionally take forms, which would not have

²⁹ W. Krok, *Polski Trybunał na tle porównawczym (Polish Tribunal on a comparative background)*, Warsaw 2012, p. 61–62.

³⁰ A. Czyż, *Sąd...*, p. 54–55.

any justification in normal circumstances".³¹ This statement is confirmed in many other Tribunal's judgments, which deemed as constitutional various forms of reckoning with communist regime (however, voicing strong reservations about some of the types of such regulations³²).

The Czech Constitutional Court also ventured to assess the legal acts on transitional justice adopted by the parliament, mostly accepting its regulations. In its first judgment it refused to reject the law on the unconstitutionality of the communist regime.³³ In one of its subsequent judgments it pointed out that the Constitution of the Czech Republic has not been based on a neutral world view, but is a set of ideas expressing basic values of a democratic society and regardless of the continuity of the old and the new legal acts, there is no continuity of the old and the new political order. For that reason even the law continuity does not entail the legality of the former communist system.³⁴

5. Conclusions

Both the Polish Constitutional Tribunal and the Czech Constitutional Court enjoy a wide range of guarantees of their independence. Since their establishment both authorities has been equipped with the institutional safeguards against interference from any other state institution. This was achieved, on the one hand, through the constitutional position of the courts and, on the other hand, by the position of judges that are independent in the exercise of their duties.

The constitutional position of the Polish Constitutional Tribunal is determined by the way of electing its judges, which is the responsibility of the *Sejm*. An oath before the President seems to have a purely ceremonial character, but a refusal to take it terminates the judge's mandate.

³¹ Judgement of the TK of 9 November 1993, K 11/93 (Legalis no. 10185).

³² B. Banaszekwicz, *Rozrachunek z przeszłością komunistyczną w polskim ustawodawstwie i orzecznictwie Trybunału Konstytucyjnego* (Settlements with the Communist past in Polish legislation and case law of the Constitutional Tribunal), IeL 2003/2, p. 449ff.

³³ M. Borski, *Początki i rozwój sądownictwa konstytucyjnego na terytorium Czechosłowacji i Republiki Czeskiej* (The origins and development of the constitutional judiciary in Czechoslovakia and the Czech Republic), RAiP 2010, p. 59.

³⁴ S. Zifcak, *Rozrachunek z przeszłością na Węgrzech i w Czechach. Ujęcie konstytucyjne* (Settlements with the past in Hungary and in the Czech Republic. Constitutional review), IeL 2003/1, p. 210.

The Czech Assembly of Deputies does not participate in the election of Constitutional Court's judges – they are nominated by the President with the Senate's consent. In both countries the President has a right to nominate the President of the court and his associates. Both courts also have the right to decide on conflicts of competence between other authorities of the state and the Czech Constitutional Court can also rule on constitutional responsibility of the President for his high treason. It has also, a difference between Polish and Czech courts, a competence related to other judicial authorities: the right of cassation. In both countries the constitutional courts' judgments are final, universally binding and there are no appeals against them. The judges' status is common in both countries – they enjoy independence and immunity and are obliged not to be a part of any political association. Their terms of office are similarly long (9 years in Poland and 10 years in the Czech Republic), although the Czech legal system allows a possibility of reelection.

All these factors seem to indicate that the Czech Constitutional Court has more power than its Polish counterpart, because it has a wider range of competences related to other public authorities. Certainly this can reflect on its authority and strengthen its position. On the other hand, a single term of office in the Polish Constitutional Tribunal serves to protect judges from the temptation of seeking political backing needed for re-election. Such solution is not present in the Czech legal system.

The other difference between both authorities is that the Czech Constitutional Court was established only in 1993 (if we exclude the Czechoslovak court existing in the years 1991–1992), and the Polish Constitutional Tribunal was established yet in the communist period and preserved continuity to date. However, as we can see in the literature, its creation was in some way forced upon the authorities of the Polish People's Republic.³⁵ Furthermore, the Polish Tribunal, unlike its Czech counterpart, has no predecessor in the inter-war period: the Constitutional Court of Czechoslovakia existed in the years 1920–1939.

Despite all the mentioned differences and similarities, both constitutional courts showed enough independence to contribute to the

³⁵ A. Deryng, *Trybunał...*, p. 98.

realization of the transitional justice process, speaking in favor of a specific treatment of the communist period. This enabled the respective parliaments to implement instruments that could fix the existing injustices. Thanks to this the aims of transitional justice, drawn from constitutional axiology, such as restoring the social justice (punishing perpetrators and satisfaction for victims, compensating the property loss, rehabilitation of the system's victims) and the protection from the return of the authoritarian system (strengthening of the symbolic condemnation of a former system, lustration) could have been realized.

Summary

The creation of constitutional courts in the countries in transition after the fall of communism in 1989 was significant in respect of compliance with the standards of the rule of law when carrying out reckoning with the former regime. The Polish Constitutional Court (although established in communist times), and the Czech Constitutional Court, have been given guarantees of independence, *inter alia* through the length of the term of office, immunity, relations with other authorities and restrictions for judges holding office. There are also some differences between the two constitutional courts, apart from the similarities, concerning, *inter alia*, the scope of competence. The position of the judges enabled them to assess impartially, among other things, the regulations on transitional justice.

Keywords: constitution, transitional justice, independence of judges, constitutional court

Niezależność sądu konstytucyjnego w czasie transformacji ustrojowej na przykładzie Czech oraz Polski

Streszczenie

Utworzenie sądów konstytucyjnych w państwach przechodzących proces transformacji ustrojowej po upadku komunizmu w 1989 r. miało istotne znaczenie z punktu widzenia przestrzegania standardów państwa prawa podczas przeprowadzania rozliczeń z minionym systemem. Polski Trybunał Konstytucyjny (choć utworzony jeszcze w czasach komunistycznych), oraz czeski Sąd Konstytucyjny zostały wyposażone w gwarancje niezależności, związane między innymi z długością kadencji, immunitetem, relacjami z innymi organami władzy, ograniczeniami dla sędziów pełniących urząd. Między obydwoma sądami konstytucyjnymi obok podobieństw zachodzą też określone różnice, dotyczące między innymi zakresu kompetencji. Pozycja sędziów umożliwiła im bezstronną ocenę między innymi regulacji zapewniających realizację sprawiedliwości transformacyjnej.

Słowa kluczowe: konstytucja, sprawiedliwość transformacyjna, niezawisłość sędziowska, sąd konstytucyjny

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