REVISTA ROMÂNĂ DE ISTORIA DREPTULUI

01 2022

ROMANIAN JOURNAL OF LEGAL HISTORY

FORUM IURIS
2022

SAPIENTIA

Revista Română de Istoria Dreptului
Romanian Journal of Legal History
ISSN: 2784 – 1219

400193 Cluj-Napoca, Calea Turzii 4, Romania
E-mail: rrid@rrid.ro
www.rrid.ro

Publicat la solicitarea Departamentului de Științe Juridice
a Universității Sapientia de către Editura Forum Iuris

Published on behalf of the Department of Law, Sapientia Hungarian
University of Transylvania by Forum Iuris Publishing House

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ABSTRACT
The theoretical analysis of the concept of the head of state cannot be detached from its historical, legal, international, and functional aspects. In this article, the analysis of the head of state is carried out primarily in the context of competences and performed functions.[1] The Republic of Poland, with its system based on the 1997 Constitution, is a representative democracy in which executive power is exercised by the government, subject to parliamentary control; legislative power belongs to the bicameral Parliament. The President is the head of state who, according to the Constitution, *is the highest representative of the Republic of Poland and the guarantor of the continuity of state power.*[2]
The role of head of state has changed its form and meaning over the centuries. The aim of this article is to present the process whereby the competences of the head of state were shaped. Analysis of the period from the adoption of the first constitution in 1791, the Constitution of May 3, deserves special attention in the context of the changes that have taken place in the institution of the head of state. On the basis of the historical background as well as the various constitutions, this article presents the concept of the head of state in the aspect of state sovereignty and its attributes as well as the legitimacy of public authority, and analyzes both the legal and factual status of this body.
KEYWORDS
head of state**,** meaning of the head of state throughout the history, functions of the head of state, competences of the head of state, state sovereignty, Poland

Șeful statului în Polonia din perspectiva istoriei dreptului

REZUMAT
Analiza teoretică a conceptului de șef de stat nu poate fi desprinsă de aspectele sale istorice, juridice, internaționale și funcționale. În acest articol, analiza șefului de stat este realizată în primul rând în contextul competențelor și al funcțiilor îndeplinite. Republica Polonă, cu sistemul său bazat pe Constituția din 1997, este o democrație reprezentativă în care puterea executivă este exercitată de guvern, sub rezerva controlului parlamentar; puterea legislativă aparține Parlamentului bicameral. Președintele este șeful statului >>

1 J. Ciapała: Status ustrojowy prezydenta jako głowy państwa (The political status of the president as head of state), *Ruch Prawniczy. Ekonomiczny i socjologiczny* rok 1996/58, (pp. 13–28), p. 14.
2 Dz.U.1997.78.483 *, Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997.* (Constitution of the Republic of Poland of April 2, 1997) Art. 126

>> care, în conformitate cu Constituția, este cel mai înalt reprezentant al Republicii Polone și garantul continuității puterii de stat.
Rolul de șef de stat și-a schimbat forma și semnificația de-a lungul secolelor. Scopul acestui articol este de a prezenta procesul prin care s-au conturat competențele șefului statului. Analiza perioadei de la adoptarea primei constituții în 1791, Constituția din 3 mai, merită o atenție deosebită în contextul schimbărilor care au avut loc în instituția șefului statului. Pe baza contextului istoric, precum și a diferitelor constituții, acest articol prezintă conceptul de șef al statului sub aspectul suveranității statului și al atribuțiilor sale, precum și al legitimității autorității publice, și analizează atât statutul juridic, cât și cel faptic al acestui organ.
CUVINTE CHEIE
șef de stat, semnificația șefului de stat de-a lungul istoriei, funcțiile șefului de stat, competențele șefului de stat, suveranitatea statului, Polonia

I. SYSTEMIC RULES IN THE POLISH LANDS UNDER THE PARTITIONS

The period during which Poland was in political captivity covered 123 years. In 1795, the Polish lands were finally partitioned between the Kingdom of Prussia, Austria, and Russia, the culmination of a series of partitions initiated by the signing of the treaties concerning the First Partition of Poland in St. Petersburg on August 5, 1772.

The misfortune of the Polish state was that the partitions coincided with the great changes symbolized by the Constitution of May 3, 1791. The constitution was a compromise between the nobility and the king that established the principle of a monarchical form of government and the heredity of the throne and introduced the tri-partition of power. The constitution abolished the liberum veto and confederation. It also retained the systemic shape of the parliamentary monarchy, which had existed in Poland practically since the late Middle Ages.[3] The King of Poland, according to Article VII of the Constitution, actually possessed executive power. In the exercise of power he was accompanied by the so-called Guard of Rights and government commissions. Standing at the Head of the State, he bore neither constitutional nor political responsibility. The article of the constitution devoted to the king and executive also referred to the right of clemency as an element of justice.[4] However, the head of state had his share of authority in the legislature; among other powers, he presided over the Senate Chamber.[5]

In practice, the constitution ceased to be in force in 1792. As a result of the three successive partitions, the Polish lands were subjected to the sovereign power of the partitioning states. From a systemic point of view, these were absolute monarchies

3 W. Uruszczak: *Zasady ustrojowe w konstytucji 3 maja 1791r.*(political principles in the constitution of May 3, 1791.) https://ruj.uj.edu.pl/xmlui/bitstream/handle/item/5419/uruszczak_zasady_ustrojowe_w_konstytucji_3_maja_1791_r_2014.pdf?sequence=1&isAllowed=y page 26 (accessed: 03.02.2022)
4 Ustawa Rządowa z dnia 3-go maja 1791 roku (Government Act of May 3, 1791) art. VII
5 Ustawa Rządowa z dnia 3-go maja 1791 roku (Government Act of May 3, 1791) art. VI

in which the rulers exercised full and unlimited power, that is, absolute power in the substantive scopes of judicial, executive, and administrative authority.[6] In these lands, short-lived polish states were established at various times, deprived of sovereignty.

1. The Duchy of Warsaw

In 1807, with the Peace of Tilsit (Tylża), Napoleon Bonaparte's war against Prussia ended in victory. The most important political decision as a result was the creation of the Duchy of Warsaw from a part of the Prussian partition. In 1809, as a result of the war with Austria, the Duchy was enlarged by lands that had been annexed by Austria. In this way, the Polish state was rebuilt to a limited extent in the form of the Duchy of Warsaw. On July 22, 1807, in Dresden Napoleon granted the Duchy a constitution.[7]

The king was given the quite broad competences of full executive power and legislative initiative. He approved the laws of the Sejm and government acts. He also filled state positions, and the ministers and senior officials were responsible to him.[8]

The Constitution granted a number of powers to the head of state in the person of the monarch. These rights were extensive in matters of state; however, exceptions were made for those reserved for the judiciary and parliamentary legislation. The king could participate in creating the law, in addition to all executive and governmental powers. With regard to matters referred to parliamentary legislation, he was entitled to exclusive legislative initiative. The appointments of judges, ministers, and senators came from the King, and lower officials were appointed by the royal delegation.[9] The Sejm remained bicameral, with a division into a Chamber of Deputies and a Senate. Following the example of the pre-partition Polish-Lithuanian Commonwealth, governors, bishops, and castellans were ex officio introduced into the Senate. A Council of State was also set up, following the French model, under the chairmanship of the king, with a secretary, ministers, and four registrars. The Council was entrusted with settling disputes over competence between courts, drafting laws, bringing ministers to court, and ruling in cassation.[10]

6 Wacław Uruszczak (2020): *Zasady ustrojowe na ziemiach polskich w okresie zaborów. Od suwerenności monarchy do suwerenności narodu. Przyczynek do historii administracji w XIX w.*, (Constitutional principles of the Polish territories in the period of the partitions: From the sovereignty of the monarch to the sovereignty of the nation.: Contribution to the history of administration in the 19th century), Academica, (pp. 22–40), pp. 24–25.

7 *Konstytucja Księstwa Warszawskiego* (Constitution of the Duchy of Warsaw) https://polishfreedom.pl/dokument/konstytucja-ksiestwa-warszawskiego (accessed: 06.10.2021)

8 Zdrada (2005): p. 58.

9 A. Dziadzio: Konstytucja księstwa warszawskiego 1807. Polska odmiana bonapartyzmu (The Constitution of the Duchy of Warsaw 1807. The Polish variety of Bonapartism) *Państwo i Społeczeństwo* 2007/7/1, p. 119 .

10 Konstytucja Księstwa Warszawskiego (Constitution of the Duchy of Warsaw) https://polishfreedom.pl/dokument/konstytucja-ksiestwa-warszawskiego (accessed: 06.10.2021).

In 1815, the Duchy of Warsaw ceased to exist when the Congress of Vienna partitioned it and incorporated the autonomous political organisms created at the time into the Kingdom of Prussia and the Russian Empire: the Grand Duchy of Posen and the Kingdom of Poland.[11]

2. The Kingdom of Poland

The Kingdom of Poland, also called the Congress Kingdom, was a state created by the decision of the Congress of Vienna. On the basis of the Constitution of the Kingdom of Poland, it was united with the Russian Empire in a personal union in the years 1815–1832.

Tsar Alexander I set the solemn proclamation of the Kingdom of Poland for June 20, 1815. Each time the Emperor of Russia became King of Poland, the national army, state apparatus, parliament, law, and judiciary were created separately.[12]

According to Article 35 of the Constitution of the Kingdom of Poland, or more precisely the Constitutional Act of the Kingdom of Poland, the Government was in the person of the king. The king exercised executive power in its entirety. All executive or administrative power derived exclusively from him. The royal person was sacred and untouchable. The king's powers included the following: the convening, adjournment, and cancellation of ordinary and extraordinary Sejm sessions; appointment of senators, ministers, and senior officials; appointment and dismissal of the governor; right to suspend Sejm laws; and right to sanction both resolutions and laws of the Sejm. The constitution given to the Kingdom of Poland also regulated issues concerning the governor, who chaired the Council of State and presented the king with candidates for senators, ministers, and senior officials. Article 63 of the Constitution regulated a council of state under the presidency of the king or his governor consisting of ministers, councilors of state, registrars, and any persons whom the king wished to specifically summon to it. The Constitutional Act of the Kingdom of Poland established national representation in a parliament consisting of the king and two chambers, the first consisting of the Senate, the second of deputies and deputies from the municipalities. According to the Constitution, all public administrative, judicial, and military activities, without exception, were conducted in Polish.[13]

3. The Republic of Cracow

Disputes arose over the political affiliation of Krakow at the Congress of Vienna. Alexander I intended to keep the city for himself, Prussia was also interested in the area, and Austria wanted to restore the state to the conditions holding before 1809.

11 Uruszczak (2020): p. 32.

12 *Ustawa Konstytucyjna Królestwa Polskiego z dnia 27 listopada 1815* (Constitutional Act Of The Kingdom Of Poland of November 27, 1815), Konstytucje w Polsce: 1791–1990 / wybór i oprac. Tadeusz Kołodziejczyk i Małgorzata Pomianowska. Warszawa: Przemiany, 1990.–S. 48–56, Arts. 35–46.

13 Ibid.

A compromise between the aspirations of the partitioning powers of Austria, Russia, and Prussia was the creation of a separate state formation for Krakow with the status of a free city. The Free City of Krakow was granted a liberal constitution on September 11, 1818. This constitution guaranteed the equality of all before the law, established the Polish language as the official language, and defined Catholicism as the national religion, while providing for tolerated challenges and ensuring the equality of Christian denominations. The Constitution confirmed the inviolability of property, personal freedom of peasants, and freedom of printing. It also introduced the independence of the judiciary and openness of procedures. The right to vote and stand for election was granted to citizens who fulfilled the requirements of a high property and education index. The Napoleonic Code and the French Commercial Code were retained, and the right to elect representatives belonged to the Chapter, University, and municipal assemblies.[14] The Constitution established the dominance of the Ruling Senate, which formally constituted the executive branch.[15] Power rested in the hands of 12 people headed by a president appointed separately by the Assembly of Representatives every three years. The Senate worked through departments, namely the Police Department, the Interior Department, and the Public Revenue Department, and it exercised legislative initiative as well as administrative authority.[16] Gradual restrictions on the independence of the Free City of Krakow by the neighboring powers followed from the end of the 1820s. The fate of the Republic of Cracow was determined by the support given to the November Uprising, and then by the failure of the Cracow Uprising—in November 1846 the Republic of Cracow was incorporated into the Austrian Empire.[17]

It should be noted that the Constitution of the Free City of Krakow was not an act issued by the authorities of a sovereign state. The Constitutions were issued by sovereign monarchs of the governing states, so the sovereigns exercised their protection only on the basis of articles.[18]

II. BEGINNINGS OF PARLIAMENTARY DEMOCRACY IN POLAND

The First World War, which lasted from 1914 to 1918, led to the collapse of three great European dynasties and monarchies: the Russian Romanovs, the Austro-Hungarian Habsburgs, and the German Hohenzollerns. Owing to internal and territorial

14 Zdrada (2005): p. 237.
15 *Ustawa Konstytucyjna Królestwa Polskiego z dnia 27 listopada 1815 r* (Constitutional Act Of The Kingdom Of Poland of November 27, 1815) Konstytucje w Polsce: 1791–1990 / wybór i oprac. Tadeusz Kołodziejczyk i Małgorzata Pomianowska.–Warszawa: Przemiany, 1990.–S. 48–56, Arts. 35–46.
16 Zdrada (2005): p. 238.
17 Ibid.
18 P. Cichoń (2012): *O rządach prawa w Wolnym Mieście Krakowie uwag kilka* (On the rule of law in the Free City of Krakow: A few remarks) Krakowskie Studia z Historii Państwa i Prawa, (pp. 241–254) p. 243.

disintegration, these states became republics following the overthrow of the monarchical system of government. The collapse of the monarchical model of government also meant the introduction in most European states (except the Bolshevik regime in Russia) of a new system of government based on democratic principles. In the countries that emerged as a consequence of the collapse of the monarchy, a parliamentary-cabinet system of government was introduced, which was characterized by the political control of parliament over the executive. Monarchical autocracy was considered a serious threat to the political system that had to be protected against. The solution was encapsulated in the slogan "democracy for all."[19]

1. The rebirth of the Polish State

The specific situation of the Polish lands in 1918–1919 necessitated the introduction of special solutions. In the absence of other institutions characteristic of a state governed in a republican way, all power was concentrated in the hands of the Provisional Chief of State.[20]

On November 11, 1918, after returning to Warsaw from captivity, in a special Address to the Nation, the Regency Council transferred "military authority" to Józef Piłsudski. It also declared that it would place power in the hands of the National Government, calling on all political centers in Poland to form one state. In agreeing to this, the general saw the need to ensure continuity of power in government as well as law against the backdrop of turbulent and revolutionary times.[21] On November 22, 1918, Piłsudski was awarded the title of the Provisional Chief of State, which officially confirmed his influence in the country. He established the Second Polish Republic as a democratic republic, ceding the rest to the Sejm, which was to be elected on January 26, 1919. He became the main decision-maker in the matter of Polish politics.[22]

2. The Small Constitution of 1919

After the elections, the Legislative Sejm passed the so-called Small Constitution on February 20, 2019. It was intended to define the political system of Poland until the entry into force of the relevant Constitution. This act introduced the supreme position of the Sejm, thus rejecting the principle of the tripartite division of power. The

19 Andrzej Dziadzio (2012): *Powszechna Historia Prawa* (General Legal History), Wydawnictwo naukowe PWN, Warszawa, (pp. 237–279), pp. 239–242.

20 Waldemar Chorążyczewski, Robert Degen (2007): *Kancelarie "władców" polskich XIX i XX wieku Rekonesans Badawczy* (Chancelleries of the Polish "rulers" of the 19th and 20th centuries) Uniwesytet Mikołaja Kopernika w Toruniu, Toruń, (pp. 131–151), p. 12.

21 Grzegorz Górski (2018): *Polonia Restituta Ustrój Państwa Polskiego w XX wieku* (Polonia Restituta: Establishment of the Polish state in the 20th century), Jagiellońskie Wydawnictwo Naukowe (pp. 43–49), p. 43.

22 A. Lipka: (accessed:10.11.2021)

result of the influence of French constitutionalism was the view that sovereign power would be exercised by a representative body, representing the will of the Nation.[23]

The position of head of state and cabinet was subordinated to the representative body in line with the principle of parliamentary sovereignty. An expression of this subordination was the recognition of the head of state as the "supreme executor" of the Sejm's resolutions on military and civil matters. However, in practice, the lack of a normative definition of the competences of the head of state stood in the way of Józef Piłsudski's freedom to exercise state authority.[24]

According to the Small Constitution, the head of state appointed the full Government on the basis of an agreement with the Sejm. The head of state, together with the Government, was also responsible to the Sejm for the performance of his office, and every act of state of the head of state required the signature of the relevant Minister.[25] The actual political role of the Chief of State in the person of Józef Piłsudski was much stronger than it might seem on the basis of the provisions of the Small Constitution. It should be noted that Józef Piłsudski was also acting as Commander-in-Chief.[26] The Small Constitution remained in effect until the final constitution was adopted on March 17, 1921.

3. The March Constitution of 1921

On March 17, 1921, the Sejm adopted the Constitution of the Republic of Poland by a large majority. The fundamental principles on which the March Constitution was based were the principle of the supremacy of the nation, the principle of the republican form of government, the principle of state unity, and the principle of the tripartition of power. The Constitution also contained a very broad catalogue of civic rights and duties. They were to guarantee all citizens of the Republic the most far-reaching freedoms.[27]

In the March Constitution, the head of state was the nation's organ of executive power. The parliamentary-cabinet system introduced by the March Constitution assumed total supremacy of the legislature over the executive. All official acts of the President required the countersignature of the relevant minister. The President had the powers typical of a head of state in a parliamentary system with regard to foreign policy. He could not exercise supreme command in wartime although he was the supreme head of the armed forces. He appointed the commander-in-chief for the duration of the war upon the proposal of the Council of Ministers. The weak position of the President was also due to the fact that he could not dissolve the Sejm on his own and

23 Krzysztof Prokop: W poszukiwaniu systemu rządów u progu niepodległości (1918–1921) (In search of a system of government on the threshold of independence (1918–1921)), *Miscellanea Historico-Iuridica*, Tom XVII,z.I 2018 (pp. 25–42), p. 7.

24 Ibid.

25 Dz.Pr.P.P. 1919 nr 19 poz. 226 *Uchwała Sejmu z dnia 20 lutego 1919 r. o powierzeniu Józefowi Piłsudskiemu dalszego sprawowania urzędu Naczelnika Państwa* (Resolution of the Sejm of February 20, 1919, on appointing Józef Piłsudski to hold the office of head of state).

26 Prokop (2018): p. 10.

27 Górski (2018): p. 66.

had no veto over parliamentary acts. By passing a simple vote of no confidence, the Sejm could remove the government in a politically responsible manner.

This led to state instability and frequent changes of government. It was not until the August Constitutional Amendment of 1926 that the powers of the President were increased. This change, which among other things introduced the right to issue decrees with the force of a statute, had the positive effect of codifying (unifying) the basic branches of judicial law in the 1930s.[28] The position of President of the Republic changed after the May Coup. The amendment of the Constitution of August 2, 1926, introduced the power to dissolve the Sejm and Senate (admittedly at the request of the Council of Ministers) and the right to issue regulations with the force of law (these lost their force if rejected by the Sejm or if they were not submitted to it within 14 days at the nearest session).[29]

After the May Coup, Józef Piłsudski did not dissolve Parliament, and did not accept the election of the president by the National Assembly. He had his trusted colleague Ignacy Mościcki, a chemistry professor, elected to the office. A new government was also formed, headed by mathematics professor Kazmierz Bartel. Realizing that Piłsudski provided strong support to Bartel, and despite the lack of a parliamentary majority, the parties in the Sejm decided not to dismiss him. This gave rise to the so-called "extra-parliamentary governments," in which the Sejm in fact renounced its constitutional right to create the composition of the Cabinet, although it still held this right formally under the Constitution.[30] In this form the constitution functioned until April 1935, when it was replaced by a new constitution. In 1944, the April Constitution was rejected by the Communist government imposed by Joseph Stalin, and nominally the March Constitution was deemed binding, although in fact its democratic principles were not respected. This state of affairs was maintained until 1947.[31]

Modeled on the French Constitution of the Third Republic, the March Constitution granted very limited powers to the President, making his actions dependent on the will of the Sejm. It is important to note here the discrepancy between theory and practice. For example, while from a formal point of view the President had complete freedom to choose a candidate for prime minister, he had to take into account the balance of power in Parliament (which could bring down the government by a simple majority). Also, in accordance with Article 50, the conclusion of peace and declaration of war by the President made the constitution dependent on the consent of the Sejm.[32] Therefore, as a consequence of the May Coup, the first changes in the subse-

28 Ibid.

29 Chorążyczewski, Degen (2007): p. 14.

30 Stanisław Zakroczymski (2020): *Jaka konstytucja dla Niepodległej?* (What constitution for the independent?), Zeszyty do debat historycznych, Muzeum Józefa Piłsudskiego w Sulejówku, Sulejówek (pp. 2–43) p. 15.

31 *Konstytucja marcowa* (What constitution for the independent?) (https://polishfreedom.pl/dokument/konstytucja-marcowa (accessed: 12.12.2021)

32 M. Jamróz: *Głowa państwa w rzeczypospolitej polskiej w latach 1922–1935* (Head of state in the republic of Poland from 1922 to 1935) https://jpilsudski.org/artykuly-ii-rzeczpospolita-dwudziestolecie-miedzywojnie/prawo-i-administracja/item/1342-g%C5%82owa-pa%C5%84stwa-w-rzeczypospolitej-polskiej-w-latach-1922–1935 (accessed: 10.02.2022)

quent Constitution concerned the strengthening of the position of the President as head of state.

4. The April Constitution of 1935

The Constitution of 1935 introduced a presidential system to the Republic of Poland, transferring most of the state power to the President while significantly reducing the role of the Sejm.

In the light of the formal controversy surrounding the adoption of the Constitution by the Sejm on January 26, 1934, the ruling camp decided to seek compromises with some of the opposition, making use of the advantage it had gained. The Senate by the required 2/3 majority finally passed the amended version of the Constitution finally on January 16, 1935. This made it necessary for the Sejm to vote on the Constitution again. The vote took place during the sitting of 23rd and 24th March, 1935. In all, 260 deputies voted in favor of the Constitution as adopted by the Senate, 139 deputies against. On the April 23, 1935, the new Constitution was signed by President Ignacy Moscicki.[33]

The April Constitution put the state on a pedestal, but it was treated as a structure guaranteeing individual rights and organizing social life. The citizen was guaranteed the possibility of developing personal values and the freedom of conscience, speech, and association, limited, however, by the common good, and was assured equality before the law.[34] The President had the task of harmonizing the actions of the supreme organs of state "as a superior factor." The basis for strengthening his position was a wide range of personal powers, the exercise of which did not require the Prime Minister and ministers to countersign. These powers included, among others: dissolution of the Sejm and Senate before the end of the term; the right to appoint and dismiss the Prime Minister, first President of the Supreme Court, President of the Supreme Chamber of Control, Commander-in-Chief, and Inspector General of the Armed Forces; nominate a candidate for president; and order general elections.[35] The April Constitution was formulated on completely different ideological principles than its repealed predecessor. The April Constitution created an authoritarian system, which is admittedly an intermediate system between a democratic and totalitarian state. Nevertheless, contrary to the declaration contained in Article 4 of "free development of social life" and "ensuring the citizens the possibility of developing their personal values," this development is reflected in the fact that the state was supposed to "give direction and regulate its conditions," "uniting" the activities of all citizens (Article 9). Such a system was significantly deepened by the adoption of the principle of elitism in Article 7.[36]

33 Górski (2018): p. 91.
34 Dz.U. 1935 nr 30 poz. 227 *Ustawa Konstytucyjna z dnia 23 kwietnia 1935 r.* (Constitutional Act of April 23, 1935).
35 Górski (2018): p. 97.
36 Paweł Sarnecki: Głowa państwa w obu polskich konstytucjach kwietniowych (The head of state in both Polish April Constitutions), *Studia Iuridica Lublinensia,* 2014/22 (pp. 298–308) p. 3.

III. THE POLISH GOVERNMENT IN EXILE DURING WORLD WAR II

After losing the defensive war in 1939, Poland was occupied by the Soviet Union and Nazi Germany. The Second Republic retained state sovereignty and was represented in diplomatic relations by the government of the Republic of Poland in exile, which obtained refuge in Paris and Angers (on an extraterritorial basis until June 1940), and then in London, where the government moved its headquarters after the defeat and capitulation of France before the Third Reich. As the Polish state still had constitutional organs of state power (including secret civil administration and judiciary in the occupied country, the Polish Underground State) and armed forces, acting simultaneously in conspiracy (the Home Army) and in exile, de jure and de facto the Second Republic existed until July 5, 1945.

The Polish state did not fall in September 1939; its territory was temporarily occupied. No act of surrender took place and the Polish authorities managed to leave the territory occupied by the occupying forces. On the basis of constitutional regulations, new authorities in exile were established.

The Constitution of the Republic of Poland of 1935 contained clauses that made it possible for the highest authorities of the state to remain capable of acting in extraordinary situations. A fundamental regulation was the provision allowing the incumbent president to appoint his successor in a situation of emergency. The successor took office at the moment of the current president's resignation. Such an instrument made it possible to maintain the continuity of a key political institution in the system of state bodies established under the April Constitution. The president's personal powers included the creation of both military and civilian centers of governance for the country in times of both war and peace.[37] One of the most important political modifications was the creation of the National Council of the Republic of Poland. Under existing conditions, there was undoubtedly a need to create an institution that could replace the Sejm and Senate. The Council was to be a representation of political parties and circles established outside Poland.[38] The Council was established by decree of Polish President Władysław Raczkiewicz on December 9, 1939, in France, with Ignacy Jan Paderewski as its president.

The National Council was set up as an advisory body to the president and the Government, with its seat becoming the seat of the Government and consisting of at least 12 members appointed by the president on the proposal of the Chairman of the Council of Ministers.[39]

From a formal point of view, the outbreak of the Second World War only changed the place of the Office of the President of the Republic of Poland to Paris, and later to London. The end of the war ushered in the formation of another centre which claimed the

37 Górski (2018): p. 115.
38 Górski (2018): p. 116
39 Dz.U. 1939 nr 104 poz. 1008 *Dekret Prezydenta Rzeczypospolitej z dnia 9 grudnia 1939 roku o powołaniu Rady Narodowej* (Decree of the President of the Republic of Poland of December 9, 1939, on the establishment of the National Council)

right to rule in Poland. The occupation of the office of president by the President of the National Council meant that in the first post-war years, until 1947, there was no separate office that dealt with the office service of the head of state. These tasks, as for the entire council, were performed by the Presidential Office of the National Council.[40]

IV. THE PEOPLE'S REPUBLIC OF POLAND

In the constitutional systems of the Communist Bloc countries, a characteristic feature of the systemic model of the highest state authorities was the appointment of a second supreme body of state power besides parliament. However, this body was not selected through direct universal suffrage, and therefore it did not have the features of a representative institution. The composition of this body was chosen by parliament, and only from among the deputies sitting in it. Consequently, some parliamentarians were members of two supreme bodies at the same time, which resulted in the creation of the same branch of state bodies. It is worth stressing that these were not equivalent bodies, as the attribute of the highest organ of state power was vested exclusively in parliament (in accordance with the constitutional principle of the unity of power, which was then adopted in all the countries with real socialism).[41]

After World War II, the Communists in Poland and the other satellite states followed a fairly uniform scenario of the gradual liquidation of all institutions functioning in society independent of the authorities, in the area of social organisation as well as religion and customs, and thus political and spiritual freedom was cancelled.[42]

1. The Small Constitution of 1947

By virtue of the Constitutional Act of February 19, 1947, on the system and scope of activity of the highest authorities of the Republic of Poland (the so-called Small Constitution), the institution of the Chief Presidium was retained in the political system of the People's Republic of Poland. It was also maintained in the period of the Legislative Sejm (1947–1952). That institution became the Council of State, modelled on Soviet legal and organizational regulations. The similarity to the Presidium of the National Council was evident; however, the Council of State should not be treated as a body performing an analogous function. In spite of taking over analogous competences of its predecessor (including, first and foremost, exercising supervision over the activities of the national councils), the difference lay in the position of the Council of State in the structure of the supreme organs of the Republic. It was also distinguished by its composition and the scope of competences granted by the

40 Chorążyczewski, Degen (2007): p. 145.

41 Stanisław Bożyk: Pozycja ustrojowa Rady Państwa w Konstytucji PRL z 22 lipca 1952 r. (The political position of the Council of State in the Constitution of the People's Republic of Poland of July 22, 1952) *Miscellanea Historico-Iuridica*, 2009/8, (pp. 161–174), p. 2.

42 Janusz Wrona: Ustanowienie systemu komunistycznego w Polsce (Establishment of the Communist system in Poland), *Polski wiek XX, t. 3, Bellona i Muzeum Historii Polski*, Warszawa, 2010, (pp. 35–80), p. 15.

Small Constitution. The President held his office according to the rules set out in the March Constitution (Articles 40–44, 45, and 46–54). He was elected for 7 years by an absolute majority of votes in the presence of at least 2/3 of the statutory number of deputies. The Small Constitution stipulated that the head of state would become the Chairman of the Council of State, as well as the Cabinet Council (i.e., the Council of Ministers convened by the Prime Minister).[43]

2. The Constitution of the Polish People's Republic of 1952

The model that came from the so-called "real socialist" state was reflected in the 1952 Constitution. It relied on the superiority of representative bodies over state bodies and also on the unity of state power. In this case, the Council of State was the collective head of state. The Sejm controlled the activities of the Council, which was directly subordinate to it and whose positions and role were determined by its constitutional powers. One of these was the possibility of replacing Sejm activities by, for example, passing parliamentary decrees which had the force of acts of Parliament.[44]

The Constitution of the People's Republic of Poland from 1952 formulated the systemic shape of the chief executive body, most similar to the model of the collegiate head of state adopted in the states of real socialism. From a formal point of view, the most important political institution of the People's Republic of Poland was the Sejm. Sessions were convened by the Council of State, which was formally the second most important political institution next to the Sejm. Although the Constitution stipulated in Article 30, Paragraph 2, that this institution was to be subordinate to the Sejm in all of its activities, in reality the Sejm did not have the possibility of such control.[45] The Council of State was established by virtue of the Constitution. It differed from both the National Council and the Council functioning in the period of the Constituent Assembly in terms of the competencies conferred upon it, its legal and organizational character, and its place in the system of supreme organs of the state. The Constitution of the People's Republic of Poland, in terms of both its internal systematics and the content of its legal regulations, was very clearly modelled on the principles of the "Stalinist" Constitution of the USSR of 1936. The shape of the Polish statute at that time was significantly influenced by the Soviet leadership, which served as the model for the constitutions that the countries called "people's democracies" adopted in the middle of the 20th century.[46]

According to Article 25 of the Constitution of July 22, 1952, the Council of State ordered elections to the Sejm and also convened its sessions. It established the universally binding interpretation of laws and issued decrees with the force of law. Furthermore, it was responsible for appointing and dismissing plenipotentiary representatives of the People's Republic of Poland, ratifying and terminating

43 Dz.U. 1947 nr 18 poz. 71 *Ustawa Konstytucyjna z dnia 19 lutego 1947 r. o ustroju i zakresie działania najwyższych organów Rzeczypospolitej Polskiej* (Constitutional Act of February 19, 1947, on the organisation and scope of action of the supreme organs of the Republic of Poland).

44 S. Bożyk: Pozycja ustrojowa Rady Państwa w Konstytucji PRL z 22 lipca 1952 r., p. 161 miscellanea historica tom VIII ROK 2009

45 Górski (2018): p. 181.

46 Bożyk (2009): p. 5.

international agreements, and filling military and civil posts designated by law. In addition, it awarded decorations, orders, and honorary titles. It acted on the principle of collegiality and was subordinate in all its activities to the Sejm. From 1952 to 1989 the Council of State of the People's Republic of Poland performed the function of head of state collectively, being the equivalent of the president. It ensured the continuity of the highest state leadership in connection with the session-based work of the Sejm.[47]

After coming into force in 1952, the Constitution was subject to many changes and amended several times, especially after the establishment of the so-called "Solidarity Movement." Despite the assumptions of the Constitution, in reality power was not in the hands of the people; political control was centralized. Above the rights of the individual were collective interests. A planned economy was introduced and the mechanisms for enforcing individual freedoms and rights were abolished.

3. The beginning of the crisis

At the beginning of the 1980s, the PRL economy was entering a state of acute crisis. In July and August 1980, a huge number of strikes broke out across the country, which led to the signing of social agreements in Szczecin, Gdańsk, and Jastrzębie. The PRL authorities agreed to the creation of independent trade unions. Workers were convinced that it was necessary to establish a common trade union representation against the regime. Consequently, at the beginning of September 1980, the nationwide Independent Self-Governing Trade Union (NSZZ) "Solidarity" came into being. The union dynamically gathered around 10 million members, thus becoming a national movement, spearheading the fight against the Communist regime.[48]

When the decision was made to impose martial law in Poland in 1981, a legal vacuum was created, as no act of statutory rank was passed in the period when the 1952 Constitution was in force organizing the functioning of the administrative apparatus, state authorities, and the national economy, as well as by the failure to regulate the rights and obligations of citizens during the period of martial law. In December 1981 it was decided to issue the Decree on martial law on the basis of Article 33, Para. 2 of the Constitution, as well as the Decree on special proceedings in cases of crimes and offences during martial law and the Decree on transferring organizational units of the Public Prosecutor's Office of the People's Republic of Poland to the jurisdiction of military courts and military organizational units of the Public Prosecutor's Office of the People's Republic of Poland. Constitutional provisions were violated in the issuance of the above decrees. Martial law in Poland was suspended as of December 31, 1982, by a resolution of the State Council of December 19, 1982, and lifted completely on July 22, 1983, by a resolution of July 20, 1983.[49]

47 Dz.U. 1947 nr 18 poz. 71 *Ustawa Konstytucyjna z dnia 19 lutego 1947 r. o ustroju i zakresie działania najwyższych organów Rzeczypospolitej Polskiej* (Constitutional Act of February 19, 1947, on the organisation and scope of action of the supreme organs of the Republic of Poland).

48 Górski (2018): p. 191.

49 Magdalena Zabłocka: *„Solidarność"—Stan wojenny w Polsce* (Solidarity'–martial law in Poland) https://teatrnn.pl/leksykon/artykuly/solidarnosc-stan-wojenny-w-polsce/ (accessed:. 04.12.2021).

On March 26, 1982, the Sejm amended the Constitution, introducing in Chapter IV two new institutions, the Constitutional Tribunal and (in further articles) the State Tribunal. Thus, in Chapter IV of the Constitution, regarding the Constitutional Tribunal, the State Tribunal, and the Supreme Chamber of Control, institutional constitutional guarantees were introduced, guarantees of the rule of law.[50] Through the creation of the State Tribunal, the constitutional responsibility of persons holding "managerial" state positions was restored. The introduction of the Constitutional Tribunal made it possible to rule on the unconstitutionality of laws and other legal acts. Both of these institutions were unknown to Soviet constitutionalism.[51] The Act on Social Consultation and Referendum of May 6, 1987, adopted by the Sejm of the People's Republic of Poland restored the institution of the referendum. The results of the Referendum of November 29, 1987, came as a shock to the regime, but no less so to the opposition leaders, who were unable to present a clear alternative to the actions of the authorities. The growing economic catastrophe, which was one of the internal factors alongside the decomposition of the system and the paralysis of the Soviet state driving events, aimed at reforming the system and economic model adopted by the ruling elite of the time. These were sham changes that did not work, due to the ever-growing resistance and social mood. The subsequent policy of further perfecting the socialist system was therefore put in doubt.[52]

4. The beginning of systemic transformation in Poland

In mid-August 1988, the communist authorities began direct talks with the opposition, which were prompted by the numerous social protests that had been ongoing since April in various regions of Poland. The so-called "Magdalenka talks," taking place from September 16, 1988, were concerned with the legalization of Solidarity. These talks were held by the state authorities with representatives of the Solidarity Movement and the Church. After preparatory talks lasting several months, the team concentrated around Jaruzelski agreed to settle the question of the renewed legalization of NSZZ "Solidarity" at the Round Table. In this way, Lech Wałęsa's precondition was fulfilled, without which he refused to enter into official talks. On February 6, 1989, the Round Table Talks began in the Namiestnikowski Palace in Warsaw. The initial outline of a project for the political reconstruction of the state was agreed, and an important element of this project was to be changes to the Constitution. The amendments were passed at a session of the Sejm held on April 7, 1989. The new provisions on counteracting legislation restored institutions such as the President of the Republic and the Senate. The previously functioning office of the Ombudsman was elevated to the status of a constitutional institution, and a new body was created, the National Council of the Judiciary. The most important decision of the "Round Table," apart from the changes to the system described above, was to hold elections

50 Wywiad z prof. Janem Ziembińskim m (wywiad przepr. S. Jadczak), Polityka Nr 29 (1472), 20.VII.1985 p. 2.
51 Górski (2018): p. 193.
52 Górski (2018): p. 198.

to the Sejm and Senate.[53]As a result and according to the principles agreed during the Round Table talks, parliamentary elections were held in Poland on June 4 and 18, 1989. As a result, 460 deputies were elected to the Sejm of the People's Republic of Poland and 100 senators to the newly created Senate of the People's Republic of Poland. The agreements between the authorities and the Solidarity opposition, signed on April 5, 1989, significantly influenced the collapse of the communist system and political changes not only in Poland, but also in the whole of Central and Eastern Europe.[54]

V. CONCLUSION

Taking into account the attempt to review the position of head of state on the basis of the constitutions of Poland and against the historical background, it can be seen that the powers and functions that were associated with this position changed dynamically in the presented period. The essence of the head of state cannot be analyzed without looking at the perspective of the sovereignty of the state; hence, special attention was paid to the analysis by focusing on functionality of this entity under the partitions. After the three partitions, the Polish lands were subjected to the sovereign power of the partitioning states. In these lands, short-lived Polish states were established at various times, but deprived of sovereignty. It has often been the case that constitutions were issued by sovereign monarchs of the governing states, so the sovereigns exercised their protection only on the basis of legal documents. In the interwar period, under the March Constitution, Poland was to be a democratic state, and the system was defined as parliamentary-cabinet style. After the April Constitution was enacted, the emphasis of the system shifted toward a presidential system. The competences of the head of state were thus adjusted to the particular system. During World War II, Polish authorities managed to leave the territory occupied by the occupying forces. On the basis of constitutional regulations, new authorities in exile were established. In the case of the People's Republic of Poland, the Council of States was given competences and functions traditional for the head of state. In many of this cases, the reality differed significantly from the formal regulations.

The international legal aspect is crucial here. In the doctrine of international law, a sovereign state should be able to determine its highest authority, which is not subordinate to other authorities and is capable of ensuring relations with other states, as well as representing it externally.[55] From the perspective of this international approach, as can be observed, the position of head of state in Poland has undergone numerous modifications.

53 Górski (2018): p. 199.
54 Beata Kołodziej: *Obrady Okrągłego Stołu* (Round Table Talks) https://dzieje.pl/aktualnosci/obrady-okraglego-stolu (accessed. 04.12.2021)
55 J. Ciapała (1996): p. 16.

Position of the Head of State in Serbia in the XIXth and XXth Centuries

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ABSTRACT
The objective of this study is to analyze and present the evolution, specificities, and changes regarding the role of the head of state in Serbia and in the states of which Serbia was part in the period from the First Serbian Uprising in 1804 until the dissolution of the Socialist Federal Republic of Yugoslavia in 1991. During this period, Serbia had 11 rulers—three of whom lost their lives due to assassinations, two of whom were deposed, and two of whom abdicated—and two dynasties. More than 15 constitutions and constitutional acts were adopted shaping, among other issues, the position of the head of state. This period comprises constitutional issues of three countries—the Principality/Kingdom of Serbia, Kingdom of Serbs, Croats and Slovenes/Kingdom of Yugoslavia, and the Federal People's Republic of Yugoslavia/Socialist Federal Republic of Yugoslavia, in which the position of the head of state continuously changed due to the will of the ruler to strengthen it and the attempt of other institutions to limit it. Furthermore, six coups d'état were executed and the state also passed through phases of dictatorship or autocracy. The content of this paper follows the form of state and its modifications in a periodic fashion.
KEYWORDS
Dynasty of Karađorđević, Dynasty of Obrenović, Josip Broz Tito, Prerogatives of the Head of State

Poziția șefului statului în Serbia în secolele al XIX-lea și al XX-lea

REZUMAT
Obiectivul acestui studiu este de a analiza și de a prezenta evoluția, specificitățile și schimbările privind rolul șefului statului în Serbia și în statele din care Serbia a făcut parte în perioada de la Prima Răscoală Sârbă din 1804 și până la dizolvarea Republicii Socialiste Federative Iugoslavia în 1991. În această perioadă, Serbia a avut 11 conducători — dintre care trei și-au pierdut viața în urma unor asasinate, doi au fost destituiți iar doi au abdicat — și două dinastii. Au fost adoptate peste 15 constituții și acte constituționale care au conturat, printre altele, poziția șefului statului. Această perioadă cuprinde probleme constituționale din trei țări – Principatul/Regatul Serbiei, Regatul Sârbilor, Croaților și Slovenilor/Regatul Iugoslaviei și Republica Populară Federală Iugoslavia/Republica Socialistă Federală Iugoslavia, în care poziția șefului statului s-a schimbat continuu din cauza voinței conducătorului de a o întări și a încercării altor instituții de a o limita. În plus, au fost executate șase lovituri de stat, iar statul a trecut, de asemenea, >>

>> prin faze de dictatură sau autocrație. Conținutul acestei lucrări urmărește sistematic forma statului și modificările acesteia.
CUVINTE CHEIE
Dinastia Karagheorghevic, Dinastia Obrenovici, Josip Broz Tito, prerogativele șefului statului

I. INTRODUCTION

This paper provides a brief overview of the position of the head of state in Serbia from the resurrection of Serbian statehood in 1804 until the dissolution of the Socialist Federal Republic of Yugoslavia in 1991. The struggle for the liberty and independence of the Serbian people and further development of the Serbian state or of the states of which Serbia voluntarily or involuntarily formed part in the XIXth and XXth centuries conditioned the specific position of the head of state. It is challenging to cover this almost 200-year-long period in one article: first, because of the quantity of legal sources governing the issue of this study that were adopted as a direct consequence of radical changes that occurred throughout this period; and second, because of its length. Contemplation of the historical development of the institution of head of state is also essential for a better understanding of its contemporary constitutional status in Serbia. However, by utilizing the chronological method in the analysis and division of chapters, the objective of this paper is to fully present the constitutional position, peculiarities, and changes concerning the function of the head of state in Serbia, while indirectly covering the main political issues and events of this 200-year-long period.

II. THE FIRST SERBIAN UPRISING OF VOŽD KARAĐORĐE

1. Constitutional Act of 1805 and Constitution of Rodofinikin

The history of the resurrection of the Serbian statehood, lost in 1459 with the Ottoman conquest, commences in 1804, with the First Serbian Uprising. On the Christian festival of Candlemass (February 15) in Orašac, insurgents elected Đorđe Petrović, also known as Karađorđe (the Turkish word *kara*[1] signifies "black" or "dark"), to be the leader of the uprising against Turkish rule. According to the Serbian historian and statesman Stojan Novaković, the election of Karađorđe was "the first step towards the state organization."[2] The German historian Leopold von Ranke characterized the

1 https://sozluk.gov.tr/ (accessed: 20 September 2021)
2 Stojan Novaković (1954): *Ustanak na dahije 1804: ocena izvora, karakter ustanka, vojevanje 1804 [Uprising against the Dahije: Evaluation of Sources, Character of the Uprising, Warfare in 1804]*, Srpska književna zadruga, Belgrade, p. 134.

election of Karađorđe as the beginning of "the Serbian Revolution" in his famous book *A History of Servia, and the Servian Revolution*, first published in 1847.

In the first year of the uprising, owing to the continuous warfare against Turks, the only power over the liberated territories was military, and it was entirely concentrated in the hands of Karađorđe.[3] Other military chiefs wanted to limit his excessive personal power, for which purpose the Governing Council (Правительствујушчи совјет/Praviteljstvujušči sovjet) was founded in 1805. Božidar Grujović, a Serb from the Austrian Empire (Hungary), lawyer, and professor of law history at the University of Harkov, who was inspired by the ideas of the French Revolution, played a fundamental role in its creation. Decisions (laws) passed separately by the Governing Council and by the Assembly[4] (Скупштина/Skupština) in Smederevo in October and November 1805, taken together, represented the first Constitutional Act regulating the relationships between Karađorđe and the Governing Council, establishing the Governing Council as the supreme executive institution.[5] Karađorđe became its chairman with the official title of Supreme Chairman of the People's Council (Председатељ верховни Совјета народна/Predsedatelj verhovni Sovjeta narodna). He also exercised the supreme military command, diplomatic function, and certain administrative and judicial functions.[6]

The help of the Russian empire to the insurgents in 1807 gave birth to the project drafted by the Russian diplomat of Greek origin Constantine Rodofinikin named the "Foundation of the Serbian government." According to this project, the Serbian Governing Senate (Правительствујушчи сенат сербски/Praviteljstvujušči senat serbski) would have the supreme power and Karađorđe, as prince (књаз/knjaz), would be the chairman of this institution with the right to grant pardons.[7] This act tended to seriously limit the powers of Karađorđe because the title of prince was not hereditary nor for life.[8] The project of Rodofinikin never came into force because the Russian emperor did not confirm it.

3 Marko P. Atlagić, Aleksandar L. Martinović: Udaranje temelja savremenoj srpskoj državi u Prvom srpskom ustanku 1804–1813 [The Foundation of the Modern Serbian State in the First Serbian Uprising], *Baština*, Priština-Leposavić, 2021, p. 360.

4 During the First Serbian Uprising the Assembly gathered at least once a year. The participants to these Assemblies were not elected by the people, but became participants owing to their position and reputation. Assemblies decided on the most important military and political issues.

5 Atlagić, Martinović (2021): pp. 361–362.

6 Ljubomirka Krkljuš: Povodom dvestote godišnjice Prvog srpskog ustanka (On the Bicentennial of the First Serbian Uprising), *Zbornik radova Pravnog fakulteta U Novom Sadu*, 2004/2, p. 12.

7 Krkljuš (2004): p. 13.

8 Srđan Šarkić: Ruski projekti državnog uređenja Ustaničke Srbije (Drugi deo—Rodofinikinov projekat) [Russian Attempts on the Constitutional Issue of Insurgent Serbia (Part Two—Establishment of a Serbian Government by Constantine Rodofinikin)], *Zbornik radova Pravnog fakulteta u Novom Sadu*, 2014/2, p. 33.

2. Constitutional Acts of 1808 and 1811

The Assembly in Belgrade adopted the second Constitutional Act in 1808. Its content is fundamental for the determination of the position of Karađorđe, who officially became leader (предводитељ/predvoditelj). Until the adoption of this constitutional act, his official title was that of commander (командант/komandant). With a mutual obligation confirmed by oath, it was decided that the Council, military commanders, and the people would recognize Karađorđe and his male descendants as the first and supreme leader of Serbia, promising him fidelity and obedience. Conversely, Karađorđe promised that he would paternally take care of the people and recognize the Council as the highest judicial institution in the country. This act, by establishing the hereditary right of the head of state, represented the foundation of the dynasty of Karađorđević. In addition, it was stipulated that all the commandments and ordinances were imposed mutually by the leader Karađorđe and the Council.[9]

The second Constitutional Act, recognizing the hereditary right of the leader Karađorđe and obliging him to act in cooperation with the Council, did not pacify the dissatisfaction of other military commanders who wanted to limit his power. The third Constitution Act, adopted in 1811 by the Assembly in Belgrade, which had a contractual form expressed through two acts exchanged by Karađorđe, Council, and military commanders, put an end to their attempts. Karađorđe gained the official title of "vožd" (this word was taken from Old Church Slavonic (вождь), meaning "leader" or "chief"). Other military commanders and the Council took an oath of fidelity first to the vožd and then to the fatherland, which reflects the monarchical nature of the oath, also swearing that they would consider every other claimant to the Serbian leadership as a foe and that they would deliver him to the court.[10] The Council undertook the obligation of not acting without the consent of the vožd. Vožd Karađorđe swore to justly lead the people, to maintain an eternal alliance with the Russian Empire, to rule in cooperation with the Council which would be empowered to inflict the most severe punishments and to be entitled to relieve punishments and grant pardons, and that he would not permit the abuse of power.[11] His hereditary right was confirmed. Vožd Karađorđe, as the president of the reformed Council, was also entitled to nominate its members (ministers and other members, including his substitute).[12]

The Constitutional Act of 1811, considering the fact that the function of vožd as head of state and the function of president of the Council as head of government were united in the personality of Karađorđe, strengthened his position and crushed opposition. The almost unlimited power he exercised, given that he was also the supreme military commander with the prerogative to represent the state externally, did not last long. After the Treaty of Bucharest ending the Russo-Turkish war in 1812, the Ottoman Empire defeated the Serbian insurgents in 1813.

9 Radoš Ljušić (2008): *Srpska državnost XIX veka [Serbian Statehood of XIXth century]*, Srpska književna zadruga, Belgrade, p. 70.
10 Vladan Mihajlović (2009): *Ustavno pravo [Constitutional Law],* Vladan Mihajlović, Kraljevo, p. 177.
11 Ljušić (2008): p. 72.
12 Atlagić, Martinović (2021): p. 370.

III. THE PRINCIPALITY OF SERBIA (1815–1882)

1. The reign of prince Miloš Obrenović (1815–1838) and the period until 1860

1.1. Period from the end of the Second Serbian Uprising until the Constitution of 1835

The Second Serbian Uprising, which was a natural reaction to the unbearable Turkish terror, was spearheaded by Miloš Obrenović, whose official title during the rebellion was also vožd. The oral agreement concluded in 1815 between Miloš Obrenović and Marashli Ali Pasha, the commander in chief of the Turkish troops, put an end to this armed conflict. According to Vuk Stefanović Karadžić, the prominent reformer of the Serbian language and contemporary of the reign of Miloš Obrenović, this agreement instituted the duality of powers in such a way that "the pasha then remained master of the Turks and muselims in the cities, and Miloš ruled over the people and knezes."[13] The Turkish pasha was the competent power for the Turkish population, while Miloš Obrenović ruled over the Serbs and was empowered to appoint and remove the knezes, chiefs of administrative-territorial units called nahije, who exercised certain administrative and judicial tasks. The Turkish Port confirmed the oral agreement concluded with Marashli Ali Pasha by issuing eight fermans in the winter of 1815–1816 establishing a "semi-autonomy" of the Serbian people.[14] In 1817, after the assassination of Karađorđe[15] by order of Miloš Obrenović, the Assembly declared him a hereditary prince of Serbia, but the Turkish Port did not confirm this title because that act would have given Serbia an attribute of a state.[16]

The turning point for the position of Miloš Obrenović and the legal position of Serbia within the Ottoman Empire was the issuance of two legal acts in 1830—Hatti-sharif by the Turkish Port and Berat by the Turkish Sultan. According to the provisions of the Hatti-sharif, Miloš was recognized by the Sultan as the Prince of Serbia, and this title became hereditary in his family according to the principle of primogeniture. The prince was to administer the internal affairs of the country in cooperation

13 Vuk Stefanović Karadžić (1960): *Prvi i Drugi srpski ustanak: život i običaju naroda srpskog [First and Second Serbian Uprising: Life and Customs of the Serbian People]*, Matica srpska, Novi Sad, p. 300.

14 Ljušić (2008): pp. 96–97.

15 After the defeat of the insurgents in 1813, Karađorđe emigrated to the Austrian Empire and then to the Russian Empire in 1814, where he became a member of the Greek national society called "Filiki Eteria" whose objective was the liberation of the Christian peoples in the Ottoman Empire. With the intent to organize a new uprising against Ottoman rule, he returned to Serbia at the end of June 1817. By order of Miloš Obrenović, Karađorđe was viciously assassinated while he was sleeping on July 13, 1817, and his head was sent to the Ottoman sultan as a sign of Miloš's fidelity.

16 Vladimir Ćorović (1989): *Istorija Srba—treći deo [History of Serbs—Third Part],* Beogradski izdavačko grafički zavod, Belgrade, p. 66.

with the assembly composed of notables of the country (which was never instituted).[17] The Hatti-sharif also stipulated that the maintenance of the prince was a duty of the Serbian people. Serbia obtained the status of the vassal principality with independent internal administration. Furthermore, in the Berat, the Sultan stated that Miloš Obrenović was the most eligible and the most capable to administer the Principality of Serbia and once again recognized his hereditary title of prince according to the principle of primogeniture. It was prescribed that in the event of a vacant throne, the Sultan would adopt a new berat in the manner foreseen in the Hatti-sharif. The Sultan also recommended to Miloš to administer the Principality reasonably and devote all his attention and care to it.[18]

The best and the most plausible depiction of the absolutistic and despotic nature[19] of the reign of Miloš Obrenović, who even used to render judgment according to his personal convictions, was given by Vuk Stefanović Karadžić in a letter addressed directly to Miloš in 1832. Vuk described his reign in the following manner: "Today in Serbia there is no government; in the literal sense of the word, you are the entire government: When you are in Kragujevac, the government is also in Kragujevac; when you are in Požarevac, it is also in Požarevac; when you are in Topčider, it is also in Topčider; when you are on the road, it is also on the road; if you tomorrow, God forbid, die (one day it has to be like that), the government would die too...."[20]

1.2. Constitution of 1835

After the revolt of Mileta Radojković provoked by Miloš's unbearable absolutism, Miloš was forced to give the people the Constitution adopted by the National Assembly on February 15, 1835. The redactor of this constitution, also known as the Candlemass Constitution after the date of its adoption, was Dimitrije Davidović, a Serb from the Austrian Empire and the editor of the first Serbian newspapers ever published.[21] This Constitution was adopted without consultations with and without the consent of the Ottoman Empire.[22]

The prince shared the legislative and executive power with the State Council (Државни совјет/Državni sovjet). The right of legislative initiative belonged to the prince and ministers as members of the State Council. The prince had the right of absolute veto given the fact that he was entitled to reject the promulgation of laws

17 Dragoljub Popović (2019): Arduous Path to Constitutionalism, *Pravni zapisi*, 2019/1, p. 12.
18 Ljušić (2008): p. 106.
19 Assassinations were the manner in which Miloš Obrenović put an end to conflicts with those who dared challenge his unlimited power. For example, he ordered the assassinations of Bishop Melentije Nikšić in 1816 and of Mladen Milovanović, one of the most important military leaders of the First Serbian Uprising, in 1823. However, the most notorious case was the abovementioned assassination of Karađorđe in 1817, which was depicted in the film *Karađorđe's Death* in 1983.
20 Vuk Stefanović Karadžić (2012): *Izabrana dela—Pismo knezu Milošu Obrenoviću od 12/24. aprila 1832. godine [Selected Works—Letter to knez Miloš Obrenović of 12/14 April of 1832]*, Izdavačka knjižarnica Zorana Stojanovića, Sremski Karlovci, pp. 121–122.
21 Popović (2019): pp. 14–16.
22 Ljušić (2008): p. 120.

and decrees passed by the State Council twice, but the third time the law or decree was submitted to him he was obliged to promulgate it if the law or decree was not to the detriment of the people or contrary to the Constitution. The prince executed laws and decrees through competent ministers. The personality of the prince was sacred and inviolable and he was not accountable for any act of rule or administration. The prince was empowered to appoint every official in the country, including the president of the State Council, ministers, and other members of this institution (whom he was entitled to remove from office). He was also empowered to grant pardons and give decorations. The title of prince was hereditary.

Even if Prince Miloš remained the most powerful figure, his power was significantly limited. The same prince in his speech stated that he would "stand under the law and in direct cooperation with the State Council."[23] Under the pressure of the Ottoman, Austrian, and Russian empires, dissatisfied because of the liberal character of the Constitution, which, based on the Constitutions of France and Belgium, contained a chapter on fundamental rights, Prince Miloš suspended it six weeks after its adoption.

1.3. The Constitution of 1838 and the period until 1860

The Constitution of 1838, known in Serbian historiography as the Turkish constitution because it had the form of Hatti-sharif, was the fruit of discussions of Serbian, Russian, and Turkish deputies in Istanbul. The Serbian historian and constitutionalist Slobodan Jovanović stated that "the absolutism that was the feature of Prince Miloš's rule was destroyed by the Constitution of 1838."[24] The powers of Prince Miloš were additionally limited by the promulgation of the Law on Council in 1839 that partly modified the Constitution.[25]

The executive power was vested in the prince through a government composed of four ministers appointed and removed from office by the prince, while the legislative power was vested in the Council (Савет/Savet), given the fact that according to Articles 11 and 13 of the Constitution, each law and decree had to be previously approved by the Council. The Law on Council limited the prince's prerogative to appoint the ministers and remove them from office, stating that the prince could only appoint members of the Council as ministers, but it also gave the prince the right of legislative initiative. The prince was also entitled to nominate the members of the Council, but according to the Law on Council, he was obliged to accept proposals and opinions of the Council in the process of election of its members. The members of the Council could be removed from office only if their guilt was proven before the Ottoman Port if they violated a law or decree. This was the most disadvantageous part of the Turkish Constitution from the point of view of Serbian statehood because it rendered possible Turkish interference in the internal matters of the Principality

23 Ljušić (2008): pp. 173–174.

24 Ljubomirka Krkljuš (2012): *Pravna istorija srpskog naroda [Legal History of the Serbian People]*, Pravni fakultet u Beogradu, Belgrade, p. 160.

25 In this subchapter I will particularly stress the provisions contained in the Law on Council. Other provisions are from the Turkish Constitution.

of Serbia.[26] Unlike the Candlemass Constitution, the prince did not have an absolute veto right because he could not reject the promulgation of a law passed by a majority of votes of the Council. The hereditary right in the family of the prince was reconfirmed. He was the chief commander of the army. The determination of salaries for the officials he was entitled to appoint, taking care of the execution of laws and decrees, participation in the election of the metropolitan and bishop, and participation in the judicial sphere by granting pardons and abolition were also among the competences of the prince.

It is clear that the position of the Council was predominant and preponderant, making it the most powerful institution. Miloš would not accept the new status and he abdicated in favor of his son Milan and left Serbia in 1839. The following period, which includes the reign of the sons of Prince Miloš, Prince Milan (1839—he died less than one month after becoming the prince) and Prince Mihajlo (his first reign 1839–1842), and the reign of Prince Aleksandar Karađorđević[27] (1842–1858), was marked by the superior position of the Council, with the Turkish Constitution in force. In Serbian historiography, it is known as the period of the defenders of the Constitution.[28] With the death of Prince Milan in 1839 at the age of 19 without children, the hereditary right of the prince was extinguished and the title of the prince became elective. The legal acts of the Ottoman Port (Berats in 1839, 1842, and 1859) stated that the Serbian prince was elected.

The Council started to lose its prestige and influence after Prince Miloš Obrenović's return to power at over 70 years of age (the second reign of Prince Miloš; 1858–1860). The Turkish Constitution was still in force, but the prince did not honor it and, consequently, the Council was practically completely subordinated to him, executing his orders.[29] The prince attempted to re-establish his hereditary right by passing the Law on Succession of the Throne of the Principality of Serbia in 1859, but the Ottoman Port did not recognize it.

2. The Second Reign of Prince Mihajlo Obrenović (1860–1868)

The successor of Prince Miloš, his son Mihajlo, did not want to accept Turkish interference, expressed through the new constitution in the form of a legal act of the Ottoman Port (Hatti-sharif), in the suspension of the Turkish Constitution of 1839.[30] Thanks to the intercession of French and Russian diplomats to this constitutional dispute between Prince Mihajlo and the Ottoman Port, he was enabled to partly modify certain fundamental provisions of the Turkish Constitution according to his will and in his favor by promulgating organic (constitutional) laws. The most important laws for the strengthened position of the prince were the Law on State Council,

26 Ljušić (2008): p. 177.
27 He was the son of vožd Karađorđe and, therefore, the change of dynasty occurred.
28 The Serbian Civil Code was promulgated during this period, in 1844.
29 Mihajlović (2009): p. 184.
30 Miodrag Radojević: Jedan ogled o razvoju srpske ustavnosti – Namesnički ustav [An Observation on the Development of the Serbian Constitutionality—Governors' Constitution], *Politička revija*, 2010/1, p. 462.

promulgated in 1861, and the Law on Central State Administration in the Principality of Serbia, passed in 1862. These laws, together with laws regulating the position of the National Assembly, municipalities and municipal powers, public officials, popular army, and the payment of taxes, represented "the uncodified constitution."[31]

With the promulgation of the Law on State Council, the Council lost, even formally, the predominant and preponderant position it had held during the period of the defenders of the Constitution. According to this law, the prince was entitled to freely nominate its members without the obligation to take into account or accept the proposals and opinions of the Council. He was also entitled to dismiss them at any time. The provision stipulating that the members of the Council should be summoned before an ordinary court in the event of a guilty verdict amended the problematic provision contained in the Turkish Constitution that rendered Turkish interference in the internal affairs of the Principality of Serbia possible. The Council could present legislative proposals to the prince and *vice versa*, but a legislative proposal could not become a law without the approval of the prince, who was entitled to withdraw the approval he had previously granted. The prince, only and exclusively, was empowered to represent the principality abroad and to conclude conventions.

Under the Law on Central State Administration, ministers became directly accountable exclusively to the prince, who freely nominated them. There was no longer an obligation to appoint members of the Council as ministers. The prince was also empowered to remove them from office. The Law on National Assembly, passed in 1861, instituted the Great National Assembly, which gathered to elect the prince or to recognize the adoption of the heir to the throne.

We can conclude that the prince had once again become the most powerful figure, marginalizing the role of the Council and controlling the ministers. Prince Mihajlo constituted a personal and absolutistic regime concentrating all power in his hands.[32] He lost his life as the victim of a private conspiracy[33] in Topčider (Belgrade) on June 10, 1868, at the age of 44.

3. The reign of Prince Milan Obrenović (1868–1882) and the Constitution of 1869

The successor of Prince Mihajlo was Milan Obrenović, the grandson of the brother of Miloš Obrenović Jevrem. Under the pressure from the army, the Great National Assembly confirmed that Milan was the only legitimate heir to the Serbian throne.[34] The Ottoman Sultan in his Berat recognized him as the Serbian prince and re-established the hereditary prince title according to the provisions of the Hatti-Sharif and Berat of 1830. Given the fact that Prince Milan was a minor, the governorship

31 Ljušić (2008): p. 156; Radojević (2010): p. 464.
32 Krkljuš (2012): p. 157; Mihajlović (2009): p. 187.
33 The assassination of Prince Mihajlo was organized and perpetrated by brothers of Ljubomir Radovanović, who had been sentenced to 7 years in prison because of his fierce opposition to the prince's absolutistic regime.
34 Ćorović (1989): p. 123.

(1868–1872) was introduced. The Great National Assembly promulgated the new Constitution in 1869, known in Serbian historiography as the Governors' Constitution due to the crucial role of the governorship in its creation. This Constitution, which formally repealed the Turkish Constitution, was adopted independently without the participation of the Ottoman Empire.[35]

Article 1 of the Constitution stated that Serbia was a constitutional hereditary monarchy. The personality of the prince was inviolable and irresponsible. He was the protector of all recognized religious confessions in the country and the chief commander of the army. Court sentences were rendered in his name. The Constitution also stated that the title of prince was hereditary in the dynasty of Obrenović. The prince and the National Assembly shared the legislative power, but the prince was a more powerful factor. The legislative initiative was the exclusive prerogative of the prince; the National Assembly could only express its desire to pass a law. The prince was entitled to appoint delegates, but they had to be "people of science or experienced in popular affairs" (one prince's delegate for each three elected delegates). He disposed of the right to convene the National Assembly, determine the time of its sessions, and dissolve it. No law could enter into force without the promulgation of the prince (the right of absolute veto). The prince was also empowered to pass laws when the public security of the country was at risk. He nominated and removed from office the ministers and president of the Ministerial Council and appointed all public officials. Under Article 100 of the Constitution, the competent minister was obliged to countersign the acts of the prince. He was also entitled to appoint the members of the State Council, which became the supreme administrative court. The traditional prerogatives of the prince, such as the right to grant pardons, represent the country abroad and conclude conventions with foreign countries, were also contained in the Constitution.

It is obvious that the position of the prince was predominant. He was more influential than the National Assembly in the legislative branch of government, given the fact that this institution did not have the right of legislative initiative. The executive power was practically monocephalous owing to the submission of the Ministerial Council to the prince, who could freely nominate and remove from office its members.[36]

IV. THE KINGDOM OF SERBIA (1888–1914)

1. The reign of King Milan Obrenović (1882–1889) and the Constitution of 1888

The independence of Serbia was internationally recognized at the Congress of Berlin in 1878. The following period was featured by the proclamation of the Kingdom of Serbia in 1882 and by the creation of the first Serbian political parties in 1881 (the

35 Ljušić (2008): p. 159.
36 Radojević (2010): p. 469.

Liberal Party, Serbian Progressive Party, and Popular Radical Party). Among these parties, the strongest one, with the greatest support among the people, was the Popular Radical Party, whose leader was the legendary Nikola Pašić, who was the main political figure until his death in 1926. Weakened by military defeat in the war against Bulgaria in 1885, King Milan decided to accept the adoption of a new constitution, the first Constitution of the Kingdom of Serbia, which was inspired by the Constitution of the Kingdom of Belgium of 1831 and by the French Constitutional Charters of 1814 and 1830,[37] as an independent state. It was adopted by the Great National Assembly in 1888 and it repealed the Constitution of 1869.

According to this Constitution, legislative power was vested in the king and National Assembly. Taking into account that the king was no longer the only one with the right of legislative initiative (the National Assembly also gained this fundamental right), that he was no longer empowered to nominate his own delegates, and that he could not pass laws when the public security of the country was at risk, the king and the National Assembly became equal factors in the legislative field.[38] The king promulgated laws, but the approval of both legislative factors was necessary for each law. He was entitled to convene the National Assembly in ordinary and extraordinary sessions, to delay its sessions for the maximal lapse of time of two months, and to dissolve it, in which case his decree had to contain the order for new elections carried out within two months and the order to convene the National Assembly within three months from the day of its dissolution. The king opened and concluded sessions of the National Assembly with his "sermon, decree, or epistle." He was also entitled to extend with his decree for the period of four months the validity of the last year's budget if the National Assembly was dissolved or delayed.

The executive power was vested in the king and he exercised it through the Ministerial Council. He nominated and removed ministers from office, who were accountable to him and the National Assembly,[39] and all public officials. Every act of the king had to be countersigned by the competent minister (including the above-mentioned acts on the convening of the National Assembly and its dissolution). The competent minister undertook the responsibility for the king's every act by countersigning it, and any such act could not be enforced otherwise according to Article 56 of the Constitution. The king was also entitled to appoint judges, to nominate eight members of the State Council from the list of sixteen candidates proposed to him by the National Assembly, and to propose the list of sixteen candidates to the National Assembly that nominated eight members from that list. Finally, the king also exercised traditional prerogatives and rights, such as the right to give decorations, grant pardons, or represent the country abroad; he was the supreme commander of the army and his personality was inviolable. The hereditary right in the family of Obrenović was reconfirmed.

37 Isidora S. Miletić: Pravni transplanti i Ustav od 1888: uporedno—pravna studija [Legal Transplants and Constitution of 1888: A Comparative Study], *Alan Watson Foundation*, 2013, p. 9.

38 Ljušić (2008): p. 231.

39 Their accountability was criminal and political.

This Constitution, which introduced the parliamentary system in Serbia, was the fruit of the compromise between the king and his main opponent, the Popular Radical Party.[40] King Milan, not being able to adapt to the new system, abdicated in 1889, two months after its adoption, in favor of his son Aleksandar.

2. The reign of King Aleksandar Obrenović (1889–1903) and the Constitution of 1901

Owing to the minority of King Aleksandar at the time of his father's abdication, a governorship was established, consisting of three governors. With the help of his father, he executed a coup d'état, dissolving the governorship and declaring himself prematurely adult. In the following year, he executed another coup d'état, suspending the Constitution of 1888 and restoring the Constitution of 1869. The period between 1897, when the former King Milan became the commander of the active army, and 1900 is considered the period of "the completely autocratic rule of King Aleksandar."[41] After his marriage to Draga Mašin in 1900, which was the cause of a quarrel with his father, who left Serbia and died in Vienna in 1901, and under the pressure of the Russian Empire, King Aleksandar decided to "octroy" the Constitution, which represented his third coup d'état because the competence of the adoption of a constitution belonged to the Great National Assembly according to the Constitution of 1869.[42]

This Constitution introduced the Senate, establishing bicameralism for the first time in Serbian constitutional history. The king was empowered to nominate the majority of its members (thirty senators for life, while eighteen senators were elected by the people). The adult heir to the throne was also among its members. The king could nominate solely the senators for life as members of the State Council. Unlike the Constitution of 1869, the legislative power was equally shared between the king and the National Assembly because they both had the right of legislative initiative. The rights of the king with regard to the National Assembly present in the Constitution of 1888 (the right to convene the National Assembly in ordinary and extraordinary sessions, to delay its sessions, etc.) were also contained in this Constitution. The king was entitled to extend the validity of the previous year's budget for the lapse of time of one year if the National Assembly was dissolved or delayed. The king appointed and removed from office ministers, who were responsible to him and the National Assembly,[43] and all public officials. The traditional rights and prerogatives of the king, such as the right to promulgate laws, to grant pardons, or to give decorations, and the inviolability of his personality present in the previous constitutions were also foreseen in this Constitution. It is noteworthy that the king was entitled to declare war and to conclude peace, alliance, and other treaties with the obligation

40 Krkljuš (2012): p. 212.
41 Krkljuš (2012): p. 215.
42 Đorđe Pavlović: Ustav Kraljevine Srbije iz 1901 [Constitution of the Kingdom of Serbia of 1901], *Zbornik Matice srpske za društvene nauke*, 2013, p. 511.
43 Their responsibility was exclusively criminal. Given the obligatory and equal participation of the Senate in the law-making process, the predominant position of the king was more than evident.

to notify the National Assembly of the same. The Constitution introduced the novelty that if there were no male lineal and collateral descendants in the family of Obrenović, the female lineal descendant would be the successor to the throne.

King Aleksandar executed another coup d'état at 23:15 on March 24, 1903, suspending the validity of the Constitution and dissolving the National Assembly by decree because the National Assembly did not honor his constitutional rights and because of its requests for freedom of the press, which was not envisaged in the Constitution. He restored the Constitution after forty-five minutes, immediately after midnight, with another coup d'état.[44] The king and his wife were assassinated by the conspirators, a group of officers led by Dragutin Dimitrijević Apis and politicians led by Đorđe Genčić,[45] on May 29, 1903. This assassination, caused by the uncertainty created by the five coups d'état that characterized the reign of King Aleksandar, tragically extinguished the Obrenović dynasty.[46]

3. Constitution of 1903 and the reign of King Petar I Karađorđević (1903–1914)

After the assassination, the National Assembly adopted a new Constitution and elected Petar Karađorđević, the grandson of Vožd Karađorđe and the son of Aleksandar Karađorđević, as the new king. The king did not take part in the adoption of the new constitution,[47] which was essentially the partly modified Constitution of 1888. The differences in the provisions on the position of the king concerned the fact that the king could not exonerate ministers from liability with his oral and written order, could not interrupt investigations against an accused minister, and was empowered to extend the validity of the last year's budget only with the consent of the State Council.[48] All other provisions regarding his position remained the same as in the Constitution of 1888.

The following period, characterized by severe international crises and nationally important events (the Customs War with the Austro-Hungarian Empire, Annexation Crisis of 1908, and Two Balkan Wars), was a period of a parliamentary system of government with a king who fully honored the Constitution and did not interfere in the work of the government or political issues.[49] On June 24, 1914, one month before the declaration of war of Austro-Hungary on Serbia, King Petar, owing to his age and aggravating health conditions, transferred the royal duties to his son Aleksandar, who became the regent. His regency lasted during the period of the First World War

44 Pavlović (2013): p. 520.
45 The Popular Radical Party led by Nikola Pašić did not take part in the conspiracy.
46 The assassination of the royal couple and the events that led up to it are depicted in the Serbian television series "The End of the Dynasty of Obrenović," released in 1995.
47 Ljušić (2008): p. 246.
48 Krkljuš (2012): p. 220.
49 Aleksandar Đurđev: Uvođenje parlamentarizma u Srbiji kao put njene evropeizacije [Institution of Parliamentarism in Serbia as a Course of its Europeanisation], *Zbornik radova Pravnog fakulteta u Novom Sadu*, 2008/3, p. 12.

and the birth and first years of the Kingdom of Serbs, Croats, and Slovenes, until the death of King Petar in 1921.

It is interesting to note that King Petar Karađorđević, alongside Prince Milan Obrenović, who died at the age of 19 in 1839, was the only Serbian ruler in the period of the Principality of Serbia and the Kingdom of Serbia whose reign ended with his natural death, without being dethroned or forced to abdicate. Prince Mihajlo Obrenović and King Aleksandar Obrenović were assassinated in 1868 and 1903, respectively, Prince Miloš Obrenović and King Milan Obrenović abdicated, in 1839 and 1889 respectively, and Prince Aleksandar Karađorđević was dethroned in 1858.

V. THE KINGDOM OF SERBS, CROATS, AND SLOVENES/ KINGDOM OF YUGOSLAVIA

1. The reign of King Peter and the regency of Aleksandar Karađorđević (1918–1921); the creation of the new state and the Vidovdan Constitution of 1921

Members of the Serbian government led by Nikola Pašić and members of the Yugoslav Committee[50] met in Corfu (Corfu Conference) and adopted the Corfu Declaration on July 20, 1917. The Declaration stated that the new state would be a free and independent monarchy ruled by the dynasty of Karađorđević, the name of the new state would be the Kingdom of Serbs, Croats, and Slovenes, and a new constitution would be adopted by the Constituent Assembly after the end of the war. The new state was solemnly proclaimed by regent Aleksandar in Belgrade on December 1, 1918. The period from the proclamation of the new state until the promulgation of the Constitution on June 28, 1921, is known as the period of provisorium, with the king (Regent Aleksandar on his behalf), Ministerial Council, and Temporary National Assembly as the main institutions. The Serbian Constitution of 1903 was still in force during that period.[51] The most important law passed by the Temporary National Assembly was the Law on Election of Deputies of the Constituent Assembly of 1920, which allowed the king to dissolve the Constituent Assembly.[52]

The first constitution of the new state was adopted on June 28 (Saint Vitus Day), 1921, hence its name of Saint Vitus Day Constitution (Видовдански устав/Vidovdanski ustav). According to Article 1 of the Constitution, the state of Serbs, Croats, and Slovenes was a constitutional, parliamentary, and hereditary monarchy. The king influenced the legislative branch of the government by having the following rights: the right of legislative initiative and legislative sanction; right to convene the National

50 Yugoslav Committee, consisting of politicians and intellectuals from the South Slavic parts of Austria-Hungary, was founded in 1915 with the objective to promote the idea of the creation of the South Slavic independent state.
51 Ljušić (2008): p. 283.
52 Krkljuš (2012): pp. 299-300, Mihajlović (2009): p. 214.

Assembly in ordinary and extraordinary sessions and to dissolve it with his decree, which must contain the order for new elections within three months; right to extend the validity of last year's budget with his decree for a period of four months; and his exclusive right to appoint judges. Similarly, the king influenced the government by being entitled to nominate and remove from office ministers who were accountable to him and the National Assembly. Finally, the Constitution envisaged the traditional prerogatives and rights of the king as the head of state (chief of the army, the right to represent the state in relations with foreign states, confer decorations, grant pardons, etc.) along with the inviolability of his personality, his rights to declare war and conclude peace and with the countersignature of his acts by the competent minister. Constitutional scholars define the parliamentary system introduced in the Kingdom as limited owing to the superior position of the king with respect to the National Assembly.[53]

King Petar died on August 16, 1921, less than two months after the promulgation of the Constitution. Regent Aleksandar became the king and, unlike his father, he was active and possessed the will and strength to interfere with alacrity in political issues. Substantially, he was the main political factor in the state who directly influenced the institutions using them as an instrument of his personal power.[54]

2. The reign of King Aleksandar Karađorđević (1921–1934), the coup d'état of 1929, and the Constitution of 1931

Due to political tensions caused by assassinations in the National Assembly in 1928,[55] king Aleksandar executed a coup d'état on January 6, 1929, suspending the Constitution, dissolving the National Assembly, and prohibiting political parties. In his proclamation to the people, the king stated that intercessors were not needed between him and the people and that the preservation of national unity and integrity of the country was the highest aim. His dictatorship was legally expressed by the Law on Royal Power and Supreme State Administration, passed the same day. Under this law, all the power in the country was concentrated in the hands of the king, who passed and promulgated laws with his decree containing the same law and nominated the president and members of the Ministerial Council, who were accountable exclusively to him and were obliged to act upon his authorization. Ministers had to take an oath of fidelity to the king, whose personality was inviolable. The king's decrees had to be countersigned by the president of the Ministerial Council, competent minister, and minister of justice. The judicial power was conducted on behalf of the king. The dictatorship of King Aleksandar is defined as a "monarchic dictatorship"[56]

53 Krkljuš (2012): pp. 299, 316, Mihajlović (2009): p. 217.
54 Krkljuš (2012): p. 316.
55 After a heated argument in the National Assembly on June 20, 1928, a deputy of the Popular Radical Party, Puniša Račić, shot dead Pavle Radić and Đuro Basariček, deputies of the Croatian Peasant Party, which was the most popular Croatian party. Stjepan Radić, the leader of the party, was also shot, dying in Zagreb on August 8, 1929, due to the consequences of the attempt.
56 Krkljuš (2012): p. 321; Mihajlović (2008): p. 223.

and as an "authoritarian dictatorship."[57] The country changed its name on October 3, 1929, with the promulgation of the Law on Name and Division of the Kingdom in Administrative Units and its official name became the Kingdom of Yugoslavia.[58]

Under the pressure of France and Czechoslovakia, countries considered friends and allies of the Kingdom, and because of the economic crisis, King Aleksandar "with the faith in God and the happy future of Yugoslavia" decided to "octroy" with his proclamation the Constitution on September 3, 1931, two years after the coup d'état. According to this Constitution, the Kingdom of Yugoslavia was defined as a hereditary and constitutional monarchy (the term "parliamentary" present in the Constitution of 1921 was omitted) and the king was the protector of national unity and the integrity of the country. The prerogatives of the king concerning his relationships with the National Assembly (right of legislative initiative, right to dissolve the Assembly, etc.) and traditional rights mentioned in the subchapter dedicated to the Constitution of 1921 were also contained in this Constitution. The Senate, whose legislative position was equal to the position of the National Assembly, was introduced and Parliament became bicameral for the second time in Serbian constitutional history. Given the fact that the king was empowered to nominate half the senators, it was an instrument for his control of the legislative branch of government.[59] In addition, the king was entitled to order by decree all extraordinarily indispensable measures to be undertaken independently of constitutional and legal provisions in the event of war, mobilization, turmoil, or rebellion that could put the public order and security of the country at risk or when the public interest was endangered to that extent. This provision, also known as the "little constitution," put the king above the constitution and laws.[60] Ministers were politically accountable exclusively to the king, who nominated and unilaterally removed them from office. It can be freely said that all the power was still concentrated in the hands of the king and that the new constitution served only to give constitutional legitimacy to his dictatorship.

King Aleksandar was assassinated in Marseille on October 9, 1934,[61] and his successor was his son Petar II Karađorđević. Owing to the minority of the new king, a governorship was formed. The main political figure in the governorship was Prince Pavle Karađorđević, son of the brother of King Petar I. Under the Constitution, the

57 Stipica Grgić, Neki aspekti poimanja uvrede vladara u vrijeme diktature kralja Aleksandra I Karađorđevića [Certain Aspects of Lèse-majesté During the Dictatorship of King Aleksandar I Karađorđević], *Zavod za hrvatsku povijest*, 2009, p. 349.

58 The dictatorship introduced the politics of integral yugoslavism, with the intention to create a specific Yugoslav nation.

59 Anita Blagojević, O Ustavu Kraljevine Jugoslavije iz 1931. godine [On the Constitution of the Kingdom of Yugoslavia of 1931], *Pravni vijesnik*, 2012/1, p. 129.

60 Krkljuš (2012): p. 324.

61 The assassination of king Aleksandar was organized by Croatian and Macedonian fascist and separatist movements—the Ustashas and Internal Macedonian Revolutionary Organization. The perpetrator was Vlado Černozemski, a member of the Internal Macedonian Revolutionary Organization. Alongside King Aleksandar, the French Minister of Foreign Affairs Jean Louis Barthou was also assassinated.

governors held full and unlimited royal power. They took an oath of fidelity to the king and had a moral obligation to honor his privileges. The Kingdom of Yugoslavia, attacked by the Axis powers without an official declaration of war on April 6, 1941, ceased to exist on April 17, when it capitulated.

VI. FEDERAL PEOPLE'S REPUBLIC OF YUGOSLAVIA/ SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA (1945–1991)

1. Period of Josip Broz Tito (1945–1971): Creation of socialist Yugoslavia, Constitutions of 1946, Constitutional act of 1953, and Constitution of 1963

The Anti-Fascist Council of the People's Liberation of Yugoslavia (ACPLY), formed in 1942, passed the Declaration proclaiming itself the supreme legislative and executive representative body of Yugoslavia at its session in Jajce on 29 November 1943 and deciding that Yugoslavia would be built on a democratic federal basis[62] as a state community of equal peoples. This conception put an end to the politics of integral yugoslavism recognizing the particularity of Serbs, Croats, Slovenians, Montenegrins, and Macedonians. The title of Marshall was conferred upon Josip Broz Tito, the leader of the Communist partisan movement. The official name of the country from November 29, 1945, when Yugoslavia became a federal republic[63] until 1963 was the Federal People's Republic of Yugoslavia (henceforth, "FPRY").

The Constituent Assembly adopted the first constitution of the new federal republic in 1946, based on the Soviet model.[64] Edvard Kardelj, who was the minister for the Constituent Assembly and president of the Commission for the Construction of the People's Power of the Central Committee of the Communist Party, played a fundamental role in its creation and adoption. Under this Constitution, the head of state was collective,[65] residing in the Presidium of the National Assembly, which according to Article 74 was entitled to dissolve the National Assembly, promulgate laws and issue decrees, give binding interpretations of laws, confer decorations, ratify international conventions, and assess the conformity of the laws of the republics to the Constitution and federal laws. The Presidium was accountable to the National Assembly, which was entitled to elect and impeach it. There was a parallelism between

62 Sergej Flere, The Authenticity of the Founding of Tito's Yugoslavia as a Federation, *Sociološki pregled*, 2018/4, p. 1120.

63 The Constituent Assembly passed the Declaration on Proclamation of the Federal People's Republic of Yugoslavia.

64 Ratko Marković (2016): *Ustavno pravo [Constitutional Law]*, Pravni fakultet u Beogradu, Belgrade, p. 133.

65 It consisted of the president, six vice presidents, secretary, and thirty members.

the Communist Party of Yugoslavia and state authorities.[66] Thus, Marshall Tito, as the general secretary of the Communist Party, became the prime minister of the federal state and a member of the Presidium. It is important to emphasize that, as in other totalitarian communist countries, all the power was concentrated in the hands of the Communist Party or Tito's hands and any form of pluralism was excluded.[67]

The institution of the President of the Republic as the executive organ of the Federal National Assembly was introduced in 1953 with the adoption of the Constitutional Act on Foundations of the Social and Political Organization of the FPRY and Federal Authorities[68] abolishing the Presidium of the National Assembly. This function was exercised by Marshall Tito. Along with traditional competences of the head of state (head of the army, the right to represent the country, promulgate laws with its decree, appoint ambassadors, confer decorations, etc.), according to Article 72 of the Constitutional Act, the President of the Republic was the president of the Federal Executive Council (some form of the political council of the Assembly to whom political-executive tasks were entrusted).[69] Additionally, the president was entitled to withhold from enforcement acts of the Federal Executive Council that the President of the Republic did not agree with, in which case he was obliged to present the issue before the Federal National Assembly. The President of the Republic was elected by secret ballot by the Federal National Assembly among its members, and a majority of the votes of the total number of deputies was needed for its election. Furthermore, the President of the Republic was accountable to the Federal National Assembly, which was also empowered to impeach the President,[70] and the term of office was tied to the term of this institution. It is important to emphasize that according to the Constitutional Act the Federal National Assembly was the highest state authority representing the sovereignty of the people, while the President of the Republic and the Federal Executive Council were defined as its executive organs to whom the Federal National Assembly assigned certain competences.

66 Vera Katz, Ustavno—pravni i politički položaj Bosne i Hercegovine prema ustavima FNRJ i NR BiH 1946. godine [The Constitutional, Legal and Political Position of Bosnia and Herzegovina According to 1946 Constitutions of the Federal People's Republic of Yugoslavia and the People's Republic of Bosnia and Herzegovina], *Historijska traganja*, 2011, p. 168.

67 The first years of the existence of the communist Yugoslav state were characterized by the elimination of anyone who could somehow challenge the new regime or put it at risk. The Commission on Concealed Graves of Killed After September 12, 1944, instituted by the Serbian Government in 2009, listed more than 60,000 people who were killed. For further information see: http://www.komisija1944.mpravde.gov.rs/cr/articles/pocetna/ (accessed: 1 December 2021).

68 This Constitutional Act also introduced the notion of the self-management of the working people in the field of education, culture, and social services, which was a peculiarity of the Yugoslav system not present in other communist states.

69 Marković (2016): p. 135.

70 The Federal National Assembly elected and impeached the President of the Republic in a joint session of both chambers. A majority of votes was needed for his impeachment and the presence of a majority of deputies of both chambers was needed for the existence of a quorum.

With the adoption of the new Constitution in 1963, the country changed its official name and it became the Socialist Federal Republic of Yugoslavia (henceforth, "SFRY"). According to this Constitution, the President of the Republic was no longer the president of the Federal Executive Council, but was entitled to propose to the Federal Assembly the candidate for this position. Other novelties concerning its position were the introduction of the right to propose to the Federal Assembly the election of the President of the Constitutional Court of Yugoslavia[71] and the totality of ten constitutional judges, and of the right to propose to the Federal Executive Council the nomination and removal from office of members of the Council of Federation.[72] According to Article 217, the President of the Republic was empowered to pass decrees having legal force on issues belonging to the competences of the Federal Assembly upon the proposal of the Federal Executive Council, "during the belligerency period or in the event of imminent danger of war." The Constitution in Article 220 determined the 4-year term of office of the President with the possibility of one consecutive re-election, but it stated that these limitations did not apply to Marshall Tito. Thus, Marshall Tito could essentially be president of the Republic for life. Provisions regarding the impeachment of the President were omitted, and therefore the Federal Assembly was solely empowered to elect the President. Under this Constitution, the Federal Assembly remained the highest state authority, while the President of the Republic ceased to be its executive organ. However, the Federal Executive Council was still defined as "an organ of the Federal Assembly to whom the politico-executive function within the framework of rights and duties of the federation is to be assigned" in Article 225.

2. Period of Josip Broz Tito (1971–1980) and the post-Tito period: Amendment of 1971, Constitution of 1974, and Amendment of 1988

Constitutional Amendment XXXVI, adopted in 1971, introduced the institution of the Presidency of the SFRY, as the collective head of state consisting of presidents of the Assembly of the republics and autonomous provinces, two members from each republic, and one member from each autonomous province elected by the Assembly of the republic or the autonomous province. The Federal Assembly proclaimed the election of its members, whose term of office lasted 4 years. The introduction of the collective head of State was the fruit of the further federalization of the state desired

71 This Constitution introduced the institution of the Constitutional Court of Yugoslavia, dedicating to it Chapter XIII (Articles 241–251). It consisted of the president and ten constitutional judges, and their term of office lasted eight years. SFRY was the only socialist country in Europe having such an institution entitled to protect legality and constitutionality and to resolve disputes between the federation and federal units regarding their rights and duties and jurisdiction disputes between courts and federal authorities.

72 This is another institution introduced by this Constitution. According to Article 224, the Federal Council "considered the issues of state policy and of activity of the politico-executive and administrative authorities."

by the aforementioned Slovenian politician Edvard Kardelj. Furthermore, Constitutional Amendment XXXVII regulated the position and competences of the President of the Republic, who was also the president of the Presidency. Owing to his "historical role," the Federal Assembly elected Marshall Tito President of the Republic. His term of office was extended to last 5 years. The specificity of this duality of heads of state was that the constitutional prerogatives of the Presidency, which were the same as the traditional prerogatives of the President of the Republic mentioned in the previous subchapter and particular ones contained in the Constitution of 1963—among which were certain prerogatives, such as the right to represent the country, promulgate laws, appoint ambassadors, and confer decorations, that constitutionally belonged also to the President of the Republic—were not activated but incorporated into the competences of the President of the Republic, with the possibility of their activation if the function of the President of the Republic ceases to exist.[73] Thus, even if the Presidency of the SFRY was constituted in 1971, its prerogatives were not activated owing to the existence of the President of the Republic.

The new Constitution, adopted in 1974 and burdened by the epithet of the longest constitution in the world[74] for containing 406 articles, maintained the mentioned specific duality without fundamental modifications. The composition of the Presidency was different according to this Constitution, consisting of one member from each republic and autonomous province elected by the Assembly of the republic or autonomous province and by the president of the League of Communists of Yugoslavia[75] according to Article 313, and their term of office lasted 5 years. Another novelty was the election of Marshall Tito as the President of the Republic without limitation of the term of office (Article 333). Therefore, he even officially became the President for life.

After his death on May 4, 1980, the prerogatives of the Presidency of the SFRY were activated, 9 years after its creation, and it remained the collective head of state until the dissolution of Yugoslavia in 1991. The Constitution of 1974 was in force during that period. Amendment XLI, adopted in 1988, concerning the position of the Presidency, empowered the Assembly of the respective republic and autonomous province to remove its members from office. The president of the League of Communists of Yugoslavia, the political party which was dissolved in 1990, was no longer a member of the Presidency. Furthermore, during a period of belligerency or in the event of imminent danger of war, the Presidency was entitled, along with the competence to pass decrees having legal force on issues belonging to the prerogatives of the Assembly of the Socialist Federal Republic of Yugoslavia, to elect, nominate, and remove from office functionaries whose election, nomination, and removal from office was the competence of the Assembly.

73 Dimitrije Kulić: Promene u ustavnom sistemu Jugoslavije od Ustava SFRJ 1963. do Ustava SFRJ 1974 [Changes in the Constitutional System of Yugoslavia from the Constitution of the SFRY of 1963 until the Constitution of the SFRY of 1974], *Zbornik Pravnog fakulteta u Nišu*, 1977, p. 93.

74 Marković (2016): p. 137.

75 The Communist Party of Yugoslavia changed its name to the League of Communists of Yugoslavia in 1952.

Regardless of the constitutional provisions stating that the National Assembly was the highest state authority, the President of the Republic or Josip Broz Tito was in reality the most powerful political figure, as evidenced by the existence of the one-party system and by the fact that the leadership of Tito within the Communist Party of Yugoslavia or from 1952 the League of Communists was adamantine, creating a cult of personality surviving even until today.[76] Party functionaries who dared to challenge Tito's leadership within the party or to oppose his politics were removed from office.[77]

VII. CONCLUSION

The position of the head of state in the period from the resurrection of Serbia in 1804 until the dissolution of the Socialist Federal Republic of Yugoslavia in 1991 oscillated. The common denominator of the period between 1804 and the creation of the Kingdom of Serbs, Slavs, and Slovenes in 1918 is a continuous attempt of the opposition, expressed through the Governing Council, State Council, or Council and National Assembly, to limit the power of the prince/king. Notwithstanding this attempt, the position of the ruler during the reign of the dynasty of Obrenović was predominant, with the exceptions concerning the last year of the reign of Prince Miloš, the first reign of Prince Mihajlo, the last year of the reign of King Milan, and the first years of the reign of King Aleksandar. Even when the members of the dynasty of Obrenović lost their predominant position in favor of the Council or National Assembly, they were able to regain it and restore unlimited power. However, the period of the reign of the dynasty of Karađorđević was characterized by a weak constitutional position of the ruler in favor of the Council during the reign of Prince Aleksandar and the National Assembly during the reign of King Petar. It can be stated that in this period, the position of the ruler depended more on his type of personality and his strong will to interfere in political issues than on the constitutional provisions. It can be said that attempts to limit the power of the ruler represented the natural development of Serbian society.

This natural development was interrupted by the creation of the Kingdom of Serbs, Croats, and Slavs in 1918. The nature of the dominant role of King Aleksandar after the adoption of the Saint Vitus Constitution in 1921 and of his dictatorship and the authoritarian regime was different, and it stemmed from his honest

76 Dražen Nemet: Povijesni mitovi o Josipu Brozu Titu kao sredstvo manipulacije narodima na prostoru bivše SFRJ [Historical Myth about Josip Broz Tito as a Means of Manipulation of the Peoples of the Former SFRY], *Pro Tempore,* 2006/3, p. 110.

77 The cases of two party functionaries—Milovan Đilas, who criticized the situation within the ruling party in his articles, making him the most famous Yugoslav dissident, and Aleksandar Ranković who was removed from office and retired in 1966 due to his idea of strengthening the federal powers instead of further federalization of the state—are the most interesting for Serbian historiography. Furthermore, Slobodan Penezić Krcun lost his life under mysterious circumstances in a car crash in 1964 after he had opposed Tito's politics regarding the position of Serbia within the SFRY.

attempt to save the country from far idyllic relations between the peoples and political parties.

Another radical interruption occurred after the end of the Second World War with the creation of the FPRY. During that period, the novelty was the introduction of a collective head of state (the Presidium of the National Assembly, which existed from the adoption of the Constitution of 1946 until the Constitutional Act of 1953, and the Presidency of the SFRY created by the Constitutional Amendment XXXVI of 1971, which lasted until the dissolution of the country in 1991). Taking into the account the existence of the one-party system and the indubitably solid position of Josip Broz Tito within the Communist Party of Yugoslavia/League of Communists of Yugoslavia until his death, it is clear that the position of head of state was predominant notwithstanding the constitutional provisions giving precedence to the National Assembly.

In the period between 1804 and 1991, assassination put an end to the reigns of three Serbian rulers—two belonging to the dynasty of Obrenović (Prince Mihajlo Obrenović and King Aleksandar Obrenović, assassinated in 1868 and 1903, respectively), and one belonging to the dynasty of Karađorđević[78] (King Aleksandar Karađorđević, assassinated in 1934). Prince Miloš Obrenović and King Milan Obrenović abdicated in 1839 and 1889, respectively, while Prince Aleksandar Karađorđević and the last ruler from this dynasty, Petar II, were deposed in 1858 and 1941, respectively. It can be said that only three rulers terminated their rule with natural death, without being forced to abdicate or ever being deposed—Prince Milan Obrenović in 1839, King Petar I Karađorđević in 1921, and Josip Broz Tito in 1980.

78 The assassination of Karađorđe in 1817 by order of Miloš Obrenović does not comprise this statement because he was not the ruler at the moment of his assassination. However, this infamous event predetermined the relationships between the two Serbian dynasties.

RULER	PERIOD	CONSTITUTIONAL DOCUMENTS
Karađorđe Petrović	1804–1813	Constitutional Act of 1805; Constitutional Act of 1808; Constitutional Act of 1811.
Miloš Obrenović	1815–1839 (first reign)	Constitution of 1835; Constitution of 1838.
Milan Obrenović	1839	Constitution of 1838 was in force.
Mihajlo Obrenović	1839–1842 (the first reign)	Constitution of 1838 was in force.
(Prince) Aleksandar Karađorđević	1842–1858	Constitution of 1838 was in force.
Miloš Obrenović	1858–1860 (the second reign)	Constitution of 1838 was in force.
Mihajlo Obrenović	1860–1868 (the second reign)	Constitution of 1838 was in force, but it was partly amended by a set of constitutional laws.
Milan Obrenović	1868–1889	Constitution of 1869; Constitution of 1888.
Aleksandar Obrenović	1889–1903	Constitution of 1901.
Petar I Karađorđević	1903–1921	Constitution of 1903; Constitution of 1921.
(King) Aleksandar Karađorđević	1921–1934	Constitution of 1931.
Petar II Karađorđević	1934–1941	Constitution of 1931 was in force.
Josip Broz Tito	1945–1980	Constitution of 1946; Constitutional Act of 1953; Constitution of 1963; Constitutional Amendments of 1971; Constitution of 1974.

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 chiefdom, 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 chiefdom 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 inclyti regni Hungariae*.

4 Attila Barna; Attila Horváth; Zoltán József Tóth; Gábor Máthé (2014): *Magyar állam- és jogtörténet* (Hungarian state and legal history), Nemzeti Közszolgálati 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 Liptószentmiklós (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 verzus 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 Verwirkungtheorie.[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 counterproductive, 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 acts[25] 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 constitution[30] 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 Constitution[33] 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 ⅗ 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 had been guaranteed by self-administration of Slovakia within Czechoslovakia.[41]

The main representation of these citizens was ensured by the Slovak People's Party (HSĽS), 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 HSĽS 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 HSĽS, 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 Lônčíková: Autonómia Slovenska 1938–1939 Počiatočná 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. kterým 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 právne dejiny* (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 HSĽS 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 HSĽS 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; Lônčíková (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 Republic[52] 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 ⅔ of the members of Congress were required to participate and ⅗ 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, ⅗ majority votes was needed for its acceptance out of a minimum of ⅔ 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 HSĽS 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 veštcom, ktorý žije ideálu národnej veľkosti a národného poslania."*

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 spôsoby, 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 State[63] 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 pact[65] 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): *Prípad 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 Ústavny 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 President[73] with Slovak nationality.

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

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

Legal Status of the Heads of State in the Czech Lands From the Beginnings of Modern Constitutionalism Until the End of Communist Rule

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ABSTRACT
The story of the heads of state in the Czech Lands during the 19th and the 20th centuries is nothing less than the modern history of the nation itself. Their status and its changes over time tell us also about the struggles, concerns, ambitions, and successes of the Czech people. When looking at the legal position of the heads of state over time, one thing can be stated without any exaggeration: Their real influence always managed to grow through the role they were supposed to play according to the sheer text of the respective constitutional provisions. This article aims to disclose how and why this happened, with a particular emphasis on the constitutional context of this process.
KEYWORDS
head of state, president, Czechoslovakia, Czech Lands, constitution, republic

Statutul juridic al șefilor de stat în Țările Cehe de la începuturile constituționalismului modern până la sfârșitul regimului comunist

REZUMAT
Povestea șefilor de stat din Țările Cehe în secolele al XIX-lea și al XX-lea nu este nimic mai puțin decât istoria modernă a națiunii însăși. Statutul acestora și schimbările în acest statut de-a lungul timpului ne vorbesc, de asemenea, despre luptele, preocupările, ambițiile și succesele poporului ceh. Atunci când analizăm poziția juridică a șefilor de stat de-a lungul timpului, un lucru poate fi afirmat fără nicio exagerare: influența lor reală a reușit întotdeauna să crească dincolo de rolul pe care ar fi trebuit să îl joace conform textului pur și simplu al prevederilor constituționale respective.. Acest articol își propune să dezvăluie cum și de ce s-a întâmplat acest lucru, punând un accent deosebit pe contextul constituțional al acestui proces.
CUVINTE CHEIE
șef de stat, președinte, Cehoslovacia, Cehia, Țările Cehe, constituție, republică

I. INTRODUCTION

The defeat of the Bohemian estates in the Battle of White Mountain (*Bitva na Bílé hoře*) in 1620 marked the beginning of feudal absolutism in the Lands of the Bohemian Crown. In response to the unsuccessful rebellion, Ferdinand II deprived the Bohemian estates of most of their rights associated with the governance of the kingdom and concentrated these powers in the hands of the monarch. The legal justification for these changes was found in the theory of forfeiture of rights (*teorie o propadlých právech*), according to which the estates lost all of their previous rights to the victorious side (the Emperor) by rebelling against him and suffering a defeat.[1]

Most of the new rules were legally entrenched in the document called the Renewed Land Ordinance[2] (German: *Verneuerte Landesordnung*, Czech: *Obnovené zřízení zemské*), which was imposed by Ferdinand and served as a land constitution for Bohemia (promulgated in 1627) and Moravia (promulgated in 1628). The most remarkable changes introduced by the new document were related to the status of the monarch: Article A1 proclaimed the Lands of the Bohemian Crown hereditary for the reigning dynasty, which meant that in case of a Habsburg succession, the estates were deprived of their right to elect or confirm the monarch. Article A8 conferred the exclusive legislative power (*ius legis ferendae*) on the monarch, while Article A20 empowered the monarch to grant Bohemian residential rights (*ius incolatus*), a right that was previously exercised by the Land Diet. Any action that interfered with the rights of the monarch, even the proposal of a new law, was punishable by death.[3]

This period of forced recatholization, Germanization, and disregard for Czech interests lasting more than two centuries,[4] which the famous Czech writer Alois Jirásek later termed the Darkness (*Temno*),[5] had an indisputable impact on the Czech national memory. The literary depiction of the absolutistic era at the turn of the 20th century aggravated the already negative stance of the Czechs toward the Habsburg dynasty and statehood and played a considerable role in the formation of the independent Czechoslovak state and its legal traditions.[6]

The aim of this article is to trace the historical development of the legal status of the heads of state in the Czech Lands from the early beginnings of modern constitutionalism in the 19th century until the fall of the socialist regime in 1989. The article will scrutinize the most important constitutional provisions from this period, primarily examining the origin and termination of their office, their roles, powers,

1 Karel Malý et al. (2010): *Dějiny českého a československého práva do roku 1945* (History of Czech and Czechoslovak Law Until 1945), Leges, Praha, p. 153.
2 Verneuerte Landesordnung des Erbkönigreichs Böhaimb. Original text in German accessible from: https://gdz.sub.uni-goettingen.de/id/PPN626655234?tify={%22pages%22:[5],%22panX%22:0.496,%22panY%22:0.745,%22view%22:%22info%22,%22zoom%22:0.382} [accessed 03-12-2021]
3 Malý et al. (2010): p. 154.
4 Ibid.: pp. 149, 154, 155.
5 See: Alois Jirásek (1915): *Temno* (Darkness), Jan Otto, Praha.
6 See for example: Arne Novák (1916): *Zvony domova* (Bells of Home), Fr. Borový, Praha, pp. 131–132.

and responsibility, and the course of events that led to the adoption of the respective provisions. A further goal of the article is to provide insight into the relationship between Czech political circles and the larger society on one hand and the head of the Czech state on the other.

II. LEGAL STATUS OF THE MONARCH FROM THE BEGINNINGS OF CONSTITUTIONALISM UNTIL THE COLLAPSE OF THE AUSTRO-HUNGARIAN EMPIRE

1. First attempts at constitutionalism

The absolutist establishment introduced by the Renewed Land Constitution prevailed in the Czech Lands for almost the whole first half of the 19th century. However, the political upheaval during the Springtime of Nations brought about the first cracks on the façade of the regime. In March 1848, the Viennese revolutionaries forced Chancellor Metternich to resign, while Emperor Ferdinand pledged to issue a constitution and guarantee civil liberties.[7]

The Emperor kept his word: On April 25, 1848, a constitution was issued for the Cisleithanian parts of the Habsburg Empire. The April or Pillersdorf Constitution[8] (named after its author, Baron Franz von Pillersdorf, the minister of interior at that time) was a rather brief compilation of foreign constitutions that were used as models[9] for the document.[10] Nevertheless, it significantly altered the position of the monarch compared to the absolutistic model, as it introduced—to some extent—the separation of powers.

According to Articles 10 and 34 of the April Constitution, the legislative power was to be divided between the Emperor and the Imperial Diet, consisting predominantly of elected members (Arts. 34–37). Article 47 of the constitution explicitly listed various issues that could only be regulated by acts of the Imperial Diet. However, according to Art. 15, all the acts of Imperial Diet also required the approval of the Emperor. All the other issues not listed in Art. 47 could also be addressed by the executive power, which remained completely vested in the Emperor. In contrast, the

7 Karel Schelle (2010): *Dejiny českého ústavního práva* (History of Czech Constitutional Law), Key Publishing, Brno, p. 7.

8 Allerhöchstes Patent Nr. 49/1848 25. vom April 1848 Verfassungs-Urkunde des österreichischen Kaiserstaates. In: Sr. k. k. Majestät Ferdinand des Ersten politische Gesetze und Verordnungen für sämmtliche Provinzen des Österreichischen Kaiserstaates mit Ausnahme von Ungarn und Siebenbürgen, 46. Band, pp. 145–158. Accessible from: https://alex.onb.ac.at/cgi-content/alex?aid=pgs&datum=1848&page=187&size=45 [accessed 03-12-2021]

9 The Belgian Constitution of 1831 was the main source of inspiration while drafting the April Constitution. Source: Karel Schelle, Jaromír Tauchen (2013): *Vývoj konstitucionalismu v Českých zemích* (Development of Constitutionalism in the Czech Lands), Linde, Praha, p. 18.

10 Schelle, Tauchen (2013): p. 18.

monarch had no judicial powers; jurisdiction was to be exercised by an independent judiciary.[11]

The legal position of the Emperor—although substantially weakened compared to absolutistic times—remained relatively strong according to the text of the constitution. Its fifth article upheld the hereditary crown of the Habsburg dynasty, as under the absolutist system. Furthermore, besides powers traditionally associated with the heads of state (granting pardons and titles—Arts. 11 and 13, appointing officers—Art. 11, concluding treaties—Art. 12, command-in-chief—Art. 11, legislative initiative—Art. 15), the monarch could also adjourn or dissolve the Imperial Diet (the constitution contained no limitations in this regard). Pursuant to Art. 8, he was not responsible for the exercise of his governing powers, but his decrees required the countersignature of a minister, who was responsible (to whom, was not disclosed in the text of the constitution). The monarch also had to take an oath on the constitution (Art. 9).

While the primary intention behind the adoption of the April Constitution was to appease the insurgents, this move did not turn out to be successful.[12] As resistance against the document grew, Ferdinand proclaimed it to be provisional, designed only for the period until a definitive constitution was adopted by a constitutional assembly. Soon, however, the draft was completely withdrawn, and the April Constitution never entered into force.[13]

The Imperial Diet, elected in order to adopt a constitution meeting the requirements of liberal circles as well, began its work in July 1848.[14] Despite the extensive political differentiation of its members and the forced relocation to Kremsier (present day Kroměříž, Czech Republic) due to the turbulent situation in Vienna, the Diet managed to come up with a constitution draft.[15] The draft, named the Kremsier Constitution[16] after the location of the assembly, had many similar provisions to the April Constitution with respect to the powers of the monarch, mainly regarding the prerogatives traditionally associated with the heads of state (diplomacy, appointments, chief command, etc.). However, the Kremsier Draft was far more extensive and detailed than the April Constitution,[17] and was more restrictive in terms of the Emperor's prerogatives. The main differences were the following: According to the

11 Stanislav Balík, Vít Hloušek, Jan Holzer, Jakub Šedo (2003): *Politický systém českých zemí 1848–1989* (Political System of the Czech Lands 1848–1989), Masarykova univerzita. Mezinárodní politologický ústav, Brno, p. 21.
12 Schelle (2010): p. 8.
13 Hermann Baltl, Gernot Kocher (1993): *Österreichische Rechtsgeschichte: Unter Einschluss sozial- und wirtschaftsgeschichtlicher Grundzüge: von den Anfängen bis zur Gegenwart*, Leykam, Neudörfl, pp. 195–203.
14 Schelle, Tauchen (2013): p. 19.
15 Ibid.: p. 20.
16 Entwurf des Österreichischen Reichstages welcher in der Zeit vom 22. Juli 1848 bis 4. März 1849 getagt hat, zuerst in Wien, ab dem 22. November 1848 in Kremsier (Mgft. Mähren) ("Kremsier Entwurf"). Accessible from: http://www.verfassungen.at/at-18/verfassungsentwurf49-i.htm [accessed 03-12-2021]
17 It contained 122 articles, compared to the 59 articles of the April Constitution.

Kremsier Draft, all acts of the Emperor had to be countersigned by a responsible minister (Art. 44), and this time the text of the draft made it clear that the ministers were to be responsible to the Imperial Diet (Art. 69). Moreover, the draft only guaranteed a suspensive veto for the Emperor against the acts of the Imperial Diet (Arts. 87 and 88), and his right to adjourn or dissolve the Diet was also subject to limitations (Arts. 50 and 51).

Be that as it may, the political trends of the time turned out not to be favorable for a constitution drafted in a progressive manner. The last wave of the Vienna Uprising was quelled by the end of October 1848, and in December Ferdinand abdicated in favour of the young and ambitious new Emperor Franz Joseph. Heartened by the outcome of the Battle of Kápolna, the young ruler issued a new constitution on the March 4, 1849, which pre-empted the draft being prepared by the Diet in Kremsier. Three days later the Diet was dissolved by his orders and the Kremsier Constitution was abandoned for good.

2. Reintroduction of absolutism

The constitution issued by the Emperor on March 4[18] (called either the March Constitution or the Stadion Constitution after the minister of the interior, Count Stadion) still acknowledged the separation of powers to a certain extent, but marked a definite setback in the development of constitutionalism.[19] The legislative power was to be exercised by the Imperial Diet and partly also by land diets, but the position of the "hallowed, inviolable and unaccountable"[20] Emperor was so strong that it could heavily interfere with the powers of legislative organs: In contrast to the Kremsier Constitution, the March Constitution left the adjournment or dissolution of the Imperial Diet completely to his discretion (Art. 69) and ensured him the right of absolute veto against the acts of the Diet (Art. 66). Furthermore, article 87 guaranteed him the right to issue regulations that temporarily had force of acts.

According to the March Constitution, the Emperor also had the traditional prerogatives of the heads of state guaranteed by the previous constitutions (appointments, diplomacy, etc.). It also required the monarch to take an oath on the text of the constitution (Art. 13) and the countersignature of a responsible minister for each of his acts (Art. 18). The March Constitution, like the April and Kremsier Constitutions, declared that the crown of each constituent land (thus the lands of the Czech crown as well) was hereditary in the house of Habsburg-Lorraine (Art. 9).

It soon became clear that the March Constitution was only the first sign of a new course in governance that quickly led to the complete abolishment of constitutionalism. After rendering the ministers unaccountable to any political authority except

18 Kaiserliches Patent Nr. 150/1849 R.G.Bl. vom 4. März 1849, die Reichsverfassung für das Kaiserthum Oesterreich enthaltend Reichsverfassung für das Kaiserthum Oesterreich. In: Allgemeines Reichs-Gesetz- und Regierungsblatt für das Kaiserthum Österreich, Jahrgang 1849, pp. 151–165. Accessible from: https://alex.onb.ac.at/cgi-content/alex?aid=rgb&datum=1849&page=287&size=45 [accessed 03-12-2021]

19 Balík, Hloušek, Holzer, Šedo (2003): p. 22.

20 Article 14 of the March Constitution.

the Emperor, Franz Joseph deprived the March Constitution of legal effect with a patent issued on December 31, 1851,[21] and concentrated all powers once again in the hands of the monarch. The following period of neo-absolutism, lasting nearly a decade, began to fall apart owing to diplomatic and military failures and the worrying financial situation of the Austrian Empire.[22]

3. Route to definite constitutionalism

In order to guarantee the affluent circles certain degrees of control over specified domains in exchange for their financial assistance,[23] the Emperor issued the October Diploma on October 20, 1860.[24] Its second article granted legislative powers mainly in the field of finances to the Imperial Council (*Reichsrat*), previously a mere personal advisory body to the Emperor[25] that had developed into a proper legislative authority in the following years.

A significant step in this regard was the February Patent[26] issued on February 26, 1861, which laid down the rules concerning the Imperial Council in greater detail. The Imperial Council was transformed into a bicameral body, with a lower house comprising deputies elected indirectly by the Land Diets[27] and an upper house made up of the highest nobility and clergy, as well as peers appointed by the Emperor.[28] While the February Patent once again paved the way to constitutionalism, it was by no means as ground-breaking as the previous constitutions. Even though the Emperor had to share legislative powers with another body of government again (this time the Imperial Council), which, in contrast to the October Diploma, was now competent in all fields of common (imperial) interest (Art. 10), the dominant position of the Emperor was beyond question. He still had the power to adjourn the session or

21 Kaiserliches Patent Nr. 2/1852 R.G.Bl. vom 31. December 1851. In: Allgemeines Reichs-Gesetz- und Regierungsblatt für das Kaiserthum Österreich, Jahrgang 1852, Stück 2, pp. 25–26. Accessible from: https://alex.onb.ac.at/cgi-content/alex?aid=rgb&datum=1852&page=111&size=45 [accessed 03-12-2021]

22 Malý et al. (2010): p. 215.

23 Ibid.: pp. 215–216.

24 Kaiserliches Diplom Nr. 226/1860 R.G.Bl. vom 20. Oktober 1860, zur Regelung der inneren staatsrechtlichen Verhältnisse der Monarchie. In: Reichs-Gesetz-Blatt für das Kaiserthum Österreich, Jahrgang 1860, Stück 54, pp. 336–338. Accessible from: https://alex.onb.ac.at/cgi-content/alex?aid=rgb&datum=1860&page=396&size=45 [accessed 03-12-2021]

25 Schelle, Tauchen (2013): p. 23.

26 Kaiserliches Patent Nr. 20/1861 R.G.Bl. vom 26. Februar 1861. In: Reichs-Gesetz-Blatt für das Kaisertum Oesterreich. Jahrgang 1861, Stück 9, pp. 69–311. Accessible from: https://alex.onb.ac.at/cgi-content/alex?aid=rgb&datum=1861&page=99&size=45 [accessed 03-12-2021]

27 Articles 6–7 of the Fundamental Law on the Imperial Representation (*Grundgesetz über die Reichsvertretung*), which was the first supplement to the February Patent (*Beilage zu Nr. 20*). Accessible from: https://alex.onb.ac.at/cgi-content/alex?aid=rgb&datum=1861&page=102&size=45

28 Articles 2–5 of the Fundamental Law on the Imperial Representation (Grundgesetz über die Reichsvertretung).

even dissolve the lower house of the Imperial Council without any restrictions (Art. 18) and issue his own ordinances while the Council was not assembled (Art. 13).

However, the political turbulence of the Austrian Empire continued, culminating in the 1860s, which inevitably led to further developments in the constitutional field. The Austro-Hungarian Compromise in 1867 was followed by a series of fundamental acts in the Cisleithanian part of the Monarchy, with many of them directly affecting the position of the Emperor. These series of fundamental acts regulating elementary relations within state governance are together known as the December Constitution.[29]

The first major change was introduced by Act no. 101/1867,[30] which stated that no act of the Emperor was valid without the approval of a minister who was simultaneously accountable to the Imperial Council.[31] These rules rendered the issuance of arbitrary decisions by the monarch virtually impossible. Act no. 141/1867[32] broadened the powers of the Imperial Council and elaborated them in a detailed manner, but also transferred legislative competences to the Land Diets in all questions not listed among those appertaining to the Imperial Council.[33] It did not, however, entail fundamental changes to the relations between the legislature and the monarch. Act no. 145/1867[34] contained the most important provisions on the executive power. Its second article stated that this branch of power belonged to the Emperor, who performed his powers through accountable ministers. He was also the commander-in-chief of the country (Art. 5) and held many traditional prerogatives related to his representative function (appointments,[35] awarding decorations,[36] diplomacy[37]). Additionally, every Emperor had the duty to take an oath before the Imperial Council after acceding to the throne (Art. 8).

When evaluating the balance of powers introduced by the December Constitution, one could generally say that the Emperor managed to retain a fairly strong legal position. The initial article of the act on the executive gives an indicative insight into the distribution of powers, stating that the Emperor is "hallowed, inviolable and

29 Schelle, Tauchen (2013): p. 28.
30 Gesetz Nr. 101/1867 R.G.Bl. vom 25. Juli 1867, über die Verantwortlichkeit der Minister für die im Reichsrathe vertretenen Königreiche und Länder. In: Reichs-Gesetz-Blatt für das Kaisertum Oesterreich. Jahrgang 1867, Stück 39, pp. 208–212. Accessible from: https://alex.onb.ac.at/cgi-content/alex?aid=rgb&datum=1867&page=236&size=45 [accessed 03-12-2021]
31 Schelle, Tauchen (2013): p. 28.
32 Gesetz Nr. 141/1867 R.G.Bl. vom 21. December 1867, wodurch das Grundgesetz über die Reichsvertretung vom 26. Februar 1861 abgeändert wird. In: Reichs-Gesetz-Blatt für das Kaisertum Oesterreich. Jahrgang 1867, Stück 61, pp. 389–394. Accessible from: https://alex.onb.ac.at/cgi-content/alex?aid=rgb&datum=1867&page=417&size=45 [accessed 03-12-2021]
33 Ibid.
34 Gesetz Nr. 145/1867 R.G.Bl. vom 21. December 1867, über die Ausübung der Regierungs- und der Vollzugsgewalt. In: Reichs-Gesetz-Blatt für das Kaisertum Oesterreich. Jahrgang 1867, Stück 61, pp. 400–401. Accessible from: https://alex.onb.ac.at/cgi-content/alex?aid=rgb&datum=1867&page=428&size=45 [accessed 03-12-2021]
35 Article 3.
36 Article 4.
37 Article 6.

unaccountable." Limitations of the Emperor's powers in relation to the parliament along the lines of those proposed in the Kremsier Draft had not been introduced: The monarch still had full discretion to adjourn the sessions or dissolve the lower house of the parliament (Art. 19) and he had an absolute veto[38] against the acts of the Imperial Council (Art. 13). He also had the right to issue emergency ordinances with the same legal effects as acts of parliament, although the latter had to approve these during its next session.[39] Another element favoring the Emperor and restricting liberal aspirations[40] at the same time was the strong[41] upper house of the parliament (House of Lords—*Herrenhaus*) composed of peers appointed by the monarch and other highly ranked noblemen and clerics.

Owing to the factors infringing the democratic principle and the separation of powers, the December Constitution can be perceived as still bearing certain absolutistic marks.[42] Despite these shortcomings, however, it should be noted that the December Constitution was the first in the history of the Austrian Empire that was not octroyed by the Emperor but passed in a proper legislative procedure with the approval of the parliament and the monarch as well. Moreover, time showed that the December Constitution was able to strike some kind of balance between the different social classes, as it managed to remain in force until the very collapse of the Austro-Hungarian Empire.

Even though modern constitutionalism was ultimately achieved in the Austrian Empire (and thus in the Czech Lands as well), this cannot be said about the national goals of the Czechs living within the boundaries of the Empire. Simultaneously with the fight for constitutionalism, the Czech nation strove for the acknowledgement and renewal of Czech legal statehood within the framework of the Austrian Empire (i.e., the creation of a separate entity comprising all the Lands of the Czech Crown, resulting into a federal or trialist system of state organization).[43] Recurring failures in this regard led the Czechs to an ever-growing dissatisfaction with their position in the state.[44] The negative stance of the Czechs toward Austrian statehood in its then existing form meant that although the Habsburg monarchs were the lawful heads of state of the Czech Lands during the whole period examined in this article so far, they were rather perceived as foreign rulers representing a system that had oppressed the Czech nation for centuries.[45] The events of the early twentieth century created a sudden opportunity for the Czechs to radically change the course of their history.

38 Balík, Hloušek, Holzer, Šedo (2003): p. 27.
39 Ibid., see also: Schelle, Tauchen (2013): p. 33.
40 Schelle, Tauchen (2013): pp. 29–30.
41 According to Article 13 all acts of parliament had to pass both the lower and the upper house.
42 Otto Urban (1982): *Česká společnost 1848–1918* (Czech Society, 1848–1918), Svoboda, Praha, p. 224.
43 Malý et al. (2010): pp. 229–231.
44 Ibid.: p. 313.
45 Ibid.: p. 236.

III. LEGAL STATUS OF THE PRESIDENTS OF THE FIRST CZECHOSLOVAK REPUBLIC (1918–1938)

1. Concepts elaborated before the declaration of independence

The outbreak of the First World War brought about profound changes in the political life of the Czech nation. Their politicians had the opportunity to articulate their demands to actors besides representatives of the Austrian state. This also meant that those who imagined a political future of the Czech nation completely outside the framework of the Monarchy now had the opportunity to articulate their ideas freely, though in exile. However, it should be noted that those who had seen the solution in the secession and the creation of a fully independent state were certainly in a minority up until the final phase of the war.[46]

Some circles, such as the conservative Czech nobility and the Catholic political parties, had not envisaged the breakaway of the Czech territories from Austria-Hungary at all,[47] probably in anticipation of a more effective protection of their interests within the Monarchy. In addition, the majority of the Czech parties properly entrenched in the Austrian political reality preferred the status quo (i.e., the preservation of the Monarchy), as they worried that in case the Austrian Empire fell apart, the supporters of Greater Germany would attempt to unite Austria—including the Czech Lands—with the German Empire.[48] In line with this, in a joint declaration from May 30, 1917, the Czech deputies of the Imperial Council still demanded "only" the abolition of dualism and the federalization of the Monarchy.[49]

Nevertheless, the first concepts envisioning the breakup of the Monarchy and the restoration of the Czech state in a completely different setting were born just before the outbreak or during the early stages of the war and were associated with two main figures: Karel Kramář and T. G. Masaryk.[50]

The former, who was the leader of the National Liberal Party, developed the so-called "Constitution of the Slavic Empire."[51] Ambitious as its name may suggest, the pan-Slavist idea of Kramář envisaged the integration of the state of Czechs, Poles, Bulgarians, Serbs, Montenegrins, and Russians into one Empire. The common head of the Empire was to be the Russian Tsar, in whose hands most of governing powers would be concentrated, and whom Kramář also imagined as the Czech, Polish, and Russian monarch at the same time. The Balkan states, however, would retain their own monarchs. Strikingly, Kramář suggested the creation of a near absolutist system, with the Tsar having the power to appoint members of the government

46 Schelle, Tauchen (2013): p. 341.
47 Ibid.: pp. 230, 314.
48 Ibid.: p. 314.
49 Ibid.: p. 345.
50 Ibid.: p. 341.
51 The text of Kramář's draft constitution in Czech is accessible from: https://suslikova.klanweb.cz/rubriky/ceskoslovensky-politicky-system/kramarova-ustava-slovanske-rise [accessed 03-12-2021]

regardless of the parliament's will, while the consent of the government would have also been needed to adopt legislative acts. One year after he devised this conception, Kramář was imprisoned. By the time he was released in 1917, the political situation had rendered his plans completely unrealistic.[52]

Tomáš Garrigue Masaryk, an academic and deputy of the Imperial Council, went into exile at the beginning of 1915 to seek the recognition of the need to create an independent Czechoslovak state by the Allied powers.[53] He had first formulated his views on the form of the future Czechoslovak state even before he left his homeland. He also imagined a monarchy, with the person of the ruler being "some western prince."[54] Masaryk frequently modified his proposals, adjusting them to the course of events and needs current at that time. In one thing, however, he was consistent for years: He stuck to monarchy as the preferred form of government.[55] Even though Kramář and Masaryk had very different ideas and opinions on international orientation, their initial views on the form of government were in accord.

The Czech and Slovak diaspora in the United States also played a substantial role in shaping the constitutional structure of the future state.[56] In the 1915 Cleveland Agreement their representatives took a stand in favor of monarchy as well, in concrete terms by creating a common federal unit for the Czech and Slovak nations within the Monarchy.

As it can be seen from the previously mentioned examples, at the beginning of the world war, there were two major concepts for the future Czech (or Czechoslovak) state, and both projected monarchy as the form of government: One wished to remain within the scope of the Monarchy with a Habsburg ruler and the other imagined a monarchy either fully independent or integrated into a larger entity with a ruler from a different dynasty. As the war approached its end, however, things started to change radically.

As the public became increasingly dissatisfied with the conservative stance of the Czech representation in the Imperial Council, the deputies issued a joint declaration on January 6, 1918, in which they demanded the independence of the Czech and Slovak nations in a democratic and sovereign state, without any reference to the Empire or the dynasty.[57] Another significant step in forming the concrete constitutional structure of the new state was the Pittsburgh Agreement from May 1918, prepared by the Czech and Slovak diaspora in the United States, which declared the will of the two nations to form an independent and democratic Czechoslovak republic. The document, which clearly opted for the republican form of government, was also signed by T. G. Masaryk (even co-authorship is attributed to him) as the representative of the Czechoslovak National Council, which was not long after recognized as the official governmental body of the Czechoslovak nation.[58] In the final days of the war,

52 Schelle, Tauchen (2013): pp. 342–344.
53 Malý et al. (2010): p. 314.
54 Schelle, Tauchen (2013): p. 344.
55 Ibid.
56 Ibid.: p. 340.
57 Ibid.: p. 347.
58 Malý et al. (2010): p. 316.

on October 17, 1918, Masaryk handed President Wilson the Washington Declaration, where he, in the name of the National Council, categorically rejected the Czechoslovak nation remaining part of the federalized Monarchy, expressed the hostile stance of the nation toward the Habsburg dynasty, and declared their intention as an independent nation to be the creation of a democratic country with a parliamentary republican establishment.[59]

In the spring of 1918, preparatory work on two fundamental acts of the new state began. One, known as the Economic Act (*hospodářský zákon*), was supposed to ensure its economic stability, while the other, called the Political Act (*politický zákon*), was meant to serve as a temporary constitution. Consequently, the latter was intended to outline the basic organization of the state. It stated that the nation would be the sovereign, but it did not proclaim the new state a republic or a monarchy, its third article only declaring that the form of government would be decided in the future. On the other hand, it designated the "interim state president" as the head of the state. This—somewhat inconsistent—approach showed that the document was in the end more in favor of a republican form of government. The interim state president was to be appointed by the already existing representative organs.[60] The draft also granted veto power to the state president and stated that the executive power would be divided between him and the government (but did not specify this question further).[61]

2. Head of state in the constitutions of the First Czechoslovak Republic

The quick collapse of the Monarchy left Czech politicians somewhat unprepared. The Political Act was not yet in a state suitable for adoption as the first legal act of the Czechoslovak state.[62] As an emergency solution, the Act on the Establishment of the Independent Czechoslovak State (*Zákon o vzniku samostatného československého státu*)[63] was adopted on October 28, 1918. This brief act, created only the night before, proclaimed the birth of the new state and established the National Committee as the body representing "the unanimous will of the nation and executor of state sovereignty" (Art. 1), which thus became the sole and supreme legislative and executive entity in the country at once. Its second article stated that the existing Austro-Hungarian legal order would remain in force (hence the act is commonly known as "Reception Norm"). The first article of the Norm left the question of the form of government open by leaving the decision to the future National Assembly in accordance with the opinion of the National Council.

59 Ibid.: pp. 318–319.
60 Namely the National Council (*Národní rada*) as the main body of the resistance-in-exile, and the National Committee (*Národní výbor*) as the main body of the domestic resistance.
61 Schelle, Tauchen (2013): pp. 508–509.
62 Ibid.: p. 510.
63 Zákon č. 11/1918 Sb. ze dne 28. října 1918 o zřízení samostatného státu československého. In: Sbírka zákonů a nařízení státu československého, částka 2, p. 10. Accessible from: http://ftp.aspi.cz/opispdf/1918/002-1918.pdf [accessed 03-12-2021]

Final agreement on the form of the Czechoslovak government was reached during the following days at the meeting of the domestic representatives of the National Committee led by Karel Kramář and the representatives of the National Council as the government-in-exile led by Edvard Beneš. By this time, virtually every delegate favored a republic except Kramář, who still held the idea of a Slavic Empire. Nevertheless, he too signed the concluding document confirming republicanism.[64]

As the constitutional order of the Monarchy could not be left in force, the National Committee began working on a provisional constitution that would only remain in effect until the proper constitution was prepared and adopted.[65] As the new country could not exist without constitutional framework, the need for the new document was urgent. The first Czechoslovak constitution, literally called the "Interim Constitution" (*Prozatímní ústava*)[66] was adopted on November 13, 1918. The following day, the Habsburg-Lorraine dynasty was deprived of the Czech throne and Tomáš Garrigue Masaryk was elected the first president of Czechoslovakia.[67]

The Interim Constitution was a brief document consisting of 21 articles containing the elementary rules on the bodies of government and their relations.[68] Articles 7 to 12 dealt with the position of the "president of the republic." The form of government was only evident from this formulation, as there was no specific provision on the form of government.[69] Despite the already existing political consensus on the matter, the Interim Constitution chose a reserved approach toward this question, as can also be seen in the wording of its seventh article, stating that "the office of president lasts until the new *head of state* is elected in accordance with the permanent constitution."[70] The usage of the term "head of state" instead of "president" showed that the Interim Constitution was reluctant to definitely decide this matter.

The distribution of powers as originally laid down in the Interim Constitution was strongly disproportionate, favoring the parliament at the expense of the president. For this reason, the constitution was immediately subjected to heavy criticism by

64 Jan Kuklík: *Proč nebylo Československo republikou hned od 28. října 1918?* (Why Was Czechoslovakia Not a Republic Right from October 28, 1918?), Acta Universitatis Carolinae—Iuridica 2018/3, p. 73.

65 Ibid.: p. 74.

66 Zákon č. 37/1918 Sb. ze dne 13. listopadu 1918 o prozatímní ústavě. In: Sbírka zákonů a nařízení státu československého, částka 6, pp. 30–31. Accessible from: http://ftp.aspi.cz/opispdf/1918/006-1918.pdf [accessed 03-12-2021]

67 Kuklík (2018): p. 77.

68 Jan Kněžínek (2018): *Prozatímní ústava a její proměny* (Interim Constitution and Its Changes) [online], Justice.cz, p. 1. Accessible from: https://www.justice.cz/documents/12681/723595/Jan+Kn%C4%9B%C5%BE%C3%ADnek_Prozat%C3%ADmn%C3%AD+%C3%BAstava+a+jej%C3%AD+prom%C4%9Bny.pdf/e0962f9b-c2d2-49ed-97a5-c7465bef73a4 [accessed 03-12-2021]

69 Schelle, Tauchen (2013): p. 515.

70 Kněžínek (2018): p. 3.

Masaryk himself[71] and other academics and politicians[72] as well, foreshadowing the considerable changes it very soon had to undergo.[73] These changes introduced in May 1919[74] were primarily aimed at strengthening the position of the president. In comparison to the original wording, which endowed him mostly with representative duties and left him practically powerless in terms of political competences,[75] the amendment granted the president a right to appoint and recall the government (Art. 14), to be present and even preside over government sessions, and to request information from their members (Art. 10a). The veto power of the president in Article 11 was also strengthened by extending the deadline for returning bills to the parliament from 8 to 14 days and stipulating that the parliament must confirm the returned bills with an absolute majority of all its members (there was no requirement of a qualified majority beforehand).

The definite constitution of Czechoslovakia was born later than originally anticipated. The process of its birth was prolonged by delays in the finalization of the peace treaties (containing duties for instance in the field of minority protection) and the extensive political debates between the different parties.[76] On February 29, 1920, the Constitutional Charter of the Czechoslovak Republic (*Ústavní listina Československé republiky*)[77]—a document of sheer political compromises—was unanimously adopted by the still unelected revolutionary National Assembly.[78] It put a definitive end to the legal and political debates over the form of government by proclaiming Czechoslovakia a *"democratic republic with an elected president as the head of state"* in its second article.[79]

The constitutional position of the president was also subject to lengthy discussions.[80] Masaryk, of course, advocated the concept of a strong president, having

71 Eva Broklová (2011): Slušná ústava pro slušné lidi (Decent Constitution for Decent People), in Jana Čeruchová, Lukáš Šlehofer et al.: *Ústava 1920* (Constitution 1920), Leges, Praha, pp. 48–49.

72 Ibid.: p. 51.

73 Schelle, Tauchen (2013): p. 514.

74 Zákon č. 271/1919 Sb. ze dne 23. května 1919, kterým se mění zákon o prozatímní ústavě. In: Sbírka zákonů a nařízení státu československého, částka 58, pp. 373–376. Accessible from: http://ftp.aspi.cz/opispdf/1919/058-1919.pdf [accessed 03-12-2021]

75 Kněžínek (2018): p. 4. Ferdinand Peroutka, one of the most important journalists during the First Republic, commented on this issue that *"although the head of state is the president, this head is chopped and placed next to the body."* See: Schelle, Tauchen (2013): p. 541.

76 Schelle, Tauchen (2013): p. 515.

77 Zákon č. 121/1920 Sb. ze dne 29. února 1920, kterým se uvozuje ústavní listina Československé republiky. In: Sbírka zákonů a nařízení státu československého, částka 26, pp. 255–269. Accessible from: http://ftp.aspi.cz/opispdf/1920/026-1920.pdf [accessed 03-12-2021]

78 The Revolutionary National Assembly was created in 1918 by the enlargement of the National Committee to 256 and later to 270 members. See: Malý et al. (2010): pp. 322, 324.

79 Karel Malý (2011): Československá ústava z roku 1920—Otevření cesty k demokratické společnosti (Czechoslovak Constitution of 1920—Opening the Door toward Democratic Society) in Jana Čeruchová, Lukáš Šlehofer et al.: *Ústava 1920* (Constitution 1920), Leges, Praha, p. 13.

80 Schelle, Tauchen (2013): pp. 541–542.

the largest possible influence on the creation and functioning of the government, while some political circles—for example, the social democrats—opposed such ideas, claiming that these powers should belong to the legislature as the representative of the sovereign.[81] The constitutional committee was also hesitant in this regard, being aware of the merits of Masaryk and wanting to honor his person by granting him decent powers, but also bearing in mind that Masaryk would not be president forever and recalling the grievances the Czechs endured during the reign of Franz Joseph.[82] In conclusion, it was rather the stance of the president that prevailed.[83] As will be specified below, he was able to retain the strengthened position he acquired with the 1919 amendment of the Interim Constitution. Although the First Czechoslovak Republic was undoubtedly a parliamentary republic,[84] the president played a very important stabilizing role between the state powers.[85]

Articles 56 to 69 of the Constitutional Charter were devoted to the office of the president. Under Article 56, the president was elected by the National Assembly with a three-fifths qualified majority. The term of office lasted 7 years, and nobody could be elected president for more than two consecutive terms except Masaryk, who was deliberately privileged in this regard (Art. 58). Articles 60 and 61 established that in case the president was temporarily unable to fulfil his tasks, his powers would be exercised by the government. Article 61 stated that if this inability lasted longer than 6 months, the National Assembly could elect a deputy president to exercise presidential powers until the president could again fulfill his tasks.

Article 64 Section (1) of the Constitutional charter granted the president not only the representative prerogatives that heads of state usually exercise but also political powers. The former category consisted of the external representation of the state, involving the negotiation and ratification of international treaties (Subs. 1), as well as declaring war and the state of war (Subs. 3). The president also appointed heads of diplomatic missions (Subs. 2), professors, judges, and certain public officers (Subs. 8), granted pardons (Subs. 11), and awarded certain types of benefactions and pensions (Subs. 9).

The latter category involved important competences regarding the government and the National Assembly as well. One of his strongest powers was the right to convene, adjourn, or dissolve the National Assembly (Subs. 4) nearly without any restriction, as the constitution only prohibited dissolution during the last six months of his term (Art. 31). Such a regulation containing no safeguards against the arbitrary dissolution of the parliament was substantially different from the rules pertaining to this question in the French Constitution of 1875, which otherwise served as a source

81 Ibid.: p. 542.

82 Zpráva ústavního výboru k ústavní listině Československé republiky—Tisk 2421. (Report of the Constitutional Committee on the Constitutional Charter of the Czechoslovak Republic—Print no. 2421.) Accessible in Czech language from: https://www.psp.cz/eknih/1918ns/ps/tisky/t2421_01.htm [accessed 03-12-2021]

83 Schelle, Tauchen (2013): p. 542.

84 Václav Pavlíček (2011): 90 let od vzniku Ústavní listina a Československá státni idea (90 Years from the Birth of the Constitutional Charter and the Czechoslovak State Idea) in Jana Čeruchová, Lukáš Šlehofer et al.: *Ústava 1920* (Constitution 1920), Leges, Praha, p. 39.

85 Malý et al. (2010): p. 335.

of inspiration regarding the presidential powers.[86] The president also had a veto right against the acts of the parliament (Art. 47), but this could be overridden by a qualified majority of the deputies and senators established by Article 48. Furthermore, besides the report on the state of the republic, he could also address the parliament with formal recommendations that he deemed necessary or efficient (Art. 64 Sec. (1) Subs. 6). Another important power of the president was the right to appoint or recall the prime minister and other ministers (Art. 70) and to determine which members of the government would lead particular ministries (Art. 72).

A major factor weakening the constitutional position of the president was the need for countersignature by a member of the government for all of his executive acts (Art. 68). Consequently, it was the government that bore the responsibility for these acts, the president himself not being responsible for the performance of his duties (Art. 66). According to Art. 67, the president could not be criminally prosecuted except for high treason before the Senate after a constitutional charge lodged by the Chamber of Deputies.

Despite some efforts in the 1930s to substantially strengthen the position of the president and introduce a system of a "strong presidency" by making the president the head of the executive and abolishing the responsibility of the government to the parliament,[87] the text of the constitutional charter was never amended during the existence of the First Republic.[88] Soon, however, the events leading up to the outbreak of the Second World War turned the constitutional order of Czechoslovakia upside down.

IV. CZECHOSLOVAK HEADS OF STATE DURING THE SECOND WORLD WAR

1. Position of "domestic" heads of state between 1938 and 1945

On September 30, 1938, the president and the government of Czechoslovakia accepted the Munich Agreement, forcing the country to cede its German majority territories to Nazi Germany.[89] The agreement was problematic in numerous aspects, including the constitutionally defective procedure of its domestic approval, lying in the complete ignorance of the parliament's consent.[90] On October 5, President E. Beneš[91] abdicated in order to create space for a more Germany-focused course in politics and emigrated, later to become the main figure of the foreign resistance.[92] At the end of November, Emil Hácha, the former President of the Supreme Administrative Court, was elected to become his successor.

86 Ibid.; see also: Broklová (2011): pp. 51–52.
87 Schelle, Tauchen (2013): p. 544.
88 Ibid.: p. 522.
89 Malý et al. (2010): p. 435.
90 See: Schelle, Tauchen (2013): pp. 892–893.
91 Beneš was elected president in 1935 after the abdication of Masaryk due to health reasons.
92 Malý et al. (2010): p. 443.

The Munich Agreement marked the end of parliamentary democracy and started the process of restriction of political rights and freedoms in the country.[93] A crucial step in this direction, concerning also the position of the president, was the adoption of the Constitutional Act. No. 330/1938 (the so-called "Enabling Act"),[94] which granted the head of state the right to issue decrees with the effects of a constitutional act, as well as a similar right for the government to issue orders substituting legislative acts, thus effectively eliminating the role of the parliament.[95]

On March 14, the day when Slovaks declared their independence, President Hácha travelled to Berlin, where he was forced to sign a declaration placing the country in Hitler's hands. The next day, German forces invaded the remaining part of Czechoslovakia. On March 16, Hitler issued a decree that established the Protectorate of Bohemia and Moravia.[96] Article 12 of the decree left in force the existing law in the occupied lands, which did not contradict the sense of the takeover of the protection by Nazi Germany, while Article 3 ruled that the Protectorate is a self-governing entity with its own bodies of governance. The decree also guaranteed protection for "the head of the Protectorate's autonomous administration," adding that he needs the confidence of the Führer (Art. 4). These provisions meant that President Hácha could formally retain his presidential title only so long as he enjoyed the support of the Führer.[97]

However, the state president of the Protectorate was not only subordinated to Hitler. Article 5 of the decree created the office of the Reich-Protector, the representative of the Reich's interests in the Protectorate, endowed with virtually unlimited powers toward the bodies of autonomous governance.[98] According to Article 5 he had the right to veto any act or measure of the autonomous establishment and could also issue legislative acts whenever he deemed necessary.[99] For this reason, the Reich-Protector enjoyed full supremacy over all bodies of the Protectorate, including the president.[100] In reality, the president of the Protectorate was only a powerless puppet, whom the Nazis used to seemingly legalize and legitimize their control over the occupied lands in the eyes of foreign actors.[101]

93 Schelle, Tauchen (2013): p. 891.
94 Ústavný zákon č. 330/1938 Zb. zo dňa 15. decembra 1938 o zmocnení ku zmenám ústavnej listiny a ústavných zákonov republiky Česko-Slovenskej a o mimoriadnej moci nariaďovacej. In: Sbírka zákonů a nařízení státu česko-slovenského, částka 110, pp. 1205–1206. Accessible from: http://ftp.aspi.cz/opispdf/1938/110-1938.pdf [accessed 03-12-2021]
95 Schelle, Tauchen (2013): p. 897.
96 Výnos Vůdce a říšského kancléře č. 75/1939 Sb. ze dne 16. března 1939 o Protektorátu Čechy a Morava. In: Sbírka zákonů a nařízení, částka 28, pp. 373–376. Accessible from: http://ftp.aspi.cz/opispdf/1939/028-1939.pdf [accessed 03-12-2021]
97 Eva Janečková (2013): *Státoprávní uspořádání Protektorátu Čechy a Morava 1939–1945* (Constitutional Establishment of the Protectorate of Bohemia and Moravia, 1939–1945), Aleš Čeněk, Plzeň, pp. 116–117.
98 Janečková (2013): p. 66.
99 Ibid.: p. 67.
100 Schelle, Tauchen (2013): p. 899.
101 Janečková (2013): p. 116.

2. Position of the head of state in exile

After the Nazi occupation of the remaining part of Czechoslovakia, several politicians (including Beneš) decided to actively promote the de jure preservation of the country's existence abroad. Their concept was based on the argumentation that the Munich Agreement and everything that followed it was null and void owing to the breach of both domestic and international law. The first body to represent state interests in exile was the Czechoslovak National Committee, founded in Paris on October 17, 1939.[102]

After the capitulation of France, the National Committee moved to London, where it was transformed into a whole system of bodies referred to as "provisional state establishment" (*"prozatímní státní zřízení"*). It consisted of a president, a government, and the State Council,[103] in order to resemble the establishment as it was laid out in the Constitutional Charter of 1920, with the president being the central and most important element of this establishment.[104] Edvard Beneš was proclaimed president, with an explanation that his resignation in 1938 was invalid as he was forced out of his office by the Germans.[105]

With reference to legal continuity, the president-in-exile assembled the State Council and appointed the government, but the functioning of the establishment was not feasible according to the original constitutional framework owing to the absence of the National Assembly. To tackle this shortcoming, President Beneš issued Constitutional Decree no. 2/1940 on the provisional exercise of legislative powers,[106] which allowed the president to issue decrees with the power of legislative acts upon the proposal of the government (Art. 2), and stated that the approval of the government substituted the approval of the parliament as required by the Constitutional Charter for certain acts of the president until the parliament can be convened again (Art. 1). This meant that the president-in-exile not only exercised all the powers granted to him by the Constitutional Charter of 1920, but he was also the carrier of legislative competence.[107]

On July 18, 1941, the Soviet Union and the United Kingdom[108] recognized the provisional state establishment in London as the official representation of

102 Schelle, Tauchen (2013): p. 902.

103 Although the triality may suggest a similar character to the National Assembly, the State Council was an advisory body to the president and a controlling and auxiliary body of the establishment. See: Schelle, Tauchen (2013): p. 905.

104 Schelle, Tauchen (2013): pp. 904–905.

105 Malý et al. (2010): p. 485.

106 Ústavní dekret prezidenta č. 2/1940 Úř. věst. čsl. ze dne 15. října 1940 o prozatímním výkonu moci zákonodárné. In: Sbírka zákonů a nařízení státu Československého, částka 10, p. 36. Accessible from: https://aplikace.mvcr.cz/sbirka-zakonu/ViewFile.aspx?type=c&id=10 [accessed 03-12-2021]

107 Schelle, Tauchen (2013): pp. 905–906.

108 The United Kingdom recognized the provisional government as the official government of Czechoslovakia a year before, on July 21, 1940. This recognition, however, did not pertain to the president and the State Council. See: Schelle, Tauchen (2013): p. 905.

Czechoslovakia, followed by the United States on July 31. On December 3, 1942, a few days before the expiration of President Beneš's original term of office, the government-in-exile unanimously affirmed Beneš as president until new presidential elections could be conducted.[109]

V. LEGAL STATUS OF THE HEADS OF STATE AFTER THE SECOND WORLD WAR

1. Czechoslovak presidents during the post-war transitional period

The question of applicable law after the end of the war was considered by Presidential Decree no. 11/1944.[110] Its first article stated that the acts adopted until the Munich Agreement constituted the effective legal order of Czechoslovakia, while domestic acts adopted after September 29, 1938 were not part of the legal order. Article 5 of the decree kept the decrees of the president-in-exile in force, adding that they should be subjected to additional approval of the relevant constitutional actors (i.e., the parliament). If the National Assembly took no action in relation to a decree within six months after its first meeting, the given decree then ceased to be valid.[111] This meant that the Constitutional Charter of 1920, as amended by the presidential decrees, remained in effect even after the Second World War.

After his return from abroad, President Beneš continued exercising his decree powers until October 28, 1945, when the Provisional National Assembly (*Prozatímní Národní shromáždění*) held its first meeting.[112] The Provisional National Assembly was elected indirectly through delegates of the National Committees as the representative bodies arising from the liberation struggle created on local, regional, and land levels.[113] As one of its first steps, the provisional legislature confirmed the presidency of Beneš,[114] and with the Constitutional Act no. 57/1946 from March 28, 1946, ratified all the presidential decrees issued by him between 1940 and 1945.[115]

A further important task of the Provisional National Assembly was to prepare the elections for the Constitutional National Assembly (*Ústavodárné Národní shromáždění*).

109 Pavel Winkler: Dekrety prezidenta republiky z období 1940–1945 (Decrees of the President of Republic During the Period of 1940–1945), *Právník*, 1994/8, p. 22.
110 Vyhláška ministra vnitra č. 30/1945 Sb. ze dne 27. července 1945 o platnosti ústavního dekretu presidenta republiky ze dne 3. srpna 1944, č. 11 Úř. věst. čsl., o obnovení právního pořádku. In: Sbírka zákonů a nařízení republiky Československé, částka 15, pp. 51–54. Accessible from: https://aplikace.mvcr.cz/sbirka-zakonu/ViewFile.aspx?type=c&id=15 [accessed 03-12-2021]
111 See also: Winkler (1994): p. 20.
112 Schelle, Tauchen (2013): p. 1106.
113 Ibid.: pp. 909 and 1107.
114 Ibid.: p. 1107.
115 Winkler (1994): p. 21.

Elections were held on May 26, 1946, with the two Communist Parties together[116] acquiring 114 seats of the total 300 in the unicameral parliament. A coalition government consisting of both Communist and non-Communist parties was created, with Communist Klement Gottwald as the prime minister (altogether, the Communists held 9 of the 27 governmental seats). On June 19, 1946, one day after its constituent sitting, the National Assembly unanimously elected Beneš the president of Czechoslovakia.[117]

As indicated by its name, the most important task of the Constitutional National Assembly was to adopt a new constitution. Several political parties articulated their opinions on specific topics, but only the national socialist party put forth a comprehensive proposal,[118] elaborated by Prof. Vladimír Kubeš. The proposal did not suggest substantial changes regarding the constitutional position of the president, often simply paraphrasing the provisions of the Constitutional Charter from 1920.[119] One difference regarding the political position of the president that can be accentuated was the increased limitation of the president's right to dissolve the parliament, with the proposal aiming to allow this measure only once per year (Art. 34). It is worth noting, however, that it was the constitutional position of Slovakia, and not the status of the president, around which the main political debate was evolving.[120] Be that as it may, all these debates turned out to be largely meaningless owing to the political events in 1948.[121]

2. Legal status of the presidents during Communist rule

In February 1948, the Communists seized power in Czechoslovakia when President Beneš accepted the abdication of the 14 non-Communist ministers and appointed a new government of K. Gottwald, predominantly consisting of Communists or their fellow travelers. Despite there being no constitutional provision expressly preventing the president from doing so, some academics argue that Beneš breached the constitution by giving in to the terms of Gottwald, which did not correspond with the political realities of the time, and thus practically helping the Communists to acquire full control over the state.[122]

While the motivation behind Beneš's decision to accept the Communist scheme remains unclear (he received a variety of threats from Czechoslovak and foreign Communists involving discrediting, civil war, or foreign invasion, worsened by the

116 The Communist Party of Czechoslovakia together with the Communist Party of Slovakia.
117 Jan Kuklík et al. (2011): *Dějiny Československého práva 1945–1989* (History of Czechoslovak Law, 1945–1989), Auditorium, Praha, p. 47.
118 The full text of the proposal, along with its explanation in Czech language is accessible from: https://is.muni.cz/el/1422/jaro2015/MP201Zk/um/web/doc/povalecne-obdobi/Kubesuv_navrh_Ustavy.pdf [accessed 03-12-2021]
119 Cf. Article 64 of the 1920 Constitutional Charter and Article 83 of Kubeš's proposal.
120 Jan Kuklík et al. (2011): p. 48.
121 Schelle, Tauchen (2013): p. 1112.
122 Václav Veber: Jak to bylo s demisemi v únoru 1948 (How It Was with the Demissions in February 1948), *Paměť a dějiny*, 2009/1, p. 9.

fact that by this time he was suffering from serious illness),[123] he did not remain long in office with the Communists in charge. Shortly after their rise to power, they drew up a new constitution, which was adopted by the National Assembly (now completely under Communist influence) on May 9, 1948. Beneš refused to sign it, and for the second time in his life, resigned his presidential seat.[124] The National Assembly elected Gottwald president, which meant that the chairman of the Communist Party also became president of the republic. The presidential consent to the constitution was thus finally granted by Gottwald.[125]

The Ninth-of-May Constitution (*Ústava 9. května*)[126] was solely based on post-war Communist proposals,[127] yet it still contained many provisions inspired by democratic constitutional traditions. A clear example is the first chapter of the constitution listing various fundamental rights and freedoms of the citizens (though in reality, these provisions were no more than empty proclamations that the Communist leadership did not mean to respect[128]). In addition, it did not proclaim the leading role of the Czechoslovak Communist Party.[129] Article 6 of the constitution identified the president as the head of the state, who was elected by the National Assembly for 7 years.

The detailed rules pertaining to the status of the president were found in Articles 67 to 79 of the constitution. Formally, the position of the president was very similar to that laid down by the Constitutional Charter of 1920. Most provisions of the 1948 Constitution regarding the presidential powers were practically identical to those in the 1920 Constitution (responsibility, convening and dissolving the parliament, some representative duties),[130] or were merely paraphrases of the previous regulation (most of the representative duties),[131] sometimes with minor changes (e.g., the deadline for vetoing parliamentary acts was extended to one month, possibility to grant a general pardon).[132] A notable difference is connected to the recalling of the government as such or individual ministers, which according to the Ninth-of-May Constitution was only possible after their demise (see Art. 74 Sec. (1) Subs. 6), while the Constitutional Charter of 1920 did not contain such a limitation (see Art. 64 Sec. (1) Subs. 7).

123 Ibid.: p. 10.
124 Jan Kuklík et al. (2011): p. 84.
125 Ibid.
126 Ústavní zákon č. 150/1948 Sb. ze dne 9. května 1948 Ústava Československé republiky. In: Sbírka zákonů a nařízení republicky Československé, částka 52, pp. 1081–1108. Accessible from: https://aplikace.mvcr.cz/sbirka-zakonu/ViewFile.aspx?type=c&id=332 [accessed 03-12-2021]
127 Schelle, Tauchen (2013): p. 1302.
128 Jan Kuklík et al. (2011): p. 86.
129 Ibid.: p. 209.
130 Cf. Articles 76–78; 49, 50, and 74 of the Ninth-of-May Constitution with Articles 66–68; 28, 31, and 64 of the Constitutional Charter of 1920.
131 Cf. Article 74 of the Ninth-of-May Constitution with Article 64 of the Constitutional Charter from 1920.
132 Article 58, resp. Article 74 Sec. (1) Subs. 11.

At the end of the 1950s, the Communist cadres came to the conclusion that the country had reached a new phase on its way to Communism and decided for the need to adopt a new, entirely socialist constitution free of the transitional elements characteristic of the 1948 Constitution.[133] Accordingly, a new constitution was adopted in 1960, named the Constitution of the Czechoslovak Socialist Republic (*Ústava Československé socialistické republiky*).[134] While the act itself is regarded as a serious misstep in the constitutional development of the country, it did reflect the political reality of the time better than the previous one.[135]

Interestingly, the socialist constitution also retained the president as the head of the state. Even though there were attempts to replace the presidential office with a collective body,[136] they turned out to be unsuccessful, and Czechoslovakia remained the only country of the Eastern Bloc with a president as the head of state throughout the whole period of Communist rule.[137] The representative duties and powers of the president as specified by the 1960 Constitution were almost identical to those found in the previous constitution. The president represented the country externally, was the commander-in-chief, awarded decorations, appointed officials and generals, and granted individual and general pardons (see art. 62).

However, compared to the earlier regulation, his powers toward the legislature and the government were considerably weakened: the presidential signature was still required for every act of the parliament (Art. 62 Sec. (1) Subs. 4.), but there was no mention of any kind of veto right. His right to dissolve the National Assembly also disappeared; only the right to confer and close sessions remained (Art. 62 Sec. (1) Subs. 4.). According to Art. 43, the president was elected by the National Assembly, but the term of his office was shortened to 5 years, and the constitution explicitly stated that the president was accountable to the parliament. Even though this was a notable difference, this provision had only declaratory character, as the Constitution did not contain any rule on his impeachment, removal, or another kind of sanction.[138] On the other hand, the president's right to appoint or recall the government as a whole or its members remained guaranteed (Art. 62 Sec. (1) Subs. 6.).

The differences between the position of Czechoslovak presidents before and after 1948 thus did not really arise from the changes in the constitutional framework, but rather from the political reality of the Communist period. With the Communist Party being the only real center of power in the country, the president could not act as an independent stabilizing element within the system of state powers, as the office had been during the First Republic.[139] With the presidential seat always occupied

133 Jan Kuklík et al. (2011): p. 208.
134 Ústavní zákon č. 100/1960 Sb. ze dne 11. července 1960 Ústava Československé socialistické republiky. In: Sbírka zákonů Československé socialistické republiky, částka 40, pp. 289–309. Accessible from: https://aplikace.mvcr.cz/sbirka-zakonu/ViewFile.aspx?type=c&id=990 [accessed 03-12-2021]
135 Jan Kuklík et al. (2011): p. 208.
136 Ibid.: pp. 210–211.
137 Zdeněk Koudelka (2018): *Prezident republiky* (President of the Republic), Leges, Praha, p. 25.
138 Ibid.: pp. 25–26.
139 Schelle, Tauchen (2013): p. 542.

by either the leaders (K. Gottwald, A. Novotný, G. Husák), or at least members of the Central Committee of the Communist Party (A. Zápotocký, L. Svoboda), the institution of the presidency became a further component assuring Communist rule in the country. On the other hand, the fact that the Communists preserved the presidential office during the whole period of their rule and that their leaders often aspired to this position indicates that the symbolic importance and the prestige of the presidency were acknowledged also in Communist circles.[140]

In 1968, the federalization of the republic was carried out by Constitutional Act no. 143/1968,[141] which replaced Chapters 3 to 6 (Articles 39 to 85) of the 1960 Constitution. Its provisions regarding the president were entirely based on the previous regulation,[142] thus being nearly identical to those in the 1960 Constitution, with amendments enacted only where necessary owing to changes arising from the federal establishment. For example, according to the new rules the president could dissolve the Federal Assembly, but only in case its two chambers are unable to agree on certain questions (Art. 61 Sec. (1) Subs. d). While the president was the federal head of state, he had no such position (and powers arising from it) toward the federal units, where the presidium of the given national council functioned as the head of state.[143] According to Art. 122 of the Constitutional Act, the presidium appointed and recalled the governments of the federal units, and in some cases also appointed officers and awarded prizes and decorations.

While there were efforts aimed at the preparation of a new constitutional framework in the late 1980s, the structure and positions of the constitutional bodies remained in effect as laid down by the 1968 Constitutional Act until the collapse of the Communist regime in 1989.

VI. CONCLUSION

While the Czechs had their own monarchic traditions dating back to the Middle Ages, the centuries-long Habsburg rule undermined the sympathy and confidence of the nation toward the monarch. When they finally had the opportunity to determine the nature of the head of state in their own independent country, these experiences played a significant role in the decision to part with monarchic traditions and opt for a republican establishment with a president as the head of state, who lacked a particularly strong position. Looking only at the letter of the law of the respective constitutions could easily mislead one into the conclusion that the presidents of Czechoslovakia were rather representative figures with an inferior position compared to the parliament and the government. Such a conclusion would, however, not

140 Koudelka (2018): p. 25.

141 Ústavní zákon č. 143/1968 Sb. ze dne 27. října 1968 o československé federaci. In: Sbírka zákonů Československé socialistické republiky, částka 41, pp. 381–401. Accessible from: https://aplikace.mvcr.cz/sbirka-zakonu/ViewFile.aspx?type=c&id=1528 [accessed 03-12-2021]

142 Schelle, Tauchen (2013): p. 1315.

143 Koudelka (2018): p. 28.

correspond to the relevance of this office in practice, as this was determined by very significant non-legal factors as well.

In the author's opinion, the most important of these factors was the personality of the president. T. G. Masaryk, the main protagonist of Czechoslovak independence abroad, was chosen to be Czechoslovakia's first head of state. Masaryk was often seen as the personification of the country's independence and the best guarantor of its freedom and democratic establishment. Such assumptions were not far from the truth, as Masaryk always respected the rules of the parliamentary establishment and did not use his powers arbitrarily simply to implement his own will.[144] His successor, Edvard Beneš, was Masaryk's companion during the struggle for independence, his designated successor, and the continuator of his legacy. During the hard times of the Second World War, when the country de facto ceased to exist, the whole concept of continuous Czechoslovak statehood resided in President Beneš.[145] Although Beneš had a stronger position than the president in a presidential system during these years, he did not abuse these powers and never tried to take advantage of his position in order to create an authoritarian system.[146]

Thanks to these factors, the presidential office not only developed strong respect and authority among the public but as far as the author of this article is concerned, the historical events caused the presidential office and the existence of the republic to inseparably blend together. This bond grew so strong that even the Communists did not dare to break the presidential tradition. Quite the contrary, their leaders sought to achieve this position and tried to make use of its popularity among the public.[147] The authority of the president is also accentuated by the illustrative term "Castle" (*"Hrad"*),[148] which is widely used in the Czech language in reference to the president himself or to his policy.[149] The symbolic role of the president's personality also continued after the defeat of Communism, when another figure who played a central role in shaping the modern history of the Czech nation was elected president. His name was Václav Havel.

144 Broklová (2011): pp. 60–61.
145 Koudelka (2018): pp. 19–20.
146 Ibid.: p. 20.
147 Ibid.: pp. 25–26.
148 The term comes from the place of the presidential seat in Prague.
149 Koudelka (2018): p. 20.

LIBERTATEA PRESEI ÎN EUROPA CENTRALĂ ȘI DE EST

LIBERTY OF PRESS IN EAST CENTRAL EUROPE

History of the Freedom of the Press in the Territory of Slovakia and Czech Republic

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ABSTRACT
This study aims to examine the history of the freedom of the press from the 19th century until the present in the territories of the current Slovakia and Czech Republic. As the histories of these countries have been strongly connected since the 20th century, this study deals with the development of the freedom of the press from the perspective of both countries. The evolution in both countries, despite the many periods in which their fates and united sovereignty were identical, underwent many changes that also affected the press law. The analysis is divided by period into five chapters dealing with this freedom in the context of the pertinent historical background.
KEYWORDS
freedom of the press, Czechoslovakia, Slovakia, Czech Republic.

Istoria libertății presei pe teritoriul Slovaciei și al Republicii Cehe

REZUMAT
Acest studiu își propune să examineze istoria libertății presei din secolul al XIX-lea și până în prezent pe teritoriile actualei Slovacie și Cehia. Întrucât istoriile acestor țări au fost strâns legate încă din secolul al XX-lea, acest studiu tratează dezvoltarea libertății presei din perspectiva ambelor țări. Schimbările în ambele țări, în ciuda numeroaselor perioade în care soarta și suveranitatea lor comună au fost identice, a suferit multe modificări care au afectat și legea presei. Analiza este împărțită pe perioade în cinci capitole care tratează această libertate din pespectiva circumstanțelor contextului istoric pertinent.
CUVINTE CHEIE
libertatea presei, Cehoslovacia, Slovacia, Cehia.

I. INTRODUCTION

Press law is the branch of law that regulates the freedom of speech in the media. State power generally seeks to restrict the freedom of speech by means of the press law. Accordingly, constitutional law, general law, and case law are intertwined in questions of the freedom of speech and the freedom of the press. Originally, the legal norms of the press law regulated the implementation or non-realization of freedom of speech and the right to information—the right to disseminate information in science, technology, and culture, as well as the freedom of expression and the dissemination and expression of religious faith in public.[1]

Historical tensions and changes of regimes have had a huge impact on the freedom of speech. Their relaxation or restriction of the political sphere accordingly affected the freedom of the press. The turn of the nineteenth and twentieth centuries and the turbulent events of the following years brought radical socio-cultural renewal in many areas. World trends accordingly affected the development of the press law in the territories of Slovakia and the Czech Republic, which, however, naturally reflected the influence of local peculiarities. The tone of these developments was set by frequent changes in the state system. Over the course of several decades, a remarkable number of governmental bodies took turns exercising authority in this territory. The Austro-Hungarian monarchy gave way to Czechoslovakia, which was then changed into the Slovak state and the Protectorate of Bohemia and Moravia. Subsequently, we saw the renewal of Czechoslovakia, which was later dissolved into the current Slovakia and Czech Republic. The common constitutional changes justified regular interventions in the legal system. The rise of each state from its predecessor cultivated the reflexive view in each generation that the previous legislature dealing with the press law was unprofessional and inadequate, resulting in the adoption of new regulations by each regime in the pertinent territories. Interestingly, much legislation was abandoned with the creation of each new system of regulation, weakening legal certainty in the field. In addition, many of these abandoned regulations dealt with the positions of press employees or with persons who have been the subject of scholarly investigation. However, it is also interesting that during this period, many long accepted but never revoked press regulations may be found as well.[2]

II. PERIOD PRECEDING WORLD WAR I

The printed press was subject to strict censorship until the 19th century. The press measures adopted between 1849 and 1852 show that the Viennese government had the intention of restricting press freedoms through censorship. At first the role of the censor was invested in religious institutions; later, the absolutist regime handed this task over to the police. By 1852, results had also been achieved in this field, primarily

1 Ján Drgonec (1995): *Tlačové právo na Slovensku*, Archa, Bratislava, p. 14.
2 Mihály T. Révész (2015): A sajtójog metamorfózisa az elsó világháború esztendeiben Magyarországon in *Jogtörténeti Szemle*, 2015/4, p. 35.

through the creation of legal regulations. The shortcomings and limited scope of the Press Act of 1849 were replaced and extended by the Press Patent of 1852.[3]

Interestingly, in this period these institutions had investigated not only books and magazines but even the inscriptions on tombstones and writing on clothing. Professor Malý stated that society had to be protected from the poison of revolution and perverted ideas of social equality. Accordingly, prior restraint was instituted, whereby all published publications had to be reviewed by a state employee responsible for the final text. Consequently, not the author itself but this employee was responsible for the content of the article.[4]

However, even before the partition of the Austro-Hungarian Monarchy by the Treaty of Versailles in 1918, the duality in law was present within the still united territories. Consequently, this entailed a duality in the law related to the freedom of the press.

1. Legislation in force in the territory of Slovakia until 1918

Political tensions in the Austro-Hungarian Monarchy forced the ruler in Vienna to abandon some of its well-known methods intended to limit the spread of ideas, as the April laws and its Article XVIII stipulated the abolishment of prior restraint. Consequently, this led to the spread of political competition and enhanced the freedom of speech. However, this also caused the spread of unpleasant thoughts and opinions concerning the ruler.

Based on the duality of law, Slovakia and its territories fell under the part governed by the Hungarian legislation. Therefore Press Law n. XIV/1914 was binding on Slovakia. This law enabled the spread of the press; the sale of magazines on streets became legal. The Hungarian law explicitly permitted posters to be placed in public on the streets, although there consent of the owner of the building was required. The law established the protection of the editor from the publisher, who could not dismiss the editor simply because he was not willing to include articles related to certain political content. The editor was thus protected from the politization of their work.

Additionally, there was an obligation of the press owner or the publisher to send every issue of the paper to certain offices: the local public prosecutor's office, the library of Comenius University, the public prosecutor of Prague, the library of the National Assembly, the library of the Press Department of the Presidium of the Ministerial Council, and the library of the respective regional office.

Nonetheless, the law had huge gaps. It established the right of correction, but only for individuals and state offices. In addition, the editor had the right to refuse to publish a correction in certain cases. When the article was published more than a month

3 Petr Bednařík, Jan Jirák, Barbara Kopplová (2011): *Dějiny česmých médii: Od počátku do současnosti*, Grada, Praha, p. 80.

4 Karel Malý (2001): Tiskoví zákon- konec staré a počátek nové právní úpravy vydávání periodického tisku, in Tomáš Sokol (ed.): *Tisk a právo*, Orac, Praha, p. 5.

before, when the article was not written in the official language,[5] or when the correction states that the information was false without any new information proving it.

The subject acting as a guarantee that the freedom of the press would not be abused or used against the state was in fact the responsible editor. The press law furthermore stated the exact conditions for this position. The responsible editor had to be a citizen who was resident in the state, had not been convicted of an offense in the preceding three years or for a crime in the preceding five years, was not under guardianship, was not in bankruptcy, was not deprived of political rights, or was not in custody or pre-trial detention. In addition, it was necessary to explicitly include the editor's name as the party responsible for the content. Furthermore, other provisions stated that the editor committed an offense when in exchange for money or other advantage he intentionally made concrete changes to or corrected a text or published a presumed false text, or to the contrary concealed information. [6]

2. Legislation in force in the territory of the Czech Republic until 1918

From the fall of 1848 to the spring of 1849, the room for civilian and military authorities to maneuver against the press was limited. The situation changed with the publication of the Press Act (Preßgesetz / PreßG 1849) a few days after the enactment of the March Constitution in 1849. The law did not apply to the territories of Hungary and current Slovakia, and its introduction was limited by the siege in force in Prague and Vienna. In any case, with the enactment of the law, the basis for action against press offenses was created, as well as the possibility of further tightening the restrictions in the future.[7]

Enforcement of the freedom of speech without censorship was a result of the 1848 Revolution. Society began to understand the freedom of the press as an inseparable part of the freedom of speech. The Emperor's Patent n. 151/1849, published together with the March Constitution, stated that everyone had the right to express himself orally, in writing, or by any form of the press. In addition, it was stated that the state should not resort to censorship or to repressive law to prevent abuse of the press.[8] However, to the contrary, the repressive law in Patent n. 161/1849 again restricted the freedom of the press.

The Criminal Code of 1850 regulated so-called verbal crimes, which also pertained to crimes that could be committed in the form of press. Gradually, censorship was re-established and press publication was permitted on the basis of concessions. Jury courts were set up for criminal proceedings for crimes committed by the press, but this did not differ much from the government's persecution of disobedient

5 Author's note: Only Hungarian and German were considered official languages.
6 Press law n. XIV/1914, Art. 24.
7 Österreichisches Staatsarchiv (ÖStA), Allgemeines Verwaltungsarchiv (AVA), Inneres, Ministerium des Innern (MdI), Präsidium, Akten, Teil I (1848–1899), Kt. 596 (1848–1851).
8 Emperor's patent n. 151/1849 from 4.3.1849.

journalists and publishers. As an example, the famous trials against K. H. Borovský before the Kutná Hora jury might be mentioned.[9]

However, the beginnings of the modern history of press law in the territory of the Czech lands can be dated to 1862, when on December 17, Act no. 6/1863 on the Press was enacted. This law was eventually to be replaced by a new press law after the establishment of an independent Czechoslovak state; however, in amended form it was part of the legal system until the mid-1930s.

This imperial Act on printing underwent six amendments during its existence. Based on this law, the freedom of the press was established and preventive censorship was erased. The Austrian law banned the posting of news on the streets without official permission. However, advertising for plays in theaters, public festivals, or insertion was also permitted. Based on the set fees, the news could be sent just by post and not by private providers. A person who wrote true facts related to the work of the government could not be punished for it. The right of correction was reestablished, which meant that the correction had to be included, at least in the next issue of the paper, and was printed free of charge.[10]

According to the Press Act, anyone could publish and sell printed matter on their own, either in their own home or in another room designated for that purpose. Before opening such a room prior to commencing this activity, the intention to publish had to be notified to the public prosecutor and the state security office of the district in which was the publishing place.

Dissemination of printed matter was considered as consisting of the sale or distribution, nailing up, posting, or display in public places, such as in reading associations and libraries.[11] According to the Press Act, the periodical press was that which was published at least once a month, even if the periods were unequal. The Press Act laid down the mandatory information that had to be included in each issue of the periodical, which included the name of at least one responsible editor. The responsible editor could only be a citizen who was independent, lived in the place where the periodical was published, and was not excluded from election to the municipal council owing to the perpetration of a crime. An additional obligation to pay bail was imposed for the publication of such periodicals. This obligation was abolished only in 1894.[12]

According to this regulation, the publisher had an obligation of a priori notification of the commencement of its activities, which had to be rectified by the Security Office. In case of failure to fulfill this duty, there was a stipulated sanction of a fine (10 to 100 gold coins).[13] The prints had to be properly marked with the place of publication and the name of the publisher. The law also mentions the person of the

9 Case of Karel Havlíček Borovský (Tuma)/ XL. Porota Kutnohorská. In: Karel Tuma (1885) *Nejslávnejší publicista českého národa*. Díl druhý. Kutná Hora: Karel Šolc. pp. 536–558.
10 Law of the Press n. 6/1863 from 17.11.1863.
11 Law of the Press n. 6/1863 from 17.11.1863. Art. 6.
12 Law of the Press n. 6/1863 from 17.11.1863. Arts. 9 and 12.
13 The present value of the fine would be from 18,510 to 185,100 HUF, based on the calculation from https://artortenet.hu/magyar-penzertekindex-arak-es-devizak-alapjan-1754-tol/. (Accessed on 1 December 2021).

editor-in-chief, who was required to be an Austrian citizen. Publishers had to pay bail for issuing periodicals, although government-issued periodicals were exempt from such fee. Published publications had to be sent to the state office and police ministries and libraries. The application and enforcement of the mentioned provisions was duly performed.[14]

The enforcement of these provisions is demonstrated by some relevant case law of the period. For example, the Court of Cassation in 1883 had to decide the interpretation of the term "print expansion" as used in the law in force. It stated that the borrowing of a press could not be considered expansion, and that the throwing of leaflets on streets can be considered expansion. Therefore, in the case of leaflets with banned criminal content, the act was deemed punishable.[15]

III. PERIOD OF CZECHOSLOVAKIA AFTER WORLD WAR I (THE INTERWAR PERIOD)

After World War I, the Austro-Hungarian Monarchy ceased to exist and Czechoslovakia was created. The new legislator in the territory of Czechia and Slovakia was the National Assembly of the Czech-Slovak Republic. The change of the state system in a given region was combined with the efforts of the successor state to take over the legal order of the previous state. Therefore, the National Assembly of the Czech-Slovak Republic faced the task of adopting a constitution and constitutional laws. By law, it either changed the legal regulations that the Czech-Slovak Republic took over from the defunct Austro-Hungarian monarchy or adopted new legal regulations in the field of media, laying the foundation of completely new laws. If the newly created state had not taken over the legal order of its predecessor, it would have become a state without legislation, a situation that would have taken a long time to remedy. The necessity of maintaining legal continuity with Austro-Hungary led to the adoption of Act no. 11/1918 and Regulations on the Establishment of an Independent Czechoslovak State. According to Art. 2 of this Act, all existing Land and imperial laws and regulations remained in force.[16]

Based on this general provision, the aforementioned Austrian Press Act of 1863 and the Hungarian Press Act of 1914 were maintained after the establishment of the Czechoslovak Republic. This situation did not change two years later, when relations related to the activities of newspapers and magazines in the Czechoslovak Republic began to develop based on the provisions of Act no. 121/1920, which introduced the Constitution of the Czechoslovak Republic. According to §113 Par. 1 of this Constitution, freedom of the press was protected. In principle, under this provision the press could not be placed under prior restraint. Restrictions on the prohibition of prior restraint according to §113 Par. 3 of the Constitution, could be enacted only by law in case of war, or when similar events broke out within the state that threatened the

14 Aleš Rozehnal (2007): *Mediální právo*, Plzeň: Vydavatelství a nakladetelství Aleš Čeněk, p. 13.
15 Plenary decision n. 522 of the Court of Cassation from 14.3.1883.
16 Peter Muríň (2010): *Slovenské masmediálne právo*. Epos, p. 55.

republican state form, the constitution itself, or the public order. In addition to the censorship regime, the constitution developed the rights of individuals under the provisions of §117, which granted the right to express an opinion orally, in writing, in print, via image, or via a different method. [17]

The Czech-Slovak Republic was for almost its entire existence a unitary state. During its later existence, various rights related to press freedom were established, among them rights related to periodicals, non-periodicals, and sound recordings or cinematographic films. The common executive body was the government of the Czechoslovak Republic in Prague. However, there was an extra-ordinary Law no. 64/1918 concerning temporary regulations for the terrritory of Slovakia. Under this law, a body was established for the territory of the Slovak Republic, called the Ministry with Power for the Administration of Slovakia. This was a regional government body with considerable powers. The Ministry implemented several executive measures in the area of periodical legislation. Later, after the consolidation of state law, measures for the entire territory of Czechoslovakia were taken by unitary executive bodies, that is, by the common government and ministries. However, Czechoslovak journalists hastily interpreted the Constitution in such a way that if everyone could express their opinion in the press within the limits of the law, then the freedom of the press itself depended on the law being accepted and voted for in the Chamber of Deputies. Groups of academics and journalists therefore interpreted such a statement as granting the power to issue a new press law. The intention was nonetheless clearly appropriate in seeking to overcome the dualism of Austro-Hungarian legislation and the restrictions placed on the work of journalists resulting from the two laws still in force. The unification of the Press Law on the basis of more modern Hungarian law subsequently became a springboard for drafting a new press law in 1921. It seemed that the freedom of speech would be secured by measures by which the region could catch up to the developments in neighboring states. However, the hopes of the journalists ended in disappointment. A modern press law was not discussed in parliament. Instead, Act no. 50/1923 became binding and was applicable to the whole territory of Czechoslovakia.[18]

While under the provisions of Act no. 50/1923, the scope of the freedom of the press was broader than under earlier Austro-Hungarian legislature, there remained evident gaps in the rights of the journalist. Art. 18 stated a punishment of imprisonment from three days to three months for anyone responsible for spreading false information for which he had no sufficient reason to consider it true. Art. 39 specified what the term "publicly" means, such that when something is public, it has to be in a form of a press publication or disseminated document, or in front of a group of people or representation of people. Based on the fact that it would be hard to exactly stipulate the necessary number of readers into whose hands a given document came, there were huge possibilities for abuse in the interpretation of the term "publicly." Nonetheless, the vague wording of the term "publicly" was supplemented by case law, where the audience of the disseminated information was specified as referring

17 Drgonec (1995): p. 18.
18 Ján Hrabánek (1934): *Soustava československého práva tiskového,* Praha-Brno, Orbis, p. 25.

to a situation where some people met intentionally or even by chance.[19] A representation, based on the argumentation of the court, however, referred to more people, such that the individuality of the individual person recedes and the group interest prevails.[20]

Perhaps the most interesting article of the aforementioned law was the provisions of §23 of the Act, under which the authorities could prohibit the publication of certain military reports as well as reports on security measures to maintain or restore order. The law did not specify that the authorities that had the power to issue a ban, nor was a public statement of the ban required. Thanks to such a vague definition, the ban also applied to cases of rail accidents, in which journalists were banned from accessing the crash site and reporting the situation in the news.[21]

In addition, in this period, the Military Press Service was established, which had its own laws related to the press. In these regulations it was stated that members of the military could not be writers or editors of political papers, although they had the opportunity to publish articles. If these articles were related to the military itself, its offices had to previously approve the publication. The Ministry of National Defense then decided in which specific paper these articles could be published. [22]

Act no. 124/1924 on the change of jurisdiction of criminal courts and liability for the content of the press in matters of false accusation, slander, and defamation also amended the legislation in force. However, the core of the rights were mostly derived from the previous Hungarian Law no. XIV/1914. The amendment stipulated the liability of the editor, or else publisher for official reports. If the report was not published faithfully, the entity obtained the right to compensation from the editor.[23] The amendment also abolished editorial secrecy; the responsible editor was afforded impunity for a published report if he proved that he had published the report because he was threatened with dismissal or significant material damage if he refused publication. The condition for acknowledging impunity was that he correctly identify the originator of the report. However, if the editor identified the wrong author of the report, the law penalized him by stripping him of the ability to hold the position of responsible editor for two years.[24]

The correlation between Acts 50/1923 and 124/1924 resulted in strict regulation of the press. In addition, their application in case law made the interpretation of the exact provisions even more restrictive. The High Court declared in its decision that the limiting provisions are not just binding upon the periodical press but upon all published documents.[25] Furthermore, the case law stated that the editor must carefully evaluate the ideas of legal nature only from the point of view of the correct

19 Decision from 25.I.1924, Kr I 519/23, sb. N. 1465.
20 Decision Zm I 10/24, sb.n. 1613, also decision from 17.IX.1924, Zm I 236/24, sb. N. 1726.
21 Hrabánek (1934): p. 61.
22 Military Service Staff Regulations. (Služebný řád vojenský služby). Regulation A-I-1. 24.4.1926.
23 Antonín Hartman (1923): *Zákon o nakladatelské smlouvě z edene 11. května 1923*, č. 106 Sb. Z. A n., Praha, Nakl.Československého kompasu, p. 32.
24 Drgonec (1995): p. 20.
25 Decision of the High Court from 1925, Zm I 362/25.

interpretation of the law.[26] The Supreme Court additionally stipulated the right to press correction, which the law granted only to offices and private persons or to political parties, but only in cases where there was a notification suitable for the members of the party concerned.[27]

Restrictions on press freedom, as known to legal science of the mentioned time period, were of two kinds: Formal restrictions on the freedom of the press and material restrictions on the freedom of the press. The first way to restrict the freedom of the press was to prevent or make it more difficult for the press to print. This category therefore included rules such as unjustified or even meaningless conditions on the issuance of printed matter and distribution of printed documents. On the other hand, material restrictions on freedom of the press lay in strict responsibility for the content of the printed matter, even in cases where the guilt of the responsible person was not proven by an arbitrary interpretation. All restrictions naturally entailed strict sanctions for violation of the provisions. In fact, the formal restrictions from the period of Austro-Hungary remained in force, although in the new form of regulations more suitable for a new form of state. [28]

Nevertheless the new form of state sought to become democratic not just on paper but in reality as well, and therefore the journalistic community strongly highlighted the need to create a new, modern press act. Following the coup, with the establishment of independent Czechoslovak state authorities, press issues were based on the misconception that it was sufficient to change only formal law, namely judicial jurisdiction in press matters, and that there was no need to change substantive criminal law.

To draft the new legislation, a seven-member commission was formed in 1929 at the Press Department of the Prime Minister of Czechoslovakia to create a legislative proposal. Four Czech, two German, and one Hungarian representative of journalist organizations had the task of preparing concrete reforming proposals in the field of press law. After several interventions by journalists, a government bill on the protection of honor was created in 1931, and 1932 saw a government bill on the press in the Chamber of Deputies. The commission therefore prepared a draft of the new press law. The government proposal from 1932 was a modern work of unification. It redefined the concept of the form, introduced a new report and a new basis for the ideological justification of press law, and limited the right to confiscate the form of journal reports, and in addition the proceedings on relevant issues were to be public. As the political will was not so strong for the creation of the formal as well as the material conditions for press freedom, the result could not be achieved and there was no possibility of creating a comprehensive new press law regulating both material law and procedural law.[29]

On this basis, the commission created a revised press amendment to the Act of 1924, namely Act no. 126 of 1933, which dealt mainly with questions of the

26 Decision of the High Court from 1927, Zm I 60/27.
27 Decision of the High Court from 1924, Zm I 693/24.
28 Hrabánek (1934): p. 66.
29 Ján Hrabaánek a Albert Milota (1933): *Nové československé právo tiskové*, Praha, Linhart, p. 7.

distribution of periodicals and other press documents. The main restrictions on distribution were applied in the areas of schools between minors, in dormitories for soldiers, and in areas close to the aforementioned. The right to issue a ban on the distribution of certain press publications was invested in the regional office, the Ministry of the Interior, and the State Security Office. The conditions for such a ban were cases of publications that directly denigrated independence, constitutional unity, or the democratic-republican form, threatened public order, or grossly insulted morality. Therefore it can stated with certainty that despite the establishment of a modern democratic state, the modern conception of freedom of the press remained far away.

IV. DURING WORLD WAR II

During the existence of the common Czechoslovak Republic, some groups of the Slovak society perceived the constitutional status of Slovakia as a basic problem of constitutional law. Already in the process of drafting the Constitutional Charter of the Czechoslovak Republic, some deputies demanded the enactment of Slovak autonomy. However, these efforts were successful only through major political changes in the European region ushered in by the Munich Agreement and the ambitions of Germany, through which there was first a change in the form of state establishment to a unitary Czechoslovak state with the autonomy of Slovakia and Subcarpathian Russia. Later, with the declaration of the Slovak State by Act no. 1/1939 and with the issuance of the Decree on the Establishment the Protectorate of Bohemia and Moravia, the Slovak Republic was created.[30]

1. The Slovak state

The Constitution of the Slovak State (officially the Slovak Republic) was enacted on July 21, 1939, as Constitutional Law no. 185/1939. Based on the fact that it was a puppet-state of Nazi Germany, the sovereignty of the state and basic fundamental rights were sharply curtailed, and fascist values were broadly reflected in the articles of the Constitution. Non-recognition of the sovereignty of the people but the leader, the principle of status instead of citizen, the priority of obligations over rights, and the possibility of restricting basic human rights by ordinary law all strongly influenced the freedom of the press.

By an order from the year 1941, the Office of Propaganda was established under the department of the Prime Minister's Office. The Office issued general guidelines for prior restraint of the press. Every press publisher was officially controlled by this office and operated in accordance with the interests of the state and in the spirit of Hlinka's Slovak People's Party as the leading party of the state. The Office carried out propaganda, informed foreigners about the internal life of the state, performed state

30 Adriana Švecová a Tomáš Gábriš (2009): *Dejiny štátu, správy a súdnictva na Slovensku*, Vydavatelství a nakladatelství Aleš Čenek, p. 152.

administration in matters of the Slovak Press Office, and directed the press, film, and other fine arts in terms of content and form.[31]

The institutional provision of state interference in the activities of the mass media was completed by the issuance of Decree no. 140/1944, which amended the regulations on the Central Censorship Commission. This law stipulated the possibility of establishing ad hoc censorship commissions subordinate to the Propaganda Office or under the jurisdiction of a certain government member. Based on the instruction of the leading organ, the commission examined, guided, controlled, and censored the work of the press. [32]

The Constitution of 1939 enacted the establishment of a state structured like a realm of estates. On this basis citizens were grouped on the basis of their profession. Accordingly, every citizen had to have a particular status, and only members of the governing political party could hold an official position. These principles were subsequently reflected in the 1944 Press Chamber Act, which also reflected the necessities of the fascist regime. It stipulated the conditions for being a journalist. A journalist had to be at least 21 years old, not previously convicted of a crime or an offense of a low moral motive, not a Jew, and able to provide a high school graduation certificate or who had successfully completed a journalism school in a domestic or recognized foreign school. This shows that antisemitism likewise affected journalists. [33]

However, the freedom of the press was also regulated differently than usual, namely through editorial law. In any case, it not only matters whether the principle of freedom of the press was enshrined in the Constitutional Charter or in the Press Act; account must also be taken of what criminal laws allowed the press to express, as well as whether those who shaped public opinion were allowed to do so.[34]

This model of restricting freedom of speech and the freedom of the press in Slovakia was introduced even before Act no. 65/1944 by Act no. 320/1940 on crimes against the state, which created the factual basis of the crime of publishing the image of a criminal. This criminal offense was committed by a person who published images of a person prosecuted by the authorities of the Slovak Republic for criminal offenses such as state treason, treason of state secrets, intelligence, or betrayal of military secrets.[35]

The exercise of the journalistic profession was allowed only after the fulfillment of the condition that the journalist be registered in the list of journalists. The conditions of enrollment in the mentioned list could not be met by persons whose contributions the state did not explicitly request. This method represented a regular way to legally restrict freedom of expression and the freedom of the press.[36]

31 Česko-slovenská/Slovensko-česká komisie historikú (2006): Yearbook of Czech-Slovak historians (*Česko-slovenská historická ročenka)*, Vydavatelství Masarykovy univerzity, p. 257.
32 Valerián Bystrický and Jaroslava Roguľova (2005): *Storočie propagandy: Slovensko v osídlach ideológií*, AEP, p. 103.
33 Drgonec (1995): p. 30.
34 Drgonec (1995): p. 18.
35 Muríň (2010): p. 57.
36 Hrabánek (1934): p. 25.

2. The Protectorate of Bohemia and Moravia

After the declaration on the establishment of the Slovak state, German militia began the occupation of the territory of the current Czech lands. In the spring of 1939, the autonomy of the Protectorate of Bohemia and Moravia was declared. The leading authority was represented through the Protectorate Government and President Emil Hácha. However, the entire national administration was subject to the occupational forces. The German leaders of the occupation directly controlled the state and led it in accordance with their interests.

In 1938 emergency measures came into force, the state of military readiness was declared, and the press was significantly reduced. In September, the Central Censorship Commission (subordinated to the Ministry of the Interior) was established, which had the task of controlling periodicals and non-periodicals, radio, film, and theater as well. The director of the mentioned Commission was photographer, journalist, and SS officer Wolfgang Wolfram von Wolmar. This exceptionally influential officer was able to suppress any disagreement with the regime based on the established censorship, regulations introducing strict requirements for publishing, and even individual meetings with editors. Wolmar was the leader of the so-called "Gruppe Presse" of the cultural-political department of the Office of the Reich Protectorate until 1943.[37]

During this period, post-publication censorship was added to prior restraint under pressure from the German Third Reich. At the time of the establishment of the Protectorate of Bohemia and Moravia, the media were consistently subordinated to the needs of the state, becoming an instrument of propaganda led by German Nazis, namely the Minister of Propaganda Joseph Goebbels. The aim was to place journalists under the greatest possible control in order to direct them and govern their activities. In 1939 the Press Office came under the control of the Occupation Office. In addition, the Czechoslovak Press Office was renamed as the Czech Press Office with the separation of the states. The journalist had the opportunity to publish legally in accordance with German propaganda. On the other hand, many journalists refused to write in accordance with the needs of the regime and continued illegal work as part of the resistance groups. This kind of conspiratorial publishing, editing, printing, distribution, or collaboration at all stages reflected strong state repression and draconian sanctions that rendered such activities extremely dangerous.[38]

37 Jakub Končelík, Barbara Köpplová, Jitka Kryšpínová (2003): *Český tisk pod vládou Wolfganga Wolframa von Wolmara*, Praha, p. 402.

38 Jakub Končelík, Jakub Večeřa, Pavel Orság: *Dejiny českých médií 20. století*, Portál, Praha, p. 94.

V. PERIOD OF CZECHOSLOVAKIA AFTER WORLD WAR II

1. Restoration of the law system

The validity of the Czechoslovak legal order was confirmed even before the end of World War II. Initially, the regulatory power of the Slovak National Council was revolutionary, based on the provisions of its first regulation (No. 1/1944 Coll. N. SNR of September 1, 1944). The Regulation declared the Slovak National Council the executor of all legislative, governmental, and executive power in Slovakia. Therefore, it rejected the principle of the division of power and concentrated all power in the hands of a single body. The Assembly of the Slovak National Council reserved the power to adopt legal regulations with the highest legal force. As a result, the validity of the Czechoslovak legal order in Slovakia was renewed indirectly as part of the legal order of the Slovak Republic and the Czechoslovak regulations adopted by it.[39]

The explicit restoration of the Czechoslovak legal system took place in August 1944 in London. According to the direction of the President of the Republic, it was a matter of renewing the constitutional and other legal regulations of the Czechoslovak state that had been issued by September 29, 1938. However, the regulations of the London Provisional State Act were not recast into the legal order in Slovakia, as these regulations were not applicable at the time when the first National Council Regulation was issued. The negotiations in London in 1944 showed that the government had to respect this concept of the Slovak National Council, even though this perturbed many of its members. Its acceptance was reflected in the concept of the Decree of the Minister of the Interior No. 30 Coll. of 27 July 1945, which specified that the Constitutional Decree of the President of the Republic No. 11/1944, stating that the legislation thus far applicable only in the Czech and Moravian-Silesian countries remained in force. From the fact that the legislation of the National Council was based on the first regulation of this body, some legal theorists and historians have deduced that until the issuance of Regulation No. 30/1945 Coll. n. SNR, Slovakia normatively did not belong to Czechoslovakia.[40] However, given the situation at the time, I do not consider this argument adequate.

The orders of the new power initially focused on regulating issues not directly related to press law that nonetheless had an impact on the activities of the mass media. Decree of the President of the Republic no. 50/1945 narrowed the scope of persons who could apply for protection against abuse of freedom of expression in the mass media. Moreover, according to §1 of Decree no. 108/1945 Coll. and the Regulation on Confiscation of Enemy Property and the National Reconstruction Funds,

39 Vladimír Flegl (1989): Dokumenty k vývoji československého ústavního práva, Ústav státní správi, Praha, p. 30.

40 Ladislav Vojáček (2004): První pražská dohoda- přijatelný kompromis nebo úspech pražského centralismu? In: K 75. narozeninám profesora Hubenáka. *Zborník z medzinárodnej právno-historickej konferencie konanej pri tejto príležitosti,* pp. 69–77.

requirements were established for valid property confiscation, which enhanced the need for establishing a position of a state officer dealing with the question of censorship.[41]

After World War II, the unified term "press law" was replaced in Czechoslovak legal terminology by two terms, "legal regulation of periodicals" and "legal regulation of non-periodical publications." Both of these terms referred to the partiality of a set of legal norms regulating social relations that arose, changed, and disappeared in connection with political-ideological activities. They included periodical and non-periodical publications, as well as cinematographic films, sound recordings, and radio broadcasting. The regulation of freedom of expression and the right to information had thus come to the fore.[42]

Ideas on the exact management of press law were outlined by Act no. 101/1947 on the position of editors and the Association of Journalists. It indicated the will of the new power to take over the regulative rights from previous holders of power, namely the right for regulation of freedom of speech through editorial law. Act no. 101/1947 thus on the day it entered into force abolished the Press Chamber based in Bratislava and the National Union of Journalists based in Prague. It defined an editor as an employee of a magazine or news or other similar establishment who, as his main occupation, carries out intellectual activity that is expressed in words or images. An editor had to be a Czechoslovak citizen who had reached the age of 21, had not been convicted under the regulations on the punishment of Nazi criminals and collaborators, and had not been legally convicted of a criminal offense.[43]

A new chapter in the history of press law was written by the Constitution of the Czechoslovak Republic. According to §21, freedom of the press was formally guaranteed. Therefore, it appeared that the state was not allowed to subject the press to prior restraint. In practical application, however, the situation many times proved to the contrary. The law subsequently stipulated who had the right to publish newspapers and magazines and under what conditions. The constitution further granted the state the exclusive right to produce, distribute, publicly screen, and import and export films. Act no. 184/1950 specified all the conditions for the publication of magazines, stipulating that the publication of the press and periodicals could not be the subject of private enterprise. Everyone had to be authorized to print, and the authorization was granted by the political parties of the National Front, state bodies, and united trade unions, as well as leading cultural, economic, interest, sports, and social organizations.[44]

Later legislative changes made in 1950 strongly affected the press law. It is worth mentioning §311 of Act no. 86/1950 and all its provisions related to the procedural criminal law. Act no. 108/1933 on the protection of honor had moved the question

41 Ladislav Vojáček (2004): Příčiny sporu o dekret prezidenta republiky č. 5/1945 Sb. In: *Dekréty Edvarda Beneša v povojnovom období*, Prešov, Spoločenskovedný ústav SAV v Košiciach vo vydavateľstve Universum, pp. 81–89.
42 Muríň (2010): p. 9.
43 Drgonec (1995): p. 34.
44 Muríň (2010): p. 59.

of personal protection from criminal law to civil law. According to the Civil Code of 1950, if someone's rights were infringed by someone else by using his name illegally, he could demand that the action be waived. However, privacy, honor, and dignity were not considered values on the basis of which the injured party could seek redress or at least waive the activity. From this point it can be deduced that the abuse of freedom of expression remained intangible in the press if it was a private person and not a state body.[45]

The following period in the history of Czechoslovakia may be assessed more or less negatively. During this time strict censorship of the press was applied in practice. Censorship as a method of maintaining control by the state was performed through three main legal instruments. First was nationalization of the publishers. Second was the placement of politically loyal officers into the leading positions of these publishing state companies. Third was the institutional assuring of the censorship through the establishment of prior restraint and post-publication censorship. Later, the Constitution from the year 1960 neglected even formally to stipulate a prohibition of censorship. The general attitude toward the protection of human rights and freedoms was therefore reflected in the regulation of the press. The state had a general interest in consolidating the dictatorship of the proletariat, including preventing the exercise of various rights.

2. The Czechoslovak Socialistic Republic

On January 1, 1969, the Czechoslovak Socialist Republic became a federal state. Within the framework of the internal integration of the state, Constitutional Act no. 143/1968 Coll. on the Czechoslovak Federation strengthened the powers of the Slovak state authorities in the field of Slovak press law. The competencies were technically constructed in such a way that according to Art. 1 of the above-mentioned constitutional law, The Czechoslovak Socialist Republic consists of the Czech Socialist Republic and the Slovak Socialist Republic and, as a result, the powers have been divided into exclusively federal, common and exclusively national competences.[46]

However, even earlier, Act no. 81/1966 on periodicals and other mass media brought a fundamental change in the press law. For the first time, this law transcended the boundaries of press law and acquired the nature of media law by introducing the category of mass media, which included periodicals, agency news, ordinary news, and other journalistic sections as well as radio and television broadcasting. In addition to the conceptual novelty, the law also meant a return to traditional institutions of the press law such as the press release. Regulation no. 119/1966 also issued the statute governing the Central Publication Report Office. The official responsible for the activities of this body was the Minister of the Interior. The Authority's remit covered periodicals, other mass media, and all public media. The role of the report was to ensure that information that was the subject of a state, economic, or professional secret was not published in the press. However, it also had the task of ensuring

45 Rudolf Glogar (1958): *Trestní zákon: Komentář,* Praha, Orbis, p. 24.
46 Muríň (2010): p. 60.

that reports contrary to other interests of society were not disclosed. Such information was interpreted as information whose content was: related to a criminal offense, directed against the political and ideological line of the state, or demonstrably likely to harm the societal interests protected by central state authorities. Therefore it was clear that the authority censored the press in accordance with the aims of the ruling Communist Party.[47]

Later, Act no. 180/1980 Coll. established the Federal Office for Press and Information, a state administrative body for the control of the exercise of freedom of expression, which replaced the authoritarian Central Publication Report Office. Under this law, the Federal Information Press Office was the federal central government agency responsible for the press and other media. This body had many different tasks and duties, such as proposing to the government the principles and main political direction of the press policy, responsibility for the registration of periodicals and non-periodicals, protection of the state's press interests, decisions on the import and permits of the foreign press, granting permission to become editor-in-chief for foreigners, and issuing permission for civil organizations to publish printed information. We may conjecture that the execution of its decisions was ensured by extraordinary means under the dominant processes in the post-normalization environment of Czechoslovakia.[48]

The period of the creation of the socialist press law was concluded in a debatable way. On the one hand, the Chairmanship of the Central Committee approved the establishment of 16-member Scientific Law Committee in 1987 to lay down the new guiding principles of the press law; nevertheless, the actual legislative work never started.[49] The Velvet Revolution in November 1989 replaced the socialist regime with a new democratic federative solution that subsequently even resulted in separate democratic states. The press law was built on completely new grounds and the current democratic level of the freedom of the press was established.

VI. CONCLUSION

Under the specific conditions of the complex establishment of national identity, the press saw significant development in the Czech and Slovak environment from the 19th to the 20th century. At a time marked by the division of the public into individual political directions and parties, the interest of societies and associations became divided as well. In addition, the political press developed in correlation with number of magazines devoted to federal, educational, cultural, or labor issues. However, we can state with certainty that owing to the oppression of a strong state, the development of the press freedom was clearly hindered. The duality of legislature in the Austro-Hungarian Monarchy consequently caused a duality in law in both pertinent

47 Drgonec (1995): p. 42.
48 Petr Bednařík, Jan Jirák, Barbara Köpplová (2011): p. 328.
49 Veronika Šutková a Marek Vagovič: *Dozeral na tlač, teraz na zákon.* https://www.sme.sk/c/3716914/dozeral-na-tlac-teraz-na-zakon.html (Accessed on 1 December 2021).

territories. On the one hand, Current Czech lands were governed by Austrian law and its Press Law no. 161/1849, while on the other hand, in the current Slovak lands, Hungarian law and its Press Law no. XIV/1914 were applied. This resulted in greater difficulty in implementing the new law in the interwar period of common Czechoslovakia. During World War II, the Slovak State and the Protectorate of Bohemia and Moravia served only as puppets of the Nazi regime. Therefore, strong prior restraint with an emphasis on Nazi propaganda was perceptible. With the end of World War II, changes in press freedom were strongly desired and needed; however, the press in this period rather became an instrument of propaganda and an ideological tool, which was made part of systematic education as the ruling Communist Party made huge efforts to prevent the public from coming into contact with foreign, especially Western, trends and developments.[50] Just after the Velvet Revolution and the establishment of new democratic state forms, censorship was abandoned and the current form of the freedom of the press had the opportunity to fully develop.

50 Authors note: Some examples that should be mentioned in relevance. For example, the late start of television broadcasting in 1953 or the resumption and spread of the so-called Evening press "trans. Večerník" in the 50s.

Development of Hungarian Press Regulations in the XIXth and XXth Centuries

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ABSTRACT
The issue of press freedom always held outstanding importance in the political sphere, as the press has the power to form public opinion, besides simply conveying information. Current constitutions of the Central European region declare the freedom of speech, opinion, and press with few limitations; however, especially in the case of Hungary, there was a long series of ups and downs until the legal framework provided the establishment of a genuinely free press and media pluralism in the 1990s. The importance of this research topic lies in it contributing to a better understanding of press-related problems in various historical contexts.
KEYWORDS
freedom of the press, press law, censorship, press crimes, press jury, Hungary

Dezvoltarea reglementărilor presei maghiare în secolele XIX și XX

REZUMAT
Problema libertății presei a avut întotdeauna o importanță deosebită în sfera politică, deoarece presa are puterea de a forma opinia publică, pe lângă rolul de a transmite pur și simplu informații. Constituțiile actuale ale regiunii Europei Centrale declară libertatea de exprimare, de opinie și de presă cu puține limitări; cu toate acestea, mai ales în cazul Ungariei, a existat o serie lungă de suișuri și coborâșuri până când cadrul legal a asigurat formarea unei prese cu adevărat libere și a unui pluralism mass-media în anii 1990. Importanța acestui subiect de cercetare constă în faptul că contribuie la o mai bună înțelegere a problemelor legate de presă în diverse contexte istorice.
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I. INTRODUCTION

This paper provides a brief overview of the regulation of the press' freedom in Hungary. The initial focus of the analysis is the beginning of the XIXth century, as the development curve of such regulations is tangible and coherent from this point

onwards. Moreover, as the use of the Hungarian language increasingly spread in all levels of society during this period, the need for an independent Hungarian press without censorship grew ever stronger. Certain acts, however, are given greater emphasis—either because of the length of being in force, or because of the novelty that the law introduced.

While the article is organized by historical period, it should be noted that although there were one or two significant laws that were in force for a considerably long time in the XIXth century, in the XXth century, especially after World War II, several laws (acts, decrees, etc.) were adopted for a shorter time. This was owing to the political framework fundamentally changing after the communist takeover, and a radically different approach to the concept of the press was introduced that did not follow the previous regulatory path. The analysis of the current regulation exceeds the limits of the present paper; therefore, the study ends with an introduction of the freedom of the press that was established by the end of the 1980s, which was based on a more modern interpretation of the concept of the freedom of the press.

II. THE ESTABLISHMENT OF THE FREEDOM OF THE PRESS AND ITS AFTERMATH IN THE DUALIST ERA

1. Reformist attempts for the adoption of Act XVIII of 1848

The origin of censorship in Hungary dates back to the mid-XVIth century. It was originally established to support the interest of the church in hindering the publication of heretical and misinterpreted ecclesiastical ideas and beliefs. Over the centuries, it slowly became a political tool of the Habsburg Emperor for restricting discussions of the enlightened concept of freedom of thought. Consequently, by the turn of the XVIII–XIXth century, the leeway of the press was decidedly limited: The publication of news and pieces of information that infringed the respect, fidelity, and authority of the Emperor or the government, and reports on "provocative" parliamentary speeches were prohibited. Moreover, the Emperor issued a list of foreign newspapers that could be released within the Empire, and any not on the list were banned. Such foreign papers and print materials were, for instance, those that gave information about the French Revolution. Therefore, it is clear that the reason for the strict censorship of such papers was their potential of spreading revolutionary ideas within the Empire: Such information was suppressed to repress any movements or riots against the Dynasty.[1] Furthermore, press censorship at the dawn of the XIXth century was rather a police matter, and during the period of 1794–1803, for example, no political newspaper was allowed to be established and the publication of the already operating ones was hindered. Consequently, owing to the strict censorship of political and

1 József Ferenczy (1887): *A magyar hírlapirodalom története 1780-tól 1867-ig [History of the Hungarian Newspaper Literature from 1780 to 1867]*, Laufer Vilmos Könyvkiadó, Budapest, pp. 92–98.

foreign papers, Hungarian journalism was limited to the linguistic, literary, and cultural spheres.[2]

Regarding linguistic issues, it is important to note that the creation of a free press in Hungary is strongly interrelated with the evolution of the Hungarian literary language: Even though there had been certain attempts to establish Hungarian newspapers in the XVIIIth century, owing to the hegemony of German and Latin languages and the slow development of the Hungarian literary language, these attempts yielded sparse results. Some of the earliest newspapers in Hungarian language were *Magyar Hírmondó* (*Hungarian Herald*) and *Magyar Merkurius* (*Hungarian Mercury*), published in the 1780s. However, they only lasted for a few years.[3] In my opinion, a strong and independent national press can only be established in the national language, which is one of the most important attributions of a nation or an ethnicity; however, the use of Hungarian language was not at all evident at the various levels of language use at that time: legislative acts and scientific papers, for instance, were all written in Latin.[4] Due to the efforts of Hungarian litterateurs in the first decades of the XIXth century, our language evidenced a fast and significant development. As a result of which, Hungarian became a suitable language for science, literature, politics, and legislation. The first recognition of the language was set out in Act III of 1836 as *one* of the official languages in the country, and within a decade, Hungarian was declared the *only* official language by Act II of 1844, thereby displacing the Latin language from preeminence.

This literary development certainly established the framework for the creation of the freedom of the press, which by that time had become a crucial issue in the political sphere as well: Ferenc Deák—the "Wise Man of the Nation," who later played a key role in the Austro-Hungarian compromise—drew attention to the importance of the abolition of censorship during the first "reformist" national assembly of 1836. He referred to Western European examples where the "press culture" opened the path for a true dialogue within the society, as all "shades" of opinions could gain representation, resulting in the purification of public opinion. Convinced by his arguments, the national assembly drafted a bill on the freedom of the press; however, due to strong political resistance from the Emperor, it was adopted neither in 1836 nor in 1839/40, during the next national assembly.[5]

The issue of the creation of a free press came to the fore again in 1848: The fact that the demand for an independent press was at the top of the revolutionists' twelve

2 György Kókay (ed.) (1979): *A magyar sajtó története I. 1705–1848 [History of the Hungarian Press I. 1705–1848]*, Akadémiai Kiadó, Budapest, pp. 44–46.

3 Réka Lengyel (2019): The Newspaper as a Medium for Developing National Language, Literature, and Science. Mátyás Rát and the Magyar Hírmondó between 1780 and 1782 in Ágnes Dóbék, Gábor Mészáros, Gábor Vaderna (eds.): *Media and Literature in Multilingual Hungary, 1770–1820*, Reciti, Budapest, pp. 87–89; Ferenczy (1887): pp. 54–55.

4 Ferenczy (1887): pp. 21–26.

5 Mihály T. Révész: Deák Ferenc sajtópolitikája a reformkorban és a negyvennyolcas forradalom napjaiban [The Press Policy of Ferenc Deák in the Reform Era and in the Days of the Revolution of '48], *Jogtörténeti Szemle*, 2003/1, pp. 19–20.

demands demonstrates the particular importance of the issue.[6] "De facto" freedom of the press was established during the revolution and it was soon promulgated by Emperor Ferdinand V in April 1848. Act XVIII of 1848 was drafted by Prime Minister Bertalan Szemere, based on French and Belgian examples.[7] The so-called "Press Law" (*"Sajtótörvény"*) was the first legal measure that declared the freedom of the press in Hungary. Article 1 stated that everyone was free to communicate and disseminate their thoughts through the press. According to the law, press release included all communications—either in words or in images—by printing, lithography, or engraving, of which the distribution had already begun.

The law regulated different issues related to the press: The first part dealt with press crimes (including violating public and religious morals, public order, high treason against the Emperor, and slander) and their punishment. The second part concerned the related judicial proceedings. All the press crimes had to be brought before a jury either by the public prosecutor or by the party concerned: As the nature of the crime was decisive in this matter, the act listed the crimes that were pursuable by the public prosecutor. It is worth noting that the establishment of the so-called "press-juries" was the idea of Deák and was set out in his famous draft criminal code of 1843, which—similarly to several reformist attempts before 1848—did not come into force.[8] The idea of introducing the institution of juries was inspired by foreign examples, as it was a common practice in several countries in Western Europe, including Belgium, England, France, Portugal, Spain, and Sweden. However, owing to the failure to adopt the above-mentioned draft of the criminal code, the jury system was not implemented in all areas of criminal law. Rather, it was implemented only in the case of press crimes. The establishment of press juries, therefore, corresponded with the international tendencies of the time.[9]

The third chapter regulated periodicals, their operating conditions, and the registration procedure. Its scope extended to newspapers that were issued at least twice a month and that partly or fully dealt with political issues. The law set out four conditions for the publication of these papers: 1) The name and address of the publisher/editor and printing house where the paper was to be printed were reported to the local authority, who reported the data to the Ministry; 2) a certain deposit had to be paid, depending on the frequency of the publication (10,000 forints for a daily paper and 5,000 forints for a less frequently published paper); 3) in case of conviction for

6 András Koltay: The Regulation of Social Media Platforms in Hungary, in: Marcin Wielec (ed.): *The Impact of Digital Platforms and Social Media on the Freedom of Expression and Pluralism—Analysis on Central European Countries*, Ferenc Mádl Institute of Comparative Law—Central European Academic Publishing, Budapest—Miskolc, 2021, p. 81.

7 András Koltay (2009): *A szólásszabadság alapvonalai—magyar, angol, amerikai és európai összehasonlításban [The Basics of the Freedom of Speech—in Hungarian, English, American, and European Comparison]*, Századvég Kiadó, Budapest, p. 64.

8 Révész (2003): p. 21.

9 Tamás Antal: A sajtóesküdtszékek és működésük szabályozása Magyarországon (1867–1896) [Press Juries and The Regulation of their Functioning in Hungary (1867–1896)], *Acta Universitatis Szegediensis Acta Juridica et Politica, Publicationes Doctorandorum Juridicorum. Tomus II. Fasciculus*, 2003/2, pp. 8–9.

press crime, the punishment had to be extracted from the deposit; and 4) one copy of the newspaper had to be sent to the president of the assigned local authority. The fourth and last chapter dealt with printing houses and booksellers. These institutions had to be registered and to pay a deposit of 4,000 forints in the capital or 2,000 forints elsewhere in the country.

The literature emphasizes that the penalties specified in the act were relatively high, as was the deposit that the publisher or the owner of the paper had to pay.[10] Moreover, the press law was also criticized because of its outdated approach. However, it is important to emphasize that at this point, the press law that entered into force did not necessarily reflect the revolutionaries' ideas, as they had envisaged a more democratic and progressive act;[11] the political reality of the time did not allow them to entirely fulfill this dream. Moreover, we should take into consideration that it was drafted within a very short time and was thus a political compromise between liberals and conservatives.[12] It should also be noted that the Press Law of 1848 was rather symbolic, at least for this period, as—owing to the difficult political atmosphere of the revolution and the war of independence in 1848–1849—its provisions could not be fully implemented in reality: The juries were not established due to a lack of time, and the long-awaited freedom of the press was soon subject to restrictions, as set out in Ministerial Decree no. 344/1849 issued by Bertalan Szemere (then Minister of the Interior).[13] Nevertheless, the undeniable importance of the act lies in the fact that it established the legal framework for free press and the abolition of censorship for the first time in Hungarian history.

2. The neo-absolutist "Pressordnung" and the revival of Act XVIII of 1848 in the Dualist Era

The surrender of the Hungarian Army that ended the war of independence in 1849 brought about several changes in the Austro-Hungarian relations: the Habsburgs aimed at restoring the order in the Empire by imposing restrictions in a wide range of issues, including press regulation. The post-war period was named after the Minister of the Interior of the Empire, Alexander Bach, who established centralized political control in the 1850s. This decade is also often referred to as the neo-absolutist era. The press law that came into force in 1852 (the so-called *"Pressordnung"*)

10 Mihály T. Révész (2013): A magyar sajtószabályozás kezdetei és hőskora [The Beginnings and the Heroic Age of Hungarian Press Regulation] in Gábor Máthé, Mihály T. Révész, Gergely Gosztonyi (eds.): *Jogtörténeti parerga: ünnepi tanulmányok Mezey Barna 60. születésnapja tiszteletére [Legal History Parerga: Festive Studies in Honour of Barna Mezey's 60th Birthday]*, ELTE Eötvös Kiadó, Budapest, pp. 304–305.

11 Domokos Kosáry (1985): A forradalom és a szabadságharc sajtója, 1848–1849 [The Press of the Civic Revolution and War of Independence], in Domokos Kosáry—Béla G. Németh (eds.): *A magyar sajtó története II./1. 1848–1867 [History of the Hungarian Press II/1. 1848–1867]*, Akadémiai Kiadó, Budapest, p. 50.

12 Koltay (2009): pp. 69–71.

13 László Feleky: A 48-iki sajtótörvény és sajtószabadság [The Press Law and Press Freedom of '48], *Magyar Figyelő*, 1913/4, pp. 253–254.

imposed a strict system of press regulation: First, the scope of the law extended not only to the products of the printed press but to any copied forms of fine arts and thoughts as well. The scope of press crimes were less defined and concrete: If the newspaper constantly published content against the throne, the monarchical form, the unity and integrity of the Empire, the monarchical principle, religion, public morals, public order, and similar material, the authority could impose a ban on the further publication of the paper (Art. 22). As the infringement of the above-mentioned concepts and institutions was not clear, the law thus left a broad area of leeway for the authorities in deciding the culpability of a paper.

The law also declared the deposit amount that had to be paid upon the establishment of a newspaper, although, it was only applicable in the case of print materials dealing with political issues: It is particularly important to highlight that the deposit could have been paid back to the editor/owner six months after the termination of publication only if the paper had not been found guilty of any press crime previously.[14]

Another significant regulation of the period was the introduction of the stamp tax in 1857, which was imposed on papers with the obligation to pay a deposit and papers that published advertisements. The tax was relatively high and the journalists of the time pointed out that the editors could not cover the tax solely from their profits.[15] Despite the discouraging legal framework and the understandable fear of setback, most papers could increase the frequency of publication of the issues, possibly owing to the growing interest of Hungarians in national culture and education.[16]

In reality, total control of the press was not implemented; the importance of the press gradually increased and it slowly became a platform for political publicity. Thus, the famous Easter article of Deák was published within the legal framework established by the Pressordnung. This famous article was published on Easter Sunday, April 16, 1865, in the *Pesti Napló* (*Diary of Pest*), which was one of the most influential and important political newspapers of the time.[17] The article provoked a heated political dialogue in the press which aimed at reconsidering the political relations and resuming the negotiations with Vienna.[18] Instead of insisting on the endeavors of the Revolution of 1848, Deák drew attention to the importance of collaborating with the Habsburgs. The efforts of Deák resulted in the Austro-Hungarian Compromise

14 Géza Buzinkay: A magyar irodalom és sajtó irányítása a Bach-korszakban (1849–1860) [The Direction of the Hungarian Literature and Press in the Bach Era (1849–1860)], *Magyar Könyvszemle*, 1974/1–4, pp. 270–271.

15 *Politikai Ujdonságok*, 1857/3, p. 317.

16 Domokos Kosáry (1985): Az abszolutizmus első szakaszának sajtója, 1849–1859 [Press of the First Period of Absolutism, 1849–1859], in Domokos Kosáry—Béla G. Németh (eds.): *A magyar sajtó története II/1. 1848–1867 [History of the Hungarian Press II/1. 1848–1867]*, Akadémiai Kiadó, Budapest, p. 293.

17 Géza Buzinkay (1993): Kis magyar sajtótörténet [Brief History of the Press]. Available at MEK-OSZK (Hungarian Electronic Library of the National Széchényi Library), https://mek.oszk.hu/03100/03157/03157.htm (Accessed on 1 December 2021)

18 Koltay (2009): pp. 75–76.

and the creation of the dualist monarchy of Austria-Hungary in 1867. During the negotiations, both parties sought to find a compromise on the issue of the press as well: Even though the Hungarian delegation was aware of certain imperfections of the April Law, such as the problematics of press juries[19] or the rigid regulation of the system of penalties for press crimes, Vienna was more in favor of keeping the Pressordnung in force.[20] In this politically sensitive situation—similarly to the reformist attempts of the 1830s—the legislators had to find a compromise within the frames of political reality. Taking into consideration that the relatively short transitional period from absolutism to dualism did not allow the legislators to elaborate a new concept of press freedom and the only alternative of the regulation of press was the Austrian law,[21] the insistence upon the April Law represented the continuity of the reformist ideology of the revolutionaries. Therefore, on March 17, 1867, Act XVIII of 1848 entered into force again.

However, some modifications had to be implemented in the April Law to address the challenges that emerged in the new political ambiance. The re-regulation of press juries was one of the major novelties of the Dualist Era: contrary to the solution of 1848, which allowed all jurisdictions to establish press juries, from 1867, these could only operate in five cities (Pest, Debrecen, Eperjes/Presov, Nagyszombat/Trnava, and Kőszeg). It is worth noting that the regulation on press juries entered into force in 1871 in Transylvania,[22] and a press jury was established in Marosvásárhely/Targu Mures.[23] The Pressordnung, however, was not overruled until 1900.[24] The main reason for the different regulations was the legal and administrative independence stemming from the geographical and historical division of Hungary and Transylvania.[25]

On the one hand, this establishment of press juries simplified the tasks of the courts, as it was unrealistic and illusory to maintain a press jury in every city; on the other hand, it centralized press jurisdiction because the government had direct contact with the press juries, as their members were appointed by the

19 The problematics of press juries will be presented below. At this point, it is worth noting that the establishment of press juries would have introduced a completely different system of judicature rather alien to the Hungarian legal system. Moreover, the failure to adopt the draft of the criminal code of 1843 resulted in further inconsistencies in the criminal court system.

20 Mihály T. Révész: A sajtószabadság „örömünnepe" 1867 Magyarországán ["Jubilation" of Press Freedom in Hungary of 1867], *In Medias Res*, 2017/1, pp. 95–101.

21 Mihály T. Révész: Sajtójog a dualista Magyarország első esztendeiben [Press Law in the First Years of the Dualist Hungary], *A budapesti Eötvös Loránd Tudományegyetem Állam- és Jogtudományi Karának actái*, 1978/21, p. 300.

22 By Decree of the Minister of the Interior and Minister of Justice no. 1498 of 14 May 1871

23 Antal (2003): p. 19.

24 Vince Paál (2019): *Tanulmányok a magyar sajtószabadság történetéhez 1867–1944 [Studies on the History of the Hungarian Press Freedom 1867–1944]*, Médiatudományi Intézet, Budapest, p. 10.

25 Edit Bakó: Az erdélyi sajtó „szabadsága" a kiegyezést követő években [The "Liberty" of the Press in Transylvania after the Austro-Hungarian Compromise], *ME.DOK*, 2015/1, pp. 109–110.

government.[26] Appeal was only possible on legal questions, and retrial could be initiated on facts only. The changes that the new regulation brought for the jurisdiction of press juries have rather theoretical importance, as there was only one case that was adjudicated on the basis of the April Law.[27] The law set out the age and property census for the members of the jury: Men aged 24 to 60 with a yearly income of not less than 200 forints, or acknowledged attorneys, engineers, doctors, and teachers could be elected to the jury. The press jury decided the facts and guilt, and the judicial council was bound to its decision and could only rule on the punishment.[28] Regulations on the press could also be found in the criminal code of 1875 (*"Code Csemegi"*), which set out certain limits to the freedom of expression by defining several press crimes, such as inter alia, offence against the Emperor (Art. 140), incitement against the constitution, the law, the authorities (Art. 171–174), crimes against religion (Art. 190–192), and libel and slander (Art. 258–277). The wording of the regulation and more generally the fact that press crimes were set out in the criminal code as well, represented a legislative concept according to which the crime was not different merely because it was committed through the press.[29] The Criminal Procedure Code of 1896 effectuated further refinements in the rules concerning press crimes: The law designated the press court of the territory where the print was made as the competent authority (Art. 562), and it introduced the possibility of confiscation of prints if the court considered it necessary (Art. 567). The regulation of the Code did not introduce any novelties into the liability system, only in press crimes and their punishments, and thus modified the Press Law of 1848 in these matters.

As can be concluded from the above, the regulation of the press was quite diversified in the second half of the XIXth century: Apart from Act XVIII of 1848, several other legal sources were connected to the issue of the press, mainly procedural and criminal rules. Even though the Press Law was drafted in the 1840s, the latter rules rather reflected the new circumstances of the Dualist Era and thus influenced the interpretation of the frame rules of the April Law. However, it should be taken into account that the April Law was strongly criticized even at the time it (re)entered into force, as it did not live up to the expectations of certain political groups that aimed at establishing a liberal press. Therefore, the overall press regulation of the last decades of the XIXth century could rather be regarded as a compromise solution somewhere between ideological illusions and political reality.

26 Antal (2003): pp. 11–12.
27 Zsuzsanna Ablonczy: A laikus bíráskodás problémájának bemutatása a magyarországi esküdtszéki ítélkezés történetén kersztül [Presentation of the Problematics of Laic Jurisdiction through the History of the Jurisdiction of Press Juries in Hungary], *Iustum Aequum Salutare*, 2009/4, p. 169.
28 Antal (2003): pp. 19–28.
29 Paál (2019): pp. 13–14.

III. PRESS REGULATION OF THE TWO WORLD WARS AND THE INTERWAR PERIOD

1. New concepts at the dawn of the XXth century: The adoption of Act XIV of 1914

Despite the fact that Act XVIII of 1848 was originally meant to regulate the press temporarily, it was in force for more than half a century: The issue of re-regulation arose only around the turn of the XIXth–XXth centuries. It is interesting to highlight that most of the acts adopted during the Revolution of 1848 were overturned all over Europe, with the exception of Italy[30] and Hungary. According to the literature, one of the reasons for this insistence upon the April Law could be due to the legislators' respect for the ideas of the revolutionaries. Therefore, the lawmakers of the dualist period opted for amendments and additional acts instead of adopting a new press law. However, by 1900, 23 of the 45 articles of the Act were no longer in force. Due to the political changes of the 1900s and the obvious fact that the existing press regulation became obsolete in face of the challenges of the new century (including the technological developments that allowed the establishment of a great number of papers that soon gained increasing influence),[31] debates on the adoption of a new press law arose. Several issues were subject to discussion, such as the question of further necessity of press juries, the maintenance of the deposit system, the regulation of gradual liability, and the repression of abuse by the obligation to rectification instead of compensation for non-material damage.[32] The new concept of the press was debated for more than a decade; however, it was strongly politicized: Press law experts intended to adopt a detailed regulation, while journalists emphasized the autonomy and the self-regulatory nature of the press.[33]

Act XIV of 1914 brought several changes that aimed to tackle the challenges of the new century. First, the material scope of the act took into account the technical developments, as the rules were applicable to the reproduction of musical pieces and the expression of thoughts through phonographs or other devices (Art. 2). The amount of deposit was raised from 10 thousand koronas to 50 thousand koronas in case of political newspapers that were published at least five times a week in Budapest and 20 thousand koronas (previously 10 thousand koronas) in the rest of the country. This provision was the most debated and the most criticized novelty of the new law, especially because the deposit system had already been abolished throughout Europe

30 Géza Kenedi: A sajtó problémái [Problems of the Press], *Magyar Figyelő,* 1911/1, p. 229.
31 Vince Paál: Az 1914. évi sajtótörvény-javaslat képviselőházi vitája [The Debate on the Press Law Draft of 1914 in the House of Representatives], *In Medias Res*, 2017/1, p. 6.
32 Géza Buzinkay (2012): Harc a sajtóreform körül, 1914 [Fights around the Press Reform, 1914], in Bertalan Pusztai (szerk.): Médiumok, történetek, használatok—*Ünnepi tanulmánykötet a 60 éves Szajbély Mihály tiszteletére [Festive Studies in Honour of 60-Year-Old Mihály Szajbély]*, Szeged, Szegedi Tudományegyetem Kommunikáció- és Médiatudományi Tanszék, különnyomat, pp. 282–284.
33 Géza Buzinkay: Sajtóreform 1914-ben [Press Reform in 1914], *In Medias Res*, 2013/1, p. 1.

by this time except in the case of Croatia, where the highest deposit was fixed at 8 thousand koronas.[34]

In addition, the right (and obligation) to rectification was introduced: If the paper directly or indirectly communicated false information or displayed true facts in a false way, the person or authority concerned could ask for rectification. The law set out certain criteria on how the rectification was to be implemented. First, the editor had to publish the corrected statement in the next issue after the date of receipt of the petition, in the same place on the page, with the same type of print as the false information (Art. 20). The statement in question could be challenged for one month after publication. The institution of rectification was perceived as a protective measure in favor of the public (persons and institutions), as the press had the power to spread defamatory information.[35]

Furthermore, the system of liability was modified: Previously, the editor had been responsible for crimes committed through the press, but under the new regulation it was the author who was responsible for the content published under his name. If the author could not be held liable for the crime, the liability was transferred to the publisher, similar to cases where the article in question was ordered by the publisher (Arts. 33–36). Moreover, a person who contributed by any means to the publication of the content that constituted the crime was also liable. The contribution might be in the form of instruction, investigation, data provision, or drafting. This solution is considered a gradual liability system; however, in the case of the 1914 law, it did not prevail in a pure form but rather drifted toward the criminal liability system.[36]

A further novelty of the new act was the introduction of compensation for non-material damages, a measure based on equity. It would have been applicable even in cases where the communication of the paper did not claim that a crime had been committed (Art. 39). The legal relationship between the publisher and the members of the editorial board was set out with special attention to the interest of the journalists. The relation between these parties had previously been regulated under the Industrial Code.[37] As a result of the new law, journalism leveled up to an intellectual job from an industrial one. The legislator thus intended to win journalists over with the clarification and regulation of their legal status.[38]

By 1914, the press had outstanding importance not only in informing the public about the international political tensions, but also in shaping public opinion during the upcoming years.[39] This situation fundamentally changed with the outbreak of World War I: The legislator had previously adopted Act LXIII of 1912 on exceptional measures in case of war, which set out stricter provisions and censorship during wartime. The Press Law of 1914, therefore, was in force for not longer than a few

34 Paál (2017): p. 27.
35 Paál (2017): p. 25.
36 Paál (2017): p. 5.
37 See Act XVII of 1884 on the Industrial Code
38 Paál (2017): pp. 4–6, 37.
39 György Litván: A sajtó áthangolódása 1914 őszén [Changes of the Press in Autumn 1914], *Századok*, 2004/6, p. 1462.

months and, unlike the April Law of 1848, it was never fully implemented later,[40] despite the fact that it was not meant to be a provisional solution; at this time, the legislator intended to regulate the press permanently. Even though there is a substantial body of scholarly research on the circumstances of the creation of the law, its long-term impact cannot be measured, nor can a relevant case law be found. Therefore, Act XIV of 1914 has rather theoretical importance in the history of freedom of the press, as the regulations of the upcoming years did not follow the regulatory path and achievements of the Press Laws of 1848 and 1914.

2. The introduction of censorship during World War I and its aftermath

As it has been mentioned earlier, World War I brought about several radical changes in the legal order of Hungary regarding private law relations, criminal law, procedural rules, the freedom of assembly, and relations between the state and citizens. Act LXIII of 1912 also introduced prior restraint, in order to stop the distribution of papers that violated the national interest in wartime (Art. 11). Prior restraint was not new in Hungarian regulation, as it had been ordered by the Pressordnung during the Bach era as well. In practice, prior restraint, however, was not generally implemented in this period: The government opted for two other measures. First, the Minister of Justice set out certain prohibited topics, such as internal political tensions, problems of food shortage, labor movements, peace initiatives, and discouraging news about external relations.[41] Second, so-called confidential notices were sent directly to the editors, politely asking them not to publish certain content.[42]

Ministerial decrees—such as no. 5.484/1914 and no. 12.001/1914/I.—banned the publication of certain foreign (hostile) papers, especially those printed in Serbia or the translation of Serbian papers. Later—after Russia entered the war on Serbia's side—the ban was extended to Russian papers and, in 1915, to all papers of the hostile states. Books and smaller print works were subject to individual examination. However, the government acted in favor of the publication of patriotic Hungarian newspapers that could influence the people's opinion in favor of the war and that reported news from the battlefield: The shipping costs were annulled and their paper supply was facilitated.[43] It can be concluded that Hungarian papers were less likely to

40 Buzinkay (2013): p. 20.

41 Viktória M. Kondor: Adalékok az első világháború alatti sajtó és cenzúra történetéhez. Törvények és cenzúra [Additions to the History of the Press and Censorship during World War I. Laws and Censorship], *Magyar Könyvszemle*, 1975/1, pp. 81–82.

42 Roland Kelemen (2017): Sajtójog és sajtószabadság: az első világháborús kivételes hatalmi szabályozás [Press Law and Press Freedom: the Special Regulation during World War I], in Roland Kelemen (ed.): *Az első világháború sajtójogi forrásai. Sajtójog a kivételes hatalom árnyékában [Press Law Sources of World War I. Press Law in the Shadow of the Exceptional Power]*, Médiatudományi Intézet, Budapest, p. 50.

43 Mihály T. Révész: A sajtójog metamorfózisa az első világháború esztendeiben Magyarországon [The Metamorphosis of the Press Law in the Years of World War I in Hungary], *Jogtörténeti Szemle*, 2015/4, pp. 35–39.

be banned: This happened mostly in the last months of the war, mainly for political reasons.[44]

Even if censorship is perceived as an obstacle to the creation of a free press, during war it is somehow inevitable[45] as the restrictive measures could be justified by the protection of the country. The government insisted on supporting patriotic papers but, owing to the ban on hostile journals, media pluralism could not be observed. It should be emphasized, however, that the introduction of censorship during the war was a common practice all over the world, for instance in the United States,[46] France,[47] and Austria.[48]

Shortly after the defeat in the world war, the wartime rules were annulled and a new law, Act II of 1918, was adopted and came into force on December 7, 1918, under the governance of Mihály Károlyi. The act was relatively short, consisting of only four articles, but it entailed radical changes for the press, although, as will be presented below, for a limited time only. Prior restraint was prohibited, the restriction on the public distribution of print materials was lifted, and the deposit system was annulled (Art. 2). Furthermore, the gradual liability system, explained above, was reintroduced (Art. 3). It is worth mentioning that the provisions of this law were also applicable to motion pictures,[49] so one can conclude that the regulation intended to keep up with the technological advancements.

Despite the promising legal circumstances, the coup d'état of March 21, 1919, of the Hungarian Communists lead by Béla Kun brought a different approach in press regulation. It was, unfortunately, the liberal concept of the law of 1918 that gave the green light for the publication of radical leftist ideas of the Communists that undermined the unstable governance of Károlyi. According to the constitution of the Hungarian Socialist Republic—a state that only existed for 133 days—the press could no longer represent the capitalist mentality, and the right of publication was given directly to the working class,[50] so that socialist ideas could be spread freely all over the country (Art. 8). However, the regulation of the Communist government turned out

44 Kelemen (2017): p. 57.

45 As had been pointed out by Prime Minister István Tisza in his parliamentary speech in 1910. *Képviselőházi Napló*, 1910/XXVI, p. 483.

46 Geoffrey R. Stone: Freedom of the Press in Time of War, *59 SMU Law Review 1663*, 2006, p. 1667.

47 Jérôme Coutard: Presse, censure et propagande en 1914–1918: la construction d'une culture de guerre, *Bulletin d'histoire politique*, 2000/2–3, p. 151.

48 Peter Plener: Der Medienverbund Kriegspressequartier und sein technoromantisches Abenteuer 1914–1918, *Zagreber Germanistische Beiträge*, 2016/1, pp. 258–259.

49 Paál (2019): pp. 140–141.

50 Roland Kelemen: A magyar sajtó és sajtószabadság helyzete az első világháborút követő vészidőszakokban—a magyar sajtójog a hatalmi/legitimációs kivételes állapotok időszakában (1918–1922) [The Situation of the Hungarian Press and Press Freedom in the Emergency Period After World War I—Hungarian Press Law in the Period of Exceptional State of Power/Legitimacy (1918–1922)], in Roland Kelemen (ed.): *Sajtójogi források a kivételes hatalom árnyékában—a magyar sajtójog a hatalmi/legitimációs kivételes állapotok időszakában* (*1918–1922*) *[Press Law Sources in the Shadow of the Exceptional Power: Hungarian Press Law in the Period of Exceptional State of Power/Legitimacy* (*1918–1922*)*],* Magyar Katonai Jogi és Hadijogi Társaság, Budapest, 2018, pp. 51–52.

to be as ephemeral as the Press Law of 1918 owing to the collapse of the Socialist Republic in August 1919. The upcoming months of 1919 and 1920 brought uncertainty in internal politics: As Hungary was occupied by Czechoslovak, Romanian, and Serbian troops, the integrity and the stability of the country was challenged—circumstances that were certainly far from ideal for the establishment of a free press.

3. Attempts to adopt a new press law during the Bethlen Consolidation in the 1920s

The governance of Prime Minister István Bethlen between 1921 and 1931 brought about a consolidation of Hungarian politics after the turbulent years of war, revolution, and terrors that defined the period 1918–1921. The form of government was also clarified by this time: Hungary became a "kingdom without a king" under the rule of Regent Miklós Horthy (which is why the period between 1920 and 1946 is referred to as the Horthy era). Preliminary censorship was abolished in December 1921 by the Prime Minister Decree no. 10.501/1921, however, the Minister of Interior was still entitled to control or ban the publication of papers that threatened the public order and foreign policy of the country.[51] In spite of the abolition of censorship, the power of the minister was a massive obstacle for the freedom of the press, as it practically meant that the publication of a paper could be hindered because of an article, a statement, or even a word.[52]

The Press Law of 1914 came into force again, despite the fact that the government of Bethlen made several attempts (in 1921, 1922, 1924, and 1928) to adopt a new act. The existing law, however, only served as a framework because the details were set out in ministerial decrees, such as Decree no. 56.203 of 1922 of the Minister of the Interior on the implementation of Act XIV of 1914, or Prime Ministerial Decree no. 1.804 of 1927 on the sale of press products in public places. The bills mainly aimed at introducing a different liability system: The editor and author would jointly have been responsible, contrary to the gradual liability that had been previously put in practice. It is generally agreed that the drafts of the 1920s would have introduced stricter rules than the 1914 law. The failure to adopt a new law was also due to the lack of political support and conviction, as it was the rapporteur himself who recalled these bills even before they could have been debated in the assembly.[53]

4. The amendment of Act XIV of 1914 in 1938 in the shadow of World War II

The first years of the 1930s did not bring fundamental novelties in the press regulation, even though there had been attempts to adopt a new law, which would have been based on a different approach to the freedom of the press. Prime Minister Gyula

51 Paál (2019): p. 178.
52 Tamás Klein: Adalékok a Horthy-korszak sajtórendészeti szabályozásához I. [Additions to the Press Regulation of the Horthy Era I.], *In Medias Res*, 2012/2, p. 189.
53 Klein (2012): p. 197.

Gömbös intended to establish a centralized and totalitarian press that was maintained only to the extent that it served the interests of the nation.[54] His attempts were not successful during his leadership, but these ideas definitely paved the way for the construction of a stricter press regime that evolved by the late 1930s.

It was only in 1938 that a new act was adopted, even though it was only the amendment to Act XIV of 1914. Act XVIII of 1938 was adopted in the shadow of the First Jewish Law (Act XV of 1938), which set out the establishment of press chambers; the number of Jewish members of the chamber was limited to 20%. The new law introduced a few changes in the system of press crimes: In the case of non-periodic papers, for instance, confiscation or even criminal proceedings could have been initiated before the distribution of the paper started (Art. 4). Moreover, the law punished the owner of the publishing house with up to one year of imprisonment, if he—deliberately or by negligence—failed to send one copy of the paper to the public prosecutor before distribution (Art. 5).

The Hungarian political leadership drifted toward antisemitism in the 1930s, and soon entered World War II on the side of Nazi Germany. As for the press, shortly after the outbreak of the war, prior restraint was reintroduced by Prime Ministerial Decree no. 8140/1939.[55] Prior restraint meant, in practice, that the consent of the public prosecutor or police authority was required for the publication of all communications. The press was monitored and controlled through a press control committee (*"Sajtóellenőrző Bizottság"*), which operated as a censorship committee as well as a bridge between the press and the government, and it played a crucial role in implementing the press policy of the state.[56] The strict censorship was further strengthened by Prime Ministerial Decree no. 5555/1940, which provided the requirement of the preliminary consent of the prosecutor not only for the distribution, but also for the printing of newspapers. In practice, the introduction of censorship allowed the government to silence the opinion of those who criticized its political orientation and thus caused tensions within society. The same phenomenon could be observed during World War I—as pointed out above, intervention in the free functioning of the press was inherent to warfare to some extent. However, contrary to the practice during World War I, the government did not issue a list of prohibited topics in the early 1940s. Defamatory writings about the Regent, religion, or the nation were banned (more precisely, they were considered press crimes), but in my opinion these provisions are not comparable to the measures of World War I, as these topics were not directly related to wartime activities. The pluralism of the press was even criticized by the Germans, as, contrary to the concept of *"Gleichschaltung"* (the attempted

54 Tamás Klein: Adalékok a Horthy-korszak sajtórendészeti szabályozásához II. [Additions to the Press Regulation of the Horthy Era II.], *In Medias Res*, 2013/1, pp. 51–52.

55 Vince Paál (2013): Sajtószabályozás és sajtószabadság a Horthy-korszakban [Press Regulation and Press Freedom in the Horthy Era], in Vince Paál (ed.): *Magyar sajtószabadság és -szabályozás 1914–1989 [Hungarian Press Freedom and Regulation 1914–1989]*, Médiatudományi Intézet, Budapest, pp. 15–16.

56 Veronika Lehotay: Közjogi korlátozások Magyarországon a Horthy-korszak második felében [Public Law Restrictions in Hungary in the Second Half of the Horthy Era], *Miskolci Jogi Szemle*, 2011/2, pp. 75–76.

Nazification of all aspects of culture and society)[57] that prevailed in Nazi Germany in this period, the Hungarian government tried to strike a balance between press freedom and censorship[58] and refused the strengthened co-operation with the press department of the German Ministry of Foreign Affairs.[59] As with World War I, the situation fundamentally changed in the last year of the war: Prime Ministerial Decree no. 10600/1944 created the legal basis for the ban of certain newspapers that was justified by the danger and threat that these papers posed to the state order. The publication of several newspapers was banned, and the editors of the remaining ones were replaced.[60] By the end of 1944, fewer than 10 papers were published[61] (while in 1943, the number of papers published was 23 at the national level and 40 at the local level):[62] It can therefore be concluded that the situation of the press was more devastated than even during World War I.

IV. THE POST-WAR PERIOD AND THE INTRODUCTION OF A COMMUNIST CONCEPT OF PRESS REGULATION

1. Press regulation in the late 1940s and the Communist takeover

The political leadership of the post-war era was devoted to the re-establishment of a free press, although with the aim of excluding anti-democratic ideas and thoughts, especially national-socialist and fascist manifestations.[63] Act I of 1946 on the form of state set out certain natural and inalienable rights of the citizens, including personal freedom, right to life without oppression, fear, and privation, and the free expression of thoughts and opinions. This was in fact the first comprehensive declaration of human and civil rights in Hungary.[64] Act VII of 1946 on the protection of the democratic state order and the republic criminalized acts intended to overthrow the democratic order of the state, including, inter alia, incitement or provocation against

57 Timothy S. Brown (2009): Weimar Radicals: Nazis and Communists between authenticity and performance, Berghahn, New York/Oxford, p. 123.
58 Lehotay (2011): pp. 76–77.
59 Paál (2013): p. 17.
60 Paál (2013): pp. 17–19.
61 Mihály Révész T. (2013): Sajtószabályozás Magyarországon (1945–1960) [Press Regulation in Hungary (1945–1960)], in Vince Paál (ed.): *Magyar sajtószabadság és -szabályozás 1914–1989 [Hungarian Press Freedom and Regulation 1914–1989]*, Médiatudományi Intézet, Budapest, p. 56.
62 Paál (2013): p. 18.
63 Gábor Sz. Nagy: A koalíciós korszak sajtójogi szabályozása 1945–1949 között [Press Regulation of the Coalition Period between 1945–1949], *Múltunk*, 2017/4, pp. 192–194.
64 Mária Palasik: A szólásszabadság deklarálása és korlátainak kezdetei Magyarországon (1946–1949) [The Declaration of Freedom of Speech and the Beginnings of its Restrictions in Hungary (1946–1949)], *Századok*, 1998/3, pp. 585–586.

national and ethnic groups, or praise of those who committed war crimes. These provisions were applied to manifestations published in the press as well.

By this time, Hungary had signed the Armistice Agreement with the Allied Control Commission (*Szövetséges Ellenőrző Bizottság, SZEB*; hereafter referred to as ACC) that controlled the defeated countries of World War II. In Central-Eastern Europe, the Soviet Union had a greater influence among the winner countries, as this part of Europe was "liberated" by the Red Army. The ACC—similarly to other internal issues—intervened in press control as well, and the Hungarian government only had the right to submit proposals to the ACC. In addition, papers could only operate under the supervision of the ACC.[65] This supervision, in practice, meant that political papers could only be published by political parties that were recognized by the ACC. That being so, the competent Hungarian authorities (ministries) were only entitled to submit a list of papers to be allowed.[66] The situation changed for a short time from September 15, 1947, after the signature of the Paris Peace Treaty, when the mandate of the ACC ended. This opened the door for negotiations regarding press regulation: Government Decree no. 11.290/1947 was adopted, but despite great expectations, it introduced ministerial censorship of all papers under internal and external pressure. According to the provisions of this decree, all papers—including those that had already been published—had to request ex post approval from the competent minister (Arts. 1–3).

In 1947–48, the communist party took leadership of the country and founded a totalitarian regime that lasted until 1989. The first period (1947–1956) is often referred to as the Rákosi era, named after Mátyás Rákosi, the General Secretary of the Hungarian Communist Party. As early as in 1945, Rákosi stated that "control over press shall be seized," and he pointed out that it could be realized through the seizure of paper supplies. Influencing the press through control over paper supplies was a specific feature of the Communist approach, and it created the possibility to shape the operation of the press on an economic and not merely political basis.[67]

A constitution was soon adopted based on the Soviet Constitution of 1936. Act XX of 1949 or the Constitution of the People's Republic of Hungary declared that freedom of expression, freedom of the press, and freedom of assembly were guaranteed "in the interest of the workers." Moreover, the Constitution stated that the means for the exercise of this right was to be provided by the state for the workers (Art. 55). This provision introduced a completely new conception of press regulation, as it practically sanctified state intervention in such matters. The state reserved the right to determine what the interest of the workers was, and all means of expressing

65 Nagy (2017): p. 196.

66 Gábor Sz. Nagy: A papírválság mint politikai fegyver a koalíciós időszakban [Paper Crisis as a Political Weapon in the Coalition Period (1945–1948)], *Médiakutató*, 2021/3–4, pp. 117–118.

67 Gábor Sz. Nagy: Az 1945. júliusi papírbotrány reprezentációja a korabeli politikai sajtóban [The Representation of the Paper Scandal of July 1945 in the Contemporary Political Press], *Médiakutató*, 2014/2, p. 105.

this interest were in the state's hands.[68] Consequently, the freedom of establishment of newspapers and thus media pluralism were completely eliminated: Publishing houses and paper supplies were publicly owned, so there was no possibility for papers to operate officially without state supervision.[69] It can be seen that the Constitution reflected Rákosi's idea proclaimed in 1945: The paper supply was in the hands of the state and the state granted it to the working people; therefore, the communist leadership managed to take control over the press, among other factors, through control and management of the paper supply.[70] In practice, a centralized censorship was established: Voices that criticized the Communist regime were silenced. The number of papers was radically reduced: Of 134, only 8 papers were allowed to be published in the countryside.[71] All foreign reporters of Hungarian citizenship were arrested and most of the journalists of foreign citizenship were expelled; only those who worked in accordance with the Party were allowed to stay.[72] The Communist ideology of prioritizing workers over intellectuals in all levels of governance was implemented in the press as well: In case of weekly prints, for instance, only 25% of the employers had a degree in higher education; in central and regional papers their number did not reach one third.[73] Moreover, journalists had to take courses on Marxist-Leninist ideology and their instruction was organized in co-ordination with universities operating in the Soviet Union.[74]

It can be concluded that the Rákosi era was one of the darkest periods for the Hungarian press: In the absence of laws and clear normative and procedural regulations, cases were ruled only in an administrative manner.[75] The press, therefore, was not regulated by laws but functioned on the basis of directives. The need for the adoption of a press law did not emerge until the Revolution of 1956.

68 Géza Buzinkay (1993): Kis magyar sajtótörténet (Brief History of Press). Available at MEK-OSZK (Hungarian Electronic Library of the National Széchényi Library), https://mek.oszk.hu/03100/03157/03157.htm (Accessed on 1 December 2021)

69 Róbert Takács (2013): A "szocialista sajtószabadság" vitái Magyarországon Sztálin halálától Helsinkiig (1953–1975) [The Debates on the "Socialist Press Freedom" in Hungary from the Death of Stalin until Helsinki (1953–1975)], in Vince Paál (ed.): *Magyar sajtószabadság és -szabályozás 1914–1989 [Hungarian Press Freedom and Regulation 1914–1989]*, Médiatudományi Intézet, Budapest, p. 70.

70 Sz. Nagy (2017): pp. 212–213.

71 It is worth noting that during World War II, in 1943, 70 local papers were allowed to be published in the countryside, as pointed out in Section 2.4.

72 Attila Horváth (2013): *A magyar sajtó története a szovjet típusú diktatúra idején [History of the Hungarian Press during the Soviet-Type Dictatorship]*, Médiatudományi Intézet, Budapest, pp. 33–34.

73 Róbert Takács (2012): *Politikai újságírás a Kádár-korban [Political Journalism in the Kádár Era]*, Napvilág, Budapest, p. 266.

74 Hortváth (2013): p. 34.

75 Rezső Bányász: Sajtó és sajtószabadság Magyarországon [Press and Press Freedom in Hungary], *Külpolitika*, 1986/4, p. 38.

2. The wind of change: 1956 and 1986, and the collapse of the Communist regime

The revolution of October 23, 1956, against the Communist leadership brought important changes in the regulation of the press and generally for freedom of expression. The post-revolutionary period is embedded in the second period of communism, the so-called Kádár era (1956–1988), named after General Secretary János Kádár. The negotiations started in early 1958, and the draft on the situation and tasks of the press was adopted in 1959.[76] Government Decree no. 26/1959 aimed at providing regulation that was adaptable to actual social circumstances. The Decree overruled all previous acts related to the press (except the constitutional provision, of course) and introduced novelties in various issues.

First of all, the scope of press products was broadened: Apart from writings, illustrations, and musical pieces, the provisions were applicable to thoughts transmitted through radio, television, films, discs, and tape recorders (Art. 1).[77] Press products were only allowed to be published upon permission of certain entities—such as the Information Office of the Government, the Ministry of Education, and the Ministry of the Interior—listed in the law (Arts. 4 and 5). The decree regulated rectification as well: Compared to Act XIV of 1914 that introduced this legal institution, the new regulation provided a broader scope of possible applicants. Apart from authorities and natural persons, state, economic, and social organizations, as well as the competent minister were entitled to ask for rectification (Art. 13). The procedural rules (deadlines, publication of the rectification, remedy) were based on the Press Law of 1914. The Decree, however, brought a major change regarding the competencies of the court: Unlike the Act of 1914, courts were competent to clarify the facts of the case, taking into consideration all the relevant information about the truthfulness and validity of the statement in question. In the previous regulation, however, the court was only entitled to rule on the fact whether the editor had fulfilled his obligation to publish the rectification or not.[78]

It is important to highlight the placement of rules regarding rectification: Since its introduction in 1914, it was rather considered to relate to criminal law instead of civil law. It was during the 1970s that the codifiers started to incorporate this right in

76 Révész (2013): p. 58.

77 It is worth noting that the first act that aimed at providing a comprehensive regulation of radio was Ministerial Decree no. 85.463/1924 of the Minister of Commerce, which was soon replaced by Ministerial Decree no. 32.250/1925 of the Minister of Commerce. Television broadcasting, however, only started in the 1950s. See: Tamás Klein: Az elektronikus sajtó szabályozásának kezdetei Magyarországon—A rádiójog genezise [Beginning of the Regulation of the Electronic Press in Hungary—The Genesis of Radio Law], in: Paál (2019): pp. 23–24.; István Kollega Tarsoly (ed.): *Magyarország a XX. században III.* (*Kultúra, művészet, sport és szórakozás*) *[Hungary in the XXth Century III.* (*Culture, Arts, Sports and Entertainment*)*]*, Babits Kiadó, Szekszárd, 1996, pp. 459–460.

78 Aurél Benárd: A sajtójog újraszabályozása a gyakorlatban [Re-regulation of the Press in Practice], *Állam és Igazgatás*, 1960/7, p. 453.

the civil code and perceive it as the infringement of rights relating to personality.[79] In the period when the Decree was in force, however, rectification was more closely interrelated with criminal law. According to the literature of the time, the Decree established the socialist perception of rectification, as it was introduced as a protective measure for the rights of the citizens;[80] however, it functioned rather as a tool for the state to sanction inappropriate manifestations.

In practice, several papers were designed for every social class and age group: The most popular political newspapers were *Népszabadság* (*Liberty of the People*) and *Népszava* (*People's Voice*). For women, *Nők Lapja* (*Women's Magazine*), for young people *Magyar Ifjúság* (*Hungarian Youth*), *Pajtás* (*Mate*), and *Kisdobos* (*Little Drummer*), and for the countryside *Szabad Föld* (*Free Land*) are worth mentioning.[81]

The constitutional amendment of 1972 (provided by Act I of 1972) modified the provisions regarding the press: Instead of the previous concept of "interest of the workers," freedom of expression, freedom of the press, and freedom of assembly were guaranteed "in the interest of socialism and the people" (Art. 64), and the provision whereby the means for the exercise of these rights are provided by the state was eliminated. Meanwhile, a new press law was being drafted, but was only adopted in 1986. Act II of 1986 did not bring radical changes; instead, it rather confirmed the previous press system. The freedom of the press was guaranteed so long as the manifestations were in accordance with the constitutional order of the People's Republic. The Preamble referred to the Constitution, which declared the freedom of the press; however, based on the above-mentioned constitutional provision of 1972, it was still based on the Communist approach. It is worth noting that the Act declared the right to access information, which had to be guaranteed through the press (Art. 2). However, this right was rather interpreted as a right to be informed about the development of socialism, including the experiences, best methods, and new solutions to serve the construction of a socialist society.[82] Therefore, despite the beautiful and sonorous wording of the Act, it was still a restrictive embodiment of socialist ideology. The aim of the new regulation was rather to clarify the legal status and relationship of journalists and the press. It regulated the establishment of papers (Art. 7); permission was still required. The grounds for the refusal of giving permission were not clarified: The competent authority could easily refuse publication by referring to the lack of personnel and material resources, that is, the lack of paper supplies.[83] This solution allowed the authorities to avoid reference to political opinions.

79 Tamás Kisbán: A sajtó-helyreigazítás "újrakodifikálásának" kritikája [The Criticism of the Recodification of Rectification], *In Medias Res*, 2014/2, pp. 374–375.
80 Révész (2013): pp. 64–65.
81 Hortváth (2013): p. 73.
82 Antal Ádám: Az 1986. évi magyar sajtótörvényről [On the Hungarian Press Law of 1986], *Jogtudományi Közlöny*, 1987/1, pp. 4–5.
83 László Lengyel: Háttértanulmányok (IV. Javaslat a nyilvánosság és a tömegkommunikáció reformjára) [Working Papers (Proposal no. IV on the Reform of Public and Mass Communication)], *Medvetánc*, 1987/2. Annex, pp. 123–125.

At this point, it is important to mention that the publication of the so-called samizdats started to flourish in the 1970s and 1980s. Samizdat[84] was a type of publication or paper that was illegally published under the Soviet dictatorship in the Soviet Union, as well as in other countries, including Hungary. These papers became increasingly popular in the 1980s and provided information on topics that were banned, such as the Revolution of 1956[85] or the Polish Solidarity movement of 1980. Among the most significant samizdat papers, *Kelet-európai Figyelő* (*Eastern European Observer*), *Beszélő* (*Speaker*), and *Szféra* (*Sphere*) could be highlighted. Publication without permission was originally regulated by the Criminal Code.[86] However, since the adoption of Government Decree no. 21/1983 MT, this matter belonged to the police and instead of the previous practice of confiscation of the illegal prints, the punishment was rather the obligation to pay a certain amount in fines (up to ten thousand forints).[87]

In my opinion, the re-regulation of the illegal printing of papers in 1983 could be considered as a measure of relief, as, despite the fast increase in the number of samizdats within a short time, the lawmaker did not make a significant step toward the effective reduction or repression of the spread of these illegal papers: Scholars have pointed out that these print materials had outstanding importance in the formation of an anti-Communist opposition and thus in the preparations for the regime change at the end of the 1980s.[88] Shortly after the adoption of the above-mentioned government decree, the authors of *Beszélő* pointed out that the multiplication of the regulation on punishment of publishers was not an efficient answer for the ever stronger prevalence of illegal papers, and therefore—as a consequence of the negligence of prohibitive rules—it undermined the credibility of the Constitution. Thus, according to them, a new approach and the modification of the press law in general would have been a solution for this phenomenon.[89]

To sum up, it can be concluded that during the Communist era, the press was strictly controlled; its functioning was not regulated in detail, but control rather operated in an arbitrary manner. The real change was brought by the collapse of the regime and the establishment of the Republic of Hungary in 1989, which resulted in the modification of the Constitution by Act XXXI of 1989, and the adoption of Act XI of

84 The word originates in the Russian expression *"самсебяиздат"* (*samsebyaizdat*), which means "published for oneself," and it was presumably first used by Russian poet Nikolay Glazkov. See: Yevgeniy Popov: A szamizdat emlékére [In Memoriam Samizdat], *Magyar Lettre Internationale*, 2000/Autumn, p. 47.

85 Including the publication of a famous poem on tyranny (*Egy mondat a zsarnokságról—A sentence on tyranny*) by Gyula Illyés, which expressed strong criticism of the Soviet regime of the 1950s. See: Horváth (2013): pp. 91–92.

86 Statutory Rule 28 of 1971

87 Horváth (2013): pp. 91–93.

88 Alessandro Marengo: A magyar politikai szamizdat [The Hungarian Political Samizdat], *Rendszerváltó Archívum*, 2017/2, pp. 50–55.

89 Miklós Haraszti—János Kis—Ferenc Kőszeg—Bálint Nagy—György Petri: Javaslat a sajtójog szabályozásának elveire [Proposal on the Principles of the Regulation of Press Law], *Beszélő*, 1984 February, Vol. 1., No. 7., pp. 126–129.

1990 on the modification of the Press Law of 1986. This fundamental political change paved the way for the construction of a modern, Western type of press regulation in conformity with international conventions and the values of the European Union.

V. CONCLUSION

The present paper aimed at delineating the development path of press regulation from its establishment in 1848 until the fall of the Communist regime in 1989. As can be concluded from the above, the regulation of the press had always been influenced by the political environment. On the one hand, (neo)absolutist and totalitarian regimes intended to keep a close eye on the functioning of the press and silence the voices that would formulate criticism against them. On the other hand, in the Dualist and democratic periods, a more liberal concept of press was reflected in the regulation. It is impossible, however, to discuss all the legislation that was relevant for the press; this paper instead highlights the most important acts that determined the functioning of the press.

The need for the abolition of censorship emerged in the first decades of the XIXth century, but it was only the Revolution of 1848 that created the possibility of the adoption of a law that provided the framework of a free press. This law was in force for the rest of the century, even during the period of Dualism, with the exception of the neo-absolutist era when censorship was re-introduced. The so-called April Law of 1848 was strongly criticized even at the time it was adopted, mainly because of its temporary nature. The political situation allowed the drafting of a more up-to-date law in 1914, but owing to the outbreak of World War I, it was not in force for a long time. Regulation was somewhat similar during the two world wars: The laws set out prior restraint and the prohibition of the publication of foreign and hostile papers. The adoption of a new press law was attempted numerous times, especially during the 1920s, but owing to political tensions, only a modification of the Press Law of 1914 was adopted in 1938. After the turbulent years of World War II, the press was subordinated to the state and could only represent the ideology of the state, that is, Communism. The most significant piece of legislation from this period is Government Decree no. 26/1959, codifying the totalitarian concept of the press. The issue of the re-regulation of the press did not emerge in this period; the press had continued to function on the basis of the same regulation for decades. The collapse of the Communist regime was the breakthrough at the end of the 1980s that introduced a liberal concept of press regulation, though only temporarily: The modification of the Press Law (Act XI of 1990) remained in force until the adoption of the current press law, Act CIV of 2010. This Act completely breaks the continuity of the previous regulation: It takes into account the circumstances of the XXIst century, with special reference to compliance with EU and international regulations.

Freedom of the Press? Poland in the 19th and 20th Centuries

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ABSTRACT
This article presents the history of legal regulations concerning the press in the Polish territories. The elements of the freedom of the press included in legal acts, usually of a descriptive character, have been considered. The first chapter deals with the first half of the 19th century and the loss of independence of Poland. In the second part, regulations in force in the second part of 19th century resulting from political and social reforms are described. The third chapter focuses on the difficulties of press regulation in the Second Polish Republic. In the last, fourth, chapter the rebirth of strict censorship in People's Polish Republic is presented.
KEYWORDS
freedom of the press, censorship, press law, Russian/Prussian/Austrian Partitions of Poland, Second Polish Republic, People's Polish Republic.

Presă liberă? Polonia în secolele al XIX-lea și al XX-lea

REZUMAT
Acest articol prezintă istoricul reglementărilor legale privind presa în teritoriile poloneze. Au fost luate în considerare elementele libertății presei incluse în actele juridice, de obicei cu caracter descriptiv. Primul capitol se referă la prima jumătate a secolului al XIX-lea și la pierderea independenței Poloniei. În a doua parte, sunt descrise reglementările în vigoare în a doua parte a secolului al XIX-lea, rezultate din reformele politice și sociale. Cel de-al treilea capitol se concentrează asupra dificultăților legate de reglementarea presei în cea de-a doua Republică Poloneză. În ultimul capitol, al patrulea, este prezentată renașterea cenzurii stricte în Republica Populară Polonă.
CUVINTE CHEIE
libertatea presei, cenzură, legea presei, împărțirile ruse/prusiane/austriace ale Poloniei, a doua Republică Poloneză, Republica Populară Poloneză.

I. INTRODUCTION

The importance of the conception of the role of the press, and words in general, in the struggle for power does not require justification. Strengthening and expanding

dominance over the word is a characteristic factor in gaining significant power, as for example in the case of Napoleon closing publishing houses.[1]

In contemporary Polish scholarly thought,[2] freedom of the press is understood as one of the constituent elements of civil society (along with, for example, freedom of association). It includes the freedom to create printed journals and the ability to freely express one's opinions and communicate information on their pages. The freedom of the press comes with the freedom of speech. Of course, these are not absolute rights, as they are subject to limitations by law after weighing values in accordance with the principle of proportionality.

A phenomenon somewhat opposite to freedom of expression is censorship. In its most extreme form, it is pre-censorship or prior restraint, undertaken before the word appears in print. The other form, called repressive or post-publication censorship, entails the confiscation of the print material or other administrative and judicial mechanisms after the publication of the censored work. Censorship can be formal, as when a special censorship office is appointed to control diverse ways of expression. A second type of censorship (substantial) is also distinguished,[3]consisting in protecting by repressive methods other goods and values (defined in a certain way by a state authority) against abuses of the freedom of expression. Elements of substantial censorship are implemented depending on the country-specific and time-specific understanding of its role. Therefore, they also appear in constitutional states.

Apart from censorship, other important mechanisms influencing the existence (or not) of freedom of the press are the way magazines function, their licensing, and formal requirements imposed on them, as well as the responsibility of authors, editors, and publishers to spreading certain and not other words or ideas.

The aim of the following article is to trace the implementation of the elements of freedom of the press in the specific context of 19th and 20th century Poland. Thus, under the specific circumstances of the lack of political independence and numerous transformations, conditions were clearly not favorable to the freedom of the press.

For the above reasons, studies of the freedom of the press in the 19th and 20th centuries are rare in Polish research on the history of law. Rather, the functioning of censorship within the individual partitions under which Poland was ruled in the years 1795–1918 is analyzed; later, restrictions on the operation of the press in the reborn state and the re-functioning of censorship during the existence of the Polish People's Republic have been investigated. These studies take into account to a large extent what is necessary in this case, a multitude of political, social, structural, and personal factors, which were sometimes even stronger than the letter of the law in

1 Andrzej Notkowski, Wiesław Władyka: Państwo–Partie–Prasa w Drugiej Rzeczypospolitej (State–Parties–Press in Second Polish Republic), *Kwartalnik Historii Prasy Polskiej* 21/3–4, 1982 (pp.165–173), p. 165.

2 Ex. Commentary on Article 14 (2016) in Marek Safjan, Leszek Bosek (ed.), *Constitution of the Republic of Poland. Volume I. Commentary on Art. 1–86*, C.H. Beck, Legalis.

3 Andrzej Dziadzio (2012a): *Cenzura prasy w Austrii 1862–1914. Studiumprawno-historyczne* (Censorship in Austria,1862–1914: A legal and historical study), Księgarnia Akademicka, Kraków, p.31.

influencing the impact of censorship on the press. When it comes to legal considerations, the implementation of the freedom of the press or its lack is influenced by regulations at the constitutional level, regulations of the press law, criminal law, or criminal procedure, and numerous administrative regulations.

It is not the purpose of this short article to present such a complex issue in an exhaustive manner, taking into account the multitude of legal systems in force in Poland and numerous (continuous!) political and social transformations. However, the main legal acts relevant to the issues discussed and the periodization of the interesting history of law in Poland will be highlighted, based on the example of regulations concerning the press.

II. FREEDOM OF THE PRESS AS FIRST STATED (FIRST HALF OF 19TH CENTURY)

The second half of the 18th century was the time when Enlightenment concepts of the state system were created. It was also the period of an intensive development of the press in Poland, which grew in importance as a policy instrument and advocate for social and economic changes. There were major attempts to introduce reforms in the country during the deliberations of the Great Sejm in 1788–1792. Its crowning achievement was an adoption of the *Constitution* of May 3, 1791. Discussions also concerned freedom of speech and the press, the existence of which, in the opinion of the Polish nobility, distinguished the Polish "republican" model from the monarchy.[4] The Polish elite was therefore attached to freedom of expression, the exercise of which was supposed to be a "civic duty," along with taking responsibility for what they expressed in certain cases.The need to protect religion, morals, and the honor of the individual was also emphasized. The discussions took place in the absence of any prior regulation. Inspirations for freedom-oriented regulations were provided, for example, by the Declaration of the Rights of Man and of the Citizen adopted in France in 1789.[5]Prepared by the Great Sejm in 1792, the *Cardinal Laws* guaranteed, among other matters, the freedom of the press. In the earliest such measure in Europe, they banned the use of prior restraint, as printing did not require prior official approval.[6] However, works on religious and moral topics were subject to prior restraint by church authorities.

Unfortunately, neither the Great Sejm achievements nor any other efforts at the end of the 18th century sufficed to protect the country from loss of independence and

4 Jacek Sobczak (2009): *Dzieje prawa prasowego na ziemiach polskich*(The history of press law in Polish territories), Wydawnictwo Naukowe Wydziału Nauk Politycznych i Dziennikarstwa, Uniwersytet im. Adama Mickiewicza; Poznań, p. 58.

5 Bartłomiej Szyndler (1993): *Dzieje cenzury w Polsce do 1918 roku* (The history of censorship in Poland until 1918), Krajowa Agencja Wydawnicza, Kraków, pp. 50–52.

6 Andrzej Dziadzio (2012b): Polski model „rządów prawa" a europejska wizja „państwa prawa" w XIX wieku (Polish model of the rule of law in comparision with European vision in 19th century) in Piotr Kardas, Tomasz Sroka, Włodzimierz Wróbel (ed.): *Państwo prawa i prawo karne. Księga jubileuszowa profesora Andrzeja Zolla*, vol. I, Wolters Kluwer, (pp. 137–146), p.144.

unity. Poland was divided between Russia, Prussia, and Austria, disappearing from the world map for over 100 years as one sovereign state, as well as becoming a part of the partitioning powers' legal orders.

However, this was not the final division. The Napoleonic Wars, the fall of the Napoleonic regimes, and successive unsuccessful uprisings influenced the changes in the boundaries of the spheres of influence or the creation of new quasi-state structures. Political changes in the individual partitioning countries were also of great importance, influencing the degree of repressiveness of each regime or the effectiveness of the legal provisions in practice.[7] This also included freedom of speech (and its limitations).

A good illustration of this phenomenon may be the situation in the part of the Russian Partition, known as the Kingdom of Poland (or "Congress" Kingdom), in the first half of the 19th century. This kingdom, established in 1815 as a result of the decisions of the Congress of Vienna, was granted a constitution[8] (French *la constitution octroyée*) by the Tsar. Its provisions were estimated positively, as the given act is sometimes called "the most liberal constitution of Europe at the time."[9]As for the freedom of printing, it was guaranteed; measures to counteract its indulgences were to be provided for by law, though a decree on the press law realizing the constitutional provisions was never adopted, despite being under preparation. Almost from the beginning, the existing constitutional provisions were disregarded. In response to the liberal tendencies presented in the press, the dissatisfaction of authorities grew.The freedom of the press was interfered with for political (on the accusation of disseminating untrue, biased, or revolutionary content) and religious reasons.[10]In practice, new restrictions were increasingly introduced without legal proceedings.[11]Also, freedom of the press was formally abolished as the first of the freedoms provided for by law, with the introduction of prior restraint in 1819.[12] At that time, arguments were raised about the incompatibility of the existing state of affairs with constitutional guarantees.[13] Failure to comply with them was one of the reasons for the uprising in November 1830. Although the period of the uprising was short(less than a year), it is very interesting, among others, in terms of press freedom. With the outbreak of the Uprising and the capture of Warsaw on November 30, the freedom of the press came into practice and was formally proclaimed by the

7 In the case of Poland, the agreements between the partitioning powers were also relevant for application of the law, see Jadwiga Teresa Kowalewska: Cenzura w zaborzeaustriackim(Censorship in the Austrian Partition),*CzasopismoOssolineum*z.10 (pp. 159–168), p. 159.

8 Constitutional Charter of the Kingdom of Poland from 27th November 1815, see Tadeusz Kołodziejczyk, MałgorzataPomianowska (ed.) (1990) *Constitutions in Poland: 1790–1990*, Przemiany, Warszawa, pp. 48–56.

9 Sobczak (2009): p. 63.

10 Szyndler (1993): pp. 63, 74–75.

11 Sobczak (2009): p. 64.

12 Szyndler (1993): p. 66.

13 Szyndler (1993): p.80.

decree of the insurgent government of December 12.[14] Despite the lack of detailed regulations of the press law, in the insurrectionary conditions, the declared freedom of printing immediately brought about a revival of the press and a publishing movement.[15] Suddenly, a significant and unfettered political force was born, which also created dangers.[16]

It is worth emphasizing the nature of the uprising itself, somehow "grassroots" and"youthful," to some extent contrary to the views and interests of conservative elites and military leaders. This feature is also evident with regard to freedom of the press, for throughout the uprising, attempts were made to limit it. Even the argument that the liberty of the press threatened the military security of the uprising was submitted (and is sometimes referred to even today[17]), although this position was rather successfully rejected it is obvious that along with the military failures of the uprising, the conflict between the authorities and the independent press grew.[18] However, neither this nor the fear of the dissemination of revolutionary currents led to the introduction of press restrictions.[19] The freedom of the press remained firmly fixed, although the uprising itself came to an end in October 1830. All things considered, the existence of the freedom of the press even during this short period is estimated positively as serving the national interest[20] and the struggle for social reforms (e.g., the abolition of serfdom), as well as presenting artistic postulates.[21] The fall of the November Uprising started the "Great Emigration." Many Polish politicians, thinkers, artists, and journalists went abroad, after which many press movements developed in exile, particularly in France. Therefore, the press also developed independently of the legal framework regulating its operation on Polish territory. This experience was later continued, for instance in the times of the Polish People's Republic.

Moreover, the fall of the November Uprising was the end of even the formal validity of the Constitution of 1815, which the Tsar replaced with the Organic Statute from February 1832. However, the actual situation was influenced especially by the person of Ivan Paskevich, who administrated the Kingdom. The following years were a time of political repression, of course taking into account the strengthening of censorship.

14 Szyndler (1993): pp. 80, 82.
15 Władysław Zajewski (1963): *Wolność druku w powstaniu listopadowym* (Freedom of printing during November Uprising, 1830–1831), Łódzkie Towarzystwo Naukowe, Zakład Narodowy im. Ossolińskich–Wydawnictwo, Łódź, Wrocław, p. 16.
16 Zajewski (1963): pp. 17, 19.
17 Sobczak (2009): p. 66.
18 Zajewski (1963): p. 116.
19 Zajewski (1963): pp. 40, 118.
20 Jerzy Łojek (1976): *Prasa polska w latach 1661–1864*(The Polish press, 1661–1864), Państwowe Wydawnictwo Naukowe, Warszawa,p. 109.
21 Zajewski (1963): p. 120.

III. THE ROLE OF THE CHANGES IN THE SECOND HALF OF 19TH CENTURY

1. 1848 in the Austrian and Prussian Partitions

The year 1848 brought a movement and disruptions in Europe, including in the territories of the Austrian and Prussian Partitions of Poland. Although the independence protests, including for instance the uprising in the Prussian Partition, were not successful for Poles, in the atmosphere of change, the regulations on the press, previously subjected to prior restraint with the requirement of the permission of a state official to publish the text, were also questioned.

In the Austrian Partition (Galicia), the decision on March 24, 1848, of the governor Franz Stadion permitted a Polish political journal to be founded. However, after the fall of the revolution, censors again objected to Polish patriotic content. The year 1848 was also a time when a daily newspaper "Czas," an important voice of Krakow conservatives and a source of much information about the era, was created.

In the Prussian Partition, 1848 was the year of the abolition of prior restraint, functioning previously on the basis of regulations from 1819,[22]which are however considered fairly liberal.[23] The change to repressive censorship enabled to some extent the development of positivist ideas, of which the Prussian Partition was an important center. The role of the press was remarkable due to the lack of a university in the region.[24]

Below, two systems resulting from the changes inaugurated in 1848 will be briefly presented, together with the circumstances related to their creation and application, andtheir real effectiveness for the realization of freedom of the press will be examined.

1.1. The Austrian Press Act of 1862

The failure of the Revolution of 1848 resulted in a more repressive regulation of the press under the laws of 1849 and 1851. This situation lasted until the beginning of the 1860s, when the Austrian monarchy underwent changes leading to the rule of law. The Austrian press regulation of 1862 seemed to be one of the models (at least in the future, independent, interwar Poland) for the modern press law and guarantees of the freedom of the press. This system functioned on the basis of the Press Act of 1862, whose adoption responded to the most urgent wishes of the liberalism

22 Grzegorz Kucharczyk (2001): *Cenzura pruska w Wielkopolsce w czasach zaborów 1815–1914* (Prussian censorship in Greater Poland during the Partitions, 1815–1914), Wydawnictwo Poznańskie, Poznań, p. 25.

23 Szyndler (1993): p. 105.

24 Marek Rajch (2004): *Cenzura pruska w Wielkopolsce w latach 1848–1918*(Prussian censorship in Greater Poland, 1848–1918), Wydawnictwo Poznańskie, Poznań, p. 20.

and helped advance the process of building real constitutionalism in the Austrian empire.[25] The Act introduced the principle that freedom of the press exists and can be limited exclusively by law (penal code)[26]in the case of goods and values that are ranked higher. Since civil rights in the area of the press were to be guaranteed, prior restraint and formal censorship consequently had to be abolished. Counteracting abuses of freedom (press and other issues) by repressive methods was not considered as dangerous as limiting citizens in an illegitimate way.[27] Therefore, freedom of the press gave the way to insults to power, morality, and religion.[28] The regulation provided subsequent means of executing the law in answer to breach of liberty. The journals were obligated to present the prepared copy 24 hours before printing. In the case harm was identified to the above-stated values, the prosecutor could order confiscation, no distribution, or even destruction of the edition. The decision of prosecutor needed a court's approval. Due to the adopted model, the accused usually were, in a way, the text itself. However, the authors, editors had a possibility to present the objections and complaints. Nevertheless, judicial review had a rather narrow scope, especially in the first period of the new regulation. The significance of the Press Act of 1862 was confirmed by the statements of the 1867 Constitution, which guaranteed in Art. 13 that: "Everyone shall have the right, within legal limits, freely to express his thoughts orally, in writing, through the press, or by pictorial representation. The press shall not be placed under censorship, nor restrained by the system of licenses. Administrative prohibitions of the use of the mail are not applicable to matter printed within the country."[29] The adoption of the Press Act and the Constitution caused amendments to the penal code and penal procedure. The Press Act itself was amended in 1894.[30]

However, the Act was "modern" in a 19th century way of thinking. Governors, in a way characteristic of the style of government,believed that such measures were needed to counteract any abuse of freedom or attempt to defeat the state order. Regardless of how measures to prevent change and "maintain order" might be estimated nowadays, the system existing in Austria protected the state against ideologies that turned out to be harmful in the next century.[31]

25 Tomasz Olechowski (2010): Lawmaking Procedure under the Rule of the February Patent: The Austrian Press Act 1862 between the House of Lords and the House of Deputies in: *Jean Garrigues et al (ed.)Actes du 57e congrès de la CIHAE: Assemblées et parlements dans le monde, du Moyen-Age à nos jours*, Paris (pp. 581–590), p. 582.

26 Dziadzio (2012a), p. 25.

27 Dziadzio (2012a): p. 113.

28 Dziadzio (2012a): p. 32.

29 The document below was taken from Walter Farleigh Dodd (1909) (ed.): *Modern Constitutions: A Collection of the Fundamental Laws of Twenty-Two of the Most Important Countries of the World, with Historical and Bibliographical Notes,* Chicago: The University of Chicago Press, https://ecommons.cornell.edu/bitstream/handle/1813/1443/Austr_Const_1867.pdf?sequence=1&isAllowed=y [available on 1st of December 2021].

30 Dziadzio (2012a): p. 28.

31 Dziadzio (2012a): p. 133.

Interesting cases from the Kraków courts related to the protection of religion, among which the cases related to the protection of the Mosaic religion may serve as a remarkable example.[32] Due to social and economic problems, anti-Jewish sentiments grew, which was also manifested in the press. In a situation involving the weighing of values and the need to assess whether the limits of freedom have been exceeded, it is always problematic to distinguish when we are dealing with offense or abuse, and when we are dealing with permitted criticism. The task of judges assessing the prosecutors' decisions on press confiscation was difficult here, and sometimes they succumbed to the social mood that was unfavorable toward Jews. These kinds of situations show the complexity of the issue of press freedom and the need to protect other values in the whole social context, along with the interplay between the social context and the press.

1.2. The German Press Act of 1874

As in the Austrian Partition, the years after 1848 were a time of transition in the Prussian Partition from the system of prior restraint performed by censors subordinated to various organs of the Prussian administration to repressive censorship exercised by the police, prosecutor's office, and courts.[33] In the light of another distinction,[34] the conditions existing in the first half of the 19th century can be called a "police system" that preventively limited the possibilities of operation of press publishers. It was the state in the person of the censor that assumed part of the responsibility for the word to be printed. On the other hand, the conditions introduced in the second half of the 19th century can be called a "legal system" that imposed legal responsibility upon publishers for published content and its enforcement by state authorities.

However, the transitions or changes did not happen automatically. Although freedom of the press was proclaimed in 1848 and entered into the constitution, and the abolition of prior restraint is considered one of the few successes of the Spring of Nations in Germany,[35] in later years press regulations were alternately strengthened and relaxed. In 1851 and 1854 laws on the topic of the press were created. Various administrative obligations and taxes imposed on authors of the press were also of great importance.[36]

It is worth noting that some journalists, publishers, printers, and distributors argued that the repressive censorship system was less favorable to them. They raised the issues of the greater "flexibility" of the censors who worked previously and their solid preparation to perform their functions, as well as the high costs of destroying

32 Andrzej Dziadzio Antysemityzm jako powód konfiskat prasowych. Orzecznictwosądówkrakowskich. XIX/XX w. (Antisemitism as a reason for press confiscations. Jurisprudence of Krakow courts at the turn of the 19th and 20th centuries) *in:* Grzegorz Górski, Leszek Ćwikła, Marzena Lipska (ed.) *Cuius Regio Eius Religio?* Wydawnictwo KUL, Lublin 2008, Tom II, (pp. 211–227).

33 Kucharczyk (2001): p. 6.

34 Rajch (2004); p. 25.

35 Rajch (2004): p. 30.

36 Sobczak (2009): pp. 46, 85; Rajch (2004): p. 34.

an already prepared edition within the new legal framework.[37] This illustrates that all civil liberties are implemented in a specific reality in which they may become illusory.[38]

In this context, the Press Act of 1874 merits attention. Its enactment was a consequence of the unification of Germany in 1871, and its entry into force replaced as many as 27 regulations in force in various territories.[39] Its decisions confirmed the abolition of prior restraint and strengthened the system of "legal censorship" exercised by the judiciary, which was to respond to violations of the penal code in the press. The German law, like the Austrian law, provided for the institution of press confiscation at the request of a prosecutor approved by the court.[40] The crimes that demanded such a reaction were *lèsemajesté*, resistance to the orders of the authorities, or disturbing the public peace.

The inhabitants of Great Poland who were under German rule were sometimes accused of crimes falling within this scope, such as incitement against the Germans.[41] The censorship system was used to fight "national minorities" in the emerging German nation after unification.[42] It was a time of a strong Germanization policy toward the Polish population. People involved in the creation of the press were required to prove their loyalty to the values promoted by the authorities.[43] Although legal regulations allowed for a relatively free development of the Polish press, their instrumental application was possible.[44] Polish editors were sometimes imprisoned for their actions or omissions, for example in spreading "public frolics."[45] The punishments were adjudged on the basis ofthe provisions of the 1871 Penal Code and the 1874 Penal Procedure.

Contrary to the Austrian solutions, proceedings in Germany were usually conducted against a specific editor. The act imposed an obligation to appoint a responsible editor representing the journal, who was sometimes called "the editor to be imprisoned."[46]

2. The Situation in the Russian Partition

Economic circumstances were also important factors determining that the second half of the 19th century would be a time of the intensive development of the Polish press. On the example of the Russian Partition, it should be noted that an important

37 Kucharczyk (2001): p. 39.
38 Kucharczyk (2001): p.40.
39 Rajch (2004): p. 36.
40 Kucharczyk (2001): p. 42.
41 Szylder (1993): p. 106.
42 Kucharczyk (2001): p. 206.
43 Sobczak (2009): p. 84.
44 Sobczak (2009): pp. 85–86.
45 Grażyna Gzella: Procesy prasowe redaktorów „Gazety Grudziądzkiej" 1894–1914 (Press trials of the editors of „Gazeta Grudziądzka"), *Rocznik Historii Prasy Polskiej 2007* (pp. 33–55), pp. 39–40.
46 Kucharczyk (2001): p. 42.

issue was the press commercialization process, which began in 1850 with the creation of the "Dziennik Warszawski."[47]

On the other hand, the situation of the press in the Kingdom of Poland and the Russian Partition was very complicated politically and subject to frequent changes. During the January Uprising (1863–1864), Russian censorship was additionally strengthened,[48] but the underground press was of great importance at that time. In the years after the failure of the January Uprising, various commissions appointed by the authorities controlled various categories of publishing houses.[49] Despite the existence of the laws of 1828 and its subsequent editions of 1886 and 1890 providing for prior restraint involving control of the press at various levels ("domestic,""imported," and "religious" publications),[50] at various times, certain elements of repressive censorship were introduced.[51] Thus, legal ambiguity and political abuses reigned.[52] The time after the January Uprising was also a time of increased attempts to subject Polish society to Russification.[53] As a rule, however, "freedom of the press" collided with the principles of Orthodoxy and other Christian denominations, respect for authority, the emperor and his family, state decrees, good manners and morals, and the veneration of private persons.[54] Thus, the catalog of values officially placed above freedom of the press was similar in all the partitioning states.

In the Russian Partition, although the development of the press was noticeable, attempts were made to subordinate it to the interests of the authorities.[55] At the level of the entire state and in individual cities, the organization of censorship offices and the complex system of mutual relations between them and the press were of significant importance.[56]

The revolution of 1905 resulted in the adoption by Tsar on October 17 of the Manifesto proclaiming freedom of speech, association and personal inviolability.[57] Following the publication of the Manifesto, in 1906 a repressive censorship system was introduced in the Austrian style and the term "censorship" was carefully removed from the official language. In practice, however, penalties and fines were imposed on journalists, and as early as 1907, the use of the term "censorship" was also returned

47 Władysław Marek Kolasa: Tendencje w Badaniach dawnej prasy polskiej (do 1864)–analiza biblio metryczna (Tendencies in Research of the Old Polish Press (until 1864): A bibliometric analysis), *Studia informacyjne* Tom 50 nr 1 (99) 2012, (pp. 35–53), p. 35.
48 Sobczak (2009): p. 68.
49 Sobczak (2009): pp. 66–67.
50 Marek Tobera: Cenzura czasopism w Królestwie Polskim na przełomie XIX i XX w. (Censorship of magazines in the Kingdom of Poland at the turn of the 19th and 20th centuries), *Przegląd Historyczny 80/1 (1989),* (pp. 41–67), p. 43.
51 Tobera (1989):p. 42; Sobczak (2009): p. 70.
52 Tobera (1989): p. 42.
53 Sobczak (2009): p. 69.
54 Tobera (1989): p. 43.
55 Kamil Śmiechowski: Strategie władz carskich wobec łódzkiej prasy codziennej do 1914 roku (Strategies of the tsarist authorities toward the daily press in Łódź until 1914), *Klio—Czasopismo Poświęcone Dziejom Polski i Powszechnym. 28, 1* (2014), (pp.63–83), p. 66.
56 Śmiechowski (2014): pp. 65, 76.
57 Sobczak (2009): p. 72.

to legal texts.[58] Journals were subjected to repressions depending on their ideological diversity, because the end of the 19th century was also the time when political parties were constituted and the press gave them voice.[59]Another cause of censorship, for instance in the industrial reality of Łódź, was social issues when the magazines tried to become a spokesman for the emancipation of working-class.[60]

The outbreak of the Great War in 1914 subjected the press content to the principles of war censorship.[61]

IV. INTERWAR PERIOD

1. Non-uniformity of law in the interwar Poland

An entirely new situation resulted from Poland regaining independence after the First World War. The date of November 11, 1918, commemorating independence, the day of the end of the war, and the arrival of Józef Piłsudski (who was to become a very important figure in the history of interwar Poland) to Warsaw, is obviously symbolic and conventional. Of course, the process of rebuilding state structures could not take place overnight, and indeed the struggle to shape the borders of the "regained" state lasted until 1923. One of the problems that the "new" state had to face was the non-uniformity of the law within its borders, even those formed quite quickly. Therefore, one of the challenges was to try to unify the law in its many branches, among which the press law cannot be considered the most important area.

In the territory of the former Austrian and German Partitions, there were rules providing for repressive censorship along with administrative mechanisms of control over the press.[62]In the former Kingdom of Poland, with the abolition of prior restraint and the proclamation of press freedom in autumn 1918, no rules regarding the functioning of the press were in force, so it operated without embarrassment, which threatened the interests of the state.[63]The aim of the legislator's actions was therefore to eliminate particularisms and to shape the boundaries for the freedom of the press.[64] However, political instability and frequent changes of government made it difficult to change the status quo.

In the years 1919–1921, the first attempts at changes were made by decreeing temporary provisions for the former Russian Partition. The adopted rules introduced

58 Szylder (1993): p. 136; Sobczak (2009):p. 73.
59 Śmiechowski (2014): p. 82.
60 Śmiechowski (2014): p. 75.
61 Sobczak (2009): p. 73.
62 Rafał Habielski: Ewolucja prawa prasowego w Drugiej Rzeczypospolitej. Zakres I recepcja (The evolution of the press law in the Second Polish Republic:Scope and reception), *Studia Medioznawcze 2014 nr 4* (pp. 79–92), p. 79.
63 Habielski (2014): p. 80.
64 KatarzynaTodos: Polskie prawo prasowe 1919–1939 (Polish Press Law, 1919–1939), *Z Dziejów Prawa t. 10, 2017* (pp. 105–140), p. 107.

the freedom of the press within legal limits. Contrary to the regulations prevailing in the lands of the former Austrian and German Partitions, the temporary press regulations provided for the institution of "suspension of the magazine" in which the crime had occurred.[65] In addition, control over the press in the first instance was exercised by the administrative bodies, not the prosecutor's office, as was the case under Austrian and German regulations. Therefore, there was still non-uniformity, and in the opinion of some press authors, excessive discretion in the application of regulations.[66] It is also worth mentioning the time of the Polish-Bolshevik war of 1920, when the press was subjected to preventive censorship for the defense of the state.[67]

2. Freedom of the press under the March Constitution of 1921

The Constitution[68] adopted on March 17, 1921, guaranteed the freedom of the press to a large extent. Citizens received the freedom to express their thoughts and beliefs (Art. 104), and a particular constitutional provision (Art. 105) was devoted to freedom of the press, prohibiting censorship or the licensing or restriction of the distribution of the press. Moreover, the Constitution did not allow the function of a parliamentarian and the function of an editor to be combined, and sessions of the Sejm and parliamentary committees were to be opened to the press. Apart from other important civil rights, the exercise of freedom of the press could be suspended under a specific procedure only in the event of a threat to public security in a specific area (Art. 124). Principles concerning application of the freedom of the press, considered important and described quite broadly, were to be provided for in the legal act. So were its limitations.

The draft of a new law was prepared in 1923[69] that would have unified the legal frameworks in the country and ensured the necessary order in the matter of press law, the realization of the freedom guaranteed at the constitutional level, and its (necessary) restrictions. However, it did not enter into force due to the instability of the government.

3. Situation after *coup d'état* in May 1926

An important turning point in the history of the Second Polish Republic was May 1926, when Józef Piłsudski, previously a formal and then informal leader of the state, returned from retirement through a *coup d'état*, demanding "moral and political cleansing" and placing his candidates at the helm of power. This course of events also had legal consequences, visible, for example, in the area of press regulations.

Revision of the Constitution from August 1926 introduced the presidential decree with the force of law. This legal remedy would later be used as a tool of law unification and its implementation in general. It was under presidential decree that in November

65 Todos (2017): pp. 114–116; Sobczak (2009): p. 89.
66 Habielski (2014): p. 81.
67 Todos (2017): p. p111
68 Dz.U. 1921 nr 44 poz. 267
69 Habielski (2014): pp. 82–83.

1926 legal provisions concerning penalties for disseminating false information and insulting the authorities and their representatives[70] were introduced. According to journalistic circles, these provisions were intended to infringe the freedom of the press guaranteed by the Constitution.[71] The introduced regulation also sparked a discussion in the Sejm and was finally repealed in December 1926.

Another decree was passed on May 10, 1927.[72] It was supposed to unify the rules of the press law. It did not introduce solutions other than those known from the partitionsystems or temporary regulations, such as specifying formal requirements related to the establishment of magazines, the obligation to submit copies before their distribution, or the institution of print confiscation (which was already controversial at that time).[73]In particular, the regulation regulated press crimes in detail, being an independent basis for adjudicating them (without the need to apply additional penal provisions) and providing for severe penalties.

The content of the 1927 regulation was controversial, and although these regulations were the basis for adjudication until 1930, they were repealed. It is difficult to say when this happened. In connection with the Sejm's resolution not to approve the presidential regulation and the issue of its publication, there was a dispute over powers that lasted for many months.

The adoption of the Penal Code in 1932[74] (also under presidential decree) was significant from the point of view of the unification of the law. This code, which was the result of the work of the Codification Commission comprising eminent scholars, is in many respects a model for the regulation of substantive criminal law. However, Chapter XIX, devoted to crimes against the authorities, including incitement to crimes in print or mockery of the authorities and the nation, was accused of being vague, which could contribute to abuses.[75]

Another crucial change was the adoption of a new Constitution on April 23, 1935.[76] Contrary to its predecessor of March 1921, it did not contain a separate place for freedom of the press. The guarantee of its existence was derived indirectly from Art. 5 of the Constitution, stating the possibility of development of citizens' personal values, freedom of their consciences, freedom of speech, and freedom of association. Therefore, this one provision contained a very broad catalog of civil rights and freedoms that required interpretation. Moreover, as stipulated in Art. 5 (pts. 3), the limit of the realization of these freedoms was the "common good," whatever that term meant. In this context, the need to pass an act, one for the entire country, regulating the implementation of the (indirectly) guaranteed freedom of the press and developing the understanding of its possible collisions with the "common good," clearly emerged. Press publishers expostulated for it.[77]

70 Dz.U 1926 nr 110 poz.640
71 Habielski (2014): pp. 83–85.
72 Dz.U. 1927 nr 45 poz. 398
73 Todos (2017): p. 124.
74 Dz.U. 1932 nr 60 poz. 571
75 Habielski (2014): p. 87.
76 Dz.U. 1935 nr 30 poz. 227
77 Habielski (2014): p. 88.

The need of press authors was met on November 21, 1938, when the Press Law[78] entered into force by presidential decree. This act established freedom of the press, understood (as in the 19th century) as the lack of prior restraint. Under the provisions of the Constitution, the boundary for this freedom was to be the "common good. "In the new law the institutions of print confiscation, magazine suspension, and fines for editors were present. The journalists' fears and protests were especially aroused in regard to the possible directions of the application of the law in the existing political reality. However, the practical allegations of the press circles were to some extent included in the implementing provisions to the adopted act.[79]

As for the constitutional notion of "common good" repeated in the Press Law, its interpretation was made under difficult political circumstances that caused or forced its introduction. Internal disputes that led to a no-less disputable authoritarianism; the cult of the ruling spheres toward Piłsudski, who died in May 1935; and the specter of the approaching war shaped this notion and not otherwise. To some extent it was an attempt to ensure the stability of the state and its power under the given conditions. It is worth noting that during the (short) period of Polish interwar independence, the attitude toward the limits of press freedom changed[80]such that the system of functioning of the press was heading toward being controlled by the state.[81] Under the temporary regulations of 1919, the limitation of the freedom of the press, according to the "classic" mechanism, was to be legal acts (penal law in particular). In the 1927 decree, priority was given to press law as a *lex specialis* in the field of delineation. In the April Constitution and the Act of 1938, primacy was given to the interests of the state under the concept of the "common good." The catalog of press crimes was expanded to include crimes against these interests, also on the basis of specific acts, an example of which may be the provisions of the decree on the protection of Józef Piłsudski's name[82] (also in press content). However, no matter what their assessment could be, no actions to protect the common good and the state's interest could have saved the state and all manifestations of public life from the next tragedy.

V. THE POLISH PEOPLE'S REPUBLIC

1. The basis and operation of censorship

During World War II, if the Polish-language press existed at all, it was subordinated to the interests of the Third Reich or the USSR, which occupied and controlled the territories. Again, there was reference to the "tradition" of the underground and emigration press, being the voice of the state creating its structures in the underground

78 Dz.U. 1938 nr 89 poz. 608
79 Habielski (2014): p. 90.
80 Todos (2017): pp. 135–138.
81 Notkowski, Władyka (1982): p. 168.
82 Dz.U. 1938 nr 25 poz. 219

and in exile, which would continue their activities during the war and during the existence of the Polish People's Republic. The emigration and underground structures, and with them the press, did not have a chance to "come to the surface," but were replaced by the Communist authorities.

The intentions of the new authorities regarding the press were clear.[83] The freedom of the press was to be limited under the applicable law and outside it. The Communists conceived of building a press strongly involved in social and political changes.[84] The press was to be "socialized, institutionalized, and centralized. "The Soviet-style press could not remain in the hands of private entities; therefore, state-owned press publishing houses were established and were merged until 1951.

The manifesto of the Polish Committee of National Liberation announced on July 22, 1944, which was the "founding act" of the new Communist state, provided for the existence of democratic freedoms, including freedom of the press, which, however, could not serve purposes that were "hostile to democracy."[85] This sounds much worse than the "common good" of the interwar period. Interestingly, in the July Manifesto, the March 1921 Constitution, whose structure at least emphasized the importance of freedom of the press, was declared binding until the new constitution was adopted. The 1938 Press Act also remained in force.

The first decisions concerning the press were made as early as 1944. On August 15, a law was passed,[86] according to which decree-laws became a widely used form of legal source. From 1945 there was an office controlling the press operating at the highest levels of state administration. "Control over the press" meant formal prior restraint[87] that was not subject to any control. Although the notion of censorship did not appear in legal language, it had importance in the colloquial language.[88] The legal basis for the functioning of the censorship office or its units changed many times on the basis of numerous decrees, orders, and resolutions of various decision-making bodies at any given moment. Casuistic regulations (and therefore ambiguous and subject to interpretation depending on the will of the authorities) concerned the direct methods of press control, the operation of publishing houses, methods of providing information, responses to press criticism, the working conditions and earnings of journalists, distribution, publication of advertisements, the activities of printing houses, and the management of (necessary) paper.[89] The regulations appeared to be detailed, perhaps excessive, as in fact censorship acted freely through

83 Anna Dombska: Ograniczenia wolności prasy w PRL (Restrictionson freedom of the press in the Polish People's Republic), *Studia prawno–ekonomiczne LXXXIV 2011* (pp. 79–100) p. 79.
84 Mieczysław Ciećwierz: Kształtowanie się państwowego aparatu nadzoru i kontroli prasy w Polsce w latach 1944–1948 (Formation of the state apparatus for supervision and control over the press in Poland in the years 1944–1948), *Kwartalnik Historii Prasy Polskiej* 22/2, 1983 (pp.27–63), pp. 27–29.
85 The text of the Manifesto published in *RocznikLubelski(Lublin Yearbook)* t.2 1959 (pp. 7–4), p. 10.
86 Dz.U. 1944 nr 1 poz. 3
87 Repressive censorship played a role in thecontrol of foreign publications.
88 Sobczak (2009): p. 95
89 Ciećwierz (1983): p. 34.

arbitrary decisions for which there was no legal remedy.[90] Meanwhile, the Constitution of the People's Republic of Poland of 1952[91] guaranteed in Art. 71 Sec. 1 freedom of speech and printing to citizens, among many other freedoms.

2. Changes of the early 80s

With the passage of time, society, including the nascent Solidarity movement, postulated changes. Interestingly, they were not meant to abolish censorship, the existence of which was obvious in the practice of life, but to subject its decision to control from the point of view of legality by submitting its functioning to proper regulation through its subjection to the judgment of the courts.[92]

The strikes that took place in August 1980 in large industrial plants, the Gdańsk Shipyard among them, led to the signing of an agreement with the government by the strikers and the creation of Solidarity. One of the 21 points of the Gdańsk Agreement[93]from August 31 included the postulate of the implementation of (constitutional) freedom of the press. Its fulfillment was to be ensured by passing a new law, according to which censorship would protect state secrets and security, protect religious feelings and non-believers, and prevent the dissemination of morally harmful content. The decisions of the press control bodies were also to be appealed against to the newly established Supreme Administrative Court.

The government, the social side, and the episcopate (one of the elements of the arrangements was also to ensure radio broadcasts of the Sunday mass) participated in the discussions on the shape of the new law. It is also worth mentioning the significant role of the Catholic press in the Polish People's Republic.

The new Act on the control of publications and shows,[94] often called the "Censorship Act," was indeed passed on July 31, 1981, and entered into force on October 1, but it did not live up to the hopes placed in it by society. All "freedom" expectations ended with the introduction of martial law on December 13, 1981.

3. The Press Law of 1984

Despite the projects and attempts made in the 1950s, 1960s, and 1970s, no new press law was passed at that time. New projects appeared in the 1980s. The law was passed on the January 26,1984,[95] and entered into force on July 1. The law maintained the mechanisms for licensing the press and controlled circulation of paper. However, it extended the judicial control of censorship decisions. It was also important in introducing means to protect personal rights (among them freedom of speech), with the possibility of obtaining financial compensation.

90 Sobczak (2009): p. 96.
91 Dz.U. 1952 nr 33 poz. 232
92 Dombska (2011): p. 83; Sobczak (2009): p. 96.
93 Text accessible at http://www.solidarnosc.org.pl/wszechnica/page_id=2906/index.html [December 7, 2021]
94 Dz.U. 1981 nr 20 poz. 99
95 Dz.U. 1984 Nr 5, poz. 24

The act remains in force to this day, though of course with numerous amendments, protecting the freedom of the press in other constitutional, social, and economic conditions. In the original version, as provided for in Art. 1, was the implementation of the freedom of printing guaranteed by the Constitution of the People's Republic of Poland, which for some time has regulated the principles of the press law in the Republic of Poland. The Main Office for Publications and Performances Control was liquidated in 1990.

CONCLUSION

The story presented above shows, in fact, the similarity of the goals and methods used by the authorities at different times in the history of the 19th and 20th centuries, regardless of the legal system of the state (Russian, Austrian, German, Polish, or Communist) in which it took place. The periods of increasing repressiveness (or sometimes preventive measures) of the censorship system were intertwined with the fight on various fronts for its mitigation. The purpose of censorship, rather unchallenged by the Polish society in the period in question, was the protection of morality (and of course rights or freedoms considered more important than freedom of the press in given circumstances), and, more problematic, the protection of the authorities and the state and the maintenance of order in the state, which was defined differently depending on the time and place. It could mean keeping Poles under the partitions under control; opposition to reformist or revolutionary or grassroots movements; or responses to internal or external disputes. Due to such an aim, political and organizational factors, including the persons of specific leaders or censors, were more important than legal factors for the guarantee of the freedom of the press or the scope of its limitation. Legal regulations in this complex area are easily fragmented and subjected to instrumental treatment. Internal censorship, carried out by the press, was certainly also of great importance. As an example of press regulations, the dangers of writing something on the pages of a legal act (even of a constitutional rank), which, however, have no substantial significance for the realization of a given freedom, are clearly visible. One of the legal orders whereby freedom of the press was proclaimed successfully developed the activity of prior restraint, the results of which could not be foreseen or remedied. The ability on the part of the author and recipient to cope with the maze of legal and non-legal mechanisms made it possible to implement elements of press freedom in its essence.

REVIEW

Manuel Guțan, Oana Rizescu, Bogdan Iancu, Cosmin Cercel and Bogdan Dima: Șefii de stat. Dinamica autoritară a puterii politice în istoria constituțională românească

[Heads of State. Authoritarian Dynamics of Political Power in Romanian Constitutional History]

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The aim of this review is to present a volume published in Romania, by several authors, in order to highlight its importance, and also to summarise its contents.

Șefii de stat. Dinamica autoritară a puterii politice în istoria constituțională românească [Heads of State. Authoritarian Dynamics of Political Power in Romanian Constitutional History] is written by Manuel Guțan, Oana Rizescu, Bogdan Iancu, Cosmin Cercel and Bogdan Dima. The monograph was published by *Universul Juridic Publishers* in the spring of 2020. Its 498 pages may seem daunting at first glance, but as I'll argue below, immersion into the book constitutes a worthwhile endeavour. The chapters – though discussing the same topic in a chronological order – can also be read separately, without affecting the reading experience.

Before attempting to describe the questions raised in this volume and the contents of the book itself, I consider it of utmost importance to draw attention to the topicality and novelty of such a writing in Romanian legal historiography. The innovation of the work lies in the fact that it breaks with the historiographical tradition of the Romanian Soviet-type dictatorship and its often ahistorical approach, which plagues historical narratives of the period to this day. It is not characterized by historical denialism and does not burdened by proto- or anachronisms as means of compensating. The monograph can be considered as a necessary augmentation of Romanian historiography, because this fundamental piece of work was missing until now from the scientific literature. It attempts to explain, among other things,

by the means of the history of public law, how democratic deficit in Eastern Europe evolved and why liberal democracies had such a hard time consolidating themselves in the region. The explanation offered by the book, is that this phenomenon has historical roots, and that authoritarian patterns have in fact survived in one form or another throughout the ages. In the national histories of Central and Eastern Europe, authoritarianism has played a much larger role, than on the western side of the continent. The book is an exemplary presentation of this idea and offers the proper lens through which one can view current authoritarian tendencies in Romania and also in neighbouring countries.

It is no coincidence that the figures mystified by Romanian historiography and considered national heroes were also the greatest autocrats that ever came to power in this region. The longing and the predilection for a strong-willed leader, endowed with an excess of power and the ability to use it in an unrestricted manner is engraved in Romanian society's cultural genome. Recollections of such leaders constitute an integral part of the national consciousness. This is not only a symptom, or an inclination of Romanian historiography, it is also typical of the history of all small states in Central and Eastern Europe. This is only another facet of "[t]he misery of Eastern European small states", as the Hungarian legal philosopher István Bibó so eloquently put it.

Looking at the entire theme of the book, one can affirm that it is primarily (though not exclusively) a historical-legal analysis of the issue of authoritarianism as displayed by the head of state –regardless of title (Voivode, Phanariot, King or President) attributed to the figure – in the last 300 years of Romanian constitutional history.

According to the authors, by summarising this topic, they wanted to achieve precise aims. The first being of a critical purpose: their research started from the observation of the general lack of a critical, systematic analysis of the role, the place and the formal (and also informal) powers that the heads of state have held in modern and contemporary Romanian constitutional history.[1] The analyses made so far, often coming from the sphere of historiography, abound in conceptual clichés and are methodologically flawed, offering the reader perspectives that have often become canonical. By combining interdisciplinary perspectives with a coherent and critical approach and by questioning a number of common misconceptions in Romanian (constitutional) historiography regarding the evolution of the constitutional construct, the book intends to decode and elicit the dynamics of political power and the place occupied by the head of state within it.[2]

The volume also has an explanatory purpose and a normative finality, as its conclusions explain not only why the direct election of the president and the limitation of presidential powers have been the central problem of the post-communist process of enacting a new Constitution, but also the process of personalization of political power and the authoritarian tendencies of post-communist Romanian presidents. It

1 Manuel Guțan; Oana Rizescu et al. (2020): *Sefii de stat. Dinamica autoritară a puterii politice în istoria constituțională românească* [Heads of State. Authoritarian Dynamics of Political Power in Romanian Constitutional History], Universul Juridic, București, pp. 18–19.

2 Guțan et al. (2020): p. 19.

is also a historical analysis of the post-communist constitutional transition, which determines whether Romania has chosen the best system of government and the most appropriate balance of powers in order to avoid abuse of power by the head of state.[3]

In order to address the above issues, during the research two main hypotheses were laid down and tested. The first thesis is that from a legal and constitutional point of view, the Romanian heads of state have had, from the 18th century to the present day, a central role in the constitutional architecture of Romania. The second proposition is, that from a political perspective, Romanian constitutional-political life has constantly experienced a personalisation of political power and various forms and degrees of authoritarianism manifested by the head of state.[4]

In the following, a short presentation of the contents of the monograph is indispensable for the offering of an extensive depiction of the book.

Manuel Guțan opens with an introductory essay, questioning whether the function of the head of state in Romania is a constitutional manifestation of the desiderates of Romanian society, and how this yearning translated itself into the current political reality. He explains how the French centralist view – and example – influenced the Romanian constitutional legislator of 1991, how the powers of the Head of State aren't sufficiently well defined in what regards relations to the Government (the inherent problems of the two-headed, *"bicephalic"* organization of the executive), how the Constitutional Court of Romanian lacks unitary case-law when it comes to the prerogatives of the President, and how still the common perception in society is that the President is the most powerful public entity, even though factually speaking this is not the case.

In the next significant chapter, Oana Rizescu goes back 300 years, and analyses the role of the Phanariots in the Romanian Principalities. These voivodes were the ones who bought the right to despoil these territories for a limited amount of time, from the Ottoman court. There is a wide consensus that the abuses committed by these rulers constitute the starting point for the discussion about the origins of autocracy in the modern period.

Manuel Guțan returns to discuss in the next chapter authoritarianism during the reform era for the Danubian Principalities. It is mentioned here how the principalities adopted a French model of state organization, but which ironically was implemented after the tsarist example, and under Russian oversight.

Bogdan Iancu's following chapter deals with events in the newly formed Kingdom of Romania during the *Belle Époque* and the First World War. The first Romanian Constitution dates back to this period, being adopted in 1866. This already limited the power of the monarch, but, as it is apparent in the chapter, simple legal constraints were not thoroughly respected by the rulers, they would exist only as mere formalities without any substantial background.

Cosmin Cercel discusses authoritarianism in the age of extremes, between and after the two World Wars. He calls this *intermezzo* an exception from the

3 Guțan et al. (2020): p. 19.
4 Guțan et al. (2020): p. 19.

ideals presented by a liberal democracy. Not accidentally, this is the longest chapter, as it deals with the Royal Dictatorship of Carol II, the pseudo-fascist system of Ion Antonescu and the installation of the Soviet-type dictatorship under Stalinist surveillance.

Bogdan Dima had the task to write the last chapter of the book about the transition following the collapse of the Soviet-type dictatorship in 1989 and to elaborate in greater detail about the political, symbolic and practical role of the President in the current political order.

The book was written for anyone interested in the larger context of legal history of Romania. For one wishing to comprehend how the current semi-presidential system is put into practice, with its own historical deficiencies, and egregious contradictions, this can also be an edifying source. In particular, the volume addresses the passionate few, willing to engage and grapple with difficult ideas about freedom and subordination. Besides this, it offers a wider picture about the psyche of Romanian society, raising and partially answering questions about how it evolved its particular idiosyncrasies.

Pentru autori

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- Douglas Morris (2020): *Legal Sabotage. Ernst Fraenkel in Hitler's Germany*, Cambridge University Press, Cambridge, p. 171.
- Second occurrence: Morris (2020): p. 184.
- Cite edited books as follows:
- Marina Gazzini (2020): Guilds and Mutual Support in Medieval Italy, in Phillip Hellwege (ed.): *Professional Guilds and the History of Insurance – A Comparative Analysis*, Duncker & Humblot, Berlin, p. 167.
- Second occurrence: Gazzini (2020): p. 168.
- Cite articles as follows:
- Emőd Veress: Post-Communist Restitution of the Nationalized Reformed and Roman Catholic Church Property in Romania, *Acta Universitatis Sapientiae. Legal Studies*, 2018/1, p. 111-112.
- Second occurrence: Veress (2018): p. 117.
- Multiple publications by the same author from the same year are designated with lower-case letters after the publication date:
- Morris (2020a)...
- Morris (2020b)...

Emphasis

- Please emphasise any text with *italics*, not bold or underlined.