



Constitutional Court to Be Established

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On February 27 the Czechoslovak parliament voted to establish a constitutional court. The court will decide on the constitutionality of laws and whether republican laws contravene federal ones. It will also settle disputes over power-sharing between federal and republican bodies and decide whether federal and republican laws contravene international agreements ratified by Czechoslovakia. The establishment of the court is an important step toward building a system of checks and balances between the executive, the legislature, and the judiciary.

In December 1990, as the bill on power-sharing between the federation and the republics threatened to spark a constitutional crisis, President Vaclav Havel proposed that the Federal Assembly establish a constitutional court. According to Havel, such a court was necessary to deal with the growing number of disputes between the federation and the republics and to determine whether republican laws contravene federal ones or whether federal and republican laws were at variance with the federal constitution. On February 27 the Federal Assembly voted to establish the court on April 1, 1991.¹

The legal basis for a constitutional court had existed for more than 20 years, a provision for such an institution having been included in the constitutional law on the Czechoslovak federation adopted in 1968 as an amendment to the Czechoslovak Constitution of 1960. After the democratic revolution in late 1989, a discussion developed among legal theorists and politicians about the

need for such a court. Many saw it as a necessary step toward establishing "a state based on the rule of law" and argued that the existence of a constitutional court would strengthen the system of checks and balances between the executive, the legislature, and the judiciary and would improve the legal protection of human rights.² However, mainly owing to the fact that the parliament and the legislative department of the government had been severely overburdened by other tasks, more than a year passed before the issue was addressed.

Debate and Changes

Reaching agreement on the establishment of a constitutional court was not an easy task. Some Slovak parties, in particular the powerful Slovak Christian Democratic Movement and the Slovak National Party, had opposed the idea of a federal constitutional court, arguing that republican constitutions should first be drawn up and separate republican constitutional courts established.³

A draft law on the constitutional court prepared by the federal government was rejected in January 1991 by the Presidium of the Slovak National Council, which argued that the federal constitutional court should come into being at the same time as constitutional courts at the republican level and that agreement should first be reached on the division of responsibilities between all three courts. Other Czechoslovak politicians were strongly opposed to the idea of having three constitutional courts in the country. They argued that a fourth court might then be necessary to settle disputes that were bound to arise between the republican and federal ones.⁴

The constitutional courts at the republican level will be established once the republics have promulgated their own constitutions. These republican courts are expected to examine and decide whether laws passed by the republican parliaments contravene the republican constitutions. Currently, only a federal constitution exists; the drafting of new federal and republican constitutions is expected to be completed later this year.

The Constitutional Court

The principal task of the constitutional court will be to rule on the constitutionality of laws. Laws declared unconstitutional by the court will automatically be suspended, after which the Federal Assembly or the respective republican parliament will have six months to correct them. If the laws are not corrected within this time limit, they will be abolished, although a special ruling exists for republican constitutional laws (see below). The decision of the court will be final, and appeals will not be possible. Individual citizens will have recourse to the court when they believe that their constitutional rights have been violated by the state. The court will quash any decision by state bodies that it deems unconstitutional. This will apply to decisions related to all basic human rights included in the Constitutional Bill of Fundamental Rights and Liberties, which the Federal Assembly enacted in January 1991.⁵

The court will also adjudicate on disputes over the division of powers between the federation and the republics as well as disagreements between the two republics. It will decide whether the laws of the federation and the republics contravene international agreements ratified by Czechoslovakia.⁶ In some cases the court will apparently also be able to adjudicate on the rulings of other courts. As a rule, the decisions made by regular civil or criminal courts can be suspended or overruled only by the higher criminal and civil courts, the highest of which is the Supreme Court, whose decisions are final. However, should an individual feel that his

constitutional rights have been violated, he may be able to take his case to the constitutional court. The law is not very clear on what the court could do if it found that the constitutional rights of a citizen had been violated by a civil or criminal court. But given that higher civil and criminal courts may rule that lower ones have violated procedural regulations, it seems likely that the constitutional court will be able to suspend the decision of a criminal or civil court if it deems that decision unconstitutional and to return the case for a new trial.

The Federal Assembly approved only three changes in the draft law, voting down nineteen other proposed amendments. The most important (and the most extensively debated) of the changes concerned the tenure of the constitutional court's judges. The original proposal was that the judges be appointed for a period of 10 years. Some deputies proposed that judges be appointed for life, arguing that such a provision would help protect them against political pressure.⁷ In the end, the parliament decided that judges would be appointed for a period of seven years. The parliamentary discussion also focused on the question of whether judges should be allowed to become members of political parties. While it was considered that barring the judges from membership in political parties would make them more impartial, some deputies argued that such a provision would curtail the judges' civil rights and would not be in line with the practice of many European countries. The final version of the law allows judges to be members of political parties but bars them from becoming officials of such parties.

The law stipulates that the constitutional court will have twelve judges: six from the Czech and six from the Slovak Republic. The Federal Assembly and the Czech and the Slovak National Councils will each nominate eight candidates; the actual selection and appointments will be made by the President. If the chairman of the court is a Slovak, the deputy chairman must be a Czech, and vice versa. The law also stipulates that judges be at least 35 years old, be law school graduates, and have spent at least 10 years practicing law.

One of the most controversial issues discussed by the Federal Assembly was whether the constitutional court should have the right to rule on the constitutionality of the constitutional laws passed by the republican parliaments. Such constitutional laws would include the new republican constitutions, which are now being drafted and are expected to be promulgated in early 1992, as well as all future amendments to these constitutions. The right of the federal constitutional court to rule on whether these constitutional acts by the republics violate the federal constitution was challenged by some

Slovak parties. The Slovak Christian Democratic Movement, for example, demanded that Czechoslovakia become a confederation or a very loose federation of two sovereign republics, whose constitutions would have supremacy over the federal constitution. Some Slovak parties also argued that the federal constitution should be derived from the republican ones and that the federal constitutional court should, therefore, not have the right to declare the republican constitutional laws unconstitutional. It was finally decided that the court would be able to rule on whether republican constitutional laws violate the federal constitution only after the new federal constitution has been promulgated. This means that the court will be unable to rule on any constitutional acts by the republican parliaments as long as the current constitution is in force.⁹

Although the court will have the right to suspend a republican constitutional law, it will not be able to abolish the law automatically if a republican parliament fails to correct it within six months. Before issuing a ruling on a republican constitutional law, the court will be obliged to ask the respective republic's constitutional court for its opinion.

Assessment

The decision to set up the constitutional court is important for several reasons. What is most significant, the court will be the first institution in Czechoslovakia entitled to make binding decisions on disputes over power-sharing between the federation and the republics as well as on disagreements between the republics themselves. The constitution inherited from the communist regime did not specify

what to do in such cases, largely because it had been built around the principle of the leading role of the communist party. The party had served both as "the glue" holding the federation together and as the supreme arbiter.

The establishment of the court will strengthen the role of the judiciary in the system of checks and balances between the executive, the legislature, and the judiciary. Until now, the judiciary has had no institution entitled to rule on laws passed by the parliaments. Not only will the constitutional court be able to do this but it will also be able to overrule those decisions by state bodies that endanger the constitutional rights of citizens. In this respect, the court will serve as a check on the executive.

The fact that judges will serve in the constitutional court for a maximum of seven years is also important. Had they been named for life, serious problems could have arisen, since there are still only a small number of judges in Czechoslovakia who did not collaborate with the communist regime. Finally, it has been agreed that the seat of the constitutional court will be in the Moravian capital of Brno, a significant decision at a time when Moravians have been increasingly complaining about the Prague-centered policies of the new government. Establishing the court in Brno will also have a symbolic significance, since a constitutional court had been situated in the Moravian capital during the so-called First Republic, when Czechoslovakia had been a democratic state.

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Notes:

- 1 AP, February 27, 1991.
- 2 Jiri Pehe, "Building a State Based on the Rule of Law," *Report on Eastern Europe*, no. 9, March 2, 1991.
- 3 AP, February 27, 1991

- 4 See comments by Deputy Prime Minister Pavel Rychetsky broadcast by Radio Czechoslovakia, January 22, 1991, 2:00 P.M.
- 5 *Ibid.*
- 6 CTK, February 27, 1991.
- 7 *Ibid.*
- 8 *Ibid.*