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EDITORIAL

We greet the reader on the occasion of the publication of the fiftteenth issue of the Central European Papers (C.E.P.). This number of our scientifical journal is dedicated to different topics from the area of legal history and current constitutional law. The authors of these articles are famous professors and scholars from Hungary and Slovakia. Among these is the former constitutional judge, too, who has had practival experience in respect of the protection of the constitution.The article on Slovak topic represents the second step in the series of the terminological articles dealing with different aspects of Central European institutional history. The following article is dedicated to the problem of Czech national memory in the context of the Second World War. This article is very interesting, because its author comes from Spain and her perspective can be new for Central European peoples.

Europe celebrated the end of the First World War in the last two ears. This historic event changed not only the history of our countries, but also the fate of many peoples and families. Recently a number of new books have been published on this theme. Several publications have focused on the life of concrete political, social and scientific persons. The legal science and its representatives are not exceptions. The Hungarian and Slovak authors have dealt with important representatives of their legal science history, too. The second rector of the first Slovak university (Augustín Ráth) or the antifascist Hungarian professor (Kálmán Molnár), who educated the young Otto von Habsburg are doubtless interesting persons, who earn attention. The reader can read two reviews about these scholars in this volume.

We hope that this new issue of Central European Papers (C.E.P.) will be useful not only for scholars but also for graduate and undergraduate students as well as for non-professional readers living here in Central Europe and living outside of our region too.

Editors

ARTICLES

Slovak National Council and (Un)Implemented Principles of Parliamentarism between 1944 and 1992[1]

prof. JUDr. PhDr. Tomáš GÁBRIŠ, PhD., LLM, MA

Abstract

The Slovak National Council (SNC) was the body, which assumed to concentrate supreme state powers in its regulation no. 1/1944, during an anti-Nazi uprising taking place in the end of the Second World War in the territory of Slovakia. This body had, however, not been directly elected until the year 1954. And even when it was to be finally elected in direct elections, these were strongly marked by a completely new approach of Communist Party and its ideology towards the role and importance of elections – limited only to prove the generally accepted leadership of the Party. As far as the SNC's activity is concerned, it kept decreasing in the first half of the researched period – both in quantity (with regard to the scope of its competence and the number of results – enacted laws), and quality (SNC was simple approving all proposals and bills without any debates). Only in the conditions of Czechoslovak federation since 1969, SNC regained some importance. In the first half of the researched period, the SNC also lost any control over its own executive body – the Board of Trustees, which was nominated by the Prague government. In 1960, the Board of Trustees was even completely abolished. Only since 1969, the national government replaced the former Board in its function of a supreme executive body for the territory of Slovakia. However, even then the idea of unified state power, which is not to be separated into different branches (legislature, executive, judiciary) led to an idea of cooperation between the supreme state bodies instead of their mutual control – since these were to follow the same goals – common interest in construction of communism. This special relationship between the supreme state bodies can only be understood through the prism of monopolist rule of the Communist Party, denying the true fulfillment of principles of parliamentarism in Slovakia up to 1989, which were then gradually reconstructed until disintegration of Czechoslovakia in 1992.

Keywords

parliamentarism, Slovak National Council, Czechoslovak Republic, Board of Trustees, Communism

1 The paper is a partial outcome of the project APVV-15-0349 "Indivíduum a spoločnosť – ich vzájomná reflexia v historickom procese".

Introduction

The contribution offers in its first part an overview of evolution of parliamentarism in the territory of Slovakia, closely connected with the evolution of the Slovak National Council (hereinafter referred to as SNC). In its second, analytical part, it draws on the first part in order to analyze the (mal)functioning of parliamentary system in the territory of Slovakia between 1944 and 1992 – pointing to a number of its peculiarities. Thereby, we shall observe a spiral development of parliamentary system in the territory of Slovakia between 1944 and 1992, in which era the periods of observations and violation of the principles of parliamentarism alternated. In particular, we shall compare the periods of 1944–1954 and 1986–1992, during which significant changes in the character of parliamentarism took place in Slovakia. These time periods are defined by the electoral periods of the SNC. Our main research question is that of the actual role of parliamentary bodies in the period of "popular democracy" and of the "actually existing socialism" in the Soviet bloc countries, using the example of Czechoslovakia. A secondary research question is that of "nationalism" present in Czechoslovakia and its constitutional and legal expression on the example of Slovakia as a part of Czechoslovakia. The hypothesis we postulate is that of particular development of parliamentarism under the rule of Communist Party, which could be regarded as malfunctioning, paralyzed parliamentarism in the first of the periods under review and, on the other hand, as a return to classical parliamentarism in the second period under review. At the same time, we shall examine the changes in the function, position and tasks of the SNC as a "national parliament" in its shift from a single body of all legislative, governmental and executive powers (1944–45) to attempts at true parliamentarism (1945–48), a period of a "façade" parliament (1948–1989), up to the return to standard parliamentarism since 1989. The main purpose of the study is thus to re-assess the role of parliaments under specific circumstances applicable in the "communist regime" countries in the second half of the 20th century.

Parliamentarism and its development in Slovakia

Parliamentarism in its classical form is the result of a special historical development taking place in England; in other countries around the world it is implemented with greater or lesser success and adaptation.[2] Classical English parliamentarism thereby did not actually work on the basis of a strict separation of powers in the spirit of Montesquieu, but rather on the principle of a close interaction between legislative and executive powers. Government members namely sit in the parliament, and ministers are responsible to the Head of State. Such a form of parliamentarism did not and does not occur in Central Europe in pure form; instead, the idea of separation of powers and a system of checks and balances is traditionally being applied – in the territory of Slovakia this tradition reaches back to the interwar period of Czechoslovak Republic, considered to have been a prime example of parliamentary democracy in East-Central Europe.[3]

2 SELINGER, William: *Parliamentarism: From Burke to Weber,* Cambridge 2019.

3 Cf. ORZOFF, Andrea: *Battle for the Castle: The Myth of Czechoslovakia in Europe, 1914–1948,* New York 2009.

Despite some doubts on the actual shapes of parliamentarism outside England,[4] the following is still considered an added value of parliamentarism worldwide: (i.) more direct responsibility towards citizens (electoral principle), (ii.) the potential to maintain responsible executive power on an ongoing basis, and (iii.) openness of parliamentary negotiation, which should facilitate the identification of relevant impacts influencing the decision-making.[5] According to some authors, parliamentarism is best defined by the fact that it is an attempt at rule through discussion: more important than the decision itself is to persuade the opponent.[6]

The states of East-Central Europe (among them the Austro-Hungarian Empire in particular), attempted specifically after the series of bourgeois revolutions of 1848/49, to emulate the parliamentary system created in England and by then already operating in France (the first attempt being the constitution of 1791, however, parliamentarism being finally fully introduced in France only in 1875). Especially the idea of parliamentary representation was thereby tempting for the bourgeoisie in this model, hoping to limit that way the absolute power of sovereign and of traditional aristocratic circles.

Hungary was also trying to implement the parliamentary system already in the second half of the 19th century – even the building of the Hungarian Parliament was supposed to indicate the English model. In the end of the day, however, the system introduced in Hungary was only an apparent parliamentarism without a general right to vote and with the preservation of power in the hands of rich landowners. Due to reluctance to introduce universal suffrage and continuing social division of Hungarian society, democratic parliamentarism in Hungary was never fully implemented until the disintegration of Austria-Hungary in 1918.[7]

Slovak political figures, claiming to speak on behalf of one of the nations of multinational Hungarian Kingdom, in contrast, promoted the idea of universal suffrage and representative principle already in their political program of 1848 revolution, called Demands of the Slovak Nation. These ideas were to be promoted by the (first) Slovak National Council, created in Vienna (the capital of Austria and the seat of the ruler) in September 1848 as a revolutionary body of Slovaks, which even declared the independence of Slovakia and Slovaks from Hungary a few days thereafter.[8]

Despite the failure of these revolutionary plans, creation of an independent Slovak parliament was requested by Slovak political representatives consistently in their subsequent political programs, including the last one – the Memorandum of the Slovak Nation from 1861. However, actual parliamentarism only found its expression in the territory of Slovakia after

4 Sometimes one speaks of post-parliamentarist democracy, where important decisions are taken by political parties and interest groups outside the parliament. Parliament and democracy were closely connected only in the 20th century. Cf. KYSELA, Jan: *Zákonodárství bez parlamentů: Delegace a substituce zákonodárné pravomoci,* Praha 2006, 27.

5 Ibidem, 20.

6 Ibidem, 23.

7 Cf. BEŇA, Jozef – GÁBRIŠ, Tomáš: *History of Law in Slovakia I (until 1918),* Bratislava 2015.

8 GÁBRIŠ, Tomáš – PATAKYOVÁ, Mária: Slovakia: The right of nation, in: *First fundamental rights documents in Europe,* SUKSI, Markku – AGAPIOU-JOSEPHIDES, Kalliope – LEHNERS, Jean-Paul – NOWAK, Manfred (eds.), Cambridge 2015.

1918, within the Czechoslovak Republic,[9] in the form of Czechoslovak National Assembly, consisting of two chambers. However, special Slovak parliament was not established even in the democratic Czechoslovakia, since the (second) Slovak national council re-established in 1918 to proclaim the will of Slovaks to join Czechoslovakia, was only short-lived and abolished in January 1919 by the Minister for Slovakia appointed by Prague government.[10] Despite promises voiced in the Cleveland and Pittsburgh agreements signed by Czech and Slovak emigrants in the USA, Slovaks thus did not attain their own parliament until 1938.[11] It was only in the tragic conditions of road to the Second World War [12] that in Czechoslovakia Constitutional Act no. 299/1938 Coll. on Autonomy of Slovak Land of 22 November 1938 was enacted, which presupposed the creation of a Slovak national legislative body – the Diet of the Slovak Land, which was to be created on the basis of elections with a proportional system basically according to the principles of Act no. 126/1927 Coll. on elections to provincial and district assemblies.[13] The Constitutional Act has exhaustively defined the competences of the National Assembly in Prague, while in all other matters, the Diet of the Slovak Land was competent to decide and act in the autonomous Slovak Land.[14]

The elections to the Diet were held on 18 December 1938. However, despite the original hopes, these were not democratic, pluralist elections. The list of candidates was firmly set as a single list and this list was supported by 90 % of the votes. The Diet came together on 18 January 1939, and lasted until 1945 without any further renewal or legitimization through elections.

During the period of the Second World War, Nazi-sponsored Slovak State was proclaimed on 14 March 1939 in place of the autonomous Slovak Land, while the legislative power was further reserved to the Diet, identical with that of former the Slovak Land, only being legally renamed from the Diet of the Slovak Land to the Diet of the Slovak Republic. Since there were no elections to the Diet during the existence of the war-time Slovak State (1939–1945), the vacant seats were filled through appointment by the President of Republic.[15]

Thanks to the Slovak National Uprising of 1944, organized and directed by the (third) Slovak National Council, established in 1943 in Bratislava (by the so-called Christmas Agreement) as a representative body of civil and communist resistance, with the end of the Second World War, the Czechoslovak Republic was reunited and restored, winning the support of anti-fascist and anti-Nazi Slovak forces. Thereby, important for the history of parliamentarism and of the SNC is the fact that during the revolutionary times of Slovak National Uprising the SNC by its regulation no. 1/1944 seized all state power on the

9 Even in the interwar Czechoslovakia, heralded for its parliamentarism and democracy, there were visions of a establishing a parliament of estates or of professions, voiced mostly in 1930s. Cf. VAVŘÍNEK, František: *Parlament a politické strany,* Praha 1930, 39, 49.

10 HRONSKÝ, Marián: Vznik a činnosť druhej Slovenskej národnej rady (1918–1919), in: *Slovenské národné rady,* PEKNÍK, Miroslav (ed.), Bratislava 1998, 59–60, 66–70.

11 Disregarding an administrative assembly called land assembly, established in 1928/29.

12 Cf. ŠVECOVÁ, Adriana – GÁBRIŠ, Tomáš: *Dejiny štátu, správy a súdnictva na Slovensku,* Plzeň 2009, 175.

13 VOJÁČEK, Ladislav – SCHELLE, Karel: *Právní dějiny na území Slovenska,* Ostrava 2008, 286.

14 Ibidem.

15 PODOLEC, Ondrej: *Prvý slovenský parlament,* Bratislava 2017.

insurgent territory. According to the Regulation, "the SNC carries out the entire legislative, governmental and executive power in Slovakia." Any other normative power was thus excluded to operate in Slovakia, in the very beginning including the Czechoslovak bodies, until recognized by the SNC. Due to this historical fact, in the post-war Czechoslovakia, Czechoslovak government as well as the Czechoslovak president (E. Beneš) were willy-nilly forced to recognize the power of the SNC in territory of Slovakia, while in turn, the SNC acknowledged the restoration of Czechoslovakia and the idea of uninterrupted international continuity of existence of Czechoslovakia, regarding the war-time period as legally non-existent from the international point of view.[16]

Thus, the SNC remained an important source of state power in Slovakia, only gradually giving up and transferring its competences to the central authorities of the Czechoslovak Republic. This was performed by a series of three Prague agreement. The so-called first Prague agreement between Prague government and the SNC came into force as of 2 June 1945. Subsequently, on 11 April 1946, the second Prague agreement was signed between Prague government and the SNC, further limiting the competences of the SNC. On the same day, the Constitutional Act no. 65/1946 Coll. on Constitutional Assembly was enacted, in which, for the very first time (!), the SNC was explicitly mentioned in a Czechoslovak text of constitutional relevance, previously being only accepted in the documents of political nature (such as the so-called Košice Governmental program of 5 April 1945).

The third Prague agreement, adopted within the so-called National Front (grouping of all political parties in Czechoslovakia) on 27 June 1946, again further limited the competences of the SNC, subordinating the SNC to the Czechoslovak government's preventive control, while subordinating its Board of Trustees as an executive body of the SNC to the Prague government, introducing at the same time parallel competences of the Trustees and the Prague ministers in the same matters for the territory of Slovakia.[17] All the activity of the SNC was in the end of the day subordinated to preventive and posterior control of the Prague government and the Board of Trustees of SNC was in effect turned into an executive body of the Prague government. This, of course, eliminated any elements of federalism that might had been present up to that date in Czechoslovakia (resulting from the special position of the SNC as the exclusive source of state power in Slovakia since the entry into force of regulation no. 1/1944 and since the integration of the SNC into the system of Czechoslovak authorities in the first and second Prague agreements). Instead, an evidently asymmetric model of Czecho-Slovakia was established in 1946.[18]

16 BEŇA, Jozef: *Vývoj slovenského právneho poriadku,* Banská Bystrica 2001, 109–110, 126–127. See also BEŇA, Jozef: Abriss der Staats- und Rechtsgeschichte der Tschechoslowakei nach dem Zweiten Weltkrieg, in: *Normdurchsetzung in Osteuropäischen Nachkriegsgesellschaften (1944–1989). Bd. 4 Tschechoslowakei (1944–1989),* MOHNHAUPT, Heinz – SCHÖNFELDT, Hans-Andreas (eds.), Frankfurt am Main 1998, 447–476; PAVLÍČEK, Václav: Über die Dekrete des Präsidenten der Republik in der Kontinuität von Staat und Recht, in: *Normdurchsetzung in Osteuropäischen Nachkriegsgesellschaften (1944–1989),* MOHNHAUPT, Heinz – SCHÖNFELDT, Hans-Andreas (eds.), Frankfurt am Main 1998, 23–76.

17 On the Prague agreements, see KVETKO, Martin: *Dohody o štátoprávnom usporiadaní pomeru Čechov a Slovákov v oslobodenej vlasti,* Bratislava 1947.

18 On the hectic changes of 1945–1948, cf. MYANT, Martin: *Socialism and Democracy in Czechoslovakia: 1945–1948,* Cambridge 1981.

Hence, since 1946, the position of the SNC as a parliament, embodying a sovereign of Slovakia, was largely degraded. After the third Prague agreement, there even occurred a clear reduction in normative production (legislative activity), while more than half of the published legal texts were only implementing regulations.[19] However, the SNC still remained formally a part of the Czechoslovak constitutional system. According to the Constitution of 9 May 1948, the Slovak National Council was a 100-member assembly elected for 6 years. However, under the same Constitution, it was entitled to exercise legislative power only in very limited fields.

Finally, as for the mechanism of creation of the SNC, it is important to note that the SNC was elected neither during the wartime, nor after the war, nor after the enactment of Constitution in 1948. National Assembly elections on 30 May 1948, were only taken as a model upon which to supplement the SNC, while individual representatives were delegated by political parties represented in the SNC, which could withdraw their representatives from SNC at any time – a *de facto* imperative mandate was thus introduced for the SNC.[20] Only on 28 November 28 1954, under the Act of the SNC no. 7/1954, finally the first general and direct elections to the SNC took place since its inception in 1943(!).

Important change in the position of Slovak national authorities took place soon. In 1956, the resolution of the Central Committee of the Communist Party of March 30 entrusted the political bureau of the Central Committee of the Communist Party to introduce measures increasing the powers of the Slovak national authorities and, similarly, of the regional and district committees. These issues were also addressed by the National Communist Party Conference, which was held on 11–15 June 1956. In the government's declaration, the increase in powers of the Slovak authorities was presented as a prerequisite for the success of planned development of economy and culture in Slovakia and as a further step to consolidate the unity of the Republic and to deepen the fraternal relations of the two nations.[21] However, the impetus to adjust the position of the Slovak authorities in 1956 in fact did not stem from the fundamental need to change the position of the Slovaks and Slovak authorities, but rather from the necessity of internal stabilization of the state and regime after the critique of Stalinism voiced in mid 1950s in the USSR.

According to the respective Constitutional Act no. 33/1956 Coll. of 31 July 1956 on the Slovak National Authorities, the SNC was "the national authority of state power in Slovakia." In fact, this was to mean that it was essentially only an extended arm of the unified state power seated in Prague. As regards the relationship with the executive power, the SNC has already in the war-time period created its Board of Trustees, which was considered the national authority of executive power in Slovakia even under the 1956 Constitutional Act.

However, as soon as the shock from the horrors of Stalinism disappeared, Czechoslovak Communist Party leaders once again reinforced the centralization of the Republic in its new Constitution of 11 July 1960. The new arrangement of the Slovak national authorities, which was reflected in this Constitution, was thereby preceded by a political rationale approved by the political bureau of the Central Committee of the Communist Party already

19 BEŇA, *Vývoj slovenského právneho poriadku*, 282, 286.

20 BARNOVSKÝ, Michal: Slovenské národné orgány v čase vyvrcholenia mocenskopolitických zápasov (jeseň 1947 – február 1948), in: *Slovenské národné rady,* PEKNÍK, Miroslav (ed.), Bratislava 1998, 147.

21 BEŇA, *Vývoj slovenského právneho poriadku*, 333–334.

on 23 February 1960. It states that the SNC should represent an integral part of the unified system of Czechoslovak state authorities.[22] The state power was thus to be united, because under the socialist constitution of 1960, the Czechoslovak Socialist Republic was a single state of two equal fraternal nations, Czechs and Slovaks. In fact, however, the SNC did not fit into the system of state bodies at all, as it had no pendant in the Czech lands. It was clearly an asymmetric element, preserved only due to the role the SNC played in the Slovak National Uprising and in the re-establishment of Czechoslovakia after the Second World War. Nevertheless, the 1960 Constitution did not hesitate to intervene into the historical structure of the Slovak national authorities – abolishing the Board of Trustees completely. The SNC Presidency became the executive body of the SNC instead of the Board of Trustees. Thus, the SNC itself also embodied the unification of state power, meaning unification of legislative and executive powers, in the spirit of the Marxist-Leninist ideals.

Nevertheless, the legislative power of the SNC further on enshrined only the right to enact laws in matters of national and regional interest, and only under two conditions – (i.) insofar as the economic and cultural development of Slovakia required special arrangements, and (ii.) provided the laws were consistent with centrally enacted laws (in Prague). In addition, the SNC could adopt laws in matters as authorized by the National Assembly. In contrast to previous rules, the SNC has neither any more discussed and approved the national economy development plan nor discussed and approved the budget of Slovakia. Its role was defined only as participation in the preparation of the plan of national economy development. Such an arrangement was in line with the constitutional concept of Czechoslovakia as a unitary, centralized state with only formal recognition of Slovakia's autonomous status. Indeed, it was only a fictitious autonomy – albeit sections of state administration, which were transferred to the SNC competence, gradually expanded and the number of commissions underlying the authority of SNC also expanded, the unitary centralized nature of state power has been maintained all the time.[23]

After the federalization of Czechoslovakia in 1968/69,[24] due to dissatisfaction of Slovak representatives with the abovementioned status of Slovak authorities, some changes were introduced – the SNC remained the representative of the national sovereignty and independence of the Slovak nation, being considered the supreme state authority in the Slovak Socialist Republic. As its pendant, the Czech National Council was established in the Czech lands. Thus, the asymmetric system has become a formally symmetric federation of two national republics.

The National Councils (the Czech one with 200 deputies and the Slovak one with 150 deputies) were elected for 4 years. However, the true Czech Socialist Republic, clearly distinguishable from the Czechoslovak Republic, was not accomplished. This was also reflected in the fact that the Czech National Council was first formed through elections

22 ŠTEFANSKÝ, Michal: Postavenie SNR v rokoch 1948–1967, in: *Slovenské národné rady,* PEKNÍK, Miroslav (ed.), Bratislava 1998, 156.

23 BEŇA, *Vývoj slovenského právneho poriadku,* 343–346, 353.

24 The only positive outcome of the process of democratization, during the so-called Prague Spring. Cf. McDERMOTT, Kevin: *Communist Czechoslovakia: 1945–89: a political and social history,* London 2015.

by the Czechoslovak National Assembly itself (!).[25] The system of two national councils and a bi-cameral Federal Assembly was then retained until the disintegration of Czechoslovakia. Important changes were introduced after November 1989, by the Constitutional Act no. 46/1990 Coll. adjusted anew the status of national authorities. The competences of the Federation and of Republics were redefined by Constitutional Act no. 556/1990 Coll. of 12 December 1990. The starting point for the redistribution of competences was the Constitutional Act on the Czechoslovak Federation of 1968. Still, unlike the 1968 model, listing of the exclusive competencies of the federation and of common (shared) competences has been omitted from the new text. Instead, the Constitutional Act was enumerating competences that belong to Federation, while the rest was attributed to the Republics. Unluckily, the result was that the unclear boundaries between competences of Federation and Republics as laid down in 1968, became even more obscured by the 1990 law. This has led to further disagreements and conflicts between the Republics on one hand and between Republics and Federation on the other, finally leading to the agreement on peaceful separation of the Federation into two independent Republics upon expiry of 31 December 1992.[26]

In connection with the extinction of the federation, the constitutional Act no. 205/1992 Coll. shortened term of office of the Federal Assembly as well as of national councils. Finally, as of 1 January 1993, with the independence of the Slovak Republic, the third and the last SNC in Slovak history (disregarding the emigrant councils established after 1945 abroad), existing continuously since 1943, was transformed into the exclusive legislative body of the newly established independent Slovak Republic, changing its official name to the National Council of the Slovak Republic.

Analysis of parliamentarism in the Slovak territory between 1944 and 1992

Peculiarities of creation and legal basis of the SNC

Based on the information provided in the first part of this paper, providing a general historical overview of the given period, we shall now move forward with a deeper analysis of the problems of Czechoslovak and Slovak parliamentarism of the 1944–1992 period. From the point of view of (un)implemented principles of parliamentarism in the territory of Slovakia in the period under review, we shall first focus here on the creation of SNC as a Slovak parliament.

Parliament is traditionally the most important representative body in a democratic state, given its competences – foremost representative and legislative.[27] In general, the representative idea implements the concept of the sovereignty of the people, their power being transferred in elections to their elected representatives – members of the parliament.

25 BEŇA, *Vývoj slovenského právneho poriadku*, 360–361.

26 On details of the process, cf. SHEPHERD, Robin H. E.: *Czechoslovakia: the Velvet Revolution and Beyond*, London 2000.

27 Parliament was only the supreme representative body, on top of a pyramid of representative bodies formed at regional, district and local levels.

By default, in the parliamentary system, the parliament as the highest representative body is formed in elections characterised by universal, equal, direct and secret ballot. However, the SNC was established in 1943 on the basis of the Christmas agreement of representatives of communist and non-communist (civil) resistance. It was thus not based on any elections of any sort. Similarly, after the outbreak of the Slovak National Uprising in August 1944, no direct elections were conceivable. SNC, deriving its legitimacy solely from revolutionary ideas, subsequently declared itself the supreme body of legislative, governmental and executive power in Slovakia (in its regulation no. 1/1944). Thus, in a revolutionary situation, at least two principles of modern parliamentarism were violated from a formal point of view – (i.) the SNC was not created in elections and (ii.) it was created as a single body of state power, logically without any "checks and balances" (although this was later amended by the subsequent regulations creating a Board of Trustees directly appointed by and responsible to the SNC). However, in a given revolutionary situation, it was certainly understandable.

Due to the activities of the SNC during the uprising, the new Czechoslovak government, formed in 1945, was forced to recognize the equality of Czechs and Slovaks as two brotherly nations. The Slovak nation enjoyed since then a kind of autonomy in Czechoslovakia – albeit distorted by political centralism of the Communist Party of Czechoslovakia, which ruled in Czechoslovakia from 1948 to 1989. The manifestation and proof of this was preservation of the SNC as a state body with very limited competences for the territory of Slovakia in both post-war constitutions (1948 and 1960). However, its status was only that of "the national authority of state power in Slovakia." This meant that it was essentially an extended arm of the central partisan state power located in Prague. At the same time, show-trials with Slovak "bourgeois nationalists" in 1950s did not leave anyone in doubt about the impossibility of real independence of Slovak politics.

As far as the SNC proper is concerned, even after the war ended, the SNC's actual functioning was still based on the principle that members of the SNC were only appointed, until provisional indirect elections were held on 29 August 1945 in Banská Bystrica – meaning indirect elections through local delegates.

Following the results of 1946 elections to the National Assembly, again, only a reconstruction of the SNC took place in 1946. Hence, still no proper direct elections to the SNC were held. Similarly, after the undemocratic parliamentary elections to the National Assembly in 1948 (with a uniform list of candidates presented by the Communist Party),[28] the SNC was again merely supplemented according to the results of these elections. This unelected SNC then worked until 1954, when for the first time, "proper" elections to SNC finally took place. For this reason, it might be possible to question the legitimacy of the SNC as a representative of the sovereign Slovak nation until 1954. Moreover, the same doubts might also apply to the elections of 1954 which shared the same characteristics as were those of elections to the National Assembly already since 1948 – namely that the elections were understood rather as a plebiscite for the Communist Party's politics, than as a political struggle.[29]

This was confirmed also by other changes to the electoral system – when an imperative mandate was introduced, this did not mean a closer link with voters, but rather a closer link

28 Cf. KUKLÍK, Jan: *Czech Law in Historical Contexts,* Praha 2015.

29 In 1986 elections, 99.95% voted for the candidates proposed by the National Front (in fact, Communist Party).

to the Communist Party,[30] and to the National Front which was the body proposing and drafting a list of candidates for the elections. The leading position of the Communist Party was even formally confirmed in the Constitution of the Czechoslovak Socialist Republic of 1960.

The new Czechoslovak Constitution, which was adopted in 1960 and proclaimed the "victory of socialism" in Czechoslovakia, did not reflect the need to change the position of the SNC. To the contrary, the abolition of the traditional Slovak executive body, the Board of Trustees, was an outcome of this Constitution. Nevertheless, the (non)existence of Slovak national bodies did not play any significant role in the functioning of the state anyway – due to the prevalence of the Party bureaucracy and the state bureaucracy over the parliament (be it the Czechoslovak National Assembly or the SNC). State power was vertically concentrated, with the centre in the Central Committee of the Communist Party.[31] Art. 4 of the Constitution of 1960 unequivocally and unmistakably expressed the leading role of the Communist Party: "The leading force in society and in the state is the vanguard of the working class, the Communist Party of Czechoslovakia, the voluntary combat union of the most active and knowledgeable citizens of workers, peasants, and intelligence." The Czechoslovak parliament was only second-ranked on the ladder of importance, with the third-ranking position of the Slovak representative body (SNC) following.

It is therefore understandable that the democratization process of the 1960s, also associated with the rehabilitation of the so-called Slovak bourgeois nationalists[32] and with new and more liberal reflections on the position of Slovakia and Slovaks in Czechoslovakia, led finally to a real attempt to the change their position within Czechoslovakia, which eventually led to the federalization of the Czechoslovak Socialist Republic in 1968.

The result was – after briefly considering other possible constitutional solutions – the Constitutional Act on the Czechoslovak Federation no. 143/1968, sometimes referred to as the "small constitution", which transformed the previously unitary statehood into triple statehood – Czech, Slovak, and Federal. The tasks related to the preparation of the arrangement were fulfilled by the Czech National Council and the SNC as national bodies of Czechs and Slovaks. However, the Czech National Council did not exist until then and it was established only in 1968 as a temporary body of constitutional political representation of the Czech nation. Its role was only and primarily to express the Czech political position on the future relations between the Czech and Slovak nations.

The Constitutional Act on Czechoslovak Federation[33] was finally adopted on 27 October 1968 and officially signed on 30 October 1968, on the day of the 50th anniversary of the St. Martin Declaration, by which the Slovak nation, as a "part of Czechoslovak nation", joined the Czechoslovak state in 1918.

According to the preamble to this Constitutional Act, the federalization was based on an

30 KYSELA, Zákonodárství bez parlamentů, 17.

31 PEŠKA, Pavel: Úvahy nad popřením ústavnosti v letech 1948–1989, in: *Vývoj práva v Československu v letech 1945–1989: sborník příspěvků,* MALÝ, Karel – SOUKUP, Ladislav (eds.), Praha 2004, 202–203, 206.

32 PEŠEK, Jan: Politický vývoj na Slovensku: od prevratu 1948 do prelomu rokov 1967/68, in: *Rok 1968 a jeho miesto v našich dejinách,* LONDÁK, Miroslav – SIKORA, Stanislav (eds.), Bratislava 2009, 32–38.

33 Cf. SIKORA, Stanislav: Československá jar 1968 a Slovensko, in: *Rok 1968 a jeho miesto v našich dejinách,* LONDÁK, Miroslav – SIKORA, Stanislav (eds.), Bratislava 2009, 82.

agreement between the Slovak and Czech nations, which allegedly used and implemented their national sovereignty and the right to self-determination for the purpose of establishing a common federation. In reality, however, the whole process had taken the opposite direction – from top down. The unitary state had been transformed into a federation by the will of the Communist Party of Czechoslovakia, albeit at the same time it had also reflected the actual will of the Slovak nation and its call from "bottom up", but had not entirely reflected the will of the Czech nation, which was rather identified with the idea of unitary Czechoslovakia. The consequence was that although the previously asymmetric system with a sort of autonomy of Slovakia was transformed into a formally symmetrical federation of two national republics, the real Czech Socialist Republic, clearly distinguishable from the Czechoslovak federation, was never accomplished. In addition, the re-introduced centralization policy of the Communist Party and Government embarked upon as early as in 1969 (in reaction to military intervention of the Warsaw Pact countries in Czechoslovakia in 1968) soon centralized the executive power and also declared the state economy unified.[34] Thus, in 1968/69, Slovaks have basically acquired only a formal statehood in the form of a member state of the Czechoslovak Federation. Still, this was a good starting point after the fall of the Communist Party's monopoly of power mere 20 years after the federalization – in 1989, when the SNC became an actual actor of the constitutional history of Slovakia.
The SNC might thus be regarded as a truly legitimate representative of the sovereign people – the Slovak nation – only after the first democratic and pluralist elections to the SNC in 1990. However, even prior to the 1990 elections, there was a rather peculiar transformation of the pre-1989 SNC taking place – similar to the situation in 1948, the development was marked by a "reconstruction" of the SNC: A number of SNC deputies namely gave up their functions, to be replaced by new deputies co-opted by the SNC itself to fill the vacant seats,[35] which is not entirely in line with democratic standards and is rather a revolutionary situation. However, unlike in case of reconstructions in 1946 and 1948, in 1990, proper democratic elections followed quickly to confirm the democratic changes in the system and in the perception of parliamentarism.

The peculiarities of SNC activity

The basic division of parliaments in terms of their actual performed tasks and working methods is their division into debating, working and combined parliaments.[36] The SNC activity initially appeared to be a combined, both debating and working parliament. In 1944–46, despite the unusual nature of its creation, the SNC namely had the powers of a standard representative body and fulfilled its tasks consequently.
However, the draft regulations were not presented to the SNC plenum by parliamentary committees, but rather by those Trustees (comparable to ministers) on whose behalf the relevant text was drafted. This might, according to some opinions, be seen as a sign

34 UHER, Ján: Slovenská národná rada v roku 1968, in: *Slovenské národné rady,* PEKNÍK, Miroslav (ed.), Bratislava 1998, 185–186.

35 Under the constitutional act of 23 January 1990 on withdrawal of deputies from representative bodies and on election of new deputies.

36 KLOKOČKA, Vladimír: *Ústavní systémy evropských států,* Praha 2006, 341–342.

of a "non-working" parliament.[37] However, there was always a standard debate on the submitted proposals and not an automatic mechanism of their approval. In contrast to the situation in the National Assembly, the SNC members still presented amendments and changes to the drafts, some of which were accepted, and some rejected. However, since 1946, voting became often unanimous already in this period of history, e.g. the first Prague agreement was unanimously approved at the SNC meeting on 5 June 1945. By this agreement, as already mentioned, the SNC limited its own powers to the benefit of the central Prague authorities.

In the following period, the SNC obtained the confirmation of its legislative competence by the Constitution of 9 May 1948. However, after 1948, the nature of the SNC's activities changed substantively – due to its subordination to the Communist Party's policy. Although formally it was true that: "As for the composition of deputies of the Slovak National Council, 103 deputies are members of the Communist Party, 7 deputies of the Party of the Slovak Revival and 7 deputies of the Party of Freedom. 33 deputies are without political affiliation," in fact, the members of the SNC voted unanimously on all the proposals submitted by the Communist Party, and this was also reflected in the election of the SNC Presidency and the SNC Speaker.

The restoration of pluralism and independence within the parliamentary activities did not take place until 1989. Even shortly after the changes of 1989, surprisingly, there was still a seeming unity of opinion in the voting present, as a relic of the formalized parliamentary debate, evidenced by SNC member Trepáč's speech: "Whether we want to admit it or not, most of our citizens are accustomed to voting for whom they will be told, raising a hand, or throwing a paper with the name into the urn. This was also reflected in the recent elections of trade union or party officials. Elections were held a month ago, and today the removal of these officials is being sought."[38]

In contrast, the resurfacing of the private initiative in parliamentary activity after 1989 was evident for example in the case of the establishment of a special commission for inquiry into police intervention in the candlelight demonstration of March 1988, or in creation of 12 working groups to draft bills on the right of assembly, association, press law and petition right, the law on political parties, the conscription law, the law on the territorial division of the Republic, on national committees (of local administration), on elections of the SNC and of the national committees, on the capital city Bratislava and on the regulation of the relationship between state and the Catholic Church. To express the opinions of SNC and its deputies, an institute of expressions and opinions was used – e.g. on expulsion of Slovak Germans after the Second World War, and similar. Thus, the character of the SNC was resumed again as being a combined, discussing and working parliament at once.

37 On working parliaments, cf. KYSELA, Zákonodárství bez parlamentů, 9.

38 17th meeting of SNC on 30 November 1989.
Available at: https://www.nrsr.sk/dl/Browser/Document?documentId=10162 (10.11.2020).

Relationship between the SNC and executive power

Parliaments are considered bearers of "completeness of power",[39] expressing the sovereignty of people and representing the supreme authority within a state. This characteristic fully applies to SNC in the insurgent period of 1944, when the SNC itself concentrated all power and was directly creating other state authorities, within a sort of "rule of parliament", different from traditional democratic parliamentary democracy. This situation has thereby heralded a later Marxist-Leninist theory of unified state power, denying any division of powers. This theory namely preaches refusal of separation of powers in favour of the idea of only a division of tasks among the supreme state authorities. In actual constitutional practice, the state authorities were namely supposed to cooperate, only formally being headed by the parliament as a representative of people's sovereignty. In fact, however, even the parliament was responsible to the working people, meaning to Communist Party: "the principle of the sovereignty of the working people means above all responsibility of all representative assemblies, the whole system of representative bodies, to the working people. But also – among other things – (for example, the responsibilities of executive bodies to representative bodies) the responsibility of all state authorities, including representative bodies to the Marxist-Leninist Party..."[40]

Slovak national executive bodies, which were essentially the SNC Presidency (since 1960) and previously the Board of Trustees (until 1960), were thus under a triple subjection – to the SNC, to working people and to the Party, whereby the Party control was of course the most relevant.

As part of its control competences towards the executive, the SNC had already known written interpellations to Trustees in 1945–46, but a significant restriction was introduced here in 1946–48. However, on 16 August 1946, the Board of Trustees was appointed only after the prior approval by the Czechoslovak Government of 14 August 1946, apparently meaning that the Board of Trustees was not to be understood solely as an executive body of the SNC, but rather it was also controlled by the Prague government.[41]

In this context a substantial change was introduced in 1948–54 in that the program of the Board of Trustees was to be approved by the SNC (for the first time at the 3rd SNC Plenary meeting on 29 July 1948). However, this is easily explained by the fact that the creation of the Board of Trustees was taken over by the Czechoslovak government on the basis of the Constitution of 9 May 1948. Since SNC was no longer involved in the creation of this body, it was given instead at least the opportunity to express the Trustees its confidence.

Return to the original concept from before 1948 occurred only in 1956 when the SNC was once again given the opportunity to appoint the Trustees; this approach was confirmed also upon the federalization of Czechoslovakia, when in the Slovak Socialist Republic arising in 1969, the SNC appointed the "government" of the Slovak Socialist Republic. The SNC was also to vote on the government's program, for an evaluation of which a special commission was set up, which was to draw up a resolution on the program and submitted it

39 PAVLÍČEK, Václav et al.: *Ústavní právo a státověda II. Díl,* Praha 2008, 216.

40 ZDOBINSKÝ, Stanislav – ZLATOPOLSKIJ, David L.: *Ústavní systémy socialistických zemí,* Praha 1988, 215.

41 Claiming that the Board of Trustees is a national as well as central body, being executive body of both Prague and Bratislava.

for approval to the SNC plenum. Interestingly, the commission was in charge of evaluating the government's program,[42] which interferes with the traditional view on separation of powers between legislative and executive powers. However, it is fully in line with the idea of mutual co-operation between the state bodies of a unified state power.

Even in this respect, however, one must not forget that the whole system worked only due to the dependence of all supreme bodies, including the SNC, on the Communist Party and on the National Front (grouping of all socialist organizations, headed by the Communist Party). Thus, in fact, it was the Party's rule and control, instead of the rule and control by SNC– which is a fundamental contradiction with any principles of parliamentarism and separation of powers.

The return to the standard democratic parliamentarism with the division of powers and the system of checks and balances did not take place until 1989, and in the Slovak conditions it fully materialized mainly after the entry into force of the Constitution of the Slovak Republic on 1 January 1993 – this Constitution namely finally introduced for the first time in the Slovak Republic the system of parliamentary democracy, with the proper separation of powers between the parliament (legislature), government (executive), the head of state (President of the Slovak Republic), and judiciary.

Conclusion

The present paper, after an initial historical overview of the legal development of parliamentary system in the territory of today's Slovak Republic, has analysed selected issues of the specific sort of parliamentarism existing in Slovakia under Communist Party rule, taking the example of supreme Slovak national representative body – the Slovak National Council – within Czechoslovakia. It was created as a private body of resistance in 1943, while in the circumstances of the Uprising of 1944 it took over all legislative, governmental and executive power in Slovakia. Despite such a dominant position (gradually restricted by three so-called Prague agreements between 1945 and 1946), until 1954 this supreme authority of state power in Slovakia was not created in direct elections. Up to the Constitution of 1948 it even lacked a proper constitutional legal basis (only the constitutional act of 1945 on Provisional National Assembly took into account the existence of the SNC). And even when the very first direct elections in 1954 took place, these were already marked by a new understanding of the electoral struggle, where general, equal, direct elections with a secret ballot only served to confirm the dominance of the Communist Party on the political scene. The SNC therefore only became truly legitimate and democratic in the sense of the true embodiment of the will of the sovereign Slovak nation after 1989.

Based on the research on SNC's significance and activity in the period under review (1944–1992), it may be stated that SNC witnessed a gradual decrease in its activity and importance, both in quantitative terms (given the scope of competences and outputs of the activity in the form of enacted laws) and qualitative terms (given that submitted proposals were approved without comments and discussions). The decrease was reversed only in the conditions of Czechoslovak federation since 1969.

42 Cf. 2nd meeting on 4 July 1986.

In relation to executive power, the loss of control of SNC over its own executive body (Board of Trustees) in favour of Prague government can be specifically witnessed in 1940s and 1950s. In addition, the idea of a unified state power and its centralist execution influenced the relationship between the legislature and executive in the sense that these two components were to cooperate and not to control each other, since they were expected to pursue a common goal of construction of communism. This has caused that while co-operation was promoted on the one hand instead of control, on the other hand, this co-operation essentially entailed direct control and interference by the Communist Party.
The analysis of the respective (constitutional) legislation as well as of the stenographic records (protocols) from the SNC meetings thus clearly show that the SNC (and similarly the National Assembly, replaced by Federal Assembly) was in fact only executing the Party's orders, being neither a working, nor discussing parliament; and even rather than "parliament" being only a formal, seeming "legislative body".

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Changes in the Constitutional Review of Legislation in Hungary

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Abstract

The article presents the changes that had taken place in the relationship between the Parliament and the Constitutional Court through focusing on the development of the Constitutional Court's competences, with particular attention to the review of constitutional amendments and constitutional control over the Parliament's rules of procedure. We place special emphasis on summarizing those voices that had, from the very beginning, harshly criticized the fundamental rights activism of the Constitutional Court and laid the foundations for the political constitutionalism that has pervaded public life since the 2010 elections, as well as the 'public law revolution' grounded in parliamentary sovereignty. This article further discusses new constitutional challenges, such as the joint responsibility of the Parliament and the Constitutional Court in safeguarding national sovereignty and constitutional identity, which opens a new dimension in the separation of powers.

Keywords

constitutional court, parliamentary law, unconstitutional amendment of constitution, national identity, constitutional identity

Introduction

One of the very first 'products' of the third wave of major social transformations, namely, the change of political system in Eastern Europe which resulted in the establishment of constitutional courts, was the Hungarian Constitutional Court, whose relationship with the National Assembly[1] has undergone significant changes during the more than three decades of its operation.

This article presents the changes that had taken place in the relationship between the Parliament and the Constitutional Court through focusing on the development of the Constitutional Court's competences, with particular attention to the review of constitutional amendments and constitutional control over the Parliament's rules of procedure. We place special emphasis on summarizing those voices that had, from the very beginning, harshly criticized the fundamental rights activism of the Constitutional Court and laid the foundations for the political constitutionalism that has pervaded public life since the 2010

1 The National Assembly is the Hungarian Parliament; this paper uses these terms interchangeably.

elections, as well as the 'public law revolution' grounded in parliamentary sovereignty. This article further discusses new constitutional challenges, such as the joint responsibility of the Parliament and the Constitutional Court in safeguarding national sovereignty and constitutional identity, which opens a new dimension in the separation of powers.

The activist Constitutional Court

One of the very first institutions of the new democracy following the change of political system in Hungary was the Constitutional Court, which started its operation before the first free elections, on 1 January 1990.[2] Perhaps the most striking feature of the Hungarian political transformation was that the regime change took place through negotiations and compromise, ensuring that the governance and operability of the state was upheld.[3] With the addition of five new members following the first free elections, the Constitutional Court did not simply join the political process as a new institution responsible for the protection of the constitution, but relying on its autonomy to design its own competences, the Court became a major political player of the regime change. The grave economic heritage of the past system, the party political differences, the tensions straining the coalition government, the new political elite's unpreparedness and lack of experience, and finally, mutual distrust rapidly eroded confidence in the multi-party system. It was in this political vacuum and pervasive distrust that the Constitutional Court became a key player, consciously taking on the role of the rule of law revolutionary, with its activism, its aristocratic detachment, speaking the dogmatic language of legalese.

Through intense doctrinal work in the early nineties, the Constitutional Court laid down the legal foundations of the rule of law with decisions on the statute of limitations, lustration cases, and motions to remedy past injustices. Making up for the lack of a chapter on legislation in the Constitution, the Court subsequently elaborated detailed requirements to guide legislation. Besides the elaborating principles regarding clarity of norms, reasonable time to prepare and public law invalidity, the Constitutional Court also made pronouncements on the democratic legitimacy of the exercise of public authority, the protection of acquired rights, laws requiring qualified majority and the rule of law requirements governing individual areas of law (criminal justice, administrative law and private law). Owing primarily to its normative content, the rule of law played a dominant role in the jurisprudence of the Constitutional Court. It was of particular significance during the period of the 'rule of law revolution' that anyone could directly apply to the Constitutional Court (actio popularis) and the Court could directly review the contested legislative act based on rule of requirements. The Constitutional Court was without doubt Hungary's flagship of legal constitutionalism.

2 The National Assembly of the single-party state adopted Act No. XXXII of 1989 on the Constitutional Court and elected the first five members of the court on 23 November 1989: Antal Ádám, Géza Kilényi, Pál Solt, László Sólyom, János Zlinszky.

3 Several books discuss the change of political regime. One of the most structured accounts of the events is given by Mihály Bihari in: *A magyar politika 1944–2004. Politikai és hatalmi viszonyok [Hungarian politics 1944-2004. Political and power relations],* Budapest 2005, 333–413. An account less focused on structural processes ig given by László Kéri in: *A rendszerváltás krónikája, 1998-2009 [The chronicles of the regime change, 1998–2009],* Budapest 2010. A public law approach is presented by Péter Smuk in: *Magyar közjog és politika 1989–2011 [Hungarian public law and politics 1989–2011],* Budapest 2011.

Through its decisions, the Court introduced and entrenched the ideal and the practice of the rule of law, linking it to common European constitutional traditions.[4]
In the Constitutional Court's self-understanding during the period of the change of political system, given the circumstances of that time, activism was, to some extent, unavoidable. The National Assembly as the constitution-maker was not in the position to remedy the discrepancies or fill in the gaps of the existing Constitution, therefore, it was up to the Constitutional Court as the single institution capable of solving those problems through the creative interpretation of the law, that, for lack of political consensus, were otherwise left unresolved. Born amidst the turmoil of the change of political system and intended to be merely a transitional document, the Constitution was initially considered by several members of the Court to be an unfinished text that can only be further improved by a group of esteemed legal professors. It is no wonder, then, that the founding president of the Court later said in an interview: "Our constitutional jurisprudence, particularly when it comes to the 'hard cases' was hovering on the verge of constitution-making, and I had never denied this."[5]
The Court understood its own role, born out of intense internal debates, to act as a genuine counterweight to the majority rule. It considered the Constitution, the making of which was in the hands of the Parliament, to be the absolute standard of review. Right until 2011 the majority in the Constitutional Court insisted that it must refrain from a substantive review of constitutional amendments, even though, so the meek counter-argument claimed, "in theory, this could be justified". It was not the interpretation of unconstitutional amendments made to the Constitution that kept the Horn government, holding a two-thirds majority in Parliament, up at night, but much rather dealing with the constitutional veto of the Bokros package[6] and the attempts at drafting a new constitution. Already then, there were intense debates on whether public law relations should be governed by parliamentary supremacy based on the principle of popular representation, or the protection of fundamental rights through constitutional review. It was these debates that escalated during the second term of the Orbán government, which for its part, held a constitution-making majority.

The victory of the principle of parliamentary sovereignty

In the background of the debates following the 2010 elections and surrounding the efforts of the parliamentary majority holding a constitution-making majority to transform public law relations is the implicit question whether now, two decades after the change of political regime, the time has come to curb the competences of the overly powerful Constitutional

4 The Venice Commission of the Council of Europe defined the substantive elements of the rule of law the following way: 1. legality and transparent, accountable and democratic legislation, 2. ensuring legal certainty, 3. prohibition of abuse of powers, 4. access to independent and impartial justice, 5. respect for human rights, 6. prohibition of discrimination and the principle of equality before the law. In: *CDL-AD (2011) 003rev Report on rule of law – Adopted by Venice Commission at its 86th plenary session (Venice, 25–26 March 2011).*

5 A "nehéz eseteknél" a bíró erkölcsi felfogása jut szerephez. Sólyom Lászlóval, az Alkotmánybíróság elnökével Tóth Gábor Attila beszélget [It is the moral stance of the judge that comes to the fore in 'hard cases', Gábor Attila Tóth speaks with László Sólyom, President of the Constitutional Court], in: *Fundamentum,* 1997, 1; in: HALMAI op. cit., 18, 395.

6 'Bokros package' refers to a set of austerity measures introduced in 1995. The Constitutional Court annulled several elements of the package whose designation hails from the Financial Minister who had elaborated them.

Court. Analysts close to the national-conservative side kept emphasizing that "what was carried out on behalf of the rule of law by limiting multi-party parliamentarism, is considered today more or less as a repression of democracy."[7] They believed that serious distortions had taken place within the constitutional system, drastically limiting the governments' scope of action. Therefore, the excessive separation of powers must be cut back, to restore the supremacy of the elected parliament, and to build a strong government with an efficient public administration. Several proposals were formulated to change the constitutional system and to introduce innovations to the new constitution.[8] The attacks on the Hungarian government from various European sources were motivated by the ambition of the Hungarian prime minister to repoliticize certain issues and to enforce the mandate given to him by the constituency. This went against mainstream EU politics characterized by the juridification of political issues, i.e. solving problems through legal/judicial avenues. "European politics is characterized by the extreme dominance of human rights logic and the downright limitation of the majority principle which stands in sharp contrast with the principle of the total sovereignty of a one-party parliamentary majority".[9] This line of thinking is the main pillar of political constitutionalism.[10]

Thus, the 'voting booth revolution' also meant the victory of political constitutionalism. The activism of the Constitutional Court was replaced by an activism built on parliamentary supremacy, fueled by a two-thirds majority (super majority). In the course of the election year, the constitutional majority amended the Constitution nine times, while also preparing the Fundamental Law, thereby radically transforming the structure of the Hungarian state system.[11] These amendments served power political and symbolic purposes, creating

7 According Béla Pokol "In spite of the fact that the parliamentary majority swept away the earlier government with the mandate to bring about change, it is shackled by the detailed provisions of an approximately twenty-thousand-page collection of the decisions of the Constitutional Court, which, moreover, can be interpreted in many different ways, so that a government majority can never be sure that it will be able to enforce its will." POKOL, Béla: Demokrácia, hatalommegosztás és az állam cselekvőképessége [Democracy, separation of powers and the state's capacity to act], in: *Húsz éve szabadon Közép-Európában. Demokrácia, politika, jog [Twenty years of freedom in Central Europe. Democracy, politics, law],* SIMON, János (ed.), Budapest 2011, 451.

8 In his aforementioned study, Béla Pokol proposes a more precise normative content of constitutional fundamental rights and obligations, a significant transformation of the powers and functioning of the Constitutional Court, a rethinking of the judicial hierarchy and judicial appointment system, and guarantees of interpretation for the new constitution, which would curb the application of the 'invisible constitution'. POKOL op. cit., 32, 453–455.

9 PÓCZA, Kálmán: Alkotmányozás Magyarországon és az Egyesült Királyságban [Constitution-making in Hungary and the United Kingdom], in: *Kommentár,* 2012, 5.

10 For critical approach of political constitutionalism see: SAJÓ, András – UITZ, Renáta: *The Constitution of Freedom. An Introduction to Legal Constitutionalism,* Oxford 2017.

11 The essential elements of the amendments were the following: the first amendment radically reduced the number of members of parliament, introduced the institution of a deputy prime minister, and created the status of government official. The second made it possible to elect someone without municipal representative status to the position of deputy mayor. The third changed the composition of the body appointing constitutional court justices. The fourth reshaped the system of public service media. The fifth vested court clerks with decision-making power. The sixth created the conditions for the retroactive taxation of severance payments that brewed a dark political storm. The seventh was to implement the changes made necessary by the repeal of the Act on Legislation, recasting among others the Prosecution Act. The seventh incorporated the supervision of the Hungarian Financial Supervisory Authority and the institution of government commissioner into the constitution. The eighth amendment limited the powers of the Constitutional Court in reviewing acts related to the economy. The ninth amendment incorporated the institution of the National Media and Infocommunications Authority into the text of the Constitution, the president of which is appointed by the prime minister for nine years. Six of the nine constitutional amendments were made at the request of individual representatives!

a radical shift in the power-sharing system and delegitimizing the 1989 Constitution.
In this new system of division of powers, the sharpest conflicts emerged between the Constitutional Court and the government, closely aligned with the legislature posing in the guise of the constitution-maker. The authors of the Fundamental Law set out to create a Constitution "as solid as granite". The democratic and professional deficiencies of 'revolutionary legislation', the Constitutional Court's 'unbridled lawyering' and the 'intrigues of globalist circles' hiding behind the Venice Commission forced the constitution-making majority to adapt the text of the new Fundamental Law successively, through gradual amendments to meet political challenges. Following the fourth amendment to the constitution, the political agenda was no longer dominated by constitutional conflicts.

Power-shift between the National Assembly and the Constitutional Court following the adoption of the Fundamental Law

Court packing?

In contrast with the previous constitution, the Fundamental Law declares the principle of the separation of powers: "The functioning of the Hungarian State shall be based on the principle of the separation of powers" [Article C) paragraph (1)]. The new regulation, as opposed to earlier assumptions and the concept prepared by the *ad hoc* committee, not only preserved the political system of republic, but also refrained from introducing drastic changes to the form of government.
The most significant changes were made to the role of the Constitutional Court in the new power-sharing system. The 2010 amendments to the Fundamental Law saw the government furnish itself with a dominant role in selecting the judges of the Constitutional Court; meanwhile, it limited the powers of the Court in reviewing cases concerning economic constitutionality, finally, it placed the election of the president of the Constitutional Court into the hands of the Parliament and increased the number of justices to 15.
These amendments did not prevent the Constitutional Court from rendering decisions in accordance with the rule of law even in politically sensitive cases. In December 2011, the Court annulled certain provisions of the Media Act.[12] The following year, the Constitutional Court elaborated the conditions under which it could rely on arguments it had set forth in earlier judgments rendered before the entry into force of the Fundamental Law;[13] it deemed the 'retirement' of judges at the age of 62 to be unconstitutional;[14] it annulled the rules criminalizing homelessness;[15] and finally, it considered the concept of family employed in the revised Family Protection Act to be too narrow.[16] The Constitutional Court's decisions clearly demonstrate that the institution is functioning according to the rule of law, and the Court, with a majority of justices considered to be aligned with Fidesz, is capable of exercising constitutional control over the legislature and the government.

12 With this decision, the Constitutional Court excluded print and online media from under the scope of the Media Act, abolished the institution of 'media ombudsman', found the rules governing the protection of journalist's resources to be unconstitutional and partially limited the investigative powers of NMHH.

13 Decision No. 22/2012. (V. 11.) AB.

14 Decision No. 33/2012. (VII. 4.) AB.

15 Decision No. 38/2012. (XI. 14.) AB.

16 Decision No. 43/2012. (XII. 20.) AB.

The problem of unconstitutional amendments of the constitution

Tensions between the Parliament and the Constitutional Court escalated on the turn of 2012 and 2013, when the Court partially annulled the transitional provisions of the Fundamental Law,[17] and subsequently, upon the ex ante constitutional review request made by the President of the Republic, declared several provisions of the Act on Election Procedure to be unconstitutional.[18] The two decisions were interconnected, since the second amendment made to the Fundamental Law placed the rules governing registration in the electoral roll (pre-registration) among the transitional provisions of the constitution, accordingly, partial annulment opened up the possibility to review the constitutionality of registration.[19] During the debate surrounding the decision on the transitional provisions of the Fundamental Law, the Court was faced with serious questions, such as whether it even has the competence to review the Fundamental Law and its amendments, and which category of legal sources transitional provisions belong to. It is the consistent case law of the Constitutional Court that it shall not review the text of the constitution, however, this shall not exclude review in cases where the validity of the amendment is in question.

The Constitutional Court based the possibility of reviewing the transitional provisions on the consideration that with the adoption of the Fundamental Law, the constitution-making power wished to create a stable, durable and consistent legal document, determining its subjects, substance and structure. The Court took the position that based on criteria flowing from the Fundamental Law, only one legal act may be at the apex of the hierarchy of legal sources. This system is broken by the transitional provisions, since they attempt to raise several provisions of permanent nature to the level of the highest legal source, without incorporating them into the body of the Fundamental Law. It may give rise to constitutional uncertainty if the substance or scope of the effective Fundamental Law may be established in several ways. "The Constitutional Court has a constitutional duty to review all laws that compromise the internal unity of the legal system, particularly those that violate the unity of the Fundamental Law itself. As such, it is not only the right, but the constitutional duty of the Constitutional Court to protect the Fundamental Law against all such decisions of the legislature, even when these are underpinned by a two-thirds majority in Parliament, that would impede or jeopardize the enforcement of the provisions of the Fundamental Law, rendering the legal substance, scope and position of the Fundamental Law in the hierarchy of legal sources uncertain, relativizing the substance of the standard of constitutionality, namely, the Fundamental Law. The Constitutional Court's mandate in protecting the Fundamental Law includes the duty to protect the Fundamental Law as a single and unitary document."[20]

The Constitutional Court made it clear that without incorporation, no provision can become a part of the Fundamental Law. This 'incorporation rule' also means that amendments cannot

17 Decision No. 45/2012. (XII. 29.) AB.

18 Decision No. 1/2013. (I. 7.) AB.

19 The Constitutional Court has 30 days to decide ex ante constitutional review petitions. Owing to the Christmas and New Year's Eve festivities this deadline was reduced by half and the preliminary question of the constitutional consideration of transitional provisions also had to be decided. Politicians aligned with the government fabricated conspiracy theories: "One has to assume extreme malice to think the Constitutional Court annulled the transitional provisions to destroy the constitutional basis for electoral registration." (Interview with László Kövér, Válasz).

20 Decision No. 45/2012. (XII.29.) AB.

cause an unresolvable conflict between the provisions of the Fundamental Law. The Court's decision declared that "the Constitutional Court may even assess whether the enforcement of the substantive constitutional requirements, guarantees and values of the democratic state under the rule of remains unimpeded, and enshrined in the constitution."[21] The majority reasoning left open the possibility of also a substantive review of constitutional amendments. These two decisions were meant to restore the balance in the power sharing system, between the powers representing political and legal constitutionality. However, the constitution-making majority took the view that the Constitutional Court had herewith crossed the Rubicon and violated the basic political interests of the parliamentary majority, which in turn, enjoys the support of the electorate. While backing down on the issue of voter registration, the constitution-maker decided to take on the Court on the issue of reviewing constitutional amendments.

Not only did the fourth amendment incorporate into the Fundamental Law the majority of the provisions previously annulled on formal grounds, but it also included several provisions which the Constitutional Court had already found to be unconstitutional on substantive grounds. More than ever before, the amendment rearranged the balance of power between the different branches, restricting the Court's room for manoeuvre considerably. In a way, this indirectly barred the Constitutional Court from substantively reviewing the Constitution, meanwhile, in cases of procedural violations, it explicitly allowed for the constitutional review of amendments. The fourth amendment stipulated that the Court was bound by the petition submitted to it, stating that the Court may extend the scope of its review only where there is a close connection with the petition. It further annulled earlier decisions of the Constitutional Court, without excluding the possibility that the court arrive at the same conclusion in its new decisions. Finally, it set a tight deadline for constitutional reviews carried out upon judicial initiative and provided for the partial publicity of the Court's proceedings.

The fourth amendment of the Fundamental Law constitutionalized a concept of the rule of law according to which in a democratic state the only constitution-maker is the National Assembly elected by the people, the parliament exercises this right in formalized procedures by way of representatives who received their mandate through elections, and no restriction of this constitution-making right is recognized. The Constitutional Court may review the constitutionality of the constitutional amendment, but only from a procedural point of view. This means that if the chief depositary of popular sovereignty, the parliament holding the constitution-making majority takes the view that the Constitutional Court rendered a 'flawed' decision, it may make use of its power of constitutional amendment to 'override' the Court's decision by incorporating the unconstitutional rule into the Fundamental Law. Proponents of political constitutionalism believe that democratically elected legislators are better suited and have greater legitimacy to solve problems arising from 'reasonable disagreements'. Meanwhile, judges may enforce minority views without widespread support in the political community, disregarding the majority opinion in an anti-democratic way. In their eyes, the essence of the constitution is not the sum of constraints imposed on political decision-makers through the list of human rights, but much rather democratic decision-making, which reserves the final decision for elected politicians. As far as the separation of

21 The decision was adopted with concurring opinions from Justices András Holló and István Stumpf as well as dissenting opinions from Justices István Balsai, Egon Dienes-Oehm, Barnabás Lenkovics, Péter Szalay and Mária Szívós.

power is concerned, checks and balances are not guaranteed through institutional veto-powers (such as e.g. the Constitutional Court), but the competition between parties in free elections and the possibility of changing parliamentary majorities.[22]

Until the constitution is adopted, constitution-making power is indeed unlimited, however, in practice it must comply with international ius cogens, the formal procedural rules governing constitution-making, as well as the principle of the integrity of the constitution (no rule may be incorporated into the constitution which is in an irreconcilable conflict with other constitutional provisions). Since the Fundamental Law does not distinguish between constitution-making and constitution amending powers, the current government, supported by a two-thirds majority in parliament, is of the view that there are no restrictions on acts amending the constitution.

In a democratic state governed by the rule of law there can be no unlimited power, as such, the constitution-making power cannot be unlimited either, since besides the constraints mentioned above, the latter is bound by the effective constitution, the Fundamental Law's system of norms. The Fundamental Law established the constitutional system of the separation of powers where the Constitutional Court as the chief guardian of the Fundamental Law has the constitutional obligation to take action against any restriction or hollowing out of the norm placed at the apex of the hierarchy of laws. It is up to the Constitutional Court to exercise its functions of protecting the constitution to the extent this is allowed under the Fundamental Law and the rules governing its interpretation. Of course, any revision of constitutional amendments cannot result in the usurpation of constitution-making powers. That is, the Constitutional Court must always respect the provisions of the Fundamental Law, it must always render its decisions on the basis of the Fundamental Law. It is the responsibility of the National Assembly to respect the Fundamental Law it had adopted, in order to maintain the level of constitutionality hitherto achieved. The Constitutional Court established the rule of incorporation, namely, that amendments and supplements to the Fundamental Law must be incorporated into the structure of the Fundamental Law in a coherent way. Accordingly, amendments to the Fundamental Law may not give rise to an irreconcilable conflict within the constitution. The rule of law guaranteed under Article B) paragraph (1) of the Fundamental Law requires both the substantive and structural coherence of constitution, which must be ensured by the constitution-making power.[23]

"The uniform, non-contradictory character of the constitution is not a self-serving conceptual construct. An effective condition for constitutional adjudication, and thus, for the legitimacy of the constitution protected is that the legal norm at the apex of the legal system be suitable to serve as the foundation for the consistent legal practice of the Constitutional Court. It should be noted that from this perspective, preserving the

22 In a recent paper, Béla Pokol supplements political constitutionalists' arguments with the international perspective "[the] decisions of the Strasbourg ECtHR and the global consitution – would submit the constitution, constitutional amendments and the consitution-making power under their control based on presciptions of advisory bodies and constitutionalized 'general' international law. This would close the circle and the most important attribute of the sovereign state, namely, disposal over the constitution-making power, would cease to exist within the state." In the conclusion to his paper, Pokol envisions the threat of a global constitutional oligarchy taking shape. POKOL, Béla: Az alkotmánybíráskodás szociológiai és politológiai kérdései [Sociological and politological questions of judicial review], in: *Jogelméleti Szemle,* 2013, 4.

23 Stumpf summarizes the jurisprudence of the Constitutional Court and the views on the unity of the constitution in detail in the concurring opinion attached to Decision No. 45/2012. (XII.29.) AB and the minority opinion written on the fourth amendment to the Fundamental Law.

unity of the constitution also lies in the interest of the legislator as well as the social order established under the constitution. (...) The cornerstone of the legal system cannot be unstable or unpredictable due its uncertain content. (...) In every country, it is up to the constitutional court to guarantee the coherence of the constitution."[24]

There is no democratic alternative to the rule of law, moreover, effective governance cannot be successfully achieved without a stable constitutional foundation. Just as the historical constitution could not be purged from Hungarian public law culture, so the over twenty years of legal development pursued by the Constitutional Court cannot be airbrushed from Hungarian constitutional culture either. Nor could the political elite of the regime change try and push the responsibility for their own inability to make their own decisions and foster agreements to the Constitutional Court, which in turn, was showing excessive activism. We are now dealing with the exact opposite situation, with the government taking a number of decisions with far-reaching socio-economic consequences. The government will have to shoulder the responsibility for these decisions and the electorate will decide whether they agree with these measures. The Constitutional Court is not competent to judge political decisions, but it has the power to review the constitutionality of matters before it, indeed, this is the Court's constitutional duty. The constitution-making majority removing budgetary and tax issues from under constitutional control for short-term interests will seriously damage the rule of law and economic constitutionality. By regularly annulling decisions of the Constitutional Court it does not agree with through "constitutionally over writing them" the government undermines the unity and the non-contradictoriness of the constitution, inviting the accusation of abusive constitutionalism.[25] In the system of the separation of powers, it is not only the constitutional principle of the separation of powers that must prevail, but also the requirement for co-operation. Where the parliamentary majority has constitution-making power, the Constitutional Court bears great responsibility since it is the only institution that can act as a real counterweight. It is in a consolidated period that it becomes clear to what extent the national parliament and government rely on the institution policing the constitution, namely, the Constitutional Court. It is in the common interest of constitutional institutions, indeed, I would say it is in the national interest, that the underlying values and provisions of the Fundamental Law win the sympathy of the citizens, which they are willing to follow. If we sacrifice values such as the rule of law and constitutional stability for short-term power interests, our entire society will pay the price. In a democratic state governed by the rule of law, the division of power should not be in the service of defeating the other, but in a system of constitutional responsibility built on mutual support and limitation for the fullest possible service of the public good.

24 CSINK, Lóránt – FRÖHLICH, Johanna: A régiek óvatossága. Megjegyzések az Alaptörvény negyedik módosításának javaslata kapcsán [The cautiousness of our forefathers. Comments apropos the draft on the fourth amendment to the Fundamental Law]. In: *Pázmány Law Working Papers,* 2013, 1, 5–6.

25 In his recent work, US professor of law, David Landau cites Hungary besides Venezuela and Columbia as an example for abusive constitutionalism LANDAU, David: Abusive constitutionalism, in: *University of California, Davis Law Review,* 47, 2013, 1, 189–260, online: lawreview.law.ucdavis.edu/issues/47/1/Articles/47-1_Landau.pdf.

Normative and individual acts of Parliament before the Constitutional Court

Overview

In addition to reviewing constitutional amendments, another important watershed in the relationship between parliaments and constitutional courts is the constitutional review of internal parliamentary legal procedures, that is, parliamentary rules of procedure adjudication in the broadest sense. In what follows, we will only focus on the self-regulatory (self-administrative) acts of the Parliament, namely, provisions of the house rules as well as customary law rules giving flesh to the house rules.

Normative foundations

Of the many powers of the Constitutional Court the most important ones are the ex-ante and ex-post constitutional review, as well as the constitutional complaint aimed at reviewing acts of Parliament.

The three most important normative sources of parliamentary law can be the subject of ex-ante and ex-post constitutional review: the Fundamental Law, the Act on the National Assembly (hereinafter: the ANA) and the provisions of the Rules of Procedure (hereinafter: RoP). Since the fourth amendment of the Fundamental Law, the Constitutional Court may not review the substance of the Fundamental Law and its amendments, but only their adoption based on the constitutional rules on enactment and promulgation, which constitutes a meaningful limitation to the Court's constitutional review powers over norms concerning the Parliament.

The ex ante constitutional review of laws, such as the ANA may be petitioned by the Parliament by a simple majority or by the President. As a general rule, Hungarian law does not know the ex ante constitutional review of normative decisions, therefore, the ex ante review of the RoP is provided for under a separate provision of the Act on the Constitutional Court. However, the statutory scope of petitioners hardly corresponds to the widely accepted constitutional purpose of the review of house rules, namely, the protection of the political minority. This is because the ex ante constitutional review related to the RoP may be petitioned by the person who had submitted the draft resolution, the government or the Parliament itself, upon the proposal of the Speaker of the Parliament. The opposition has a meager chance of initiating a successful resolution, the Government will most probably enforce its will in the parliamentary vote on the draft resolution, as such, it is not in its interest to turn to the Constitutional Court directly or through Parliament.

The scope of those entitled to petition ex post abstract constitutional review is not tailored to the interests of the opposition, either. Prior to the entry into force of the Fundamental Law, access to the Constitutional Court through actio popularis was greatly reduced. Of the possible petitioners specified in the Fundamental Law, only the Ombudsman and a fourth of the Members of Parliament have so far exercised this right. Thus, the politically divided opposition must either come together or rely on the support of an external power, the Ombudsman. In fact, there have been examples of such alliances among the opposition as well as successful ex-post constitutional review petitions, even in a matter with parliamentary law relevance.

Not only did the entry into force of the Fundamental Law repeal the general right to petition the Constitutional Court for ex post constitutional review, but it also introduced the direct and genuine constitutional complaint that was hitherto unknown to the Hungarian legal system. As acts of Parliament cannot be challenged before ordinary courts, of the types of constitutional complaints, only the direct constitutional complaint has real relevance, since genuine constitutional complaints are only admissible, if they contest judicial decisions. Direct constitutional complaints are particularly relevant in the context of parliamentary autonomy, since they may also be geared towards challenging sui generis sources of parliamentary law. Indeed, acts of Parliament also include a number of specific executive acts, such as decisions on the conduct of sittings, parliamentary policing and disciplinary decisions, or decisions regarding the mandate of dignitaries, which give flesh to the relevant normative constitutional provisions and house rules. There are also special sources of parliamentary law, which do not take the form of constitutional, legislative or normative decisions, but which are nevertheless of a normative nature, forming the basis for issuing individual acts. These sources include presidential decrees or house committee resolutions. These are the sources of parliamentary law that are difficult to classify from a theory of legal sources point of view, but there is no doubt that owing to their role in detailing and interpreting house rules they are essential for the functioning of the parliament as well as for the exercise of parliamentary duties and powers. Since these decisions do not qualify as either legislation or as public law regulatory instruments, they cannot be the subject of ex post abstract constitutional review, so the only way to challenge their constitutionality is to file a constitutional complaint.

The strict system of conditions for the admissibility of a direct constitutional complaint, in particular, the extremely stringent deadline, reduce the chances of substantively reviewing a petition contesting parliamentary law to a minimum. It should also be emphasized that various acts adopted in Parliament, which are typically individual decisions, cannot be challenged before the Constitutional Court, not even through a direct constitutional complaint. It is merely the norm based on which the act was adopted, that may be challenged, with the exception of the Fundamental Law of course. Consequently, there are a significant number of acts of parliament that cannot be challenged.

The most important decisions of the Constitutional Court rendered on parliamentary law

From among the decisions of the Constitutional Court, we shall only focus on the most important decisions concerning parliamentary law, yet even from these few cases it is clear how much the Court's willingness to influence the 'internal affairs' of the Parliament has changed.

Decision No. 50/2003. (XI. 5.) AB was based on several petitions, one of which was a constitutional complaint alleging that the legislator had provided no legal remedy against the report of the parliamentary inquiry committee. This state of affairs seemingly complied with Article 57 paragraph (5) of the Constitution in force at the time, as it only required the provision of legal remedies against judicial, administrative and other decisions rendered by public authorities. However, this provision of the Constitution was given a broad interpretation by the Constitutional Court, who established the violation of the Constitution through omission: "According to the findings of the Constitutional Court,

the activities of the parliamentary committees conducting the investigation qualify as the exercise of public authority. It follows from Article 57 (5) of the Constitution that an appeal against decisions taken in the course of this activity affecting the rights, obligations and legitimate interests of citizens and other persons must be provided." This means that the Constitutional Court justified the classification of the activity of the inquiry committee as an exercise of public authority by reference to the fact that the committee makes decisions affecting the rights, obligations and legitimate interests of persons. Thus, in this decision, the Constitutional Court conducted a substantive review of parliamentary law relying on a broad interpretation of both its powers and the Constitution.

In Decision No. 9/2008. (I. 31.) AB the Constitutional Court ruled that the decision on the election of the President is of individual character, and owing to this quality, it cannot be reviewed by the Court. Hence, in this case, the Court interpreted its powers narrowly.

Decision No. 10/2013. (IV. 25.) AB was based on a constitutional complaint submitted by ten independent deputies, in which they sought the annulment of an amended RoP provision on the formation of political factions. It was argued, increasing the minimum number of MPs required for forming a new political faction to 12 and stipulating that only members of the party that had promoted an electoral list and won a seat in the previous elections may establish a faction violates the Fundamental Law. The Constitutional Court, however, stressed that "the Parliament enjoys a high degree of organizational leeway, whose limitations lie in the respect for the Fundamental Law. (...) Thus, the National Assembly independently decides all matters concerning its organization and operation which are not regulated by the Fundamental Law or other acts; the only substantive requirement regarding such decisions, i.e. internal organizational rules is that they do not violate the Fundamental Law."

The petitions underlying Decisions No. 3206/2013. (XI. 18.) AB and 3207/2013. (XI. 18.) AB contested decisions on disciplinary fines, in effect challenging several different disciplinary rules enshrined in the ANA. According to the Fundamental Law, "Everyone shall have the right to seek legal remedy against any court, authority or other administrative decision which violates his or her rights or legitimate interests". Thus, a decade after the 2003 decision of the Constitutional Court, and the entry into force of the Fundamental Law notwithstanding, the question remains the same: can a parliamentary act be qualified as a judicial, public authority or other administrative decision? As far as disciplinary decisions were concerned, the Constitutional Court answered without embarking upon an in-depth assessment: the absence of a remedy against such decisions shall not in itself result in a situation that is unconstitutional". This statement is repeated almost verbatim in Decision No. 3207/2013. (XI. 18.) AB. The Constitutional Court dealt with disciplinary and parliamentary policing related decisions in a similar way as it proceeded in respect of the National Assembly's internal organizational freedom: "Article 5 (7) of the Fundamental Law guarantees the right for the National Assembly to lay down its own internal rules and protocol for sittings in the Rules of Procedure adopted by a two-thirds majority of the Members of Parliament present. The National Assembly enjoys great freedom in drafting the provisions of the Rules of Procedure; its self-regulatory autonomy is a competence protected under the Fundamental Law, in which the Constitutional Court may intervene only in extreme cases and on the basis of very serious arguments and reasons, where there is a direct violation of the constitution."

In summary we may conclude that neither the normative framework, nor the jurisprudence of the Constitutional Court point into the direction of the Court becoming an institution for policing the Parliament's Rules of Procedure, indeed, in exercising its powers in relation to the National Assembly, the Constitutional Court opts for providing the Parliament greater regulatory leeway.

Beyond legal and political constitutionalism: The interdependence of the National Assembly and the Constitutional Court

A new level in the separation of powers

The intensity of the constitutional debates surrounding the public law upheaval following the adoption of the Fundamental Law has subsided, giving way to issues related to national sovereignty and constitutional identity. Having joined the European Union following the millennium, Central and Eastern European Member States left their socialist ideological past behind, a system that for a long time sought to standardize their public law structures. These countries are now, at this stage of integration forced to give shape to and accept their own constitutional identity while at the same time, persuade the European Union to recognize new identity as well. "In the early stages of integration, tolerance towards the primacy of EU law was the 'ticket' for Member States to join the club of a united Europe." At present, especially after Brexit, it is the continued operation (and quality) of the club that is at stake, so it is now also up to the European Union to "respect the principle of constitutional tolerance and to 'endure' the constitutional identity of the Member States so that the club can continue to operate smoothly".[26]

Today, the European Union is somewhere between a community of law and an independent state.[27] It has reached the critical mass that increasingly encourages Member States to mark out their own 'limits of sovereignty'. The legal systems of the European Union and Hungary are interconnected. We are witnessing a gradual widening of this relationship. The so-called 'integrationist' approach promoting such widening "forces Member States from the often misunderstood and poorly contextualised, yet objectively important sovereigntist perspective to redefine their relationship and that of the national constitutional (system) with the European Union".[28]

The European Union is basically built on the primacy of European Union law. In practice, primacy is derived from the principles of interpretation and application of law (e.g. effet utile, supremacy of Community law, direct effect and direct applicability) flowing from primary law and the case law of the Court of Justice of the European Union (CJEU).[29] These

26 SULYOK op. cit. 46.

27 French Professor Bertrand Mathieu's book is among the very few books which discusses the key issues democracy and the constitutional state based on rule of law from a 'sovereigntist' viewpoint. "We need a strong, organized and culturally homogenous society on the national level. Meanwhile, a further level may also exist, which is open to the differences between its constituent peoples, which is enriched by the diversity of national culture, and which is united around the common heritage… The goal must therefore be a Europe of the nations and not a Europe substituting the nations." in: MARHIEU, Bertrand: *A jog a demokrácia ellen? [Law against democracy?],* Budapest 2018, 215.

28 SULYOK, op. cit. 47.

29 Cf. Costa/ENEL case, 15 July 1964, 6/641 [1]; and 22 June 2007 Opinion of the Commission's Legal Service.

rules and principles have all helped the European Union in positing its own law (and hence its own 'self-limits') in relation to that of the Member States. In this context, the CJEU has also stated that Member States may not invoke their own constitutional arrangements in order to apply EU law selectively or in a discriminatory manner.
However, Community law also has its own self-imposed limits. An important new limit was introduced by the Treaty of Lisbon, the treaty that was actually designed to achieve an integration closer than ever between the Member States. Article 4 (2) of the Treaty on European Union (TEU), as amended by the Treaty of Lisbon, makes it clear that there is a protected core of national sovereignty which a Member State may preserve: *"The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State".*
National parliaments and national constitutional courts have a key role to play in both interpreting and protecting national identity. Their cooperation is essential for protecting national sovereignty and constitutional identity. In case of dispute, it is ultimately up to the constitutional courts to give substance to the notion of constitutional identity and, if necessary, to enforce it.
Nevertheless, it is not necessary, or even appropriate, for national constitutional courts to carry out this interpretative activity in complete isolation, only looking inwards, instead, Member States' constitutional courts can carry out their interpretative task most effectively in close cooperation with each other and in dialogue with the CJEU.

In pursuit of constitutional identity

Hungary has had a written constitution since 1949, nevertheless, the Fundamental Law restored the constitutional continuity that had previously been disrupted. The National Avowal declares that *"We honour the achievements of our historical constitution and we honour the Holy Crown, which embodies the constitutional continuity of Hungary's statehood and the unity of the nation."* The normative provisions of the Fundamental Law assign a more specific role to our historical constitution. According to Article R (3), *"The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal contained therein and the achievements of our historical constitution."*
Ferenc Deák said "Our constitution is a historical constitution, which was not made at the same time, but rather developed from the experiences of our nation, always in light of the needs of the nation and the necessities of those times [...] changing from time to time both in essence and in form."[30] Thus, the Hungarian historical constitution is a living reality, evolving organically, at the same time, it is also intended to provide the community with relative stability for generations to come: "our ancestors have endowed

30 DEÁK, Ferenc: *Adalék a magyar közjoghoz - Észrevételek Lustkandl Venczel munkájára [More on Hungarian public law – Observations on the work of Venczel Lustkandl]: „Das ungarisch-österreichische Staatsrecht" A magyar közjog történelmének szempontjából ["The Hungarian-Austrian public law" from the perspective of the history of Hungarian public law],* Pest 1865, 88.

us with the Hungarian constitution, a culmination of centuries' worth of achievements, which took shape gradually, forged in the life of the nation, and it is our duty to pass it on to our descendants if possible in the very same form, indeed, we must ensure that its force extends not only to our lives as mortals, but that it be transferred, as a solid legal basis, not unlike bricks and mortar, from generation to generation."[31]

According to this quote, Deák perceives the constitution as an identity-shaping document. If we are to consider the constitution as the "identity card of the nation", then in contrast with the neutral text of the previous constitution, one of the most important tasks of the Fundamental Law is precisely to enumerate the achievements of the historical constitution as an interpretative backdrop.

But what should we consider an achievement within our historical constitution? A scholarly approach defines the concept "achievement as a term meaning the result of a struggle, an enduring effort, which is the outcome of an organic development", yet it also stresses, that "something does not necessarily become an achievement of the historical constitution just because it formed part of the historical constitution, otherwise the scope of institutions pertaining to the achievements of the historical constitution would be too wide".[32] The Constitutional Court did not provide a general definition for the concept, however, in some of its decisions the Court classified certain legal institutions, such as judicial independence, religious freedom and freedom of the press, as achievements of the historic constitution. Based on the provisions of the Fundamental Law [Articles (B) and C)] and the recital of the National Avowal mentioned above referring to the Holy Crown, it can be reasonably argued that the separation of powers, the rule of law and popular sovereignty also fall under the scope of such achievements, since these principles are but the contemporary manifestations of the Holy Crown doctrine.[33]

The first important milestone in the development of our national (constitutional) identity is the Decision No. 22/2016. (XII. 5.) AB of the Constitutional Court, in which the Court interpreted the so-called 'EU clause' of the Fundamental Law. According to the clause enshrined in Article E) paragraph (2) *"With a view to participating in the European Union as a Member State and on the basis of an international treaty, Hungary may, to the extent necessary to exercise the rights and fulfil the obligations deriving from the Founding Treaties, exercise some of its competences set out in the Fundamental Law jointly with other Member States, through the institutions of the European Union."* The reasoning of the decision clarifies that "the concept of constitutional identity in the Hungarian Constitutional Court understanding means Hungary's constitutional self-identity." The decision further expressly provided that *"in exercising its powers, the Constitutional Court may, upon a petition to that effect, examine whether the joint exercise of competences based on Article E) paragraph (2) of the Fundamental Law violates human dignity, other*

31 Draft reaction to the royal rescipt submitted by Ferenc Deák on 14 March to the House of Representatives. In: FARKAS, Albert (ed.): *Album of the National Assembly, 1866, 1867,* Pest 1867, 227.

32 SULYOK, Márton: Nemzeti és alkotmányos identitás a nemzeti alkotmánybíróságok gyakorlatában [National and constitutional identity in the jurisprudence of national constitutional courts], in: *Nemzeti identitás és alkotmányos identitás az Európai Unió és a tagállamok viszonylatában [National identity and constitutional identity from the perspective of the European Union and the Member States],* Szeged 2014, 33.

33 STUMPF, István: *Constitutional Identity and the Scope of the (Administrativ) Implementation of European Decisions,* Budapest 2017, 172–173.

fundamental rights or Hungary's sovereignty or its self-identity stemming from its historical constitution." As far as the substance of constitutional identity is concerned, the reasoning set forth that this *"will be elaborated on the basis of the Fundamental Law as a whole, as well as its individual provisions, and, in line with Article R) paragraph (3), these shall be interpreted from case to case according to their purpose, the National Avowal and the achievements of our historical constitution."* Thus, in this decision, the Constitutional Court made it clear that firstly, that constitutional identity may constitute a limitation to the exercise of EU competences. Second, the Court also vindicates the right to establish the substance of the Hungarian constitutional identity through interpretation. Thirdly, from the formula outlined above, it is clear that the Court will take consider the historical dimension in its interpretation. With this decision, the Constitutional Court established three bases for review: the test based on the fundamental rights reservation, sovereignty control, and identity control. Those criticizing the decision[34] accuse the Court of not having gone far enough and only making an attempt to symbolically substitute the failed seventh amendment of the Fundamental Law. The Constitutional Court, however, was not in the position to take over the role of the constitution-making power and, in the absence of an express legal basis, could not expand beyond its powers.

In the 2018 elections, the governing parties (Fidesz-KDNP) gained yet again a constitution-making majority in parliament, and thus finally succeeded in adopting the seventh amendment to the Fundamental Law.[35] The amendment enshrined the concept of constitutional identity into the text of the constitution, a concept that stems from the historical constitution and which all state bodies are bound to protect. In the second paragraph of Article E), the constitution-making power identified the inalienable elements of national sovereignty, which in turn, constitute the limitations for the exercise of competences by EU institutions. This was the constitutional basis upon which the Constitutional Court rendered its decision on the issue of the Government's interpretation of the constitution.[36] Developing its earlier decision further, the Constitutional Court stated that the legal basis for the application of EU law in Hungary is the Hungarian constitution. In its interpretation of the Fundamental Law, the Court takes into account the obligations associated with EU membership as well as the obligations undertaken by Hungary in international treaties, maintaining that no institution

34 For a detailed analysis and critique of the decision, see: DRINÓCZI, Tímea: A 22/2016. (XII.5.) AB határozat: mit (nem) tartalmaz és mi következik belőle – Az identitásvizsgálat és az ultra vires közös hatáskörgyakorlás összehasonlító elemzésben [Decision No. 22/2016. (XII. 5.) AB: what it (does not) contain and what follows from it – A comparative analysis of identity control and ultra vires joint exercise of powers], in: MTA Working Law Papers, 2017, 1; and also: HALMAI, Gábor: Abuse of Constitutional Identity. The Hungarian Constitutional Court on Interpretation of Article E) (2) of the Fundamental Law. In: Review of Central and East European Law. In: *Review of Central and East European Law,* 43, 2018, 1, 23–42.

35 The Fundamental Law of Hungary. National Avowal. *"We hold that the protection of our identity rooted in our historic constitution is a fundamental obligation of the State." Article E) para (2) With a view to participating in the European Union as a Member State and on the basis of an international treaty, Hungary may, to the extent necessary to exercise the rights and fulfil the obligations deriving from the Founding Treaties, exercise some of its competences arising from the Fundamental Law jointly with other Member States, through the institutions of the European Union. Exercise of competences under this paragraph shall comply with the fundamental rights and freedoms provided for in the Fundamental Law and shall not limit the inalienable right of Hungary to determine its territorial unity, population, form of government and state structure. Article R) para (4) The protection of the constitutional identity and Christian culture of Hungary shall be an obligation of every organ of the State."*

36 Decision No. 2/2019. (III.5.) AB.

may encroach upon the Constitutional Court's interpretation of the Fundamental Law. Since compliance with EU law is foreseen under the Fundamental Law as a constitutional obligation, possible conflicts should be resolved through constitutional dialogue. This notwithstanding, the authentic interpretation of the Hungarian Fundamental Law is the exclusive task of the Hungarian Constitutional Court, which all other bodies and institutions must respect.

According to the National Avowal *"We are proud that our king Saint Stephen built the Hungarian State on solid ground and made our country a part of Christian Europe one thousand years ago."* A thousand years ago, King St. Stephen took a decision – the Fundamental Law restores continuity with this resolution. Continuity however, goes beyond the symbolic, since Article E) paragraph (1) also provides that *"In order to enhance the liberty, well-being and security of the people of Europe, Hungary shall contribute to the creation of European unity"*.

European identity also forms part of Hungarian identity. In addition to preserving and protecting this identity for the benefit of our nation, both Parliament and the Constitutional Court must work towards enriching our common European identity with our Hungarian identity.

Summary

As the paper tried to highlight, the relationship between the Parliament and the Constitutional Court can be interpreted as a way which has several periods within this relation showed newer and newer dimensions and specialties. In each period the Constitutional Court's role was quite solidly determinate by political circumstances. It begun with the bloodless revolution's legacy, which led to a political vacuum within the Constitutional Court became a key player. Although the activism of the Constitutional Court eased after the millennium, it still remained the strongest counter-power of the majoritarian policy making. Its strength became visible again after the 2010 parliamentary election: with their two-third majority governmental parties started to reshape the constitutional system without the need of oppositional support. The Constitutional Court had to face the challenge of anti-constitutional constitution-amendments between 2010 and 2013. During this period the Constitutional Court's competency was also modified – these modifications overwhelmingly point into the direction of restriction – and the Constitutional Court did not try to extend its limited competencies – the political constitutionalism seemed to defeat the legal constitutionalism. Due to the debates on separation of powers between the EU and member states sharpened – highlighted by the migrant and financial crises and also by the Brexit – the two "giants", the Parliament and the Constitutional Court became allies in a new front: both has the constitutional obligation to protect Hungary's constitutional identity, so both Parliament and the Constitutional Court must work towards enriching our common European identity with our Hungarian identity.

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A Victim Among Martyrs? Czech Victimhood Nationalism during the First World War

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Abstract

Victimhood nationalism has gained considerable attention in the past decade within nationalism studies. This theoretical article shows how recent research in the fields of international relations and victimology can help improve our understanding of Czech (Czechoslovak) nationalism. To do so, this study is using a selection of newspaper articles and unpublished archival materials from the period of the First World War, covering propaganda activities of Czechs (Masaryk, Beneš) and their allies or acquaintances in France, as well as those of Czech-Americans in the United States of America.
By drawing on the definitions of victimhood nationalism within the context of the 20th century by Adam B. Lerner, and of Early Modern religious martyrdom by Brad S. Gregory, as well as on recent research conducted by Andrea Orzoff regarding the national identity of interwar Czechoslovakia, I highlight the importance and the singular aspect of the use of victimisation as a diplomatic and political strategy in the Czech case during the First World War.

Keywords

nationalism, Czechoslovakia, First World War, propaganda, myth, victimhood, martyrdom, victimhood nationalism

Introduction

Victimhood nationalism has gained considerable attention over the past decade, especially within the fields of international relations, political sciences, and of course a closely related interdisciplinary field, nationalism studies. Nevertheless, most of these recent research efforts have so far been concentrated on the second half of the 20th century as well as specific well-known cases such as Yugoslavia, Palestine, and Israel.[1] The Irish and Baltic cases were also covered by recent inquiries into the use of victimisation within a political framework and the theorisation of victimhood nationalism.[2] This theoretical study demonstrates that it

1 See for instance for the Palestinian and Israeli cases: CAPLAN, Neil: Victimhood in Israeli and Palestinian National Narratives, in: *The Middle East Book Review 3,* 2012, 1–19. For the Israeli and Yugoslav cases, see for instance: LERNER, Adam B.: The Uses and Abuses of Victimhood Nationalism in International Politics, in: *European Journal of International Relations,* 2019.

2 See: OKAWARA, Kentaro: A Critical and Theoretical Re-imagining of 'Victimhood Nationalism': The Case of National Victimhood of the Baltic Region, in: *Baltic Journal of European Studies,* 9, 2019, 4, 206–217; FERGUSON, Neil – BURGESS, Mark – HOLLYWOOD Ian: Who Are the Victims? Victimhood Experiences in Postagreement Northern Ireland, in: *Political Psychology,* 31, 2010, 6, 857–886.

is relevant to use an earlier case, namely Czech victimhood nationalism during the period of the First World War, to analyse the historical developments of victimhood nationalism throughout the 20th century. Indeed, this type of national discourse and identity was already present prior to the Second World War in the Central European region, as research has shown for the interwar period for instance.[3] Therefore, this article also aims to show how historical research could benefit from and contribute to recent interdisciplinary discussions within nationalism studies, especially by highlighting the existence of long-term developments of and patterns within victimhood nationalism. This could strengthen some arguments made regarding the (challenged, at times)[4] definition of victimhood nationalism, as shown later in this paper.

The fact itself of being a victim and the act that turns one into a perpetrator or a victim, namely victimisation and crime respectively, are the main subjects of one field, criminology, and one so-called sub-field, victimology. The latter has sometimes been defined as a sub-field due to its lack of complex and thorough scientific theorisation so far;[5] this situation is also a consequence, or side-effect perhaps, of its interdisciplinary character, which led to the neglect of the study of victims as a focus group.[6] Nevertheless, thanks to its multifaceted particularity victimology welcomes a diversity of scientific approaches, among them historical research – one that has been guilty of disregarding victims as a study subject in the past, though it also provided "a measure of empirical evidence to challenge the 'marginality' of victims in past centuries."[7] Due to this lack of extensive research concerning the concept of victimisation from the perspective of the victims, recently addressed thanks to the introduction of victimology surveys in various countries,[8] another concept has been belatedly taken into consideration, namely the (mis)use of the status of victim in national and international politics. Indeed, despite a continuous use of victimhood nationalism by various national groups since the 19th century, a proportionally small effort has been made within the scientific community to identify its characteristics, its economic and social developments or roots, its consequences on international law and international relations, or more importantly, what made and makes victimhood nationalism a successful strategy from the perspective of its advocates within a nation, and what precipitated or precipitates its downfall.[9]

Fortunately, the past decade has shown an increased interest in both victimisation from the point of view of criminology and victimhood nationalism from the field of international relations and political sciences. Therefore, up-to-date definitions of these concepts are now readily available, thus allowing other more peripheral fields such as history to build on these findings and enhance our understanding of victimhood nationalism as a *longue*

3 ORZOFF, Andrea: *Battle for the Castle: The Myth of Czechoslovakia in Europe 1914–1948,* New-York 2009; HEIMANN, Mary: *Czechoslovakia: The State that Failed,* New Haven 2009.

4 OKAWARA, 214.

5 WALKLATE, Sandra: Perspectives on the Victim and Victimisation, in: *Handbook of Victims and Victimology,* WALKLATE, Sandra (ed.), Devon 2007, 13; ROCK, Paul: Theoretical Perspectives on Victimisation, in: *Handbook of Victims and Victimology,* WALKLATE, Sandra (ed.), Devon 2007, 37–61.

6 ROCK, 39–41.

7 KEARON, Tony – GODFREY, Barry S.: Setting the Scene: A Question of History, in: *Handbook of Victims and Victimology,* WALKLATE, Sandra (ed.), Devon 2007, 17.

8 ROCK, 48.

9 LERNER, 18–19.

durée phenomenon. This article addresses the topic from the Czech perspective, making use of updated definitions and recent theoretical advances originating from the fields of criminology, victimology, international relations, and cultural studies. I put the four key characteristics of victimhood nationalism as outlined by Adam B. Lerner to the test through the study of a selection of published and unpublished archival sources such as newspaper articles and personal correspondence, from the period of the First World War. These sources encompass propaganda activities of Czech diplomats (yet unofficial at the time) such as Tomáš Garrigue Masaryk and Edvard Beneš, similar efforts from their allies and acquaintances in France, as well as Czech-American propaganda articles published in the United States of America. One Czech-Jewish source was also included for this study in order to demonstrate certain aspects with more clarity. By examining all these sources together, the relevance of Lerner's theoretical findings is highlighted and the definition of Czech nationalism as victimhood nationalism during the First World War can be established.
The choice of the Czech case specifically (thus excluding the Slovak side) was motivated by three aspects: first, the Czech nation-building process was more developed than the Slovak one in 1914,[10] therefore the discourse offers an interesting picture of the narrative during the chosen period; second, due to the Compromise of 1867 and the structure of the Habsburg Empire prior to the Dual Monarchy, it is rendered difficult to associate both groups into the Czecho-Slovak (Czechoslovak) identity since they had significantly different historical experience;[11] third, as was shown previously, the Czechoslovak national identity that resulted from this phase of development leading to an independent state was predominantly Czech.[12]

Defining Victimhood Nationalism

Adam B. Lerner draws indeed the following attributes from his analysis of victimhood nationalism: international, political, transgenerational, and adaptable. It is international since it involves at least two distinct nations, and often an additional third-party nation – with various degrees of political autonomy, ranging from full independence to severe limitations of political representation and rights.[13] The political characteristic can be explained from two approaches, the first one being that "victims have agency, they often have a political will and they actively give meaning to victimhood through various practices."[14] Secondly, victimhood nationalism "politicise[s] collective trauma," and therefore it has political consequences on the formation of a national identity and on the political process of

10 LASS, Andrew: Romantic Documents and Political Monuments: The Meaning-Fulfillment of History in 19th-Century Czech Nationalism, in: *American Ethnologist,* 15, 1988, 3, 456–71; COHEN, Gary B.: Recent Research on Czech Nation-Building, in: *The Journal of Modern History,* 51, 1979, 4, 772.

11 In addition to previously cited sources, see: BAKKE, Elisabeth: *Doomed to failure? The Czechoslovak Nation Project and the Slovak Autonomist Reaction 1919–1938,* PhD diss., Oslo 1998; SUDA, Zdeněk: The Curious Side of Modern Czech Nationalism, in: *Czech Sociological Review,* 9, 2001, 2, 225–234.

12 HÁJKOVÁ, Dagmar – WINGFIELD, Nancy: Czech(-Oslovak) National Commemorations during the Interwar Period: Tomáš G. Masaryk and the Battle of White Mountain Avenged, in: *Acta Histriae,* 18, 2010, 3, 425–452.

13 LERNER, 2.

14 HOONDERT, Martin – MUTSAERS, Paul – ARFMAN, William: Introduction, in: *Cultural Practices of Victimhood,* 2018, 3.

nation-building.[15] Its transgenerational aspect lies in the fact that it implies grievances that transcends the generational boundaries.[16] Last but not least, it is adaptable in time and in space,[17] and therefore it can be re-framed and re-phrased within various contexts, geographical areas, and historical periods.[18]

As he rightly points out, the use of victimhood for political purposes is widespread throughout the world, and it was not a phenomenon that emerged only recently. The Central European region was submerged by victimhood and martyrdom narratives long before the use of such national discourses became a critical topic for political scientists in relation to post-Second World War conflicts in the Middle East or during the post-communist period in Europe, for instance. Throughout the 19th century and until the fall of the Austro-Hungarian monarchy in 1918, all nationalities present in this region had elaborated their own version of nationalism with victimisation narratives at their core, and all were using it at various levels to put pressure on their respective governments. It is interesting to note here that this phenomenon also included national groups that were in a position of power or majority such as the (Austrian) Germans or the Hungarians. Victimhood nationalism in the Austrian case emerged as an official political discourse in the aftermath of the First World War and was "confirmed" following the Second World War, for instance.[19] In the former case, it was built on narratives present among the population already during the war and especially from 1916 onwards, as Maureen Healy shows through her thorough analysis of everyday life in wartime Vienna.[20] This period was crucial also for the Czech nation-building process since the official discourse that would prevail for the next two decades was elaborated during these years.[21]

The Czech propaganda organised mainly by Tomáš Garrigue Masaryk and Edvard Beneš on behalf of the Czecho-Slovak Council outside of the Czech lands during the First World War was no exception in terms of constructing their own version of official victimhood (or even tragic heroism)[22] narratives. Such propaganda was also present in a more limited scope within the Czech lands due to censorship. However, the example of *Rozvoj,* briefly mentioned later in this paper, is a very specific one that should not be considered as representative of the propaganda activities "from inside", though it is relevant to include it in this study as will be explained. Most of the efforts within the Habsburg-governed territory were directed by the group of political figures around Karel Kramář as well as acquaintances of Masaryk. The new state that emerged from this period, the First Czechoslovak Republic also known as Czechoslovakia, was even described as the "child of propaganda" by British

15 LERNER, 3–4.

16 Ibidem, 9.

17 HOONDERT – MUTSAERS – ARFMAN, 1.

18 LERNER, 3–4.

19 HSIA, Ke-chin: 'War Victims': Concepts of Victimhood and the Austrian Identity after the Habsburgs, in: *Austrian Environmental History 27*, LANDRY, Marc – KUPPER, Patrick (eds.), Innsbruck 2018, 251.

20 HEALY, Maureen: *Vienna and the Fall of the Habsburg Empire: Total War and Everyday Life in World War I,* Cambridge 2004.

21 HASLINGER, Peter: *Nation und Territorium im tscheschischen politischen Diskurs 1880–1938,* Munich 2010; ORZOFF, 35.

22 HAJKOVÁ – WINGFIELD, 436.

historian Herbert A. L. Fisher.[23] This significant impact shows how crucial it is to analyse discourses (and their spread or use) from a historical perspective: "Nations need a sense of the past but they also need the most accurate possible understandings of that past."[24] Incidentally, the most crucial phase of the Czech nation-building process occurred as the perception of victims in Western Europe was changing from that of a "real actor in the day-to-day practice of criminal justice" towards a "symbolic and generic construct in public discourse."[25] This corresponded to the end of the 19th century and the beginning of the 20th century; this switch of perception of the role of victims within the society was inevitably influenced by the images of pure and innocent victims within the Victorian era and the rise of Romanticism in literature and the arts.[26] Framing an entire nation as a – collective – victim thus became possible and legitimate, since the concept of victimisation ceased to be part of the sole judicial context of court proceedings and enforcement of justice for the preservation of public order and of the monarch's authority.[27] Besides, victims were not perceived solely as a technical element within the judicial system anymore: they were progressively incorporated into a public discourse framing them as passive, innocent, and vulnerable, seeking protection from a strong state that took an increasingly paternalistic image.[28] Therefore, the Czech nation could theoretically be framed as a credible vulnerable and innocent victim of a terrible and oppressive Austrian-Hungarian state dubbed the "Prison of Nations" within this context, and it could even seek the protection of one or more of the great nations – France, Britain, or Russia in this specific case. We will see further in this article how this scenario corresponds to the definition of victimhood nationalism outlined by Adam B. Lerner.

At this point, it is important to clarify the choice of the term "victimhood" rather than "martyrdom". Indeed, the latter is traditionally used in historical research to describe the self-perception of Central European nations since most of them have their identity rooted in Christianity, and in their role as bulwarks of Christendom against Islam and the Ottoman Empire.[29] Nonetheless, the Czech nation had a significant variation in its discourse embedded in the important religious difference of the Czech national myth during the 19th century.[30] Partly due to the influence of Masaryk – himself an advocate for secularism – and mainly due to the emphasis on the legacy of Jan Hus by the early Awakeners, who included among others Palacký and Dobrovský,[31] the Czech national myth in the 19th century was based on the recurrent centuries-old struggle of Bohemian (Czech) Hussite (Protestant)

23 ORZOFF, 13.

24 HUNT, Lynn: Writing History Today: From Postmodern Challenge to Global History, in: *Czech and Slovak Journal of Humanities 2,* Olomouc 2018, 13.

25 KEARON – GODFREY, 24.

26 Ibidem, 24–25, 30–31.

27 See KEARON – GODFREY for more developed explanations regarding the evolution of the status of victims and the role of prosecution throughout history.

28 Ibidem, 30–31.

29 JOHNSON Lonnie R.: *Central Europe: Enemies, Neighbors, Friends,* New-York 2002, 64.

30 Ibidem, 92.

31 Ibidem, 66; ORZOFF, 17.

nobles against the Catholic Austrian (German) Habsburg oppressors.[32] The execution of Jan Hus in 1415 and the defeat at the Battle of White Mountain in 1620 were the main examples.[33] This motif was even overtaken by some Czech-Jews during the First World War to signal their loyalty towards the Czech state and their opposition to the Habsburg oppression.[34] Catholicism symbolically was or represented the main threatening "other" for the Awakeners, defining the Czech identity as a separate, different one from the rest of the region. In this context, a discourse in line with the traditional Central European and Catholic version of martyrdom or one that would defend the Roman Catholic Church was logically not the preferred options. This historical legacy, combined with the inclusion of non-protestant and non-secular national groups (such as Slovaks or Ruthenians, but also Jews, for instance) within the Czecho-Slovak nation project at the beginning of the 20th century, oriented the Czech national discourse towards a relatively more inclusive[35] and secular version of the traditional Central European martyrdom, which drew closer to political victimhood. Though many publications focusing on this aspect of Czech identity prior to the 20th century frame their studies in terms of (religious) martyrdom,[36] this paper shows how crucial it is for historians to use distinct terms that would accurately reflect this significant evolution in the Czech national discourse at the turn of the century. Thus, I use here the terms victimhood or victimisation specifically to establish a clear separation with the religiously connoted term martyrdom – which will not be the focus of this study.

Besides victimisation and martyrdom, tragic heroism is a concept also used to describe another aspect of victimhood nationalism;[37] in this paper, it refers to the use of military heroism within a narrative focusing on victimhood, thus turning the act of war into an act of sacrifice for the nation (e.g. in the case of Czecho-Slovak Legions in Russia). As Ke-chin Hsia shows, certain categories of war victims in Austria were perceived as "dutiful hero-sufferers" during the post-war years leading to their inclusion into national victimhood discourses originating from all political sides. These discourses emphasised the difference between martyrdom, which was considered meaningless, and tragic heroism which was considered purposeful.[38] A similar situation, namely distancing from martyrdom and turning to a more political approach, happened in the case of the Czech (later Czechoslovak) national identity during the First World War, as this paper shows.

32 JOHNSON, 66–67; ORZOFF, 11; SUDA, 229.

33 HAJKOVÁ – WINGFIELD, 430.

34 *Rozvoj*, 1915, 10 July.

35 INGRAO, Charles: The Changing Face of Habsburg History: Truth or Consequences?, in: *Czech and Slovak Journal of Humanities,* 2, Olomouc 2018, 18.

36 JOHNSON, 66.

37 HSIA, 248–249.

38 Ibidem.

Political Victimhood or Religious Martyrdom: The Czech Case

The notion of sacrifice is central to any study of victimhood and martyrdom, equally so; what defines whether this sacrifice belongs to one or the other is the way it is framed by the victim and by the society around them. The act of sacrifice can equally be a self-perception or an external one given by the society as a whole, or a specific community, for instance. This aspect of sacrifice is crucial for studies such as this one, since it means it can be both a personal story or storyline and a public discourse – whether official from a state or established government, or non-official from a minority (of any type) or a separate sub-group or community within the main official (national or not) group. Within the context relevant to this article, namely the beginning of the 20th century, we can find the former, personal storylines, in private letters, for instance, or in diaries. The latter, public discourse, can be found in a wide variety of sources such as newspapers, official documents including proceedings of parliamentary sessions, speeches, but also schoolbooks and any other material related to public life. This includes of course visual elements such as statues, ceremonials, clothes, and many others. Hence the need to have an interdisciplinary approach and to review progress made in such a broad range of fields.

In the case of the present study, the analysis focused on written forms of public discourse, mainly originating from newspaper articles. However, letters, therefore personal storylines, were also included for two reasons: first, these were written by public figures such as politicians who were aware of their status as such and who were using these storylines in their private communication; second, due to this fact, it is important to include these sources as they show the consistency (or disparities) between public and private discourses, as well as create a link between both. In his monograph about Early Modern martyrdom, Brad S. Gregory described the importance of this method of selecting sources to ensure that the resulting research would depict the Early Modern society and perception of martyrs with as much accuracy as possible.[39] This similar methodological approach helps defining both concepts (victimhood and martyrdom) in a comparative way. Furthermore, understanding Early Modern martyrdom is essential when focusing on the late 19th century and early 20th century in the Central European context. Indeed, most of the events that were used by the Awakeners of Central European nations to picture their national groups as victims took place during this period: in the Czech case, the Battle of White Mountain (1620) and the persecution of those considered rebellious or heretic that followed is one of the most well-known illustrations of this phenomenon.

It is important to underline that the border between martyrdom and its religious symbolism, on one side, and victimhood and its political struggle on the other, is very thin in Central Europe. The way sacrifice is interpreted by the public or non-public discourse defines whether a narrative belongs to the realm of religious martyrdom or political victimhood. As Terry Sullivan wrote, "nationalism took on the aura of a secular religion" and in Central Europe, the concept of nation as elaborated in the 19th century was rooted in

39 GREGORY, Brad S., *Salvation at Stake: Christian Martyrdom in Early Modern Europe,* Cambridge Mass. 2001, 17–19.

one's language first, one's religion came second or was equally important.[40] Origins or ancestry came as a third criteria that had a symbolic though meaningful influence: tracing back noble Bohemian families to the Middle Ages and the so-called Golden Age of the Bohemian Crown.[41] Victimhood can be defined within the lines of International Relations and Political Sciences as seen previously, whereas martyrdom remains a very religious concept, anchored in liturgy and theological definitions.[42] Nevertheless, they both share some characteristics, as we can see when comparing Lerner's and Gregory's research. According to Brad S. Gregory, the requirements for martyrdom as a concept are: "the notion of martyrdom must exist and be available to contemporaries (…) there must be people willing to punish the heterodox with death (…) there must be people willing to die for their religious convictions (…) there must be survivors who view those executed for their religious convictions as martyrs."[43] The latter aspect also implies that martyrdom is transgenerational, as stories of those who are killed as martyrs are told by survivors to the next generations.[44] In the context of the First World War and the Czech case, martyrdom was indeed still present and widely used and recognised, though in terms that differed from the Early Modern perception; there was a regime enforcing rules through discrimination and sometimes persecution against those who did not comply with them, though these laws focused mostly on language and political affiliations or views; obviously there were survivors and people willing to die for their struggle, the latter being illustrated most famously by the Czecho-Slovak Legions abroad. Therefore, it is clear that despite all the shared characteristics, the main difference is the omnipresence of religious motives within martyrdom. As Gregory clearly states: "without [these elements], martyrdom either does not exist, does not occur, or is not understood as such."[45] The term "martyr" was often used by Czechs and Slovaks, as well as their allies, abroad and within the Czech lands, especially in press articles or politically charged publications or correspondence. It was not understood according to the religious definition of martyrdom, though, but rather based on political victimhood. There are many reasons for this that should be addressed in future research. Among them, the fact that the main bearer of this victimisation discourse during the period studied for this paper, Masaryk, was advocating for secularism;[46] the fact that the Czech and Slovak communities as national groups were diverse in terms of faith and religious affiliations; the fact that religion was increasingly becoming a secondary concern regarding how society defined itself and its struggles following the industrial revolutions and the rise of ideologies or doctrines such as nationalism and Marxism.

To illustrate this absence of religious motives, and therefore this shift from religious martyrdom to political victimhood, we can quote Ernest Denis' words from his major work about Czech history published in 1902: "Between persecutors and martyrs, between tyrants and victims, it is not possible for me to remain neutral; I hate oppression in every

40 SULLIVAN, Terry: Nationalism and the Nation State in Central Europe, in: *The Politics of Ethnicity in Central Europe,* London 2000.

41 JOHNSON, 28.

42 GREGORY, 7.

43 Ibidem, 26–27.

44 Ibidem, 25–26.

45 Ibidem, 27.

46 SUDA, 231.

shape and form, I believe in the triumph of justice, and that is why the cause of Bohemia is so dear to me."[47] Denis was close to some of the Awakeners of the 19th century, he even had direct contact with František Palacký. Therefore, it was natural for him to use this term, "martyr", despite the religious connotations it had, since the original version of the Czech national discourse was rooted in the struggle of Hussites against Roman Catholics.

Czech Propaganda during the First World War: Victimhood as a Political & Diplomatic Tool

When analysing sources from the First World War on the background of the model for victimhood nationalism presented by Adam Lerner, the use of this narrative as a political and diplomatic tool becomes clearer. This observation represents yet another significant element to argue that during this period, the Czech (Czecho-Slovak) national discourse was already evolving towards a strictly political version of victimhood nationalism – after a transition that has yet to be analysed thoroughly. This part of the study also shows how this model, coming from the field of international relations, can be applied to cases dating back to before the Second World War – offering a much-needed bridge between historical and political sciences in the study of nationalism(s). As mentioned previously in this article, we can summarise the characteristics of victimhood nationalism as follows, according to Adam Lerner: international, political, transgenerational, and adaptable. Besides these characteristics, it requires the existence of a collective trauma, or at least of a narrative of collective trauma – which needs not be rooted in empirical truth or experienced by the entire group that forms the nation.[48] During this analysis, attention must also be paid to the possible existence of a victim-perpetrator relationship that could be presented with the aim of performing victimisation, and the involvement of a third party. The First World War being a worldwide conflict, there were more than one third party; namely, we can say there were three main third parties, France, the United Kingdom, and the United States of America – the Entente powers fighting against the Central powers. Nevertheless, the sources examined for this article feature mostly two third parties: France and the United States of America.

In the Czech case, the international dimension of the discourse focusing on victimhood is perhaps the easiest to demonstrate. For instance, Tomáš Garrigue Masaryk, Edvard Beneš, and the large majority of the architects of this political propaganda spent most of the war in exile outside of the Austro-Hungarian territory, thus intrinsically making their fight for Czecho-Slovak independence an issue of international diplomacy. This situation influenced the relations between the European states involved on all sides of the war (Central Powers, Entente Powers, and neutral states) in multiple cases, as well as the diplomatic communication. The Czecho-Slovak representatives were indeed not officially recognised as a government yet – and were even considered criminals from the Austrian-Hungarian government's perspective. It was therefore more complicated to avoid espionage from the enemy, as the instructions given by French statesman Louis Eisenmann in his letter sent

47 DENIS, Ernest: *La Bohême depuis la Montagne Blanche*, 1902, 2.

48 LERNER, 7.

on 11 December 1916 show.[49] Furthermore, their private correspondence with and the numerous articles published by foreign diplomats, politicians, and scholars show the extent of their international outreach[50] beyond the Central and Eastern European region – and the traditional "allies" of Czechs within the Habsburg Monarchy.

A key document showing that all three characteristics were included in the Czech case during the First World War is the essay entitled "Austria Delenda Est" and written by Edvard Beneš in 1916. In one of his first handwritten drafts,[51] we can already see how Austria was designated as the perpetrator and the Slavic populations as the victims. A key observation that must be highlighted from this document is that it was introducing the main claims on the Czecho-Slovak side in a very detailed manner, thus defending their proportionality in relation to the charges made against the Austrian-Hungarian state. This is a crucial point since at that time, there was still a significant influence of previous approaches to victimisation within the political-judicial system in Europe; besides the symbolic role of victims, there was a tendency to emphasise the harm caused to a larger community (or the entire society in the eventuality it could threaten the established order) rather than the individual.[52] The text thus showed that Czech claims were not solely for the better good of their own community, but were made in the interest of all Slavic people in Central Europe and the Balkans – or even in the interest of the entire European continent. The "dismemberment" and "annihilation" of a sovereign state was and remains the ultimate sentence against this kind of perpetrator. Therefore, the alleged crime(s) had to be carefully characterised – in a similar manner as for an actual trial. The main accusation lies in the fact that Austria-Hungary, which is almost considered as one alleged criminal here, premeditated the murder of the Slavic communities. The "murder" here being the act of war, sending Slavic populations to the frontlines as an act of oppression. These, according to Beneš, were planned long before 1914 through fictional conspiracies that were invented by the Austrian-Hungarian government in order to target troublesome elements among Slavic political figures.[53] This accusation was also outlined with very similar arguments in articles published by a French scholar under the pseudonym Jules Chopin in the French journal *Le Mercure de France* on 16 March 1916 and 16 June 1916.[54] Both men were in contact through personal correspondence, which shows how coordinated the Czech propaganda was within the international diplomatic framework.

49 Masarykův Ústav a Archiv Akademie věd České republiky (Archives of Masaryk Institute and the Academy of Sciences of the Czech Republic, hereinafter as MÚA), fund Edvard Beneš (hereinafter as EB) IV/1, cart. 73, sign. 240, folder R48/1/A1, doc. 48–50, letter from Louis Eisenman to Edvard Beneš, 11/12/1916.

50 For example, an overview of T. G. Masaryk's correspondence showing this international outreach can be found in: HÁJKOVÁ, Dagmar – ŠEDIVÝ, Ivan (eds.): Korespondence T. G. Masaryk – Edvard Beneš (1914–1918) (hereinafter as Kor. TGM-EB), MÚA, 2004; HLADKÝ, Ladislav – ŠKERLOVÁ, Jana – CIBULKA, Pavel (eds.): Korespondence T. G. Masaryk – Slované; Jižní Slované. Praha 2015; RYCHLÍK, Jan (ed.): Korespondence T. G. Masaryk – slovenští veřejní činitelé (do r. 1918), Praha 2008.

51 MÚA fund EB IV/1, cart. 73, sign. 240, folder R48/1/A2, doc. 94, page 2, "Pourquoi l'Autriche-Hongrie doit être démembrée et anéantie ? ", handwritten notes (in French) by Edvard Beneš, 1916.

52 KEARON – GODFREY, 24.

53 MÚA fund EB IV/1, cart. 73, sign. 240, folder R48/1/A2, doc. 94, page 14, handwritten draft by Edvard Beneš, 1916.

54 CHOPIN, Jules: L'Autriche-Hongrie : Brillant Second, *Le Mercure de France,* 1916, 16 March; CHOPIN, Jules: La Préméditation Austro-Hongroise, *Le Mercure de France,* 1916, 16 June.

This can be linked to Lerner's argument that victimhood nationalism requires a malleable discourse that can be adapted to different audiences and contexts throughout space and time. The inclusion of all Slavic people of Central Europe within the narrative of victimhood enabled Southern Slavs, for instance, to claim a similar status of victim.[55] In a letter sent in December 1916, we can see how Masaryk coordinated these changes depending on the overall military situation: "Tell Dr Osuský to write an article about a) the Magyar atrocities against the Romanians – see Cantacuzino, the Romanians in Hungary, b) about the Romanian-Slovak and Serbian alliance – it was in the 1890s. The common programme is interesting now."[56] Even Romanians, who were not considered a Slavic but Latin national group due to their linguistic identity, were included in this political victimhood narrative hostile towards the Habsburg powers. It would be logical to interpret this as a will to show the proportionality of the harm caused by the Habsburg monarchy in comparison with the demands of its victims. Another explanation that is equally plausible is the intention to directly appeal to the third-party nation targeted by this article, namely France. Indeed, in early 1917, an article was published in the French journal *La Nation Tchèque* with this version of the victimhood narrative: "(…) all the oppressed nations of Central Europe, in Austria-Hungary and in the Balkans would have kept lamenting under the yoke of Berlin, Vienna, and Budapest."[57] At this point, *La Nation Tchèque* was already considered as the official propaganda channel of the Czecho-Slovak Council based in Paris. We must therefore consider this example within the context of diplomatic strategies on the side of the Allies.

In a telegram sent by Beneš to Masaryk in November 1916, we see once again that the focus was obviously political and not religious: he clearly states that an attack conducted against the Polish or Russian people represents an attack against "us", namely against Czechs and Slovaks.[58] Beside the fact that both these nations were not considered as natural allies of the Czechs, for both historical and religious reasons, it is interesting to note here that this "attack" was a strictly political one since it referred to a parliamentary reform. Once again, there was no trace of any religious motive, making this a clear case of political victimhood as outlined by Lerner: it was a political, international matter, that could easily be adapted to the (predominantly) Czech narrative.

Last but not least, the active involvement of Czech-Americans in the spread of this discourse focusing on political victimhood shows how Lerner's conceptual model can help with understanding the Czech case in the context of the First World War. Indeed, according to an article published in *Slavie* in December 1915, it was the "duty" of Czech-Americans to support the Czecho-Slovak struggle for independence in Europe.[59] This, despite the fact that most Czech-Americans reading this newspaper had emigrated in the late 19th century or were children of those who emigrated to the United States. The example of *Rozvoj,* [60] a Czech-Jewish newspaper, also shows how this victimisation transcended generations

55 Německý Socialista proti Malým Narodům, in: *Slavie,* 1917, 29 June, 3.

56 Letter (in French) from T. G. Masaryk to E. Beneš, 8 September 1916, in: *Kor. TGM-EB,* 153.

57 La Bohême Indépendante et l'Italie, in: *La Nation Tchèque,* 1917, 1 February, 294.

58 Telegram from E. Beneš to T. G. Masaryk, 7 November 1916, in: *Kor. TGM-EB,* 174.

59 *Slavie,* 1915, 7 December, 2.

60 *Rozvoj,* 1915, July 10.

and traditional "national" group identifications. Indeed, references to the Czech struggle against the Habsburg were mirroring 19th century discourses, though stripping it from its divisive martyrdom elements.

The political victimhood discourse was thus transgenerational, political, international, and adapted depending on different contexts and audiences. It was done willingly in this manner in order to claim the right to independence.

By combining a historically accurate reading of the contemporary context of the Czech case during the First World War with the most recent research in the fields of international relations and nationalism studies, it is possible to show the existence of significant similarities between cases of victimhood nationalism from the second half and the beginning of the 20th century. In this article, I showed that the Czech national discourse was rooted in victimisation narratives, but also that it is impossible to define it within the lines of religious martyrdom, unlike other Central European nations. Furthermore, this paper adds to recent historical research showing that there was a historical continuity in the use of such nationalism prior to the Second World War in Central Europe. For this region, political victimhood as featured during the Communist period[61] for instance was neither a recent nor a new phenomenon.

Future research could focus on analysing the characteristics that made this Czech-dominated national discourse of victimhood such a unique case within the Central European context already before the First World War broke out. If done in a thorough manner covering the main aspects of Czech (Bohemian and Moravian) society prior to the war, this would enable historians of nationalism, but also experts in international relations to have a clear overview of another version, namely an inclusive one, of victimhood nationalism, as well as its evolution in time, space, and (public, private) discourses.

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61 With the example of the Communist interpretation of Jan Hus' myth, for instance: JOHNSON, 68.

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REVIEWS

Josef VOZÁR

Augustín Ráth. Prvý slovenský rektor Univerzity Komenského [Augustín Ráth. First Slovak Rector of Comenius University]

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The Comenius University, the first Slovak university was established in 1919. The new Czechoslovakia had only three universities in the interwar period – the oldest of them the Central European University in Prague (Charles University) and two new universities in Brno (Masaryk University) and Bratislava (Comenius University). The foundation of the Czechoslovak Republic in October 1918 gave a strong impulse to the use of the Slovak language in all public areas including the courts, the public administration and legal education. The Slovak legal and institutional infrastructure was born only after the collapse of the Austro-Hungarian Monarchy. Bratislava became after 1919 not only a university city, but also a venue of scientific conferences, the seat of scientific societies and specialised magazines.

The big problem for prewar Slovakia and the Slovak national movement was the fact that there were only a very limited number of legal professionals with scientific background. The former university in Bratislava (University of St. Elisabeth) was an institution with Hungarian working language and spirit. Several legal academies working in the more important cities were Hungarian institutions, too. The solicitor or barristor was a typical legal profession for Slovak lawyers in the old Hungarian Kingdom before 1918. The public administration was a field mainly reserved for Hungarians or for Slovak renegats (Hungarised Slovaks). Very few Slovak lawyers worked at that time as a judge and Augustín Ráth was an unique exception in this respect.

Augustín Ráth (1873–1942) was born in Ružomberok (Rosenberg, Rózsahegy) in Liptov county. This county together with other north-western counties (Orava, Turiec, Trenčín) represented at that time the main bastion of the Slovak national movement in prewar Hungary. Ružomberok was a Catholic city in a predominantly Protestant county. Ráth descended from an enterprising family and his grandfather came from the mother side of a former mayor of city. Originally he had planned to become a priest, but later he changed this plan and started legal studies in Cluj-Napoca (Kolozsvár), which was a center of Hungarian Transylvania at that time. Ráth finished his studies in Budapest. A very famous professor of Roman law, Márton Kajuch-Szentmiklóssy (a native from Liptov, too) suggested to him to try a university career in Budapest, but Ráth preferred the profession of a practical lawyer. Before 1914 he worked as provincial solicitor. Ráth was at that time active in the Slovak national movement, too – e. g. he founded the regional newspaper Orava and he was editor-in-chief of Slovenské ľudové noviny for a certain period. Ráth protected the Slovak activists in judicial processes. He was on the managing board of Úverná banka

(Credit Bank) and in 1906 he stood as an unsuccessful Slovak candidate to the Hungarian parliament.

Just before the First World War Rath changed his profession and he became a judge in Novi Sad in Voivodina, which belonged then to Hungary. During the world war he served as a distinguished Austro-Hungarian military judge in Kruševac in occupied Serbia. He may have had good connections with the Serbs, because after the war he worked as a Serbian civil servant in Voivodina and later in Belgrade. Here he worked at the Ministry of Justice. He was responsible for the codification of laws and for this work he was awarded the Order of St. Sava 3rd Class.

Ráth repatriated to Czechoslovakia in 1919. At first he worked as a civil servant and as head of department at the Czechoslovak Ministry of Unification. This ministry was traditionally led by Slovak politicians and professionals, because they knew the Czech, Slovak, German and Hungarian languages. The knowledge of these languages was very important in the field of legal unification. Ráth was simultaneously also a judge of the electoral court. Rath participated in the discussions about the Slovak legal terminology, because this question ranked as very current after the First World War. The Slovak language became an official language of the Czechoslovak Republic, which needed the Slovak terminology, too. This terminology was born immediately after the collapse of the Austro-Hungarian Monarchy. The journal Právny obzor and its founder and first editor-in-chief, Emil Stodola played an important role in this sensitive process.

After his return to Czechoslovakia Ráth restarted his scientific career. He lectured at the Faculty of Law of Charles University in Prague, where he was habilitated in 1920. The president of the republic apponinted him professor of civil law in 1921. He was a co-founder of the Faculty of Law of Comenius University in Bratislava and its first dean. He became the first Slovak rector of Comenius University in the school year 1921/1922. Augutín Ráth was a regular professor of civil law between the two world wars. He worked at the Faculty of Law until the end of his life. He was a very helpful and student-friendly professor.

Ráth performed many important functions in the scientific and social life of Slovakia. He was a member of many scientific societies (e. g. Štátovedecká spoločnosť (State Science Society) or Učená Spoločnosť Šafárikova (Šafárik Learned Society)). He participated in the preparation of an uniform Czechoslovak Civil Code, but this code was adopted only after the Second World War. He and his wife were active in the social life of the interwar Bratislava. His wife was Czech and they had four childrens. Ráth did not support the restrictions against the Czech professors in Bratislava (the majority of professors of the Faculty of Law had Czech origin) after the declaration of Slovak independence, but he did not protest openly. Augustín Ráth died in 1942 in Bratislava.

During his scientific life Ráth dealt with several aspects of civil law. His important topic was the unification and codification of law. He published about the legal customs and he dealt with the Slovak legal terminology, too.

The author of Ráth' biography is Jozef Vozár (1967), who is presently the director of the Institute of State and Law in Bratislava. This institute is a part of the Slovak Academy of Sciences. Vozár is a specialist for Slovak civil law, but recently he has been publishing very interesting biographies about the life of important Slovak lawyers from the first half of 20th century. Several years ago he published a monography about the four famous Slovak

lawyers coming from Liptov. Vozár is a native of Liptov, too. This book contained one chapter about Augustín Ráth as well. Later he published a monography about Vladimír Fajnor, who was the first Slovak president of the prewar Czechoslovak Supreme Court. Together with professor Oľga Ovečková he edited the representative book about the history of the first Slovak legal scinetific journal (Právny obzor), which had been founded by Emil Stodola in 1917.

The new publication by Jozef Vozár is based on research in the Czech and Slovak archives (especially of Comenius University, Archiv in Bratislava) and on good knowledge of the memoaires. He used the old and current Slovak legal literature, too. The book has five big chapters. The first chaper is about the private life and studies of the young Slovak lawyer. The second chapter focuses on the socilitor's, scientific, journalist and political career before 1918. Then it deals with the years of the First World War. The third chapter presents the very interesting issue of the unification of law in prewar Czechoslovakia. This issue is especially interesting from the legal point of view. The fourth chapter deals with the activities of Ráth in the Slovak scientific life. The fifth chapter is the biggest – it focuses on the history of Comenius University and on the role of Ráth there. This chapter encompasses half of the book. The final chapter deals with the complex evaluation of the person of Augustín Ráth and with his place in the history of Slovak legal science and legal education. Vozár has called attention to the moral and human qualities of Augustín Ráth. He was a moderate, tolerant and democratic person and he played a very important role in the process of education of the first strong generation of Slovak legal scholars. The style of the book is elegant (Moderált és elegáns stílus – ezt így furcsa. Elég, hogy elegáns.) The readers can feel the sympathy of the author with his hero, but this fact does not change the objective character of the book. This fact is especially evident in the last chapters and the conclusions.

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Gábor SCHWEITZER

„Egy tisztességes jogtanár". Molnár Kálmán pályaképe ["The honest professor of law". Portrait of Kálmán Molnár]

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The reviewed book deals with professor Kálmán Molnár, who was a very interesting person of the Hungarian legal science and public life in the interwar period. The author of the book is Gábor Schweitzer, a research-fellow of the Institute for Legal Sciences of the Hungarian Academy of Sciences. (This institute is currently part of Eötvös Loránd Research Network.) Schweitzer is also a full-time lecturer of the National University of Public Service. His main research topic is the history of Hungarian constitutional law and the history of the Hungarian legal science before 1945. He published many articles and several books about the life of the Hungarian scholars living and working between 1867 and 1945.

The portrait of professor Kálmán Molnár by Gábor Schweitzer helps us to understand the complicated situation of the Hungarian scholars in an extremely difficult period of Hungary. The defeat suffered in the First World War and the collapse of the traditional Hungarian statehood in 1918 resulted in important mental and social problems in the life of many people in Hungary. This collapse initiated the three decade-long period (1918–1948) of history, which changed Hungary very dramatically. Two revolutions, one conter-revolution, two dictatorships and one world war took place during this period. But these three decades were the most active period in the life of professor Molnár.

Kálmán Molnár (1881–1961) was born in Nagyvárad (currently Oradea in Romania) in the family of professor Imre Molnár. His father taught legal studies at the local Catholic academy of law. Molnár's family of gentry origin belonged to the Catholic intellectual circles in the city. The young Molnár began to study here, but later he continued his studies in Budapest. Hungary had only three universities with regular faculties of law (Budapest, Cluj Napoca and Zagrab) at that time, but regional cities had academies of law as well. These academies were in the hands of the Catholic and Protestant churches or they were the property of the state (royal academies).

Young Molnár prused studies abroad, too (Germany and France). After his return to Hungary he was given the position of a lecturer in Eger, where he worked at the catholic legal academy. Molnar wroked here between 1907 and 1925. Originally his main subject was Hungarian constitutional and international public law. During the First World War he served on the front and spent several years in a Russian camp for military prisoners. He returned in 1919, but after the collapse of the monarchy he joined another departament. His new workplace was the departament of legal history and history of the church in Eger. As an ardent monarchist and Catholic Molnár did not agree with the republican form of state and with the provisional legal character of the Horthy regime. From his point of view it was

not correct to teach the legal institutions, with which he did not agree. Molnár supported the legitimist movement, which advocated in the interwar period the restoration of theHabsburg dynasty. Molnár like a large number of Hungarian Catholic and conservative intellectuals presented antisemitic and antiliberal opinions. He presented the history of Hungarian public law for the young Otto von Habsburg, too.

The Hungarian constitutional and political system had a provisional character in the interwar period. This system was born under the pressure of the Western winners and the domestic political circumstances. The Károly Huszár government called for National Assembly elections to be held on 25–26 January 1920. These elections, which were conducted via secret ballot and were open to all Hungarian citizens, including women over the age of 24, resulted in a governing coalition composed of two parties that won nearly 94 percent of all mandates in the National Assembly: the Christian National Union Party and the National Smallholders' and Farmers' Party.

Some politicians from the Christian National Union Party favored the return of the last king from Habsburg-dynasty to the throne of Hungary, though the Entente Powers had indicated that they would not accept this option. Others, mainly from the National Smallholders' and Farmers' Party, advocated the appointment of a Hungarian national king. National Assembly representatives finally approved Prime Minister Huszár's proposal to elect a regent to temporarily serve as head of state until a permanent solution to the Habsburg king vs. national king question could be found. The government had two candidates – Miklós Horthy and count Albert Apponyi who led the Hungarian delegation in Trianon. The real position of Horthy was stronger, because he was the commander of the National Army and he had British supporters as well. The regime of "provisorium" started with the election of Horthy. The monarchist Molnár accepted this regime, but only as a provisional solution.

Later Molnár worked in Southern Hungarian, in Pécs, at the Catholic legal academy. He achieved here the position of dean. He was a consequent supporter of the formal legal continuity with the pre-war legal system and he had a theoretical problem with the legitimacy of the Horthy-regime. The Hungarian political system became more authoritarian in character and pro-German in foreign policy from the third decade of 20th century. The deeply conservative Molnár opposed this political trend and criticised the adoption of anti-Jewish discriminative acts atÍ the end of 1930s. Molnár, together with professor Ödön Polner signed the protest of Hungarian intellectuals against these laws in 1939. During the Second World War he represented the anti-fascist position and under the rule of Hungarian fascist party in 1944 he spent several weeks in the fascist prison.

After the Second World War he was for a short time the member of the provisional National Assembly in Debrecen. This fact was a paradox in his life, because he always supported the regular forms of creation of parliaments instead the revolutionary forms. Molnár always criticised the fascism and discrimination from a conservative point of view. He did not reject the idea of limiting the voting right and he supported the idea of plural suffrage. But old Molnár had a prestige among the antifascist lawyers after the second world war. He did not have a wife and childrens. These reasons were very important in the process of delegating him to Debrecen, because during the post-war Soviet occupation every travel inside Hungary was dangerous.

After the short political carieer in 1945 he went back to Budapest, where he taught at the Faculty of Law of Pázmány Péter University (currently Eötvös Lóránt University). He was an active teacher and publisher, but the communist political regime sent Molnár to pension in 1949. Then Molnár lived as a pensioner in Budapest in the last years of his life.
Molnár's political and scientific life demonstrates very clearly the complicated Hungarian history in the first half of 20th century, the dilemmas of the honest and moral persons at that time. The interwar period after two revolutions, one counter-revolution and the Trianon Treaty was a very ambiguous period in the history of our country. Hungarian society was forced to break with its traditions and, as a result, it looked for new possibilities. This proces happened in the shadow of the increasing power of Nazi Germany. Gábor Schweitzer as the author of the book is well acquainted with the general context of the Hungarian scientific and political life in the interwar period. He used many original materials from Hungarian archives and libraries. The author utilizes many memoires from this period, too. The reader can feel the sympathy of the author with the hero of the book, but this sympathy is objective and Schweitzer does not conceal the negative and probematic aspects of the life of professor Kálmán Molnár.

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