




JAKUB HABLOVIČ

 <https://orcid.org/0009-0004-2247-3906>

University of West Bohemia in Pilsen

VILÉM KNOLL

 <https://orcid.org/0000-0002-7294-6394>

University of West Bohemia in Pilsen

TOMÁŠ PEZL

 <https://orcid.org/0000-0003-2840-1714>

University of West Bohemia in Pilsen

## *Constitutions and Constitution-making during the Communist Government Constitutional Development in Czechoslovakia in the 1950s<sup>1</sup>*

### Abstract

The article discusses the development of constitutional law in Czechoslovakia during the 1950s. It briefly summarizes the most significant events that preceded this period and had the greatest impact on constitutional changes at the time. The most notable change of this period was the adoption of the “Ninth-of-May Constitution,” which laid the foundation for the implemented reforms. Given the importance of this document, the article describes the circumstances of its creation, including a competing constitutional draft. Special attention is paid to the constitution’s content and the additional legislation that supplemented and amended it. In connection with this legislation, the article provides examples demonstrating that constitutional guarantees of the separation of powers and fundamental human rights were violated and subordinated to the totalitarian regime led by the Communist Party of Czechoslovakia.

**Keywords:** law; constitutional law; legal history; Ninth-of-May Constitution; totalitarianism

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## Introduction

The constitutional law of the 1950s was significantly influenced by the events that immediately preceded it. Between 1945 and 1948, certain constitutional institutions, such as the Constitutional Court, were affected by the consequences of World War II. Others had a modified or temporary character due to the post-war settlement. From 1945 to 1946, legislative power was vested in the Provisional National Assembly, whose election and activities were governed by the Constitutional Decree of the President of the Republic No. 47/1945 Coll., on the Provisional National Assembly. Despite these changes, the fundamental document defining the constitutional order remained the Constitutional Charter of the Czechoslovak Republic of 1920.<sup>2</sup>

In February 1948, a communist coup took place, interrupting the democratic development of Czechoslovakia for more than 40 years. A totalitarian political regime was established, to control most aspects of people's lives and restrict their freedoms. In this system, actual power was held by a small group of communist officials to whom all significant political decisions were subordinated.<sup>3</sup> February 25, 1948, was celebrated as Victory Day during the totalitarian era. On June 2, 1948, President Edvard Beneš abdicated his office, and nearly three months later, he passed away. The election of Klement Gottwald as the new president on June 14, 1948, symbolically completed the transition from democracy to totalitarianism.<sup>4</sup> These events influenced most aspects of Czechoslovak society, including constitutional law.

Constitutional law, positioned at the pinnacle of the legal norm hierarchy, set the democratic course of the Czechoslovak Republic and guaranteed the principles of the rule of law based on respect for freedom and equality. Given the ideological foundations of the communist regime, it was clear that significant changes in constitutional law were inevitable.

### 1. The political situation after february 1948

The events that took place in February 1948 represent a problematic issue from the constitutional law perspective. After the resignation of the ministers from the National Socialist Party, the People's Party, and the Slovak Democratic Party on February 20, 1948, the government remained quorate, as 14 out of its 26 members remained in office.<sup>5</sup>

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<sup>2</sup> Act No. 121/1920 Sb. An English translation of the Constitution was published in Hoetzl, Joachim, *The Constitution*. The most detailed account of the 1920 Constitution can be found in Schelle, Beňa, Tauchen [et al.] *Ústava a ústavní systém meziválečného Československa* and especially Kuklík, *Příběh československé ústavy I*; Kuklík, *Příběh československé ústavy II*; in English see Kuklík, *Czech Law*, 94–101. For developments between 1945 and 1948, see, for example, Schelle, Tauchen, *Vývoj konstitucionalismu I*, 1105–300; Schelle, Beňa, Tauchen [et al.], *Ústava a ústavní systém socialistického Československa I*, 11–225; in English see Kuklík, *Czech Law*, 136–47.

<sup>3</sup> Kaplan, *Proměny české společnosti*, 5.

<sup>4</sup> E.g., Schelle, *Dějiny ústavního práva*, 525.

<sup>5</sup> According to § 80 of Act No. 121/1920 Coll.

It was only after the resignation of two additional ministers from the Social Democratic Party on February 25, 1948, that the government ceased to function. On the same day, President Edvard Beneš accepted the resignations of 16 ministers and appointed new ministers<sup>6</sup> exclusively from the ranks of the Communist Party of Czechoslovakia, as proposed by Prime Minister Klement Gottwald, himself a member of the Communist Party of Czechoslovakia. While this appointment was formally in accordance with constitutional law, the organization of mass demonstrations, the creation of workers' militias, direct pressure on the president, and other deliberately orchestrated societal pressures organized by the Communist Party of Czechoslovakia were in conflict with the constitutional conventions of a democratic constitution.<sup>7</sup>

The communist regime sought to maintain the appearance of continuity in the multi-party system through political parties grouped within the National Front. However, the parties of the National Front, which were officially attributed the role of a people's democratic coalition platform, gradually lost real political power and ultimately served merely as auxiliaries to the Communist Party of Czechoslovakia in executing its totalitarian policies.<sup>8</sup> On May 30, 1948, elections were held for the National Assembly, the highest legislative body. In these elections, there was only a single joint candidate list of the National Front, which the Communist Party of Czechoslovakia controlled, and no other candidates were allowed to run. The joint candidate list received 86.6% of the votes. So-called *white ballots*, where voters submitted a blank piece of paper into the ballot box, became symbols of dissent. This was not a marginal act of protest since as many as 13.4% of voters chose this form of voting.<sup>9</sup> In June 1948, the Czechoslovak Social Democratic Party merged with the Communist Party of Czechoslovakia; however, only about one-third of its members actually joined the Communist Party. Other originally democratic parties incorporated into the National Front also faced a decline in membership. Their activities and participation within the National Front were subject to supervision and scrutiny by the State Security (StB). There was no political opposition to the Communist Party of Czechoslovakia, nor were there any critical media or independent press. This period marked the beginning of the persecution of political opponents. At the beginning of the 1950s, state policy was shaped by the program adopted at the 9th Congress of the Communist Party of Czechoslovakia, whose main ideological goal was the construction of socialism. This was to be achieved primarily through the collectivization of agriculture, the elimination of the petty bourgeoisie, the introduction

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<sup>6</sup> According to § 64, subsec. 1, pt. 7. of Act No. 121/1920 Coll.

<sup>7</sup> Kuklík [et al], *Vývoj československého práva*, 107–14. For a legal perspective on the February events with a bibliography – a brief and updated overview, see Nedvědický, “Únor 1948;” in English: Kuklík, *Czech Law*, 145–6, generally for further developments, see Pernes, *Velké dějiny, passim*.

<sup>8</sup> Kaplan, *Národní fronta*, 46–8. The National Front of Czechs and Slovaks was established as an association of political parties to restore the functioning of the liberated Czechoslovakia, based on negotiations between exiled representatives regarding a new government program in Moscow in March 1945. It was composed of the Communist Party of Czechoslovakia, the Czechoslovak Social Democratic Party, the Czechoslovak National Socialist Party, and the Czechoslovak People's Party. In the post-war elections in the Czech territory, no parties other than those affiliated with the National Front were allowed to run. In Slovakia, the National Front included the Communist Party of Slovakia, the Democratic Party (dissolved in 1948), the Freedom Party, and the Labour Party (dissolved in 1948). For more details, see *ibid.*, *passim*; recently Novotný, “Národní fronta.”

<sup>9</sup> Kaplan, *Národní fronta*, 94–6.

of the dictatorship of the proletariat (which was aimed at the complete eradication of political opposition), the fulfilment of a five-year economic plan driven by central planning, and the integration of the economy into the Soviet economic sphere.<sup>10</sup> In November 1954, elections to the National Assembly were held. The elections were organized in single-member districts, with only one candidate running in each. The nominated candidates of the National Front received 97.89% of the votes. The political course described above continued throughout the 1950s. More significant changes in some areas were brought about by the 20th Congress of the Communist Party of the Soviet Union, held in February 1956, where Stalin's cult of personality was criticized, and some of his crimes were publicly condemned.<sup>11</sup>

## 2. The preparation of the new constitution

On October 17, 1946, the Constituent National Assembly of the Czechoslovak Republic adopted Act No. 197/1946 Coll., on the Constitutional Committee, which was tasked with drafting and submitting a proposal for a new constitution. This committee consisted of thirty-six members selected based on the principle of equal representation. A panel of experts was established alongside this committee, comprising thirteen leading specialists in constitutional law. Most of them had already contributed to shaping the constitutional order of pre-Munich Czechoslovakia. The majority of the work on drafting the new constitution was subsequently delegated to this committee.<sup>12</sup>

The drafting of the constitution was accompanied by political struggles from the very beginning. The National Socialists and the People's Party advocated for the new constitution to be based on the 1920 Constitution, whereas the Communists pushed for the creation of an entirely new constitution that would reflect the societal changes following World War II.<sup>13</sup>

The preparation of the new constitution was, of course, carried out within the framework of the National Front, but, even so, reaching a simple consensus proved difficult.<sup>14</sup> Members of the Czechoslovak People's Party,<sup>15</sup> the Czechoslovak Social Democratic Party, and the Slovak Democratic Party put forward proposals and positions regarding the new constitution from among the non-communist political parties.<sup>16</sup> The most active contributors to its drafting were representatives of the Czechoslovak National Socialist Party, led by Professor Vladimír Kubeš, who presented a comprehensive concept for a new constitution

<sup>10</sup> Kuklík [et al.], *Vývoj československého práva*, 115–7.

<sup>11</sup> Schelle, *Dějiny ústavního práva*, 253–6.

<sup>12</sup> The process of drafting the constitution has been more recently summarized (including bibliography) by Ryšavý, “Ústava Československé republiky,” Schelle, Beňa, Tauchen [et al.], *Ústava a ústavní systém*, 226–394.

<sup>13</sup> Kaplan, *Československo v letech 1948–1953*, 7.

<sup>14</sup> See, e.g., Ryšavý, “Ústava Československé republiky,” 551–4; for more details, see Kaplan, *Příprava Ústav*.

<sup>15</sup> Beránek, *Češi a Slováci*, 208.

<sup>16</sup> The individual proposals were briefly presented by Ryšavý, “Ústavní návrhy,” Schelle, Beňa, Tauchen [et al.], *Ústava a ústavní systém*, 319–37.

based on the existing 1920 Constitution. According to his proposal, Czechoslovakia was to be an independent, sovereign, and unitary state founded on the principles of nationhood, political democracy, and socialism, all within the spirit of humanism. Regarding the national structure of Slovakia, this concept advocated for Czechoslovakia as a unitary state internally divided into three regions, which would form the foundation of the administrative system. It envisioned the existence of Czech, Moravian-Silesian, and Slovak regional assemblies. Political democracy was to be safeguarded by preserving the range of rights and freedoms contained in Chapter Five of the 1920 Constitution. The idea of socialism in this concept was based on the so-called Czechoslovak socialism, which was designed to align with the principles of political democracy. This idea was to be incorporated into the constitution by including provisions supporting the democratic expression of the political parties' membership base. Many elements of this concept were integrated into the official draft of the constitution, which was prepared by Vladimír Kubeš himself and published in his work *O novou ústavu* (For a New Constitution). However, this proposal ultimately failed to gain approval, and the events of February 1948 completely eliminated any genuine democratic tendencies in the new constitution. All non-communist constitutional proposals were disregarded, and the foundation of the new constitution was instead based on the communist draft by Vladimír Procházka.<sup>17</sup>

### 3. The Ninth-of-May Constitution (1948)

In March 1948, the text of the new constitution was completed and, in a symbolic reflection of the new era, discussed and approved by the members of the Presidium of the Central Committee of the Communist Party of Czechoslovakia and the Central Committee of the National Front. Its approval by the Constituent National Assembly was scheduled only afterwards. On May 9, 1948, the final session of the Constituent National Assembly took place, during which the draft of the new constitution was unanimously approved.<sup>18</sup>

The constitution is referred to as the “Ninth-of-May Constitution” based on the date of its adoption. This date was deliberately chosen, as it marked the anniversary of Victory Day,<sup>19</sup> symbolizing the designated path of the Czechoslovak Republic into subjugation under the Soviet Union. According to contemporary propaganda literature, the Ninth-of-May Constitution was described as the “definitive closure of the capitalist past,”<sup>20</sup> intended to “establish the legal foundation for building a socialist society.”<sup>21</sup>

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<sup>17</sup> Kubeš, *O novou ústavu*. Kubeš's proposal was briefly summarized by Schelle, *Dějiny ústavního práva*, 253–6; Schelle, “Ústavní návrh.”

<sup>18</sup> Schelle, Beňa, Tauchen [et al.], *Ústava a ústavní systém*, 348.

<sup>19</sup> A national holiday celebrated on May 9, which at that time was observed in the Soviet Union and some other countries as Victory Day in honour of the end of World War II in Europe. In Czechoslovakia, this day had been celebrated since 1946 as the day of the arrival of the Red Army in Prague. It was officially declared a national holiday by § 1 Act No. 93/1951 Coll., which designated it as the anniversary of the liberation of Czechoslovakia by the Soviet Army.

<sup>20</sup> Boura, *O ústavě*, 23.

<sup>21</sup> *Ibid.*

The constitution retained the structure of the highest institutions of parliamentary democracy as well as the principle of the separation of powers, and it did not mention the leading role of the Communist Party of Czechoslovakia. Given the political developments, this meant that the constitution was destined to be disregarded. On the occasion of the constitution's 10th anniversary, a conference was held, during which Pavel Peška stated that "ultimately, the leading role of the Communist Party is inferred from the deeply democratic and socialist content of our constitution."<sup>22</sup>

Despite efforts to gain his support, President Edvard Beneš ultimately did not agree with the constitution, refused to sign it, and chose instead to abdicate the office of President of the Republic on June 7, 1948. As a result, the constitution was signed only by his successor, President Klement Gottwald.<sup>23</sup>

#### 4. The content of the constitution

The new constitution was published in the Collection of Laws as Constitutional Act No. 150/1948 Coll., the Constitution of the Czechoslovak Republic, and was divided into three parts: the Declaration, Fundamental Articles, and Detailed Provisions of the Constitution.<sup>24</sup>

The Declaration can be considered the preamble of the new constitution, which, according to the explanatory report, lacked legal relevance but was considered the most important interpretative tool. It was a relatively extensive and ceremonial text, which in its first part explains the state ideology and in its second part presents and comments on selected historical periods as arguments for the historical legitimacy and continuity of the new constitution. Pursuant to the state ideology, the Declaration identifies the "Czechoslovak people" as a "as constitutional and legal subjects," alongside the Czech and Slovak nations. The text clearly reflects a combination of popular sovereignty and national principles, upon which the state was to be founded. The popular sovereignty principle is expressed in the opening words of the Declaration – "We, the Czechoslovak people" – which is further supplemented by the objectives it seeks to achieve: "to build our liberated state as a people's democracy," "to ensure a peaceful path to socialism," and "to defend with all our strength the achievements of our national and democratic revolution against all efforts of domestic and foreign reaction." From the text, it is evident that the so-called achievements of our national and democratic revolution directly reference the events of February 1948. The second part of the Declaration elaborates on

<sup>22</sup> Peška, "O aktuální praktické funkci," 63.

<sup>23</sup> Schelle, *Dějiny ústavního práva*, 263. Re: the abdication of President Edvard Beneš and the election of Klement Gottwald as president, see, e.g., Pernes, *Velké dějiny*, 65–74. See also the draft of President Beneš's abdication letter and the election of President Gottwald in Gronský, *Komentované dokumenty*, 327–8, No. 1, 382–8, No. 6.

<sup>24</sup> The constitution has been recently summarized (including bibliography) by Schelle, "Ústava Československé republiky;" see also: Schelle, Beňa, Tauchen [*et al.*], *Ústava a ústavní systém*, esp. 338–95, 531 et seq.; Schelle, Beňa, Tauchen [*et al.*], *Ústava a ústavní systém, passim*; in English see Kuklík, *Czech Law*, 148–58. Interestingly, it was also published in an English translation in 1948: Stein, trans., *The Constitution*.

the defence of the historical legitimacy of the constitution and efforts to build a people's democracy, emphasizing its connection to "progressive and humanitarian traditions." As a supporting argument, it states that Czechs and Slovaks "have lived together in a single state for a thousand years" and have fought to preserve their state against various enemies, including feudal exploiters, German imperialism, the evil of the capitalist economic system, and German Nazism. The historical context presented is distorted to portray the development of Czechoslovak statehood as inevitably leading to a single goal: the establishment of a people's democratic order in line with the idea of socialism and an alliance with the USSR. The final statements of the Declaration state that the second and third parts of the Constitution will expand on the ideas set forth in the Declaration, thereby providing "a solid foundation for the legal order of our people's democracy."

This was followed by twelve articles containing the basic principles of the constitution. Art. I defined the form of the state and government, establishing that the Czechoslovak state was a people's democratic republic and that all state power derived from the people. Art. II addressed the national question, a subject debated since the beginning of the constitutional drafting process, specifically regarding Slovakia's status within the state. Czechoslovakia was characterized as a unitary state of "two equal Slavic nations, Czechs and Slovaks." This wording explicitly ruled out any form of federal arrangement. Even the name Czechoslovak Republic (without a hyphen or other division in the word "Czechoslovak") symbolically expressed the unity and equal status of both nations. Art. III was of exceptional significance, as it established the principle of equality of all citizens and the principle of equality attributes. It did not recognize privileges, prohibited discrimination based on gender, and guaranteed personal rights, including freedom of personality and expression. Furthermore, it introduced social and economic rights, specifically the right to education, the right to work, the right to fair compensation for work performed, the right to rest, and the right to social security in cases of incapacity to work. Art. IV established the principle of the sovereignty of the people, who were to exercise state power through representative bodies elected by the people, controlled by the people, and accountable to the people. Every citizen over the age of 18 had the right to vote, while eligibility to be elected required a minimum age of 21. This article also defined the attributes of suffrage, which were to be universal, equal, direct, and secret. Art. V laid the foundation of legislative power, stipulating that the highest legislative body was the unicameral National Assembly, composed of 300 deputies elected for a term of six years. Art. VI established the position of the president, who was to serve as the head of state. The president was to be elected by the National Assembly for a seven-year term. Art. VII stated that the highest body of governmental and executive power was the government, which was responsible to the National Assembly and was appointed and dismissed by the president. Art. VIII and Art. IX further defined Slovakia's position within the state. The Slovak national authorities, specifically the Slovak National Council and the Board of Commissioners, were designated as the holders and executors of state power in Slovakia, ensuring the equality of Czechs and Slovaks within the framework of people's democracy. Art. X determined that national committees were the holders and executors of state power at the municipal, district, and regional levels and were responsible for overseeing the rights and freedoms of the people. Art. XI addressed judicial power, stating that it was to be exercised by independent courts. It further stipulated that judges were inde-

pendent and bound only by the legal order of the people's democracy. Articles I to XI granted a wide range of rights and freedoms, and when viewed in isolation without context, they can hardly be considered instruments that contributed to the lack of freedom and oppression that accompanied the constitution's implementation. This assertion is further supported by the fact that the actual situation in society did not align with what was stated in the constitution. Art. XII addressed the economic system of the state. The economic structure was to be based on the nationalization of mineral resources, industry, wholesale trade, and banking, on the principle that "land belongs to those who work it," on the protection of small and medium-sized enterprises, and on the inviolability of personal property. The entire national economy was to serve the people and, in line with this idea, was to be managed through a unified economic plan. According to contemporary propaganda literature, "the dismantling of the economic foundations of capitalism meant [...] the full extension of democracy into the economic sphere."<sup>25</sup>

The third part of the constitution was titled "Detailed Provisions of the Constitution," which expanded on the twelve fundamental articles. The first chapter elaborated on citizens' rights and duties, particularly expanding on Art. III mentioned above. This section of the constitution declared the principles of equality, personal freedom, inviolability of the home, confidentiality of correspondence and transmitted messages, freedom of residence, property rights, protection of family and youth, the right to education, freedom of conscience and religion, freedom of expression and cultural assets, the right to petition, freedom of assembly and association, and social rights. However, this chapter also outlined the duties of citizens toward the state and society, including, for example, loyalty to the Czechoslovak Republic, the obligation to uphold the constitution and laws, the duty to work according to one's abilities, and contribute through one's labour to the benefit of society as a whole. The subsequent chapters of this section of the constitution further detail the status, jurisdiction, and functioning of fundamental institutions, including the National Assembly, the President of the Republic, the government, Slovak national authorities, national committees, courts, and the economic system. The final chapters addressed specific general issues, such as the unity of state citizenship, the possibility of border changes, and the designation of Prague as the capital of the Czechoslovak Republic. The text of the constitution concluded with final and transitional provisions.<sup>26</sup>

## 5. The status of Slovakia

The status of Slovakia within Czechoslovakia was a widely debated issue in the period following World War II. The leaders of the Czechoslovak government-in-exile, led by President Edvard Beneš, advocated the concept of uninterrupted continuity, which was based on maintaining Slovakia's status in the same form as during the First Republic. However, developments between 1945 and 1948 demonstrated that this would not be feasible. The primary causes were the conviction in the need for reforms, chiefly advo-

<sup>25</sup> Boura, *O ústavě*, 12.

<sup>26</sup> For more details, see, e.g., Schelle, Tauchen, *Vývoj konstitucionalismu 2*, 1304–6.

cated by the Communist Party of Czechoslovakia, and the position of the Slovak population, which deemed the notion of continued continuity intolerable.<sup>27</sup>

The Ninth-of-May Constitution defined the status of Slovakia in the Declaration (Preamble), as well as in Art. VIII and Art. IX of the Fundamental Articles, and in greater detail in Chapter Five of the Detailed Provisions. The Czech and Slovak nations were declared equal. In line with this principle, the constitution designated Slovak national authorities as the holders of state power in Slovakia, represented by the Slovak National Council and the Board of Commissioners.<sup>28</sup>

These authorities had limited competencies and were dependent on the government of the republic. According to § 94 of the constitution, the Slovak National Council was to exercise legislative power in matters of a national or regional character, but only under the condition that a special regulation was necessary to ensure the full development of the material and spiritual potential of the Slovak nation and as long as the matter did not require uniform regulation by law. Further restrictions were set by § 96, which exhaustively listed the subjects to which legislative activity could apply. Additionally, § 112 and § 114 were highly restrictive, as they granted supervisory powers and the right to an absolute veto to the government and, respectively, the prime minister,<sup>29</sup> effectively allowing them to override the entire legislative activity of the Slovak National Council.<sup>30</sup> These restrictions highlight the significant centralism, which is also evident in the fact that the Slovak National Council met only once a year in 1951 and 1952.<sup>31</sup> The Board of Commissioners was even more influenced by the government, as it was directly appointed by the government, which also allocated its competencies. Furthermore, according to § 117 of the constitution, a government minister was authorized to exercise the commissioners' powers directly in Slovakia, provided that the relevant commissioner was informed.

The status of Slovak national authorities was revised in 1956 in connection with the changes introduced by the 20th Congress of the Communist Party of the Soviet Union. These changes were implemented through Constitutional Act No. 33/1956 Coll., on Slovak National Authorities, which replaced the entire fifth chapter of the constitution.<sup>32</sup> According to § 1 of this Act, the Slovak National Council was defined as the national body of state power in Slovakia, and its position was strengthened in relation to the government. Under § 16, laws of the Slovak National Council were signed by its chairman, the chairman of the Board of Commissioners, and the relevant commissioner (rather than the prime minister), who was also responsible for their implementation. Additionally, the government lost its veto power over legislation, and the authority to review constitution-

<sup>27</sup> Janák, Hledíková, Dobeš, *Dějiny správy*, 426–7. For a detailed account of the development of Slovakia's status and the position of Slovaks, see especially Beránek, *Češi a Slováci*. For a brief account, including a bibliography, see Schelle, Vojáček, "Slovensko a poválečné Československo."

<sup>28</sup> For more on them, see Beránek, *Češi a Slováci, passim*; Zudová-Lešková, "Sbor pověřenců," 211–2; Zudová-Lešková, "Slovenská národní rada," 328–9; Vojáček, "Slovenská národní rada – zákonodárství," 345–51; Schelle, Vojáček, "Slovensko a socialistické," 521–3.

<sup>29</sup> For more details on other restrictions, see, e.g., Schelle, Tauchen, *Vývoj konstitucionalismu 2*, 1306.

<sup>30</sup> Pavlíček [et al.], *Ústavní právo II*, 236–7.

<sup>31</sup> Schelle, Beňa, Tauchen [et al.], *Ústava a ústavní systém*, 378.

<sup>32</sup> According to § 27 of Constitutional Act No. 33/1956 Coll., all other provisions of the constitution and constitutional acts are also replaced if they regulate matters differently from this constitutional act.

ality was transferred to the Presidium of the National Assembly. According to § 19 of this Act, the Board of Commissioners was defined as the national body of governmental and executive power in Slovakia. Under the new regulation, this body was now accountable to the Slovak National Council.<sup>33</sup> However, these changes were merely formal, and the powers of the Slovak National Council were soon restricted again. Within the centralized and authoritarian decision-making system of the Party Politburo and the Secretariat of the Central Committee of the Communist Party of Czechoslovakia, the position of Slovak national authorities remained unchanged in practice.<sup>34</sup>

## 6. The constitution *de jure* and *de facto*

However, from the actual actions of the Communist Party of Czechoslovakia, it was evident that the constitution's provisions were merely a proclamation that would not be genuinely upheld. In particular, the provisions on fundamental civil rights were often circumvented and interpreted in a way that allowed the communist regime to control society following the Soviet model.<sup>35</sup> The circumvention of the constitution was facilitated by the absence of an independent institution for the protection of constitutionality, a role previously fulfilled by the Constitutional Court.<sup>36</sup>

An example of the circumvention of rights guaranteed by the constitution is Act No. 68/1951 Coll., on Voluntary Organizations and Assemblies, which, in § 6, stipulated that the exercise of the right of assembly, guaranteed to citizens, was conditional upon alignment with the interests of the working people and permitted only if it did not threaten the people's democratic system, public order, or peace. These conditions effectively made the exercise of the right of assembly impossible, for example, demonstrations or protests against the government. The right to personal freedom could also be significantly restricted. The legal framework for this was provided by Act No. 247/1948 Coll., on Forced Labour Camps. According to the provisions of § 2 of this Act, among others, individuals threatening the development of the people's democratic system or the economic life of the state could be placed in forced labour camps. This measure was adopted in response to the growing discontent of the population with the communist regime during the period following President Edvard Beneš's death.<sup>37</sup> The separation of powers between the legislative, executive, and judicial branches was clearly defined by the constitution, but in political practice this division differed significantly. The actual holders of power in Czechoslovakia were the highest bodies of the Communist Party of Czechoslovakia. Major decisions were first discussed and approved by these party bodies, and only afterwards were they ratified by constitutional authorities. An example of this is the approval process of the constitution itself, where the draft was first reviewed and approved by the Praesidium of the Central Committee of the Communist

<sup>33</sup> Beránek, *Češi a Slováci*, 262.

<sup>34</sup> Janák, Hledíková, Dobeš, *Dějiny správy*, 427–8; Jánošíková, Knoll, Rundová, *Mezníky*, 154.

<sup>35</sup> Adamová [et al.], *Velké dějiny*, 295.

<sup>36</sup> Langášek, *Ústavní soud*, 207.

<sup>37</sup> Kuklík [et al.], *Vývoj československého práva*, 166–7.

Party of Czechoslovakia and the Central Committee of the National Front, and only then was it approved by the Constituent National Assembly.<sup>38</sup> Through Constitutional Act No. 47/1950 Coll., on Adjustments in the Organization of Public Administration, the government was granted the authority to establish, dissolve, and modify the competence of ministries, commissions, and other public administration bodies through regulations, as well as to create new ministries, commissions, and other administrative bodies. The purpose of this measure was to achieve a flexible and efficient adaptation of public administration to routine tasks.<sup>39</sup> This also effectively weakened the position of the National Assembly in favour of the organs of the Communist Party of Czechoslovakia. The success of this measure is evidenced by the fact that the number of laws passed by the National Assembly steadily declined between 1949 and 1955.<sup>40</sup> A crucial instrument for the Communist Party of Czechoslovakia in controlling society was the national committees, whose significant role was determined by the constitution and Act No. 280/1948 Coll., on Regional Organization.<sup>41</sup> Through Constitutional Act No. 81/1953 Coll., on the Management of National Committees by the Government, the administration of national committees was removed from the jurisdiction of the Minister of the Interior and placed under the authority of the government. The stated purpose of this measure was to ensure the uniform implementation of state administration tasks at all levels. However, the official objective was “[...] to fully enforce the will of the working people [...] as expressed in laws, regulations, and government resolutions [...] and in the directives and guidelines issued by ministers for their implementation.”<sup>42</sup> This was further implemented through a detailed regulation on national committees issued in 1954, which also placed their activities under the authority of the government.<sup>43</sup>

Throughout the 1950s, the ongoing changes continued, during which legislative activity led to the further restriction of rights declared by the constitution, including constitutional laws. The most significant changes to the constitution occurred in the judiciary. The regime used the courts to legalize “judicial terror” and eliminate all opponents of the new system. The most well-known examples of this were the fabricated political trials of Milada Horáková and Rudolf Slánský.<sup>44</sup> Constitutional Act No. 64/1952 Coll., on Courts and the Prosecutor’s Office, established a powerful prosecution authority that was completely independent of both the judicial system and the Ministry of Justice.<sup>45</sup> According to the provisions of § 6 of this Act, “the supreme supervision over the pre-

<sup>38</sup> For example, Kuklík, *Czech Law*, 151–2.

<sup>39</sup> § 1 Const. Act No. 47/1950 Coll.

<sup>40</sup> Cvrček, *Právní informatika*, 248–61, esp. 248, 251.

<sup>41</sup> Kuklík [et al.], *Vývoj československého práva*, 121–2. A recent overview of the development of national committees, including a bibliography, is provided by Janák, Hledíková, Dobeš, *Dějiny správy*, 442–55. A newer, brief summary can be found in Schelle, “Národní výbory (1945–1948);” Schelle, “Národní výbory (1948–1990),” esp. 146–7.

<sup>42</sup> § 1 Const. Act No. 81/1953 Coll.

<sup>43</sup> § 2 Const. Act No. 12/1954 Coll., see also Act No. 13/1954 Coll. and Act No. 14/1954 Coll. Janák, Hledíková, Dobeš, *Dějiny správy*, 449–50; Schelle, “Národní výbory (1948–1990),” esp. 147–51.

<sup>44</sup> See the article by Knoll, Byszowiec, “«Socialist Legality» and Interference in the Independence of the Judiciary in the 1950s,” published in this issue. A summary of political trials with a bibliography is provided in two volumes of the Encyclopaedia of Czech legal history. Schelle, Tauchen, *Encyklopedie českých právních dějin VIII*; Schelle, Tauchen, *Encyklopedie českých právních dějin IX*.

<sup>45</sup> Schelle, Beňa, Tauchen [et al.], *Ústava a ústavní systém*, 348.

cise implementation and adherence to laws and other legal regulations by all ministries and other authorities, courts, national committees, bodies, institutions, and officials, as well as individual citizens, belongs to the General Prosecutor.<sup>46</sup> It can thus be generally stated that the constitutional inconsistencies were, to some extent, overcome by several constitutional acts, which introduced Soviet models into the Czechoslovak constitutional system. On the other hand, these inconsistencies were further deepened, particularly through implementing legislation in the area of fundamental rights and freedoms of citizens, as well as through interventions by state administration and political bodies.<sup>47</sup> The chapter of the constitution, which, in addition to personal freedoms and political rights, also included social and cultural rights, was not formally subject to significant changes or amendments. However, in practice, legislative, administrative, and political interventions largely transformed it into an almost meaningless declaration. This shift was based on Marx's class-based conception of law, which regarded law as the "will" of the ruling class "elevated above the law."<sup>48</sup> Additionally, this shift was accompanied by the rejection of the distinction between private and public law.<sup>49</sup>

This led to the establishment of a communist dictatorship, disguised under a semi-democratic facade, created through constitutional proclamations and the formation of the National Front, which was officially declared the dictatorship of the proletariat.<sup>50</sup>

## Conclusion

Constitutional law in the 1950s underwent significant changes due to historical events. In February 1948, the communist coup interrupted the democratic development of Czechoslovakia for more than 40 years, and constitutional law, as the guarantor of a democratic system based on human rights and freedoms, became an obstacle to the new regime. The most significant change was the adoption of a new constitution, known as the Ninth-of-May Constitution. This document included provisions that formally established fundamental constitutional institutions based on the separation of legislative, executive, and judicial power. It also guaranteed a broad range of fundamental civil rights, such as the right to assembly, the right to personal freedom, and others. However, many provisions were merely proclamatory, and, as the 1950s progressed, it became evident that they served only to facilitate the consolidation of power by the Communist Party of Czechoslovakia and the establishment of a totalitarian regime. The actual state of society

<sup>46</sup> On the development of the prosecutor's role during this period, see, for example, Vlček, "Vývoj prokuratury," 388–90; Lata, "Prokuratura;" Schelle, "Prokuratura socialistická," 634–42.

<sup>47</sup> On implementing legislation, see, for example, Malza, Sluga, *Ústava Československé republiky*; Gronský, *Komentované dokumenty*, esp. 389–510. On the development of law and its application in practice, see, for example, *Komunistické právo, passim*; Kuklík [et al.], *Vývoj československého práva, passim*; Vojáček, Schelle, Knoll, *České právní*, 559–645.

<sup>48</sup> Příbáň, "Na stráží jednoty světa," 47; Kühn, "Ideologie aplikace práva," 62. On the subordination of legal interpretation and justice to class ideology, see Příbáň, "Na stráží jednoty světa," 55–6; see also: Kühn, "Ideologie aplikace," esp. 66–73.

<sup>49</sup> Jánošíková, Knoll, Rundová, *Mezníky*, 152.

<sup>50</sup> Kuklík, *Czech Law*, 147.

and the real exercise of power differed diametrically from the wording of the constitution. The real power of constitutional institutions was systematically curtailed in favour of the highest bodies of the Communist Party of Czechoslovakia. The implementation of constitutionally guaranteed rights was subject to conditions imposed by communist legislation, which effectively prevented their exercise and enabled their suppression. The judicial system underwent major transformations, allowing for targeted persecutions aimed at the complete and definitive elimination of political opposition and social resistance against the totalitarian rule of the Communist Party of Czechoslovakia.

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### Legal acts

- Zákon č. 121/1920 Sb., kterým se uvozuje Ústavní listina Československé republiky = forming an introduction to the Constitutional Charter of the Czechoslovak Republic and Constitutional Charter itself.
- Ústavní dekret prezidenta republiky č. 47/1945 Sb., o Prozatímním národním shromáždění = Constitutional Decree of the President of the Republic on the Provisional National Assembly.
- Zákon č. 197/1946 Sb., o ústavním výboru = on the Constitutional Committee.
- Zákon č. 150/1948 Sb., Ústava Československé republiky = The Constitution of the Czechoslovak Republic.
- Zákon č. 247/1948 Sb., o táborech nucené práce = on Forced Labor Camps.
- Zákon č. 280/1948 Sb., o krajském zřízení = on Regional Organization.
- Ústavní zákon č. 47/1950 Sb., o úpravách v organizaci veřejné správy = on Adjustments in the Organization of Public Administration.
- Zákon č. 68/1951 Sb., o dobrovolných organizacích a shromážděních = on Voluntary Organizations and Assemblies.
- Zákon č. 93/1951 Sb., o státním svátku, o dnech pracovního klidu a o památných a významných dnech = on the National Holiday, Public Holidays, and Commemorative and Significant Days.
- Ústavní zákon č. 64/1952 Sb., o soudech a prokuratuře = on Courts and the Prosecutor's Office.
- Ústavní zákon č. 81/1953 Sb., o řízení národních výborů vládou = on the Management of National Committees by the Government.

Ústavní zákon č. 12/1954 Sb., o národních výborech = on National Committees.

Zákon č. 13/1954 Sb., o národních výborech = on National Committees.

Zákon č. 14/1954 Sb., o volbách do národních výborů = on Elections to National Committees.

Ústavní zákon č. 33/1956 Sb., o slovenských národních orgánech = on Slovak National Authorities.

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