

# Law, Politics, and Judicial Review of Constitutional Amendments

## Abstract

The paper focuses on the unique constitutional procedure of judicial review of constitutional amendments. It questions whether the current practice in the Czech Republic effectively preserves the constitutional order. Furthermore, it asks if abrogating a constitutional amendment could trigger a constitutional crisis rather than protect a democratic state governed by the rule of law. The thesis examines why certain parts of constitutions are deemed immutable by the legislative branch. It presents the key doctrinal arguments for and against judicial involvement in the constitutional amendment process. It also analyses the evolving relationship between law and politics, investigating the causes and consequences of the judiciary's increasing influence. These outcomes form the basis for considering the legitimacy of judicial review.

The latter part of the thesis focuses on specific methods of protecting the core values of constitutions. The paper reviews the Czech approach to the immutability of the essential requirements for a democratic state governed by the rule of law. The judicial protection provided under Article 9(2) of the Constitution is analysed. Similarly, relevant case law is discussed, especially the tension between democratic legitimacy and judicial authority, outlining the ambiguity of the Czech eternity clause. Additionally, the paper turns its focus abroad. A scale is introduced to discuss the foreign approaches: it ranges from systems that have judicial review of constitutional amendments, and the core values that are both anchored by the constitution, to systems where the oversight and main elements of a constitution are only defined by courts. The study identifies three potential sources of inspiration for the Czech practice: the involvement of the public through referenda, ex-ante judicial reviews, and extending the timeline for adopting constitutional amendments.

In conclusion, the thesis reflects on whether these foreign approaches are compatible with the Czech constitutional framework and whether they could help address the challenges of democratic legitimacy and the vagueness of Article 9(2). The study ultimately finds limited solutions abroad. Instead, it emphasizes the importance of an engaged civil society, judicial restraint, and strong protections for democratic institutions as critical elements for protecting core constitutional values.

**Keywords:** material core of constitution, eternity clause, judicial review of constitutional amendments