

Právo medzinárodných ekonomických integračných organizácií a Súdny systém Európskej únie

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Téma: Kontrolné mechanizmy v MO

- ▶ **Súdny prieskum aktov prijatých v rámci MO**
- ▶ **Mimosúdny dohliadací systém v MO**
- ▶ **Riešenie sporov v rámci MO**



Literatúra

- ▶ Klabbers: *An Introduction to International Institutional Law*, Cambridge, 2009.



Súdny prieskum aktov v rámci MO

- ▶ 2 rozdielne otázky:

- ▶ Otázka 1:
- ▶ Musí byť akt prijatý orgánom medzinárodnej organizácie v súlade s požiadavkami ustanovenými zakladacou zmluvou?

- ▶ Otázka 2:
- ▶ Existuje proces, ktorým medzinárodný súd alebo tribunál môže preskúmať súladnosť takéhoto aktu so zakladajúcou zmluvou?



Súdny prieskum aktov v rámci MO

- ▶ Otázka I:
- ▶ Poradný posudok Právomoc VZ na prijímanie členov OSN (1948):
 - ▶ „The political character of an organ cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment.
 - ▶ To ascertain whether an organ has freedom of choice for its decisions, reference must be made to the terms of its constitution. In this case, the limits of this freedom are fixed by Article 4 and allow for a wide liberty of appreciation.“



Súdny prieskum aktov v rámci MO

- ▶ Otázka 2:
- ▶ odpoved' závisí od zakladajúcej zmluvy
 - ▶ v mnohých MO nie je dohodnutý, ale niekedy je daná právomoc interpretovať
- ▶ v OSN: žiadny osobitný postup preskúmania, žiadna interpretačná právomoc
 - ▶ napriek tomu: otázka preskúmania môže vzniknúť v rámci dvoch druhov konaní na MSD:
 - ▶ posudkové
 - ▶ sporové



Súdny prieskum aktov v rámci MO

► Prieskum aktu:

► Pojem prieskumu:

- posúdenie súladu aktu s požiadavkami zakladajúceho dokumentu
- súladnosť s požiadavkami procesnými, s požiadavkami na právomoc

► Právne dôsledky prieskumu:

- žiadne: menšie porušenia procesných predpisov
- neaplikácia právneho aktu (ak neexistuje)
- zrušenie



Súdny prieskum aktov v rámci MO

- ▶ Príklady OSN:
 - ▶ rozsudok ICTY Tadič:
 - ▶ „*There is no question, of course, of the International Tribunal acting as a constitutional tribunal, reviewing the acts of the other organs of the United Nations, particularly those of the Security Council, its own ‘creator.’ It was not established for that purpose, as is clear from the definition of the ambit of its ‘primary’ or ‘substantive’ jurisdiction in Articles 1 to 5 of its Statute.”* (para. 20)



Súdny prieskum aktov v rámci MO

► Príklady OSN:

- ▶ rozsudok ICTY Tadič:
- ▶ „*But this is beside the point. The question before the Appeals Chamber is whether the International Tribunal, in exercising this ‘incidental’ jurisdiction, can examine the legality of its establishment by the Security Council, solely for the purpose of ascertaining its own ‘primary’ jurisdiction over the case before it.*” (para. 20)



Súdny prieskum aktov v rámci MO

- ▶ Príklady OSN:
 - ▶ Posudok MSD Výdavky na misie:
 - ▶ “*In the legal systems of States, there is often some procedure for determining the validity of even a legislative or governmental act, but no analogous procedure is to be found in the structure of the United Nations. Proposals made during the drafting of the Charter to place the ultimate authority to interpret the Charter in the International Court of Justice were not accepted; the opinion which the Court is in course of rendering is an advisory opinion. As anticipated in 1945, therefore, each organ must, in the first place at least, determine its own jurisdiction.*”



Súdny prieskum aktov v rámci MO

► Príklady OSN:

► Posudok MSD Namíbia:

- „Undoubtedly, the Court does not possess powers of judicial review or appeal in respect of the decisions taken by the United Nations organs concerned. The question of the validity or conformity with the Charter of General Assembly resolution 2145 (XXI) or of related Security Council resolutions does not form the subject of the request for advisory opinion.“
- “However, in the exercise of its judicial function and since objections have been advanced the Court, in the course of its reasoning, will consider these objections before determining any legal consequences arising from those resolutions.”



Ďakujem za pozornosť

