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CONSTITUTIONAL LAW OF THE CZECH REPUBLIC

Karel KLÍMA*

RESUMEN: Las circunstancias históricas de la evolución constitucional en la República Checa son descritas de manera general en este artículo, haciéndose un breve análisis de la pasada constitución checoslovaca. La exposición se enriquece con una serie de detalles trascendentes en el régimen constitucional así como las particularidades de la división del Estado checoslovaco en los Estados checo y eslovaco. Concluye el autor con la descripción de algunas particularidades del sistema constitucional checo de separación de poderes, proporcionando una visión práctica de las circunstancias constitucionales.

ABSTRACT: The historical circumstances of the constitutional evolution of the Czech Republic are described generally in this article, which briefly analyzes the previous Czechoslovak constitution. This description is enriched by a series of transcendental details of the constitutional regime, together with details of the division of the Czechoslovakian State into the Czech and Slovak States. The author concludes by describing some details of the Czech constitutional system of the separation of powers, putting forward a practical view of constitutional circumstances.

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I. EVOLUTION OF THE CZECHOSLOVAK CONSTITUTION

1. Characteristics of the Czechoslovak constitutional evolution

The constitutional history of independent Czechoslovakia and the emergence of two independent states in 1993 offer some special experience to modern constitutionality, though they in many respects follow the experience of classic constitutionality.

The specific features of Czechoslovak constitutional history have their roots in the circumstances under which the first Czechoslovak Republic came into existence after the breakup of Austro-Hungary, and then in World War II and the post-war division of the world (objective circumstances). Internal events with decisive impact on constitutional evolution were, above all, the break of the restoration of the First Republic after World War II in 1948 and in the following years, and consequent complete subordination of the internal constitutional system to the regime of the Soviet constitutionalism. The so called Prague Spring in 1968, in spite of the fact that the system liberalization was stopped by the occupation of Czechoslovakia, meant in fact the constitutional beginning of the federation. In its principle this new federation brought about the change in the structure of the constitutional system, but political restoration of the pre-federalization regime (consolidation process) beginning in the 70's cast considerable doubt on the conception of such state organization. Differences in the development of the restored democratic policy in the Czech part and in Slovakia after 1989 led to a new arrangement of federative relationships, however, they finished by the split of the national states on the basis of a political and constitutional agreement.

It is characteristic for the constitutional evolution of Czechoslovakia that the emergence and duration of its constitutions, and even a particular constitutional regime, are bound up with decisive state and political changes (convulsions), that is, with state or political discontinuity. The evolution of Czechoslovak constitutional history went through development "waves", and even these were influenced by the stages of constitutional evolution in the world (for example, the acceptance of the idea of federalism, more recently the concept of constitutional judiciary, etc).

The constitutional history of Czechoslovakia has proved that the constitution is always the product of internal or external sovereignty of the state, and this is what its actual role depends on. Thus it is bound, above all, with the external state sovereignty (a contrario-occupation of Czechoslovakia in 1939, suspension of the Constitution by an external force). Yet the constitution includes also rules of the internal life, thus proving the actual internal sovereignty of the people if this role is recognized in internal policies (a contrario-actual suspension of the 1948 Constitution of the Czechoslovak Socialist Republic in the 50's).

Further, it is characteristic of the Czechoslovak constitutional history that its constitutions have never lasted long enough to have a stabilizing effect, because of the short period of independent development of the country and multiple breaks of it (occupation in 1939, effects of "cold war", the mentioned year 1968). Czechoslovakia has not had longer internal or external "peaceful" conditions to develop its constitutionality.

2. Stages of the Czechoslovak constitutional evolution

There are several stages of internal constitutional evolution of Czechoslovakia, which can be proved by political events and constitutional facts:

1. The period of the so called Interim Constitution of 1918.
2. The period after the adoption of the Constitution of the Czechoslovak Republic of 1920 (till 1938, or 1939 when legislation was in the hands of the executive after the Munich Agreement).
3. The period of the so called Temporary London Establishment and gradual restoration of democratic constitutionality in conjunction with the liberation of Czechoslovakia.
4. The period 1945-1948, characterized by the establishment of the Legislative National Assembly and preparation of the new constitution.
5. The period 1948-1960, when the Constitution of 9 May was in force.
6. The period until 1968, when the Constitution of the Czechoslovak Socialist Republic was in full force.
7. The period of federal Czechoslovakia based on the changes of the constitutional system made essential amendments to the Constitution in 1960 and 1968.
8. The period of the so called, temporary constitutional system including the restoration of political democracy, market economy and the

rule of law, including an attempt at new constitutional arrangement that led to defederalization of the system (from 1989 to the end of Czechoslovakia).

When evaluating constitutional documents of Czechoslovak history, first of all the three complete Constitutions (1920, 1948, and 1960), the constitutional Act concerning the Czechoslovak Federation of 1968 and other constitutional documents after November 1989, it may be stated that the Czechoslovak constitutional science took inspiration in external sources, but at the same time it brought its own original knowledge and concepts (e. g., the particular system of separation of powers in the First Republic, or the system of a two-state federation based on an agreement, the Charter of Fundamental Rights and Freedoms of 1991, and others). Czechoslovak constitutional evolution shows as well that though there existed the Czechoslovak constitutional “school”, the Czechoslovak constitutional science had a strong tendency to be close to the dominating concepts in constitutional models in the world (during the First Republic and after 1989 its relation with classic constitutionalism, in the 50’s the application of the Soviet concept of political power and the citizen status).

Though the stages in the constitutional evolution of Czechoslovakia are obvious, Czechoslovak constitutionality is characterized not only by its discontinuity, but also by strong trends of continuity between individual periods, both concerning whole constitutional acts and particular institutions. It can be proved by the endeavour to restore the Constitution of the Czechoslovak Republic of 1920 and its institutions after World War II, or by the application of the original constitutional Act concerning the Czechoslovak Federation practically until the end of the federation. Constitutional continuity can be seen also in the process of the transition of the federation into two independent states in both republics (compare the manner of the transformation of the concept of fundamental rights and freedoms in the Slovak Constitution and in the Czech constitutional order).

The elements of continuity can be especially seen in the development of the form of government, which can be proved, above all, by the concept of separation of powers based on the Constitution of 1920, then the effort to restore it in 1945 and later in the Constitution of 1948,

while these “remainders” of the elements of formal separation of powers survive till the end of the federation.

Looking at the constitutional history of Czechoslovakia, without considering the periods of independence and temporary legitimate Czechoslovak government abroad (1939-1945), we can see that the Czechoslovak form of government experienced two types:

1) Parliamentary form of government with a special status of the President (1920-1938, 1945-1948, 1990-1992), the form of government, however, being subject to the political competition of parties both on central and local levels, cabinet posts being occupied in conjunction with elections or political agreements.

2) So called absolute power of Parliament subject to political command while preserving some formal elements of separation of powers, in this system the monopolistic party becomes the State, particular personal groupings holding their offices for life (e. g. Politburo), statism shows in gradual conventional joining the offices of the General Secretary and the President of the Republic.

3. Internal and external regime of the Constitution

For the characterization of the Czechoslovak constitutional evolution it is significant that the relationship between the written and the actual Constitution was to a large extent determined by the political regime of a given stage, or its changes within the stage. In that sense, the political regime more or less respected, or partly or completely denied the Constitution. As an example may be mentioned the situation in the development of party and political system of the First Republic (differences in the system and cooperation of political parties of the 20's and 30's), or the situation of the 50's, when the formal validity of the adopted Constitution for democracy was denied by political trials, that is, by essential restriction of liberal political rights.

P. Peska in this connection states that the change of a system must be distinguished from the change of a regime, the latter occurring, above all, within a system or during the transition to a different system.

Regarding the actual political life of the Czechoslovak constitution, that is, regarding the way the constitution was respected by the official political power, there may be distinguished the following periods of constitutionality:

1) The period 1918-1938, or 1945-1948, when the Constitution is the foundation and the framework of party pluralist democracy.

2) The period 1939-1945, the time of brutal Protectorate regime during the external occupation.

3) The period 1948-1989, characterized by constitutional and actual dominance of one political party deciding on internal and external policies of Czechoslovakia, and on real possibilities of using constitutional institutions, or political dominance over constitutional authority. The regime of the Constitution was dependent on official and constitutionally given (therefore State) ideology.

4) The period 1989-1992, characterized by gradual restitution of constitutional foundations of pluralist democracy, of the regime of pluralist life, including the restoration of the system of fundamental political rights.

In the outlined division into periods the regime was never uniform and the Constitution was always more or less adapted to politics, that means that in some degree policies were or were not in the framework of the Constitution, respected it, were outside of it or above it.

4. External aspects of the constitutional evolution

The geopolitical location of Czechoslovakia as a small and as late as in 1918 liberated state in the heart of Central Europe makes it essential to consider the circumstances of international development and the development inside the constitutional system. It is necessary because repeated infringement of the sovereignty of the state was usually caused by an external, direct or indirect, agent.

During the First Republic the actual constitutional party system was step by step influenced by the increase of fascism in the neighbouring countries and direct party and public impact of internal nationalism of Sudeten Germans in Czechoslovakia itself.

Already during World War II and especially after it, Yalta leads to the division of the world, and at the same time the psychological influence of the liberation by a Slavonic nation brings about both spontaneous and transformed transfer of external experience, alien to internal traditions and mentality (for example, the concept of Soviets, psychological aspects of collectivization).

The cold war, without doubt, leads the internal regime into extreme, making the ties with politics closer, to almost complete socialization of the means of production and internal political and civic intolerance.

The Prague Spring meant a potential political break into the hitherto delimited bipolar world. The coordinated interference of Warsaw Pact states finished this political and constitutional experiment.

The situation in European socialist countries, in conjunction with the advance of Gorbachov's perestroika and liberalization of several at that time still socialist countries, leads in Czechoslovakia to the specific transition of power for which the name "velvet revolution" became common within and outside of the country. In the course of this "revolution" the existing form of government is used in the transformation of the former monolithic political institutions, in diversifying forms of ownership, in simultaneous radicalization of Slovak national ambitions (new stage of the national revolution), in making the official Czech policy Western-like with the stress on liberalism.

The period of the 80's and 90's is marked with the development of supranational institutions in the world, notably the European Community, the status of European Parliament, etc. This fact, connected with association ambitions of the Czechoslovak Federal Republic, without doubt favorably influenced also the nature of internal democracy. Moreover, the guarantees of international organizations related to the observance of adopted fundamental rights and freedoms in individual contracting countries are getting more profound.

The adoption of the Charter of Fundamental Rights and Freedoms in 1991 served also as an "admission ticket" or a condition to entry into the Council of Europe, thus being a political part of the association mechanism.

II. CONSTITUTIONAL ASPECTS OF THE DIVISION OF CZECHOSLOVAKIA

1. *Constitutional situation between 1989 and 1992*

Constitutional situation of Czechoslovakia showed, in the period between 1989 and 1992, a complicated transitional constitutional system. In the course of these years the Parliaments (the Federal Assembly, the

Czech National Council and the Slovak National Council) adopted a number of constitutional Acts, which meant gradual, and from the point of view of the content, essential changes of the Constitution. These changes regulated systematically a number of institutions of constitutional law.

The Parliaments adopted the Charter of Fundamental Rights and Freedoms of Citizens (January 1991), the constitutional Act concerning the Constitutional Court of the Czechoslovak Federal Republic and the Act concerning its organization and proceedings in it, the Act concerning political parties which founded pluralist democracy. Freedom, of ownership and equality of forms of ownership, together with the rules of commercial law, became the basis for the functioning of market mechanism.

The development of the constitutional system in Czechoslovakia after 1989 brought also acceleration in the relationship of Czechs and Slovaks and further considerations on constitutional form of this relationship, e. g., in the form of the so called authentic or otherwise restored federation, confederation or some other loose contractual association.

This political, demographic and constitutional problem came to a head at the moment of election to all Parliaments in June 1992. The election results showed that in both republics won political groupings with diverse economic, social and foreign interests. Though none of these coalitions (parties) declared it before elections, both winning political subjects started the practical process leading to the division of the federation, even before the newly elected federal Parliament was established in July 1992.

2. Process of dividing Czechoslovakia

The situation after the elections in 1992 showed that the common federation is an unsurmountable barrier to further constitutional development. The majority of public opinion, however, did not accept the idea of splitting Czechoslovakia, and insisted on a referendum as an authentic form confirmation or rejection of the idea. The constitutional act on the referendum in force at that time provided for its own use in the issue of the form of federative organization.

Therefore it may be said that the prepared end of Czechoslovakia resulted from the objective situation after the elections, and the tension was increasing due to uncompromising ambitions of the winning election

subjects of both countries. To make it acceptable for the world there was a visible effort to carry out the process of division in a cultural, peaceful, “velvet” way, which met with a positive response in the world traumatized by the war in splitting Yugoslavia and war conflicts (civil wars) in the former Soviet Union.

In spite of the dominance of political negotiations concerning the manner of this division without the participation of Parliament, there was a visible effort for a constitutional procedure. The purpose of this effort was to make the breakup of Czechoslovakia constitutional. The decision was to be made by the voting of the parliamentary majority which was the outcome of negotiations of political parties.

The goals of political parties declared in public did not exclude a procedure out of Parliament, that is, beyond the agreed constitutional regulations. The process of this division was completely determined by the idea of giving rise to fully independent subjects.

In Czechoslovakia an original experiment was made to split the hitherto two-state federation in a constitutional way. This attempt consisted in the transformation of the constitutional system being in force in such a way as to enable the choice of the manner of dividing the federation. It failed at the beginning due to the fact that the first constitutional Act concerning the end of Czechoslovakia prepared along these lines was not adopted.

At the same time, gradual decentralization of the federation was under way, powers being delegated from the federation to the republics in accordance with the Constitution. Simultaneously, from the beginning of September 1992, agreements between the Czech Republic and the Slovak Republic were being prepared as a manner of governing relationships between both successor subjects in particular fields of social life (economic, political, civic, and international). A general agreement on good neighbourhood, friendly relations and cooperation, adjusting mutual relations of the successor subjects after the split, was prepared as well.

The constitutional foundation for the division of Czechoslovakia is created by constitutional Acts of 13 November 1992, concerning the division of the property of the Czechoslovak Federal Republic between the Czech Republic and the Slovak Republic and its transfer to the Czech Republic and the Slovak Republic, and later of 25 November 1992, concerning the end of the Czechoslovak Federal Republic. These constitu-

tional Acts were adopted by a close parliamentary, majority, or by the decision of the Federal Parliament after concentrated political pressure of political parties winning the elections.

From the historic point of view it is remarkable that the Parliament elected as Parliament of the Czechoslovak Federation decided on the end of this federation and on its own end. From the political point of view it overstepped the legitimacy of election programs of parties underlying the elections in 1992, while the programs, with one exception, did not mention the end of Czechoslovakia.

The constitutional basis for the division of Czechoslovakia was not a referendum, though it was a constitutional possibility. The public opinion was step by step influenced by statements that the split of the Czechoslovak Federal Republic was inevitable, so that the use of a referendum was practically out of the question.

A specific feature of the constitutional situation of the Czechoslovak Federal Republic between 1 October 1992 and 31 December 1992 was the difference between the starting constitutional positions of both subjects. The Slovak Republic adopted its Constitution entering into force already as of 10 October 1992. According to its text, it was the constitution of an independent, non-federative state. Thus a peculiar and constitutionally conflicting situation arose, when the Czechoslovak Federation still existed *de iure*, but the Slovak Constitution in force from September 1992 *de facto* stated the independence of Slovakia. In this period there existed a real conflict between the federal and, Slovak constitutional systems, each of these constitutional systems claiming its priority. Essentially, it was a state of a competing “constitutional dual government”. The Czech Constitution as the constitution of a new, independent Czech state was adopted on 16 December, becoming effective as of 1 January 1993.

The constitutional Act concerning the end of the federation determined the end of the Czechoslovak state, including its organs, army, police and state organizations as of 31 December 1992. A peculiarity of this Act was the fact that it stipulated certain obligations for the successor states concerning the expected transfer of the Federal Parliament deputies to Parliaments of the republics, or the ban on the use of the symbols of the former Czechoslovak Federal Republic by the successor subjects. Doubts were cast on the implementation of such provisions already in

the process of passing the draft law concerning the end of the federation, which is witnessed by the fact that the Czech Republic soon afterwards adopted as its flag the flag of the former Czechoslovak Federal Republic.

3. Division of the property of the Czechoslovak Federal Republic

The process of dividing Czechoslovakia is specific in that the constitutional Act concerning the division of property preceded the resolution on the division itself, and the actual division of property practically started before the date of the split (e. g., in the army and transport).

The principle of the division of property determined by constitutional means was the territorial principle, according to which the property is transferred to that successor state in whose territory it is located. It had an absolute authority regarding immovable property, in the case of movables it was applied when these belonged to immovable property. If the mentioned principle could not be applied, then was applied the principle of division according to the number of the population, according to which property is divided in the proportion two to one (the Czech Republic against the Slovak Republic). The same principle was applied in discharging financial obligations of the former Czechoslovak Federal Republic towards foreign countries.

III. CONSTITUTIONAL SYSTEM OF SEPARATION OF POWERS

The state power in the Czech Republic is, according to the Constitution, derived from the people and exercised by three types of organs: the legislative, executive, and judicial powers (in the classic concept-pouvoirs). This authority may be exercised (it provided for by a future constitutional act) directly (*cfr.* Art. 2, pars. 1 and 2 of the Constitution). The state power the principal type of the public power as a more general term see adjudication No. 3/1992 of the Collection of Awards of the Constitutional Court of the CSFR, commented on in another passage of this book). The state power is supreme in the whole territory of the state. Moreover, the Constitution admits corporate self-government of the territorial type, which may be interfered with, on the part of the state, only in the events of necessary protection of the law, and in cases provided for by the law (Art. 101, par. 4 of the Constitution).

The structure of the state power as a system of the highest state bodies is the typical subject matter of a modern constitution. The vertical structure” if existing, follows from it, and in constitutions of unitary states it is usually regulated by other legal rules. Relationships between the highest organs of the state power, being of a particular type, constitute “the form of government”.

The form of government in the Czech Republic is discontinuous in relation to the form of government of the previous CSFR both on the federal and the republic level. The Constitution of the Czech Republic is based on the system of separation of powers (including mutual checks between, them), and does not give general priority to any of them. The former concept of the so called absolute power in the hands of representative bodies in the multilevel form of this system (Federal Assembly, National Council, regional, district, local committees), including the elections of judges by these bodies, was abandoned.

There are at least three possible alternatives of the assessment of the form of government according to the Constitution of the Czech Republic:

- a) De iure provisional-temporary.
- b) De iure complete in accordance with the Constitution-filled.
- c) Factual.

Re: a) The Constitution of the Czech Republic counts with a provisional (temporary) situation, when the Senate has not yet been elected and neither the Provisional Senate has been established (*cfr.* Art. 106, par. 2 of the Constitution). The Constitution does not set a deadline for the Provisional Senate or the Senate to be established. However, it is essential that during that time (the Constitution assumes the time until the law concerning the Provisional Senate enters into force) the Assembly of Deputies, as one of the chambers of Parliament, performs the duties of the Senate in accordance with the Constitution. During this period the Assembly of Deputies may not be dissolved in the sense of Art. 35 of the Constitution. Even in view of other facts (non-existence of the “checking” role of the Senate) it may be deduced that the position of the legislative power is stronger in the system of separation of powers under such circumstances.

Re: b) The structure of the form of government is also influenced by the fact that the legislative power itself is a complex power, its parts having different functions and different positions. It may be assumed

that the role of the Senate in affecting the legislative power (in law-making), the executive power (possibility of a constitutional action against the President), or the judicial power (the consent with the judges of the Constitutional Court proposed by the President) will make the form of government constitutionally stable or changeable.

Re: c) It follows from general, constitutional comparisons of forms of government in pluralist democracies that the actual form of government may differ from, the constitutional form both concerning its stable form and its changes. First of all, the form of government may be affected by accepted constitutional conventions. With regard to the different dates of elections to the Assembly of Deputies and the assumed successive elections to the Senate, to the confidence in the government being bound with Parliament, it is possible to expect numerous actual relationships between these organs which may lead to various degrees of competitiveness and conflicts. The particular image of such relationships makes the form of government *de facto*.

Regardless potential development of a particular form of government in the constitutional system of the Czech Republic, it may be stated that the particular structure of the separation of powers in accordance with the Czech Constitution is founded on some features of the form of government, which are in the given constellation the following:

a) Parliament (*i. e.* both chambers) is elected by citizens in direct elections, and it is the supreme representative of the constitutive and legislative powers. The institution of direct exercise of the state power by the people has not yet been established.

b) The government is constituted by the will of the Assembly of Deputies (a part of Parliament), it is dependent on its confidence, and may be checked by it.

c) The President is elected by Parliament for a definite period of time.

d) The head of state, besides a number of powers inside the state, is the exclusive representative of the state externally, he is the Commander-in-Chief of the armed forces. He is not answerable under the Constitution. In order to be valid, some of his decisions require the co-signature of the Prime Minister or a member of the government.

e) It is the exclusive privilege of the head of state to appoint judges of general courts and, with the consent of the Senate, also judges of the Constitutional Court.

f) The President may apply the suspension veto to a parliamentary bill, though the consequent and final decision rests with Parliament.

g) The Constitutional Court may decide on the compliance of acts of Parliament with the Constitution and repeal, not suspend, them if they do not comply.

h) The Senate may not be dissolved, it is a guarantee of the permanence of the legislative power (in the form of legal measures).

IV. CONTINUITY AND DISCONTINUITY IN THE EMERGENCE OF THE CZECH REPUBLIC

The Constitution of the Czech Republic in its Preamble, stating the restoration of the independent Czech state, proclaims its links with the “good traditions of Czechoslovak statehood”. The content of the Constitution and further legal rules govern in detail continuity or discontinuity; in the areas of state, territory and law.

1. *State continuity and discontinuity*

Under the constitutional Act of the Federal Assembly of the Czechoslovak Federal Republic No. 542/1992 Coll., concerning the end of the CSFR, the Czech and Slovak Federative Republics ceased to exist at the end of the day dated 31 December 1992. The Czech Republic and the Slovak Republic were determined the successor states. On the following day the competence of the CSFR passed over to the successor subjects which became the bearers of the independent, complete state authority in their respective territories. The Czech Republic assumed that part of powers which were in the federalized Czechoslovakia the responsibility of the federation. Thus Czechoslovak statehood ended and a new state was founded.

With the end of the CSFR ended also the state organs of the CSFR, the armed forces and the armed police corps of the CSFR, budgetary and subsidized organizations funded from the state budget of the CSFR and state organizations within the competence of the CSFR established by an act of Parliament (*cfr.* Art. 3 of the said constitutional Act), without compensation and without successors.

The constitutional Act concerning the end of the federation further passes the legislative, executive and judicial powers over to the organs envisaged in it. The legislative power was to be taken over in the republics by the legislative bodies composed of deputies elected to the Federal Assembly and to the respective National Councils in the elections in 1992. National Councils have not yet included the deputies of the former Federal Assembly.

The authority of the government of the CSFR was to be assumed by governments of individual republics. The authority of the Supreme Court of the CSFR was to be transferred to the highest courts of the republics, the authority of the Constitutional Court of the CSFR to these same courts. With regard to the full force of new Constitutions of the republics, these provisions were after 1 January 1993 implemented in the Czech Republic by amending the constitutional Act of the Czech National Council No. 4/1992 Coll., concerning measures related to the end of the CSFR. This act, in view of its legal nature, may be considered an “acceptance” constitutional Act, and the constitutional Act No. 29/1992 Coll., concerning some further measures related to the end of the CSFR may be considered an “amending acceptance” Act.

The constitutional Act No. 624/1992 Coll., concerning the abolishment of offices of judges and the termination of contracts of employment or service in conjunction with the end of the CSFR is also significant for the constitutional end of the Czechoslovak Federation. In accordance with this Act were abolished as of 31 December 1992 offices of the judges of the Constitutional Court, of the Supreme Court of the CSFR and of military courts, offices of prosecutors and investigators of the General Prosecution and of military prosecutions. *Ex lege* were terminated also contracts of service of officers of the armed forces of the CSFR, contracts of service of the armed police corps of the CSFR and of civil servants of state organs and organizations funded from the state budget of the CSFR, and of state organizations within the competence of the CSFR.

The constitutional Act concerning the end of the CSFR constitutes the transformation of state authority with elements of continuity and discontinuity. Then it was the responsibility of the republics in what degree they accepted or not the ideas of this Act.

The acceptance Act mentioned above transfers under its Art. 3 the competence of the former Federal Assembly of the CSFR and its Presidium to the Czech National Council and its Presidium, the competence of the CSFR government to the government of the Czech Republic, the competence of state administration of the CSFR to central organs of state administration of the Czech Republic established before with regard to the nature of the subject matter, and if this is not the case, new organs are set up to assume the corresponding powers. The competence of the Supreme Court of the CSFR and of the General Prosecution of the CSFR, including the High Military (Prosecution, was taken over by the Supreme Court of the Czech Republic. Former territorial military courts and prosecutions of the CSFR were replaced by territorial courts and prosecutions of the Czech Republic bearing the same names. Constitutional Act No. 29/1992 Coll. Then transferred judges and prosecutors from former federal courts and prosecutions to the said organs of the Czech Republic, if these consented.

Under Art. 106 of the Constitution the Czech National Council becomes the Assembly of Deputies with the existing four-year term of office, as of the day of this Constitution coming into effect. Under Art. 108 of the Constitution the government of the Czech Republic, appointed after the elections in 1992 and performing its duties on the day of the Constitution enters into force, is deemed to be appointed in accordance with this Constitution.

The continuity of the legislative power was, in addition, emphasized by the Resolution of the Presidium of the Czech National Council No. 5/1993 Coll., concerning the adoption of the constitutional Act of the Czech National Council on measures related to the end of the CSFR, under which the bearer of the legislative power in the Czech Republic is the Czech National Council.

Neither of the acceptance Acts, accepted the transfer of the competence of the judges of the former Constitutional Court of the CSFR to the Supreme Court of the Czech Republic (see above), but the staff of the Office of the former Constitutional Court of the CSFR were transferred, with their consent, to the structure of the Supreme Court of the Czech Republic. All judges of the courts of the Czech Republic, however, were transferred under Art. 111 of the Constitution of the Czech Republic into the constitutional system established by the new Constitution.

2. Territorial continuity and discontinuity

The Constitution of the Czech Republic in its Art. 112, par. 1 incorporates constitutional acts of the said previous Parliaments, that is, the National Assembly of the Czech Republic, the Federal Assembly of the Czechoslovak Socialist Republic and the Czech National Council, which define the state boundaries of the Czech Republic. Thus it explicitly confirms the continuity of the territory of the new Czech Republic with the territory of the former Czech Republic, which was a part of Federal Czechoslovakia, or a former part of unitary Czechoslovakia which became the Czechoslovak Socialist Republic after the federalization of the state under the constitutional Act on the Czechoslovak Federation.

3. Legal continuity and discontinuity

As it has been said above, constitutional order of the Czech Republic took over the Charter of Fundamental Rights and Freedoms, the mentioned constitutional acts regulating the state boundaries of the Czech Republic, that is, sources of constitutional law originating in former Czechoslovakia. These incorporated documents prove partial constitutional continuity of the Czech Republic with Czechoslovakia.

Yet, there is the new constitution of the Czech Republic, which makes a completely new foundation of the constitutional situation, modifying in a new manner a part of the subject matter of constitutional law (see below in more detail), thus establishing partial discontinuity of constitutional evolution. The same Constitution, in Art. 112, par. 2, broadens this discontinuity by enumerating Czechoslovak constitutional Acts being repealed. In accordance with this provision, the Constitution of the CSFR of 1960, the constitutional Act on the Czechoslovak Federation, constitutional Acts amending and supplementing them, and the constitutional Act of the Czech National Council No. 67/1990 Coll., concerning the state symbols of the Czech Republic are repealed.

Of special significance is par. 2 of Art. 112 of the Constitution, under which other, constitutional Acts being in effect in the territory of the Czech Republic on the day of the new Constitution entering into force have the strength of laws. Thus the Constitution took over generally indicated constitutional Acts, but changed, their legal force by one degree

(it may be understood as a “degradation”). They were not incorporated in the constitutional order, but in the legal order of the Czech Republic.

What has been said above justifies the statement that there is both continuity and discontinuity in the area of constitutional law.

Constitutional Act of the Czech National Council No. 4/1992 Coll. in its Art. 1 takes over the legal order of the CSFR. In general terms it refers to constitutional Acts, laws and other rules of the CSFR in force on the day of the end of the CSFR in the territory of the Czech Republic. However, it excludes the application of those provisions of the said rules which are specific to the existence of the CSFR with the Czech Republic being a part of it. It is the matter of application, that means, of legal subjects applying legal norms, to determine which provisions (or legal rules) are concerned. In case of a conflict the dispute could be settled by the Constitutional Court in a particular case.

Therefore we can speak about continuity of the legal order with certain reservations determined in the constitutional Act. The constitutional Act further gives the rule for judging conflicts between incorporated federal rules and legal rules of the Czech Republic of the same strength, issued before the end of the CSFR. If a conflict of these legal rules arises, then it is the rule of the Czech Republic that has priority.

The acceptance constitutional Act mentioned above was passed one day before the Constitution was adopted, and came into effect on 31 December 1992, the Constitution one day later. For the acceptance, consequently continuity of constitutional acts, the principle *lex posterior derogat priori* is applied, or the provisions of the Constitution analysed above.

V. CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS

The Charter of Fundamental Rights and Freedoms is the document given its firm place in the legal order of the former CSFR by the constitutional Act of the Federal Assembly of the CSFR No. 23/1991 Coll., which makes the introduction to the Charter. It is named as a part of the constitutional order of the Czech Republic by the Constitution of the Czech Republic, and promulgated as a part of the constitutional order by the Resolution of the Presidium of the Czech National Council of 16 December 1992, No. 2/1993 Coll.

The Charter of Fundamental Rights and Freedoms is a source of constitutional law and a binding norm. It is binding on all subjects, a directly valid law. Its content forms the basis for decisions of the Constitutional Court (above all, in adjusting constitutional complaints of citizens). The former Constitutional Court of the CSFR made a number of awards based on it.

The Charter of Fundamental Rights and Freedoms regulates the rights of man and citizens. In that sense it sets forth:

- Human rights and fundamental freedoms (Chapter II).
- Rights of national and ethnic minorities (Chapter III).
- Economic, social and cultural rights (Chapter IV).
- Right to judicial and other legal protection (Chapter V).

General provisions of the Charter have essential significance not only for the definition of the status of individuals, but also for the characteristics of a constitutional and legal state. Therefore they are the foundation both for any normative activity of the state (or public power) and for interpretation and decision-making actions of the Constitutional Court of the Czech Republic.

Among the general constitutional principles of the Charter the following may be considered the most important for adjudications of the Constitutional Court:

1. For the constitutional status of man and citizens

- The principle of inalienability, imprescriptibility and inviolability of rights (Art. 1).
- The principle of equal rights for all people (Art. 1).
- The principle of freedom to act if not prohibited by the law, and non-obligation to act if not imposed by the law (Art. 2, par. 3).
- The principle of safeguarding the rights regardless of any distinctions (sex, race, color, language, beliefs, religion, political or other opinions, national or social origin national or ethnic minority, property, birth or other status Art. 3, par. 1).
- The principle of free deciding of every person about his or her nationality (Art. 3, par. 2).

- The possibility to assert ones right before an independent and impartial court by the prescribed procedure (Art. 36).

2. *For the activity of the state (public authority) towards an individual*

- State authority is applied only in the cases and in the limits stipulated by the law and in the manner provided for by the law (Art. 2, par. 2).
- Obligations may be imposed only in accordance with the law and within its limits (Art. 4, par. 1).
- Limits of fundamental rights and freedoms may be regulated only by the law under conditions laid down by the Charter, while applying these limits the essence and meaning of fundamental rights and freedoms must be observed, the provisions must not be misused for other purposes than those they were provided for (Art. 4, par. 4).
- Nobody may be injured as to his or her rights due to the exercise of fundamental rights and freedoms (Art. 3, par. 3).
- Only a court may decide on guilt. and punishment for crimes (Art. 40, par. 1).

VI. CONSTITUTIONAL JUDICIARY OF THE CZECH REPUBLIC

The Constitution of the Czech Republic, that is, constitutional Act No. 1/1993 Coll., sets up the Constitutional Court of the Czech Republic. On 16 June 1993 a new Act concerning the Constitutional Court was adopted, in the Collection of Laws under No. 182/1993, which regulates the organization of the Constitutional Court, proceedings in it, salaries of judges of the Constitutional Court and affairs of judges of disciplinary nature (hereinafter Act on CC). This Act implements and elaborates the Constitution on the basis of its Art. 88, par. 1. The Act designates Brno as the seat of the Constitutional Court.

The Constitutional Court of the Czech Republic is conceived as an organ which is a part of the judiciary. It is supposed to act as the organ protecting constitutionality. Its exclusive status and irreplaceability in the system of separation of powers rest in this. It is a monolithic body with no vertical structure. Under the term protection of constitutionality

may be understood, in the sense of the Constitution and the Act on CC, both the legal sphere (range of matters) in which the Constitutional Court decides, and an aggregate of means used by the Constitutional Court in deciding on the observance of rights and competences of constitutional-law subjects (or other enumerated rules).

V. Mikule and V. Sládeček deduce from the range of competences of the Constitutional Court that the Constitutional Court protects not only constitutionality, but also the rule of law, i. e., the compliance with ordinary laws. 5) It may be added that by establishing the Supreme Administrative Court this specific function of the Constitutional Court would be changed.

As the Constitutional Court is a part of the system of the highest constitutional organs of the Czech Republic, its relationships with some of the highest constitutional organs of the republic are determined by the Constitution. The President has the authority to set up the Constitutional Court, the authority to give consent to this establishment rests with the Senate, which may also decide on the prosecution of judges of the Constitutional Court (see below).

It follows from the material competence of the Constitutional Court and its powers that the Constitutional Court can affect the legislative activity of Parliament by repealing sub-constitutional rules repugnant to the Constitution. It can also decide on the matter of mandates of deputies or senators, on a constitutional complaint of the Senate against the President of the Republic. Thus it can intervene in the relationship with the legislative power and the executive power (presidential). In this position it plays the role of a potential arbiter in disputes between the Parliament and the President.

The Constitutional Court affects the executive power by repealing a legal regulation or its particular provisions if they are in conflict with a constitutional Act, an Act of Parliament or an international treaty under Art. 10 of the Constitution of the Czech Republic. It is, e. g., a statutory order concerning the implementation of a law and within its bounds, under Art. 78 of the Constitution, or legal regulations of ministries, other administrative authorities and self-government bodies, issued under Art. 79, par. 3 of the Constitution, on the basis and within the bounds of the law, if they are authorized by the law to do so.

Although the Constitutional Court of the Czech Republic is an independent part (type) of the judicial system, it has certain constitutional possibilities to cooperate with and act within the general judiciary:

a) A general court may initiate an action of the Constitutional Court if it concludes that an Act of Parliament that is to be applied in a case is inconsistent with a constitutional Act (see Art. 95, par. 2 of the Constitution).

b) The Constitutional Court decides on constitutional complaints against authorized decisions and against other interventions by organs of public power in fundamental rights and freedoms guaranteed by the Constitution (Art. 87, par. 1, letter d) it has the role of a review organ *sui generis* towards any form of decision-making of general courts.

