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Constitutional and legal mechanism of conducting foreign policy of the Czech Republic

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Abstract

The paper is concerned with the study of the organization and functioning of the constitutional and legal mechanism of conducting the foreign policy of the Czech Republic with use of statistical and comparative-legal methods. The authors begin their research with the historical survey and pay attention to functional relationships of governmental authorities conferred with foreign policy powers. The paper ends up with the perspectives for further research. The authors believe that special consideration should be given to the aspect that remains beyond the scope of this paper, which is the mechanism of making foreign policy decisions in the Czech Republic.

Keywords: the Czech Republic, constitutional, legal, mechanism, foreign policy.

Mecanismo constitucional y legal de conducir la política exterior de la República Checa

Resumen

El documento se ocupa del estudio de la organización y el funcionamiento del mecanismo constitucional y legal para llevar a cabo la política exterior de la República Checa con el uso de métodos estadísticos y jurídicos comparativos. Los autores comienzan su investigación con la encuesta histórica y prestan atención a las relaciones funcionales de las autoridades gubernamentales conferidas a los poderes de política exterior. El documento termina con las perspectivas para futuras investigaciones. Los autores creen que se debe dar consideración especial al aspecto que queda fuera del alcance de este documento, que es el mecanismo para tomar decisiones de política exterior en la República Checa.

Palabras clave: República Checa, constitucional, legal, mecanismo, política exterior.

1. INTRODUCTION

In modern world international cooperation in different spheres of social life is a paramount factor of progressive development. One of the conditions of a successful development of states and nations is a multifaceted, close, strong and mutually beneficial cooperation in various spheres of state and social life. This cooperation establishes favorable conditions for closer integration of states in economic, scientific, technological, cultural and other fields. To a great extent due

to the peaceful foreign policy and intensive international intercourse a lot of nations achieved a high level of development in the second part of the XX century. The improvement of the constitutional and legal mechanism of conducting foreign policy is of particular importance to modern countries. The functioning of this mechanism in various countries has not been studied properly yet. However, the Russian science of constitutional rights used to study and is still concerned with the attempts to undertake the study of the constitutional and legal mechanism of conducting foreign policy in Russia and abroad. For instance, as back as in the 70s Mironov (1978) published his monograph *Legal regulation of foreign relations in the USSR* (Mironov (1971) and in 1978 he published his work *Constitutional framework of foreign policy in the USSR*. This topic was touched upon in Leibo's et al. (2012) monograph *Foreign policy mechanism applied by bourgeois countries of Central Europe*. In 1986 a team of authors of the State Law Department of Moscow State Institute of International Relations (MGIMO) run by the Ministry of Foreign Affairs of the USSR published a multi-author monograph "Constitutional and legal mechanism of conducting the foreign policy of a state" under the editorship of Havlicek (2003), and in 2004 a group of authors of the Constitutional Law Department of Moscow State Institute of International Relations (University) published a multi-author monograph *Constitutional and legal mechanism of conducting foreign policy*. The state and legal mechanism were a target of research in Pavlov's (2003; 2016) works "State and legal mechanism of conducting foreign policy in the USSR" (Pavlov (1985) and *Constitutional and legal*

mechanism of conducting foreign policy in Russia. In Russia these publications triggered the research of the constitutional and legal mechanism of conducting foreign policy by modern states.

2. METHODOLOGY

The present research is an attempt to analyze the organization and functioning of the constitutional and legal mechanism of conducting foreign policy in post-socialist countries that took the path of democratic development Shashkova(2015) as exemplified by the Czech Republic. Such interest to the constitutional and legal mechanism of conducting foreign policy in such countries is explained by the fact that they, as a rule for the first time, use a totally new mechanism compared to the one they used when they were socialist ones. The study of the constitutional and legal mechanism of conducting foreign policy in such countries is of great importance for Russia to maintain good neighborly foreign policy relations with them. In the course of democratic reforms in the society and state, a number of countries in Eastern Europe joined the EU and NATO. The main peculiarity of the constitutional and legal mechanism of conducting foreign policy in post-socialist countries is that, after joining the EU and NATO, they practically deprived themselves of the sovereign right to conduct an independent foreign policy. It influenced the constitutional and legal mechanism of conducting foreign policy as well as the mechanism of making foreign policy decisions. The present

paper focuses on the constitutional and legal mechanism of conducting foreign policy in the Czech Republic, as a typical one for Eastern European countries that joined the EU and NATO. However, while being generally similar, the constitutional and legal mechanism of conducting foreign policy has its peculiarity in each Eastern European country (Shashkova, 2012). The basic framework of the foreign policy conducted by the governmental authorities of the Czech Republic is given in the Czech Republic's Foreign Policy Concept adopted by its Government on July 13, 2015. This document defines the foreign policy course of the Czech Republic for governmental authorities, involved in the foreign policy, stipulates the main objectives of their foreign policy actions and external relations in general (Grechko et al., 1986).

The Czech Republic's Foreign Policy Concept defines the main objectives: state security, prosperity and sustainable development, and human dignity, including human rights. It also has two national objectives: a service to the public and the reputation of the Czech Republic. The Czech Republic's Foreign Policy Concept underlines its priority areas. As for global issues, the Concept mentions that the Czech Republic contributes to increased global prosperity via its development cooperation, and that the country will seek to improve the economic sustainability of international development cooperation projects. The document indicates that the Czech Republic takes into consideration changes in the world policy and the shift to an increasingly multipolar world, an increased role of non-governmental

actors in international affairs and a strong cooperation of countries in the modern world. The main directions of the Czech Republic's foreign policy are carried out by means of the constitutional and legal mechanism of conducting foreign policy. The constitutional and legal mechanism of conducting the foreign policy of the Czech Republic is a system of organizational, regulatory and functional instruments that form "organizational", "regulatory" and "functional" subsystems. These subsystems, though interconnected, are at the same time relatively independent parts of the constitutional and legal mechanism of conducting foreign policy. The key role in promoting the Czech Republic's interests on the world stage belongs to the governmental authorities of the Czech Republic, empowered by the Constitution of the Czech Republic and legislation to conduct the foreign policy of the republic. The governmental authorities of the Czech Republic vested with authority to conduct the foreign policy of the state and involved in the foreign policy process make up an organizational constituent of such a state and legal phenomenon as the constitutional and legal mechanism of conducting the foreign policy of the Czech Republic. The President of the Czech Republic plays a special role in the constitutional and legal mechanism of conducting the foreign policy of the Czech Republic. The status of the President in countries with the parliamentary form of government is characterized by the fact that this governmental body is empowered with symbolic rights, the implementation of which depends on the government (Afanasyeva et al., 2016). It should be mentioned that the status of the President of the Czech Republic as Head of the state, differs from the status of

presidents of other countries with the same form of government due to the peculiarity of their constitutional and legal status (Havlicek, 2003).

The peculiarity of the constitutional and legal status of the President of the Czech Republic in the state mechanism of the Czech Republic is that in accordance with the Constitution and legislation of the Czech Republic the President is not the highest governmental body. Nevertheless, Section 1 Article 54 of the Constitution of the Czech Republic proclaims the President as Head of the state. It would seem that the status of the President of the Czech Republic as Head of the state suggests his belonging to the highest governmental authorities. However, constitutional provisions concerning the President of the Czech Republic indicate that the status of the President has its peculiarities in the governmental authorities system that tells on the role the President plays in the constitutional and legal mechanism of conducting foreign policy in the Czech Republic and making foreign policy decisions. One of the peculiarities of the constitutional and legal status of the President of the Czech Republic that influences the role of Head of the state in the constitutional and legal mechanism of conducting foreign policy in the Czech Republic is that since 2012 the President has been elected not by the Parliament, but via the popular-vote election which is not typical of the countries with the parliamentary form of government. It means that the President of the Czech Republic gets the right to exercise powers right from the voters. This instrument of power significantly increases the status of the President of the Czech Republic and helps him to be more independent

in the implementation of constitutional powers in tackling the issues of domestic as well as foreign policy. This mechanism allows Head of the state to make independent decisions while dealing with foreign countries and not be bound by the countersignature of the Head of the Government. This degree of independence of the President of the Czech Republic backed by the Constitution and legislation of the state makes it possible for the President to disagree with the Head of the Government of the Czech Republic on a number of issues including foreign policy affairs. It can be exemplified by the position of the current President of the Czech Republic Miloš Zeman on the effectiveness of the US and EU sanctions against Russia. Contrary to the position of the EU and the Government of his own country, he denounces these sanctions and calls for lifting sanctions against Russia because he thinks they are unfair and inflict great damage to the European Union and Czech-Russian relations. When Miloš Zeman visited Russia to participate in the celebrations of the 70th anniversary of the victory in the Great Patriotic War, during his meeting with President Vladimir Putin Miloš Zeman characterized Czech-Russian relations in the following way: “As you surely know, I am confident that normal relations will follow the cool-down...Normal ties are cultural, political and economic ties. Since every president protects the interests of his nation, I am here to protect the interests of the Czech Republic...I am certain that the sanctions are a short-term affair. I publicly spoke against the sanctions” (<http://kremlin.ru/events/president/news/49446>, 2017). The President of the Czech Republic has a rather wide range of powers regarding

domestic and foreign policy, though a lot of them can be used only with the consent of the Government. In accordance with the Constitution of the Czech Republic, the President is not the Head of the executive branch of the Government and officially is not the highest agency of state power. However, the President is a spokesman of the sovereignty of the Czech Republic and represents the country on the international scene. As for foreign policy powers of the President of the Czech Republic, Article 63 of the Constitution of the Czech Republic stipulates that the President represents the state externally; negotiates and ratifies international treaties; accredits and recalls heads of diplomatic missions of the Czech Republic in foreign states and international organizations; represents the state while dealing with diplomatic envoys of other countries. Not being officially the highest agency of state power, the President of the Czech Republic represents the Republic in other countries and international organizations (<http://zakony.centrum.cz/ustava-ceske-republiky/Reference>, 2017). As it has been said the President of the Czech Republic plays one of the leading roles in the constitutional and legal mechanism of the foreign policy of the country. Although the presidential powers in foreign policy are limited by the necessity of getting a countersignature of the Head of the Government, the President has foreign policy powers entrenched by the Constitution that enable him to make independent decisions on foreign policy issues (Mishim et al., 2004).

Although the President of the Czech Republic plays a special role in the governmental authorities system and constitutional and legal

mechanism of conducting foreign policy of the state, the leading role is given to the Government of the Czech Republic. The Government in the states with the parliamentary form of rule takes the leading role in conducting domestic and foreign policy. The role of the Government of the Czech Republic in the constitutional and legal mechanism of conducting foreign policy is defined by the peculiarity of the legal status of this governmental body in the state mechanism of the Czech Republic. The Government of the Czech Republic consists of the Chairman of the Government, Deputies of the Chairman and Ministers. The Government as a whole, its Chairman and other constituents are involved in the foreign policy process and make up the most important part in the constitutional and legal mechanism of conducting foreign policy of the Czech Republic. The Government of the Czech Republic tackles foreign policy issues which are mainly concerned with making treaties, performance of obligations and security of the state (Vodicka, 2003). The Government is headed by the Chairman that plays a special role stipulated in the Constitution, and is relatively independent in the highest governmental authorities system. The status of the Chairman within the Government itself has its peculiarity. When the President of the Czech Republic makes decisions, the Chairman of the Government of the Czech Republic is the first among equals. In a strict sense, the Chairman of the Government of the Czech Republic is not a command authority in relation to other members of the Government. However, from the legal and political point of view, the status of the Chairman of the Government of the Czech Republic is different from the status of other members of the Government. The key difference is that pursuant

to the Constitution and legislation of the Czech Republic, the Chairman of the Government represents the Government while dealing with other governmental authorities domestically (Havlicek, 2003). While studying the constitutional and legal mechanism of conducting the foreign policy of the Czech Republic, a special attention should be paid to the competence of the Chairman of the Government to perform presidential duties in cases stipulated by the Constitution of the Czech Republic. Pursuant to Article 66 of the Constitution of the Czech Republic if the office of the Presidency becomes vacant and before a new President has been elected or has taken the oath of office, likewise, if the President of the Republic is, for serious reasons, incapable of performing his duties and if the Assembly of Deputies and the Senate adopt a resolution to this effect, some presidential duties, including those concerned with foreign policy, devolve upon the Chairman of the Government. Among those are the duties under Article 63 paragraph 1 in accordance with which the Chairman of the Government of the Czech Republic represents the state externally; negotiates and ratifies international treaties; receives heads of diplomatic missions; accredits and recalls heads of diplomatic missions etc.

In accordance with Article 66 of the Constitution of the Czech Republic, the Chairman of the Government can perform other presidential duties under Article 63 paragraph 2 of the Constitution of the Czech Republic not explicitly enumerated in constitutional acts if a statute so provides.

Therefore, the constitutional and legal mechanism of conducting foreign policy makes both the President and the Government responsible for its conduct. If the Chairman of the Government of the majority of parliamentary republics represents the state externally, negotiates and signs international treaties, in the Czech Republic the duty to represent the state externally, negotiate and ratify international treaties etc. is allocated to the President of the Republic. However, presidential duties concerning foreign policy require countersignature of the Chairman of the Government or a member of the Government designated by him. In foreign policy affairs, the Government may decide to send the armed forces of the Czech Republic outside the territory of the Czech Republic and to allow the stationing of the armed forces of other states within the territory of the Czech Republic. The Government may also decide on the transfer of the armed forces of other states across the territory of the Czech Republic and on their overflight over the territory of the Czech Republic; or on the participation of the armed forces of the Czech Republic in military exercises outside the territory of the Czech Republic and on the participation of the armed forces of other states in military exercises within the territory of the Czech Republic. Without delay, the Government informs both chambers of Parliament about any decisions they make. The Parliament may annul the Government's decisions by voting in both chambers or one of them by an absolute majority of all its members (Constitution of the Czech Republic Article 43, n.d.). One of the key roles in the constitutional and legal mechanism of the Czech Republic is performed by a specialized body of the executive branch –

the Ministry of Foreign Affairs of the Czech Republic. This government body functions in accordance with the Constitution of the Czech Republic and the amended law, adopted by the Czech National Assembly in 1969. The Ministry of Foreign Affairs maintains relations of the Czech Republic with other states, international organizations and integrative blocks; it coordinates activities resulting from bilateral and multilateral communication except those performed by the Ministry of Justice. Being the key body in tackling foreign policy affairs of the Czech Republic, within the limits of its competence the Ministry of Foreign Affairs of the Czech Republic elaborates the Czech foreign policy and coordinates foreign assistance provided to develop external economic relations. Pursuant to the above-mentioned law, the Ministry of Foreign Affairs coordinates the activities of other ministries and governmental bodies in external relations, within the scope of its competence contributes to the fulfillment of international treaties with the participation of the Czech Republic; oversees the compliance with the obligations imposed by the membership of the Czech Republic in international organizations; protects the rights and interests of the Czech Republic and its citizens abroad; controls diplomatic missions of the Czech Republic in foreign states and international organizations; guarantees the relations of foreign states' authorities in the Czech Republic and abroad; manages the Czech Republic property abroad; coordinates preparation, ratification and nationwide discussion of international treaties and covenants; monitors the publishing of international treaties with the participation of the Czech Republic; enforces international treaties and conventions safeguarding the interests

of the Czech Republic; grants permission on import and export of military goods; trains staff to work in foreign establishments of the Czech Republic; organizes elections to the Chamber of deputies of the Czech Republic abroad; participates in the organization and holding of Czech Republic deputies election to the European Parliament. The Ministry of Foreign Affairs of the Czech Republic performs other tasks stipulated by the Constitution and legislation of the country. The part and parcel of the constitutional and legal mechanism of conducting foreign policy of the Czech Republic are the Chambers of the Parliament of the Czech Republic. Their foreign policy activity is connected, in the first place, with their law-making function because they are endowed with the right to pass laws and other statutes and regulations that define social relations in conducting foreign policy (Leibo, 1984). Moreover, the Chamber of Deputies decides on the declaration of a state of war; gives its consent to sending the armed forces of the Czech Republic outside the territory of the Czech Republic or stationing of the armed forces of other states within the territory of the Czech Republic; decides on the Czech Republic's participation in defensive systems of international organizations of which the Czech Republic is a member. The Chambers of the Parliament also give their consent to the participation of the armed forces of the Czech Republic in military exercises outside the territory of the Czech Republic and on the participation of the armed forces of other states in military exercises within the territory of the Czech Republic (Constitution of the Czech Republic Article 43, n.d.).

On top of that, the Chamber of Deputies and the Senate give assent to the President of the Czech Republic for the ratification of international treaties. In accordance with Article 49 of the Constitution of the Czech Republic the ratification is required for the treaties: a) affecting the rights or duties of individuals; b) of the alliance, peace, or other political nature; c) by which the Czech Republic becomes a member of an international organization; d) of a general economic nature; e) concerning additional matters, the regulation of which is reserved to statute. If the chambers give their assent to ratify a treaty, they pass constitutional law on the ratification of an international treaty. The law is adopted by a 3/5 (qualified) majority of all the members of each chamber of the Parliament. The chambers of the Parliament of the Czech Republic participate in foreign policy by maintaining inter-parliamentary relations with parliaments of other countries and participating in inter-parliamentary international organizations. The deputies of the Chamber of Deputies and the Senate of the Parliament of the Czech Republic make up a national group of parliamentarians of the Czech Republic in the Inter-parliamentary Union. The organization and functioning of this group are regulated by the Statute on Czech Republic's national group in the Inter-parliamentary Union (<http://www.psp.cz/sqw/hp.sqw?k=231>, 2017). A certain role in the constitutional and legal mechanism of conducting foreign policy is performed by the Security Council of the Czech Republic. The National Security Council of the Czech Republic is a standing governmental group responsible for coordinating the Czech Republic's security issues and preparing draft measures to ensure the

country's security. The Security Council comprises 11 members. The Security Council is headed by the Chairman of the Government of the Czech Republic. Other members of the Council include: the deputy prime minister, the minister of finance, the minister of defense, the minister of the interior and the minister of foreign affairs. The Security Council of the Czech Republic has its organizational structure the main bodies of which are committees fulfilling various tasks of the Security Council. Among them are: the foreign security policy coordination committee reporting to the Minister of the interior, and the Defense planning committee reporting to the Minister of defense (RESOLUTION of the Government of the Czech Republic, 2014). The Security Council tackles foreign policy issues connected with the state security. It is stipulated in the Decree of the Government of the Czech Republic of July 9, 2014 that proclaims that apart from dealing with the state security, the Council drafts and introduces for consideration of the Government proposals on the participation of the Czech Republic in the events to fulfill its allied obligations arising from international treaties with the participation of the armed forces of the Czech Republic outside the territory of the Czech Republic in international peacekeeping operations to make and sustain peace, to provide humanitarian aid to foreign countries and to participate in large-scale rescue operations outside the territory of the Czech Republic (RESOLUTION of the Government of the Czech Republic, 2014). The Security Council deals with other issues connected with the state foreign policy.

One of the constituents of the constitutional and legal mechanism of conducting the foreign policy of the Czech Republic is the Constitutional Court of the Czech Republic. Its competence, organization and operating procedures are stipulated in the Constitution of the Czech Republic and the Law “On the Constitutional Court of the Czech Republic” of 1993. The competence of the Constitutional Court in the area of foreign policy is concerned with the Czech Republic’s membership in the European Union. Thus, for instance, in accordance with Article 87 of the Constitution of the Czech Republic, the Constitutional Court of the Czech Republic decides on the compatibility of the referendum on the Czech Republic joining the European Union with the Constitutional law on the referendum on the Czech Republic’s integration into the European Union. The crucial function of the Constitutional Court of the Czech Republic in the area of foreign policy lies in its preventive control on the compliance of an international treaty, which is subject to ratification, with the Constitution and legislation of the Czech Republic. Pursuant to paragraph 2 of Article 87 of the Constitution of the Czech Republic, prior to the ratification of a treaty, the Constitutional Court decides on the treaty’s conformity with the constitutional order. A treaty may not be ratified prior to the Constitutional Court giving judgment. In accordance with paragraph 1 of Article 89 of the Constitution of the Czech Republic, in case the Constitutional Court decides against an international treaty because of its incompatibility with the constitutional order of the Republic, the treaty will not be ratified unless the incompatibility is eliminated. A

certain role in the constitutional and legal mechanism of conducting foreign policy of the Czech Republic is performed by other state bodies conferred with the foreign policy powers. For instance, the Ministry of Defense is also involved in conducting the foreign policy of the Czech Republic. The Law 2/1969 empowers the Ministry of Defense of the Czech Republic to fulfill tasks connected with the defense support of the country. However, some powers that arise from the Czech Republic's membership in NATO, are of the foreign policy area. For instance, point 3 of paragraph 16 of the Law 2/1969 stipulates that the Ministry of Defense of the Czech Republic in the framework of the European security system organizes cooperation with the armed forces of other countries. By so doing the Ministry of Defense of the Czech Republic, thereby is involved in the implementation of the military policy doctrine of NATO. While operating within the framework of NATO, the Ministry of Defense is engaged in the foreign policy of the Czech Republic, and therefore, becomes a constituent of the constitutional and legal mechanism of conducting the foreign policy of the Czech Republic. All the governmental authorities mentioned above are interrelated in the process of conducting the foreign policy of the Czech Republic and function according to regulations and standards enshrining their competence in the foreign policy area of the Czech Republic. The Constitution of the Czech Republic and other laws and regulations define the rights, obligations and order of interaction of the state bodies in the conduct of the foreign policy of the Czech Republic, and form a regulatory subsystem of the constitutional and legal mechanism of conducting foreign policy of the

Czech Republic. These laws and regulations have been analyzed as an organizational element of the constitutional and legal mechanism of conducting the foreign policy of the Czech Republic.

3. CONCLUSION

Summarizing what has been said above, we can make a conclusion that the constitutional and legal mechanism of conducting foreign policy of the Czech Republic has its peculiarities. The first peculiarity is that the main role in making the foreign policy decisions is fulfilled not only by the Head of the state – the President of the Czech Republic, but by the Government as well, acting via the Chairman, Deputies of the Chairman and Ministers. While in a typical parliamentary republic the key role in making decisions in the foreign policy area is performed by the Head of the Government, and the President plays only a symbolic role, the Czech Head of the state has the possibility to exert actual influence on taking foreign policy decisions. For instance, the President ratifies international treaties signed by the Government and approved by the Chambers of the Parliament. The President of the Czech Republic has the right not to ratify an international treaty and bring it back to the Parliament and the Government of the Czech Republic. Therefore, the most important decisions in the foreign policy area are made to a greater or lesser extent by all governmental authorities, including the President of the Czech Republic, although the legislation of the Czech Republic does

not straightforwardly acknowledge the President as the highest state body. In conclusion, it should be mentioned that some aspects of the topic under consideration require further research. The follow-up study of the constitutional and legal mechanism of conducting foreign policy of the Czech Republic is rather promising because such an important element of the topic under discussion as the mechanism of making decisions in the foreign policy area is left beyond the scope of this paper. The mechanism of making foreign policy decisions is a dynamic expression of the constitutional and legal mechanism of conducting foreign policy of a state. The mechanism of making the foreign policy decisions is an integral part of the constitutional and legal mechanism of conducting the foreign policy of a state and deserves a special and more detailed study in further research of this topic.

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