

The Position of Head of State in Slovak Conditions From the 19th Century to 1989

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ABSTRACT

The head of state as a legal institution is a position of utmost importance for every democratic state, and its development represents the spirit of the age. The territory of Slovakia is special in this regard, because its first establishment as an independent state was during the Second World War, at which time the people could for the first time independently create their state system and the head of state could extend their influence. The answer to why the Slovaks seized the opportunity to found their own state in this unfortunate era is because of their long history of unsuccessful political attempts to gain independence. This article seeks to show this aspect of the Slovak state by examining the position of head of state on the territory of Slovakia since the 19th century.

KEYWORDS

head of state, Slovak political representation, Slovak totalitarian Republic

Funcția de șef de stat în condițiile slovace din secolul al XIX-lea până în 1989

REZUMAT

Șeful statului, ca instituție juridică, este o poziție de maximă importanță pentru orice stat democratic, iar dezvoltarea sa reprezintă spiritul epocii. Teritoriul Slovaciei este special în această privință, deoarece prima sa constituire ca stat independent a avut loc în timpul celui de-al Doilea Război Mondial, moment în care poporul a putut pentru prima dată să-și creeze în mod independent sistemul de stat, iar șeful statului și-a putut extinde influența. Răspunsul la întrebarea de ce slovacii au profitat de oportunitatea de a-și întemeia propriul stat în această epocă nefericită se datorează istoriei lor îndelungate de încercări politice nereușite de a obține independența. Acest articol încearcă să arate acest aspect al statului slovac prin examinarea poziției șefului de stat pe teritoriul Slovaciei începând cu secolul al XIX-lea.

CUVINTE CHEIE

șef de stat, reprezentare politică slovacă, Republica totalitară slovacă

I. INTRODUCTION

At the beginning, it is crucial to explain what the position of the head of the state refers to in general, how this institution developed through history under the conditions of the territory of today's Slovakia, and its historical specifics in relation to the development of head of state in Slovakia.

First, the concept of a head of state, either in its original expression or in modified versions, has existed on the territory of today's Slovakia ever since the beginning of the history of its functional development. In general, the head of state as an independent organization of state belongs to the highest constitutional organs of the state, and formally it holds the highest position in the hierarchy of state organs, and is moreover the symbol and the valid representative of the state externally. Moreover, the position, competencies, and tasks of the head of state in different countries are diverse, being affected by many factors; as a result, even the naming of this institute differs in individual countries.¹

Legal history from the aspects of Slovakia is quite unique, taking into consideration the fact, that its territory was part of different countries throughout history, also scholars mainly do research on the history of law and state of the Czech and Slovak territories jointly. Most of the Slovak territories belonged to the Hungarian state entity in the 19th century, and to Czechoslovakia in the 20th century.

Typically, when analyzing the institute of head of state, the constitutional development of the respective country must be taken into consideration as well. In the case of Slovakia, the development of the head of state has been affected by the formation of feudal Hungary, the Habsburg Empire, and the Dual Monarchy of Austria and Hungary, as well as Czechoslovakia, when the legal territory of Slovakia was part of these states. As an independent Slovak state was non-existent until the 20th century, the transformation and evolution of the head of state was influenced by the political course of events in these territories, which contributed to the formation and changes in the state-building and statehood of these countries.

II. THE ABSOLUTIST ERA

The first typical era, based on the general periodization of the scientific discipline of the history of the state and law of the Slovak Republic and the Czech regions, focuses on the feudal era, which represents one of the longest periods of the existence of state and law in these areas, in this case from the 9th century until 1848. Officially, the absolutist era in the Slovak territories refers to the period from 1526 until 1848.²

1 Marian Posluch, Ľubor Cibulka (2006): *Štátne právo Slovenskej republiky* (State law of the Slovak Republic), Heuréka, Bratislava, p. 96.

2 Florián Sivák (1998): *Dejiny štátu a práva na území Slovenska do roku 1918* (History of state and law on the territory of Slovakia until 1918), Vydavateľské oddelenie Právnickej fakulty Univerzity Komenského, Bratislava, pp. 2–3.

The main focus of this article is on the development of head of state in the feudal era in the 19th century.

In late feudalism the head of state was the absolute monarch with seemingly limitless power, and who exercises his power to strengthen and preserve the feudalist system. In Slovak territory it was mainly Hungarian centralization that was characteristic. In this era the Kingdom of Hungary was part of the Austrian Empire ruled by the Habsburgs, and the Slovak territories were situated in the Hungarian-dominated part of the state.

In this era, the main law source was customary law; however, from the 16th century there were numerous attempts to codify the law. The most important written source of law in this time was the *Tripartitum*³ by István Werbőczy, a trusted legal scholar, who in his work collected the actual customary law of that time. While the *Tripartitum* never became an official source of law, it was valued highly and widely used by lawyers. Thus, some aspects of the dynamics, ideals, and position of the head of state are expressed in this collection.⁴

The monarch, the head of the state in the Hungarian Monarchy, held a special position that was quite unique among the European countries of this era. The monarch was considered as an apostolic king, so as a head of a Christian state by coronation he gained the power of the whole administration of the church and missionary duties in his kingdom, thus the monarch's power was universal. The monarch's authority was legitimized by fulfilling the legal conditions for the coronation, so the choice of the monarch was based first, on his suitability and skills for governance (*idoneitas*) by the Royal Family, supported by the Royal Council; second, acceptance by the country; and lastly, consecration by the Church.⁵

Generally, the monarch was the wielder and practitioner of the chieftom, and thus of jurisdiction, legislation, governance, and administration, and he was also the commander of the armed forces.⁶

The uniqueness of the position of the monarch of the Hungarian Kingdom lies in the fact that originally the chieftom belonged to the Holy Crown and its derived practitioner was the nation. The nation thus basically involves the monarch in this power through the process of coronation. Before coronation, the monarch had to make an oath that he would keep the law and the customary law, causing this process to be of constitutional importance. Thus, the monarch *accepted* this power and exercised it together with the nation.⁷

The monarch had royal prerogatives such as being sanctified and inviolable, not responsible to any other national organ, and an apostolic monarch. In relation to the legislative power, the monarch could issue decrees and privileges, and from the 13th

3 *Tripartitum opus iuris consuetudinario incltyti regni Hungariae*.

4 Attila Barna; Attila Horváth; Zoltán József Tóth; Gábor Máthé (2014): *Magyar állam- és jogtörténet* (Hungarian state and legal history), Nemzeti Közzolgálati Egyetem Közigazgatástudományi Kar, Budapest, p. 372.

5 Barna et al. (2014): p. 66.

6 Barna et al. (2014): p. 67.

7 Barna et al. (2014): p. 68.

century he practiced the legislative power jointly with the Diet, as established in Act no. 12/ 1791.⁸

According to the interpretation of the Holy Crown, the monarch exercised the state power of the Holy Crown, not his own. The executive power, in line with Act no. 12/ 1791, is carried out in the spirit of the law. These royal prerogatives include the right to appoint high officers, inspect the enactment of the law, declare war, make peace, exercise financial authority, gift lands, and grant aristocratic titles.

Judicial power was no longer exercised by the monarch personally once the Royal Curia and other privileged establishments could carry out their own judicial proceedings from the 15th century, adjudicating in the name of the monarch. The monarch was entitled to sign judicial orders and give mercy and amnesty, and could not amend any judgements.

To sum up, in the first half of the 19th century, the monarch had seemingly endless power and also strove to exercise his great legislative power in sovereign fashion. He was in charge of the executive branch, and in the absolutist interpretation the monarch had in principle limitless power that no organization could supervise. However, he was obliged to respect the customs and basic principles of the monarchy. He could not freely dispose of the rights of the aristocracy nor the citizenry. In any case we cannot state that he was a despotic leader, for he was obliged to respect the law. Central power was exercised by the monarch, the lords, and high priests. This joint governance with the aristocracy and titled citizens initiated the creation of different types of royal prerogatives that were transformed during the eras of Revolution and Dualism.

III. THE REVOLUTIONARY ERA AND THE DUAL MONARCHY (1840S–1867)

The second half of the 19th century can be described as a turbulent era, with many changes regarding the form of state, politics and the law system. The classical absolutist and feudal governance of the monarchy caused dissatisfaction among large masses of citizens, who felt the inequality arising from their status. Many intellectuals, activists, and politicians expressed their disagreement with the old system, which led to class exclusiveness, inequality before the law, and the oppression of the Hungarian nation. This national uprising was characteristic to the Slovaks as well, who introduced their own political reforms beside Hungarians. The revolution, its failure, and the neo-absolutism afterwards contributed to the Austro-Hungarian compromise, the establishment of the Dual Monarchy, which sorted out the multinational relations in the country, as well as the creation of a more modern division of national organizations, including the position of the head of state.

⁸ Barna et al. (2014): p. 75.

1. Slovak political movements in the 1840s

The national uprising of the Slovak nation began in the 1840s. The Slovak national movement had the purpose of creating a modern Slovak national identity, and later its legal recognition. First, they established their cultural affiliation, then their political identity by establishing various Slovak business companies, education societies, and cultural associations. Ľudovít Štúr was an aspiring politician who was the key figure in the Slovak national movement, founding the first Slovak newspaper *Slovenskje národnje novini* (Slovak national newspaper), which mainly dealt with political issues.⁹

In this newspaper Štúr and his colleagues published their perception of reforms regarding education, language, and the Slovak political program. Slovaks sought to realize the independence of the nation through the creation of political autonomy (administrative and territorial) in Hungary. Many motivated young evangelical people joined the movement, where they could express their political demands; however, in the reality of the Hungarian political system they could hardly secure them.¹⁰ Nevertheless, these claims were presented for the Hungarian political elite in 1848 when Ľudovít Štúr was member of the Hungarian Assembly, however, these radical reforms were doomed, as they would have led to the decentralization of the sought-after independent Hungary.

After armed conflict between the Habsburgs and Hungarians broke out arising from the claims of the Hungarian National Uprising, in 1848 Slovak reformists managed to popularize their political aims among the Slovak peasantry in the western and central parts of the mainly Slovak territories. At a gathering in Liptósztmiklós (Liptovský Mikuláš) in May 1848, the official Slovak political program was created by key Slovak reformists such as Ľudovít Štúr, Jozef Miloslav Hurban, Michal Miloslav Hodža, Ján Francisci, and Štefan Daxner. The document is called the “*Requests of the Slovak Nation*.”¹¹

First, Slovaks demanded their political representation in the Hungarian Assembly, and the establishment of a Slovak Diet, in which they could manage their own independent issues, declare Slovak an official language, and education in Slovak as well. They also called for universal suffrage and democratic rights, including freedom of the press and of public assembly. The “Requests,” combining as they did a national, political, and social vision, can be considered the first consistent political program in modern Slovak history. The “Requests of the Slovak Nation” were addressed to His Majesty the King-Emperor, to the Hungarian Diet, to His Excellency the Hungarian Palatine, the King’s Deputy, and to the Hungarian Ministry on May 10, 1848.

9 Peter Macho; Daniela Kodajová et al. (2015): *Ľudovít Štúr na hranici dvoch vekov–Život, dielo a doba verus historická pamäť* (Ľudovít Štúr on the border of two ages–Life, work and time versus historical memory), Historický ústav SAV, VEDA, vydavateľstvo Slovenskej akadémie vied, Bratislava, pp. 57–58.

10 Macho et al. (2015): pp. 59–61.

11 *Žiadosti Slovenského Národa* (Demands of the Slovak nation), available online: https://www.gjar-po.sk/~gajdos/druhy_rocnik/Ziadosti_slovenskeho_naroda.pdf

However, as they could not reach mutual understanding with the Hungarians, they later turned to Vienna, and sought to realize their territorial autonomy on an ethnic basis with their help. This reflected the Austro-federalist concept; however, with the defeat of the Hungarian revolution, the more conservative leadership was renewed by bureaucratic centralization in the country. Although they sided with the Austrians in the armed conflict in hopes that after the war their political claims would be realized, this hope did not come to fruition. In the next Slovak political program, the “Memorandum of the Slovak nation” of 1861, the Hungarian-federalist option was again the focus, and this remained the basic orientation of Slovak political thought until 1914.

In conclusion, we can state that while the Slovak political movement focused mainly on gaining territorial and political independence, it also sought to modernize the country in the same way as the Hungarians, whose reformist ideas tried to change the basic constitutional state organs, as well as the role of the head of the state and the monarch.

2. Constitutional developments in 1848

The Diet of 1847/1848 was of the utmost importance, because the epoch-making modern legal institutes were legally enacted by the signature of the monarch Ferdinand V. himself on April 11, 1848. These were called the April Laws, which aimed to reform the Kingdom of Hungary into a parliamentary democracy and a nation-state. By accepting these laws, the Kingdom of Hungary became a constitutional monarchy. They did not draft a new constitutional document, but altered the Constitutional rules from the 1700s to maintain legal continuity. Basically, the reform aspirations of Hungarians were realized.¹²

By the creation of the independent Hungarian Government, which was responsible for the legitimate Hungarian Diet, basically only the monarch’s persona linked Hungary and the Austrian Empire, forging a personal union.¹³

The independent sovereign Hungary governed itself by its Government and Diet, while the monarch had much less power in the executive branch. He reigned over the Kingdom of Hungary, but without de facto governing it. According to the April Laws the executive power was realized by the independent responsible Government in the name of the monarch. The person of the monarch was to be sacred and inviolable henceforward. Moreover, the monarch’s competencies were limited in favor of the Palatine, who served as a substitute of the monarch in his absence. His decrees gained legality and validity in Hungarian territories only by the countersignature of the respective minister. Some competencies of the monarch remained untouched, such as initiating legislation, enactment of legislative acts, and summoning and

12 Barna et al. (2014): p. 173.

13 Barna et al. (2014): p. 170.

postponing the Diet; however, its dissolution was possible only if the year's audit and the next year's state budget had already been determined.¹⁴

However, the growing tension between Hungary and the Austrian Empire due to the quick and fairly radical reforms regarding the state form resulted in a counter-attack from the Austrians. Dissatisfaction with the state formation of the Hungarians within the Austrian Empire was expressed by the Croatian Palatin Josip Jelačić, upon whom the Austrians relied on to lead some of the armed forces. By this conflict, the actual representatives of the Habsburg dynasty disregarded the April Laws. This threat encouraged the Hungarians to create armed opposition, because at this point it was evident that a diplomatic solution would not be enough. The independent Hungarian Government resigned, and the monarch autocratically appointed another Government. In response, the Hungarian Diet elected the national Defense Commission (Országos Honvédelmi Bizottmány), under the leadership of Lajos Kossuth, which had a key role in establishing and leading the Hungarian armed forces. This organization primarily exercised executive power, but Kossuth gained some competencies similar to the head of state, such as appointing national officers and leaders of the armed forces.¹⁵

After several battles on different front lines in 1849, the Hungarians officially dethroned the Habsburg dynasty, and as a result the institute of the head of state needed to be newly formed. This position was strangely named the Governor President, which resembled the post of a more republican head of state. His decrees and other decisions were validated by the signature of the respective minister. Moreover, the decision of declaration of war and making peace had to be supported by the Diet. Kossuth was given this title between April 14 and August 11, 1849. This overall was a mixed position, because the members of the Government were appointed by the head of state, but he could not dissolve the Diet. This resulted in the Governor President having a dominant influence on what political pathway the overall Government would take. By the end of the fight Kossuth appointed Artúr Görgey, the former Minister of Defense, as head of state, with dictator-like competencies. However, its "strengthened" position was not enough to ensure success on the battlefield, and the Hungarian War of Independence was lost.¹⁶

After the Hungarian surrender, the neo-absolutist era began with attempts to re-establish the centralization and domination of the Habsburg dynasty, which lasted until the Austro-Hungarian Compromise of 1867. The position of Hungarians and other nationalities in decision making and political representation were largely impaired, to such an extent that Hungary completely lost its constitutional organizations and state independence. The legal framework of these changes was given by the Constitution of Olmütz in 1849, in which the Austrian Empire was declared a unitary inseparable monarchy. However, in 1851 the Silvester Patents suspended this

14 Act no. III/1848 on the establishment of an independent responsible Hungarian Government, available online: <https://net.jogtar.hu/ezer-ev-torveny?docid=84800003.TV&searchUrl=/ezer-ev-torvenyei%3Fpagenum%3D27>

15 Barna et al. (2014): p. 174.

16 Barna et al. (2014): p.174

rigid Constitution, and based on these monarchic absolutism was straightforwardly established without illusions. This absolutist regime was ensured by police and military force carried out by the Minister of the Interior Alexander Bach.

In this period, as indicated, the head of state remained the only functioning state institution, who governed in a manner neglecting the traditional Hungarian constitutional customs because he exercised legislative power without the support of the Diet, and his position as legitimate monarch of Hungary was questionable due to the absence of a coronation ceremony.¹⁷ His attitude towards the Hungarians was justified by the *Verwirkungstheorie*.¹⁸

Overall, he was the central figure in every branch of power. He had the highest position in the public administration, as he was “sacred, inviolable, and not responsible” for his actions, he filled the legislators’ post alone, and the executive entitlements were guaranteed, especially as there was little possibility of their transfer to other state organs. Originally, the Imperial Council was linked to the Government and was replaced under the head of state, as he appointed its members as well. The collective responsibility of the ministers of the Government was replaced by personal responsibility.¹⁹

In conclusion, the high hopes of both the Slovaks and the Hungarians manifested in the revolutionary era were dissolved by the re-established neo-absolutism. Some changes introduced by the revolutionists remained in force during this period, such as equality before the law and the elimination of serfdom, but on the other hand the Slovak and Hungarian territories were degraded into administrative provinces under the direct supervision of the monarch. Although the Slovaks sided with the Crown, their position after the revolution was no more relevant than the Hungarians’. The head of state had to show power and reunify the Kingdom, thus turning to the absolutist regime once again.

3. The Dual Monarchy of Austria and Hungary

The police and military violence that enforced the centralist regime were counter-productive, which led to political changes in 1859. The position of the Austrian Empire was weakened internationally as well with the failure of the war against the Italian national liberation movement. The monarch Franz Joseph I was forced to open a route for reforms.²⁰

The dissatisfactory financial situation in the Empire required him to summon the Imperial Council, but with the assurance that they would have control over the national budget and participation in the Government’s decision making. These changes had enabled gradual liberalization since 1851. The recovery of constitutionality

17 Tomáš Gábriš (2013): *Modernizácia uhorského právneho poriadku v 19. storočí* (Modernization of the Hungarian juridical system in the 19th century), in Dušan Kováč et al. (ed.): *Sondy do slovenských dejín v dlhom 19. storočí*, Historický ústav SAV, pp. 2–3.

18 Meaning the theory of losing all their rights, whereby because the Hungarians had rebelled against their legitimate Monarch, they should lose all their constitutional organizations.

19 Gábriš (2013): pp. 4–5.

20 Sivák (1998): p. 64.

was marked by the October Diploma in 1860, which fairly significantly reduced the absolutist power of the monarch by re-establishing some state organs in Hungary from before the revolution. Later, the February Patent in 1861 contained federalist features in the form of the bicameral Imperial Council as the main legislative body, in which the national minorities could be represented; however, the monarch retained his competence in foreign affairs and war. In reality, however, it did not bring any real change in the position of the Hungarian and other provinces.²¹

In order to reclaim the strong position of the Austrian Empire, the monarch and politicians recognized the need for a compromise with Hungary, in which they settled their disputes over the state system. The Pragmatica Sanctio presented common grounds for the constitutional basis, because it stipulated the constitutional and administrative independence of Hungary and also the indivisibility and permanence of the provinces of the realm. Finally, the legal framework of a compromise was introduced in Act no. XII of 1867, which was passed by the Hungarian parliament and accepted by the monarch once he was officially crowned. Thus, a real union between Hungary and Austria was born in the form of a relatively modern parliamentary monarchy with dual state organs.²²

Although a parliamentary monarchy had been established, the relevance of the monarch was not questioned. The Dual Monarchy was a special state entity because its state organs were built on different legal theories. The principle of “*Rex regnat, sed non gubernat*”²³ was present in the legislation regarding the competencies of the main state organs. The sovereign states of Austria and Hungary determined their legal relations, with the monarch being the link between them. The dynamics in the common affairs of the two states were based on absolutist theory, which is reflected in the fact that some of the monarch’s prerogatives were preserved, such as his competence in foreign and military affairs, which were governed in cooperation with the Diet.²⁴

The person of the monarch based on the new constitutional acts²⁵ remained “sacred and inviolable” and not responsible to anyone who could not also be enthroned. In case of legislative power, his right to propose bills remained, because the Government could initiate legislative proceedings for bills that had been approved by the monarch beforehand. Only the monarch could summon, suspend, or dismiss the Diet. Among the executive competencies of the monarch was the appointment of members of the Government, other state officials, ecclesiastical officials, university professors, and all judges and public notaries. The judgements of courts were delivered in his name, he could declare amnesty for any crime, and he was the Chief of the Armed Forces.²⁶

21 Barna et al. (2014): p. 180.

22 Gábriš (2013): p. 5.

23 “The King reigns but does not govern.”

24 Barna et al. (2014), p. 176.

25 1867. évi XII és IV törvénycikk (Act no. XII/1867 and Act no. IV/1869)

26 Sivák (1998): p. 65.

This delicate form of a state was built on the strong bond between the dominant powers of Austria and Hungary. The unity of the state was secured by respecting and acknowledging certain provinces (e.g., Croatian territory) by the “leading” states. This meant that participation in state governance on different levels was guaranteed on the basis of provincial historical individuality, not of nationality. Thus, the representation of nationalities was indirectly restricted in the important state organs. This caused political representation of other nationalities than the Hungarian to be less than 10%. Although equality of nationalities was formally introduced in Act no. 44/1868, the Hungarian political elite preferred to refer to the citizens of Hungary as part of a single political Hungarian nation, regardless of their own nationality.²⁷ From the Slovak point of view it was mainly the language and education policies that were problematic. The official administrative language was Hungarian, but language rights were offered to individuals, not to nationalities as a whole. Slovaks were even more dissatisfied with Hungarian being the obligatory language in state schools.²⁸

Overall, the Dual Monarchy was a unique state that regained its relevance through compromises between the different territorial states, although in this regard the Slovaks could not reach their political goals.

IV. THE FIRST CZECHOSLOVAK REPUBLIC (1918–1938)

Before the First World War, despite the “Hungarization” in the monarchy, as the majority of Slovaks expressed their loyalty toward the monarchy, state-building for Slovaks and Czechs depended on the activities of Slovaks and Czechs living abroad. The end of the war and the dissolution of the Dual Monarchy enabled the real establishment of the independent state of the Czechoslovak Republic.

The idea of creating a joint republic for Slovaks and Czechs was introduced by Tomáš Garrigue Masaryk, a highly influential politician and philosopher who eventually became the first President of Czechoslovakia. He actively contributed to the creation of the state during the First World War when he emigrated to the USA, where he worked on his Independent Bohemia Project, in which he expressed the possibility of an independent Czechia incorporating Slovak territories as well. This vision of the joint state was backed up by the Slovak and Czech immigrants in Russia and USA.²⁹

The position of the head of state had clearly changed: The concept of a monarchy was completely abandoned, and the formation of the institution of a president began. The temporary constitution was drafted for the purpose of creating a modern

27 The leading Hungarian politician and first Minister of Justice in the Monarchy, Ferenc Deák, highlighted the existence of the “political nation,” by which he intended to unify the nations in Hungary. The purpose of this concept was to substitute the institution of the nation-state. His political view dealt with the national minorities by extending their political rights.

28 Sivák (1998): p. 64.

29 The Kiev Contract and Cleveland Contract contained the idea of creating Czechoslovakia in detail. These were popularized in Slovak and Czech social groups in Russia and USA, thus boosting the activities of nation builders.

republican state, so it introduced the rule of law and the classical division of power into three branches, legislative, executive and judicial. The temporary constitution³⁰ thus already contained provisions dealing with the concept of the head of state.

Overall, the President had quite a weak position in comparison to the other essential central state organs. This is indicated by the fact that the President could not interfere with the activity of the national Assembly or the Government, nor could he appoint and dismiss it. He was elected by the national Assembly until the final constitution came into effect and a new President was elected. He had all the classical presidential prerogatives, such as representation of the state externally, being Commander-in-Chief of the Army, greeting diplomats, declaring war, making peace, appointing state officers, and granting amnesty. Countersignature by certain members of the Government was needed when realizing government acts. His legislative power extended to signing Acts together with the Head of Government and the member of Government who was entrusted to execute it. He also had veto right, meaning he could send a bill back to the national Assembly that within eight days for re-evaluation; however, the President's veto could be easily overturned by passing the act once again. If the President could not be present, he was substituted for by the Government.³¹

In the temporary constitution, the President represented a bridge between the legislative and executive power. Additionally, his limited competencies were due to the fact that Masaryk was abroad during the establishment of the new republic. Since his arrival in his homeland, inspired by the American system, he strove to strengthen the position of the head of state in the final constitution. In the end he successfully attained his objective with the adoption of Act no. 271/1919 Zb. z. an. Once this act was adopted, the President gained an essential position in foreign affairs and in directing domestic politics, mainly through the appointment and dismissal of Government.³²

The final Constitution³³ was adopted in 1920. It declared Czechoslovakia a democratic republic with the President as the head of state. The third chapter dealt extensively with the President, whose competencies were thoroughly extended thanks to Masaryk's efforts.

The President was elected by the national Assembly for a term of 7 years with $\frac{1}{3}$ of the members present, and a person could be elected only to two presidential terms in a row. However, Masaryk was given an exception to this rule because he was so highly trusted by the politicians and masses. The president had quite a standard position typical for a parliamentary republic. His competencies included representing the state externally, serving as Commander-in-Chief of the Army, greeting diplomats, declaring of war, making peace, granting amnesty, summoning, adjourning,

30 Zákon č. 37/1918 Zb. z. a n. O dočasnej ústave (Act no. 37/ 13.11.1918 on the interim Constitution)

31 Gábriš (2013): p. 57.

32 Gábriš (2013): p. 58.

33 Zákon č. 121/1920 Zb. z. a n. kterým se uvozuje ústavní listina Československé republiky (Act no. 121/1920 on the introduction of the Constitutional Charter of the Czechoslovak Republic)

and dissolving the national Assembly, signing legislative acts, exercising the right of veto, sending reports about the status of the state to the national Assembly, and appointing state officers, Ministers, university professors, and judges.³⁴

Overall, the first Czechoslovak Constitution granted the head of state substantial authority, making the President an effective representative of the executive and governing power. This is justified by the fact that he could attend government meetings, claim reports on certain issues, and freely determine the number of members of Government. An interesting relation between the executive branch and the head of state was highlighted by the need of countersigning by the Government when the President realized government acts. However, this limitation was compensated by the fact that the Government was responsible for the President's actions.³⁵

By creating a common state, it can be concluded that the Slovak and Czech political elite reached a prosperous compromise. However, some inadequacies were foreshadowed during the existence of Czechoslovakia. First, the different economic situation across the territories of the country caused difficulties in the unification process. In the Slovak sections, agricultural industry dominated during the monarchy, but other industries were characteristic of the Czech territories.³⁶ The formation of a joint economy naturally caused a reduction in the industrial capacity of Slovakia from the era of the monarchy.³⁷

Second, Czechia could be considered an autonomous administrative and cultural complex, partly thanks to the free usage of Czech language in schools. However, in Slovakia the language of culture was not Slovak owing to the "Hungarization" of different fields.³⁸

In conclusion, the First Czechoslovakia successfully established a modern republic, but the inequalities and different motivation of the two component nations reached its peak in the 1930s Slovak nationalist movement.

V. THE SLOVAK REPUBLIC (1938–1945/48)

The 1930s and 1940s were politically highly turbulent. On the one hand, during the 1920s and 1930s, democracy reached a critical point in Europe, because citizens in general felt it to be a weak regime that could not provide adequate solutions to social and economic problems that mainly affected people with low socioeconomic status. Additionally, the political representation of countries in international relations was

34 Zákon č. 121/1920 Zb. z. a n. kterým se uvozuje ústavní listina Československé republiky (Act no. 121/1920 on the introduction of the Constitutional Charter of the Czechoslovak Republic)

35 Gábriš (2013): p. 58.

36 The Czech lands were the most economically developed part of Austria-Hungary, with up to 60% of all industry concentrated here, versus only 19% in Slovakia (even only from the sum of the entire Hungarian industry).

37 Martin Svatuška: Vzťahy medzi Slovákmi a Čechmi v období prvej Československej republiky (1918–1938) (Relations between Slovaks and Czechs in the period of the first Czechoslovak Republic 1918–1938), *Slovenská politologická revue*, 2007/2/1, pp. 12–13.

38 Svatuška (2007): p. 19.

deemed weak under this regime, which made the idea of a more concentrated authoritative type of state organisation more attractive to the masses.

Czechoslovakia had retained its democratic state system notably longer than the other Central European countries. However, the Slovak national political movement indirectly threatened this system, and tensions also arose from the obvious territorial claims of the neighboring nations (mainly Germany and Hungary). The creation of the first independent Slovak state occurred under these critical circumstances.³⁹

1. Activities of the Slovak People's Party and the Munich Agreement

The Preamble to the Constitution of the Czechoslovak Republic of 1920 did not differentiate between the two nations of Czechs and Slovaks, stating rather that "*We, the Czechoslovak nation, want to affirm the unity of the nation...*"⁴⁰ According to the autonomously oriented Slovaks, this formulation did not represent the Slovak nation as an independent nation, which should have been guaranteed by self-administration of Slovakia within Czechoslovakia.⁴¹

The main representation of these citizens was ensured by the Slovak People's Party (HSLŠ), which in the 1935 elections gained 30% of the votes in coalition with the Slovak National Party (SNS).⁴² The aspirations for Slovak autonomy were initiated several times in Parliament by this coalition. Three bills were presented in 1921, the first by F. Juriga, the second by Labayov, and the third by Tukov. After these unsuccessful attempts HSLŠ introduced another bill on the Autonomy of Slovakia in 1930, and then one in 1938. Both of the latter bills envisioned a Czechoslovakian state in the form of a confederation, where Slovak parts would be autonomous parts of the y, with their own legislative and executive branches; however, the head of state and other 11 political fields would be mutual.⁴³

Jozef Tiso, the de facto leader of HSLŠ, was a key figure in attaining Slovak autonomy, however, at the beginning he represented the less radical wing of the party. This gradually changed, as much as during the Second World War, he was the head of the Slovak Republic.

39 Martina Fiamová; Michala Lónčíková: Autonomía Slovenska 1938–1939 Počiatková fáza holokaustu a perzekúcií (Úvod)–(Slovak Autonomy 1938–1939: The Initial Phase of the Holocaust and Persecution (Introduction)), *Forum historiae*, 2019/13/1, p. 1.

40 Zákon č. 121/1920 Zb. z. a. n. ktorým se uvozuje ústavní listina Československé republiky (Act no. 121/1920 on the introduction of the Constitutional Charter of the Czechoslovak Republic)

41 Peter Sokolovič (2009): *Hlinkova garda 1938–1945* (Hlinka Guard 1938–1945), Ústav pamäti národa, Bratislava, pp. 13, 19.

42 Stanislav Balík; Petr Fiala: Československé volby 1935 a dolní parlamentní komora: rozdíly mezi poslanci pročeskoslovenských a antisystémových stran? (The Czechoslovak elections of 1935 and the lower chamber of parliament: differences between the representatives of pro-Czechoslovak and anti-system parties), *Historický časopis*, 2020/68/2, Bratislava, pp. 202, 293.

43 Ladislav Vojáček; Jozef Kolárik; Tomáš Gábriš (2013): *Československé právní dějiny* (Czechoslovak legal history), Paneurópska vysoká škola; Eurokódex, Bratislava: Žilina, p. 64.

The fight for the territorial unity of the nation of Czechoslovakia was relevant in Germany as well because of a significant German population in the northern part of Czechoslovakia, the Sudetenland. This “dispute” between the two countries was settled at an international conference, where the German, Italian, British, and French political delegations concluded the Munich Agreement on September 30, 1938, by which the border between Germany and Czechoslovakia was changed to attach the Sudetenland to Germany.⁴⁴ This agreement was intended to provide a solution to the Polish and Hungarian minority questions within three months as well. Furthermore, based on the arbitral decision, the First Vienna Award, Hungary gained the southern part of Czechoslovakia on November 2, 1938. With the conclusion of these invasive decisions, which were void from a legal point of view, Czechoslovakia lost major territories.⁴⁵

The Slovak nationalists in the now nationally pure Czechoslovakia saw the opportunity to establish some form of Slovak autonomy.

2. Creation of the independent Slovak Republic

The year 1938 was beneficial for Slovak nationalists, owing to the weakening of Czechoslovakia as a democratic state. During the events of the Munich Agreement, the HSLS strengthened its governmental monopoly. The Czechoslovakian Central Government in Prague started to approve some Slovak claims, appointing Jozef Tiso Minister for the Management of Slovakia with full power. Moreover, after the events of the Munich Agreement, the current president Edvard Beneš resigned and Emil Hácha, who had little interest in the office, was appointed the new head of state.⁴⁶ These changes contributed to the Slovak national reunion, namely the Congress in Žilina at which the politicians of HSLS drafted the Žilina Agreement (Manifesto of the Slovak nation), in which they established the Slovaks’ rights to self-determination. This document was the basis for the *Constitutional Rule no. 299/1938 Zb. z. an. of the Autonomy of Slovak State*, which guaranteed an independent executive and legislative power for the Slovaks beside the centralized government in Prague, while the institution of head of state remained common.⁴⁷

The newly appointed Slovak Autonomic Government under Prime Minister Jozef Tiso systematically started to build a Slovak totalitarian system, thus disposing of political plurality. *Constitutional Rule no. 230/1938 Zb. z. an. o zmocnění ke změnám ústavní listiny a ústavních zákonů republiky Česko-Slovenské* also contributed to the totalitarian shift by changing the structure and dynamics of the constitutional organizations, entrusting the legislative and constituent power to the president and the head of government. The position of head of state was so greatly empowered, in fact, that

44 Vojáček et al. (2013): p. 66.

45 Ladislav Vojáček, (2008): *Právne dejiny Slovenska* (Legal history of Slovakia), Bratislavská vysoká škola práva, Bratislava, p. 87.

46 Vladimír Kadlec (1991): *Podivné konce našich prezidentů 1. vyd* (The strange endings of our presidents, 1st edition), Kruh, Hradec Králové, p. 67.

47 Fiamová; Lónčíková (2019): p. 3.

he was entitled to amend the Constitution and any legislation in forms of presidential decrees in cooperation with the Government.⁴⁸ With this amendment parliamentary democracy basically reached its end in Czechoslovakia by the end 1938.⁴⁹

President Hácha, out of fear that the Slovaks would declare themselves an independent Slovak state with a totalitarian system, carried out a military occupation, the Homolov coup, establishing a military administrative and judicial dictatorship. The president appointed a new Slovak government as well.⁵⁰

Despite the preventive measures of the president, Jozef Tiso was invited to Berlin to discuss the probable future of Slovak autonomy with Adolf Hitler. Tiso could choose from two alternatives, whereby Slovakia either declared itself an independent fascist state, or suffered military occupation of its territory by Hungary and Poland. In this intense situation, the Slovak Congress acclaimed the establishment of the Slovak State by *Act. no. 1/1939 Sl. z.*, in which they defined the territory of the Slovak State, declared the Slovak Congress its legislative body, and received the legal system of the late Czechoslovakia with amendments arising from the independence of the Slovak State. Furthermore, this Act concentrated all the state power in the hands of the Slovak Congress. The existence of the independent Slovak State legally started on March 14, 1939.⁵¹

3. Position of the head of state

The Constitution of the new Slovak Republic⁵² was introduced on July 21, 1939, namely Constitutional Rule no. 185/1939 Sl. z. This Constitution undermined the parliamentary form of government; the sovereignty of people was not mentioned, while an ideology of class stratification instead dominated. Basically, a totalitarian regime was built, with the restriction of basic rights and a link between the state and Christian ideology. The drafting commission was inspired by the corporate class structure of Italy and Pope Leo XIII. encyclicals.⁵³

In the 1st Chapter of the Constitution of the Slovak Republic, the state was officially declared a republic, represented by the President as head of state. The 3rd Chapter dealt with the position of the head of state in detail.⁵⁴

The required age for passive suffrage was 40 years, and the candidate for President had to have Slovak citizenship and be electable to Congress. The same person could be elected President for only two successive terms.⁵⁵

48 Ústavní zákon č. 330/1938 Sb., o zmocnění ke změnám ústavní listiny a ústavních zákonů republiky Česko-Slovenské (Act no. 330/1938 on the authorization to amend the Constitutional Charter and Constitutional laws of the Czech-Slovak Republic)

49 Vojáček et al. (2013): p. 68.

50 Vojáček et al. (2013): p. 69.

51 Vojáček et al. (2013): p. 69.

52 The official name of the country based on the Constitutional Act no. 185/1939.

53 Vojáček et al. (2013): p. 69.

54 Ústavný zákon č. 185/1939 Sl. z. (Constitutional Act no. 185/1939 Sl. z.)

55 Ústavný zákon č. 185/1939 Sl. z. (Constitutional Act no. 185/1939 Sl. z.)

The President was elected indirectly by the Congress; a minimum of $\frac{2}{3}$ of the members of Congress were required to participate and $\frac{3}{4}$ were required to be present for a valid election. If no one of the candidates gained the needed quorum, a second round was organized with the two most successful candidate from the first round. In the second round an absolute majority of votes was required. The term of office was lengthened in comparison with the previous Constitution to 7 years. Moreover, for the first time the entire text of the presidential oath was included in this legal document.⁵⁶

In case the President could not carry out his duties, the presidential office was governed by the Government.

The executive power was represented by the President and the Government as well. Among the presidential competencies were representing the state externally, accepting and entrusting delegates, accepting international treaties, declaring war and making peace, setting up and dissolving the Congress, sending bills back to the Congress with amendments, signing legislative acts, appointing and dismissing ministers, and appointing university professors and judges. Moreover, the President was the Commander-in-Chief of the Army and had the power to grant pardons, remit the sentence of any person convicted of any offence, and grant badges of honor.

Regarding the executive power of the President, he had to rely on the competent minister, because without his signature, presidential acts were not valid. Because of this dynamic, the President was not responsible for his decisions made while he was in office.

The only criminal offence for which the President could be prosecuted was treason. A newly founded organization was responsible for the prosecution of the President, the State Council. This organ had a special role in inspecting both the President and the Government specified in later chapters.

Regarding the legislative branch, the President had the competency to set a relative veto to the legislative bills. If he sent the bill back within 15 days, $\frac{3}{4}$ majority votes was needed for its acceptance out of a minimum of $\frac{2}{3}$ of all the members of the Congress.⁵⁷

The President had quite strong influence over the Government, as he had the authority to appoint and dismiss its members and its head. Moreover, he could attend and preside over the meetings of the Government.⁵⁸

Overall, these constitutional competencies of the President are indicative that the Constitution makers' intention was to grant him a strong position in the structure of interrelations among the constitutional organizations. A clear reference to the leader principle and its type of head of state can be deduced.⁵⁹ Štefan Polakovič, a Slovak philosopher who was also a member of the HSLs political party, defined this principle as *"The Leader is absolutely entrusted by the nation; thus, the nation follows him. The Leader*

56 Ústavný zákon č. 185/1939 Sl. z. (Constitutional Act no. 185/1939 Sl. z.)

57 Ústavný zákon č. 185/1939 Sl. z. (Constitutional Act no. 185/1939 Sl. z.)

58 Ústavný zákon č. 185/1939 Sl. z. (Constitutional Act no. 185/1939 Sl. z.)

59 Ladislav Orosz; Katarína Šimuničová (1998): *Prezident v ústavnom systéme Slovenskej republiky*, Veda, Bratislava, p. 43.

*is the highest centered, infinite authority for bringing the general welfare. In one nation there can only be one will, and one declaration of this will. The Leader is a national prophet and oracle, who lives for the idea of national greatness and national commitment.*⁶⁰

This ideological definition was highlighted in legal terms in Act no. 215/1942 Sl. z. on the Slovak People's Party, according to which state power of the Slovak nation is exercised by the Slovak People's Party. This was the only legally allowed Slovak political party, which was represented by its Leader. Its position is defined in the following part of the Act: *"The Leader determines the direction of the Party's policy within the program principles approved by the Congress and the ways in which the Party should fulfil its mission. The orders issued by the Leader in this regard are binding on each member and official of the Party. The leader presides over the Congress, the Central Committee, and the Presidency appoints and dismisses the Secretary General and the Presidents of the county and district organizations."*⁶¹

Jozef Tiso, Catholic priest and chairman of the HSĽS was elected for the first and only President of the Slovak Republic on October 26, 1939, throughout the whole existence of this state until 1945. The persona of Jozef Tiso was strongly charismatic, with great rhetorical skills, and as a representative of the Catholic church was popular among the Slovaks, who were strongly religious.

To sum up, the head of state in the first Slovak Republic was not merely a representative organ of the state, but rather an important position with great influence on the governmental and executive power. This resulted in the accumulation of executive power in the hands of the President, especially in the times of war, which was essential for the Commander-in-Chief. Thus, it can be stated that the Slovak Republic was not a clearly parliamentary republic, because it displayed features of a presidential republic.

4. Relations with Germany

The quick and somewhat shallow circumstances under which the first Slovak Republic was created indicate a strong German presence that lasted throughout the existence of the state. Real independence was not granted, although during the face-to-face meeting between Tiso and Hitler in Berlin exact guarantees for it were mentioned. The Slovaks requested the Germans to protect their state borders against

60 *"Vodca je neobmedzeným poverením národa, a preto národ ide za vodcom. Vodca je sústredená najvyššia, ničím neohraničená moc na prevádzanie všeobecného blaha. V jednom národe môže byť len jedna vôľa a jeden prejav tejto vôle. Vodca je národným prorokom a vešcom, ktorý žije ideálu národnej veľkosti a národného poslanía."*

61 Act no. 215/1942 Sl. z. on the Slovak People's Party—*"Vodca určuje smer politiky Strany v rámci programových zásad schválených zjazdom a spôsobu, ako má Strana plniť svoje poslanie. Rozkazy, ktoré Vodca v tomto smere vydá, sú pre každého člena i funkcionára Strany záväzné. Vodca predsedá zjazdu, ústrednému výboru a predsedníctvu, menuje a odvoláva generálneho tajomníka, predsedov župných a okresných organizácií."*

enemy forces, which the newly appointed Minister of Foreign (Ferdinand Ďurčanský) Affairs gently mentioned in his list to Hitler.⁶²

An important international document was drafted in which the relations between Germany and Slovak State were clearly defined. The Treaty on the Protective Relation between Germany and Slovak State⁶³ was signed on March 23, 1939. With this treaty Germany gained the upper hand in protecting the political independence and territorial integrity of the Slovak State. Moreover, its different chapters defined the German control over the organization of Slovak armed forces, and the obligation of the Slovak State to govern its foreign affairs in line with Germany's and also in cooperation with the German Government.⁶⁴

The political and economic links between the two states were deepened by a private and confidential protocol on economic and financial collaboration. On the one hand, Germany offered support to boost the Slovak economy; however, this aid was focused on economic branches more appealing to German interests. Moreover, another pact⁶⁵ was signed that enabled Germany to gain control of and use Slovak businesses that dealt with military affairs.

The dominant influence of Germany was clear, and also legally established by the different bilateral treaties. Overall, the position of Slovakia was not much different from that of the other "puppet states" occupied and indirectly created by Germany. This highlights the fact that Germany intended to use Slovak-German relations in a way to support its military offensives.

VI. THE CZECHOSLOVAK REPUBLIC (1948–1989)

The post-war era, lasting until 1948, was not crucial in the development of the head of state. His position was governed by the Constitution of 1920 for the Czechoslovak state organs in exile. The formation of the second Czechoslovak Republic was beginning, through the activities of the Czech and Slovak politicians forming the state organs in exile.

The temporary Czechoslovak state system was present in London from 1940, consisting of the president (Edvard Beneš), Government, State Council, and Legal Council.

At the end of the war, because the Czechoslovak territories were liberated by the Eastern Bloc, the Soviet Union had great influence in the post-war Czechoslovakian state establishment. Although anti-communist politicians expressed their protest in 1948, the pro-communist activists gained the upper hand, so a new Government was

62 Katarína Hradská (2001): *Prípady Wisliceny: nacistickí poradcovia a židovská otázka na Slovensku* (The case of Wisliceny: Nazi advisers and the Jewish question in Slovakia), AEPRESS, Bratislava, p. 9.

63 Deutsch-Slowakischen Schutzvertrag.

64 Igor Baka (2010): *Politický systém a režim Slovenskej republiky v rokoch 1939–1940* (Political system and regime of the Slovak Republic in the years 1939–1940), Bratislava: Vojenský historický ústav, p. 32.

65 Pact on Military Economy (Wehrwirtschaftsvertrag).

formed based on the suggestions of Klement Gottwald, who eventually became the leader of Communist Party of Czechoslovakia. The power of the Communist party lasted until 1989.⁶⁶

The new Constitution of May 9, 1948, introduced the same competencies to the president as in the Constitution of 1920, but in a Marxist-Leninist spirit. He remained the representative of executive power together with the Government, which took responsibility for the president's actions. The greatest limitation on the president's power was on conflicts of interest, so that once he was elected President, he could not fill the position of a member of the national Assembly nor of the Government.⁶⁷

In conclusion, although the presidential prerogatives remained, a more essential change was the form of state becoming a unitary state of two equal nations that derived its power from the people.⁶⁸ However, the classical rule of separation of power was absent, the constitution defining the separation of work in fulfilling state tasks.⁶⁹ This is how the Communist spirit was revealed in the Constitution.

The political Communist ideology in the state was strengthened in the 1960s. The Constitution of the 1960 mainly changed the perception of the separation of power in the state. State power was taken over by the Communist Party of Czechoslovakia. The president

became a representative of the Communist Party as well. Other modifications were introduced that affected the president's position. As he was elected by the unicameral national Assembly, the President was responsible to it. The President was elected for the period of five years. Some legislative competencies of the president were weakened by taking away the right of veto and the authority to dismiss the national Assembly. He was deprived of the power to appoint judges, but became entitled to appoint the Attorney General. His relation to the Government remained the same.⁷⁰

The events of the Prague Spring in 1968 changed the relations of the state toward the Communist regime. Although this liberation movement was intended to loosen up the Communist state organization, it had a different outcome. Alexander Dubček, the first secretary of the Czechoslovak Communist Party, was a leading figure of this movement and introduced a political reform program that contained the democratization of the Constitution, a grant of civil rights and liberties, and promulgation of autonomy for Slovakia. However, his idea of "socialism with a human face" was demolished by the military occupation of the country by the Soviet Union, and the situation was normalized.⁷¹

The outcome of these events was positive for the Slovaks, as the federative division of the states was beginning. Constitutional rule no. 77/1968 Zb. divided the formal unitary statehood into Czech, Slovak, and federal. Other than the national

66 Gábriš (2013): p. 78.

67 Gábriš (2013): p. 78.

68 Ústavný zákon č. 150/1948 Zb. (Constitutional Act no. 150/1948)

69 Gábriš (2013): p. 80.

70 Ústavný zákon č. 100/1960 Zb. (Constitutional Act no. 100/1960)

71 Gábriš (2013): p. 80.

Assembly, the Czech National Council and the Slovak National Council were established, in order to make preparations for the creation of a federal state. By Constitutional rule no. 143/1968 the Czechoslovak Federal Republic was established as a *“federative state of the two equal brotherly nations, the Czechs and Slovaks.”*⁷² In this period the institute of the head of state was not modified, and became the representative of the two federal nations.

These modifications in the state contributed to the gradual alienation of the two states from each other. Complete separation was realized a bit after the Velvet revolution in 1989. On January 1, 1993, the independent Slovak Republic was established, and the head of state has developed exclusively under Slovak conditions since then.

VII. CONCLUSION

As stated before, Slovakia as an independent state existed only in the 1940s and since 1993 as a democratic state; however, this latter period is not included in this study. Throughout history the Slovak nation struggled to reach its political goals, mainly the autonomy of its territory; thus, the position of head of state was formed in the context of the concrete state to which Slovakia belonged at any given time. Overall, in every era the Slovaks stood up for their political goals, but unfortunately they could bring about a clear change in their status only in the turbulence of the Second World War. Later they actively contributed to the formation of a joint state with the Czechs; however, owing to the Communist ideology, they could hardly establish autonomy beyond the form of a federation. Moreover, the cultural and economic struggles and differences between the Czech and Slovak territories undermined the vision of a stable alliance.

During these times, the head of state was always intended to be a representative of the country, regardless of its form, but the nation could not always identify with it. This was especially true of the Slovaks, because even during pre- and post-war Czechoslovakia, there was only one President⁷³ with Slovak nationality.

72 Česká a Slovenská Federatívna Republika je federatívny štát dvoch rovnoprávných bratských národov, Čechov a Slovákov

73 Gustav Husák (time in office: 1975–1989).