

From Monarchy to the Independent Czechoslovakia

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ABSTRACT

During the First World War, the attitude of Czech politicians to the idea of the existence of an independent state changed fundamentally.

T. G. Masaryk, who became the main representative and agent of the efforts for independence, formed, together with his associates the Czech Foreign Committee, later transformed into the Czechoslovak National Council, which sought to win over the representatives of the Entente to the idea of an independent Czech state. The Czechoslovak National Council was gradually recognized in 1918 by the individual powers of the Entente as a provisional government.

The fundamental document of the domestic policy was the Declaration of the Czech Deputies of the Imperial Council and Provincial Assemblies, also called the Epiphany Declaration, adopted on 6th January 1918, demanding the independence for its nation.

T. G. Masaryk responded to the manifesto of Emperor Charles I on the federalization of the Austrian part of the monarchy, an attempt to save the empire, by solemnly declaring the Czechoslovak independence, which is also known as the Washington Declaration. It already presented the form of the Czechoslovak state –republic.

Czechoslovakia was established as an independent state by a revolutionary act of the Czechoslovak National Committee on 28th October 1918, which on this day declared itself the government of the new state, the executor of state power and at the same time a legislative body.

Already on 13th November 1918, the National Committee promulgated a Provisional Constitution.

Given its provisional nature, the Revolutionary National Assembly had the most important role, to draft and approve the fundamental law of the state. The constitutional basis of the first pre-Munich republic became the Constitutional Charter of 1920. The approval of the constitution represents the culmination of the formation of the Czechoslovak state.

The adoption of the Constitutional Charter of the Czechoslovak Republic in February 1920 meant the definitive break-up of the new republic with the constitutional-legal continuity and the tradition of Austrian constitutionality.

KEYWORDS

World War I, T. G. Masaryk, idea of an independent, the Washington Declaration, the Revolutionary National Assembly, the Provisional Constitution, the Constitutional Charter of the Czechoslovak Republic 1920.

During the First World War, the attitude of Czech politicians towards the idea of the existence of an independent state changed fundamentally. Until the outbreak of the war, the secession from Austria and the creation of an independent Czech state had not been a real option. Most of the Czech political representatives were convinced

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that Austria-Hungary would be preserved regardless of the outcome of the war it had provoked. Austria-Hungary was considered, with reservations, to be the most appropriate form of constitutional existence. However, the war marked a significant turning point – representing not only the end of national and social conveniences but also the end of the pre-war concepts aimed at the democratisation and federative organisation of the Habsburg confederation of states. In the Czech lands and in the whole of Cisleithania, the demand for a solution resulting in the Czech-German settlement arose, becoming a fundamental existential issue of the entire Habsburg Empire from the end of the nineteenth century. The emperor, together with the Austrian government, were under pressure from the German nationalists of Bohemia, who were protected by the force of the neighbouring Wilhelmine Germany; although the Czechs insisted on a settlement, the Germans refused to negotiate with them, and they were ready to agree on a settlement only with the government. However, the war changed everything. Due to their resistance to the war efforts, the Czechs were considered unreliable by the military circles, many of them were persecuted, and the leaders of the National Liberal Party were sentenced to death for alleged high treason.¹ One of the manifestations of resistance against the war was the formation of Czechoslovak military units – legions fighting on the side of the Entente Powers against the Austro-Hungarian Monarchy. In 1916, the Austrian Germans came to an agreement on the principles of Czech-German settlement, which were imposed to significantly strengthen centralism, create a customs union with Germany and divide Czech lands into Czech (with the official German and Czech languages) and German (with the official German language). The historical state law of the Czech lands was to be definitively denied, and the Czech lands were to be gradually Germanised.

T. G. Masaryk, who became the main representative and agent of the efforts for independence, formed, together with his associates E. Beneš and M. R. Štefánik, the Czech Foreign Committee; later, this committee transformed into the Czechoslovak National Council, which sought to sell the representatives of the Entente on the idea of an independent Czech state.² The Czechoslovak National Council was gradually recognised in 1918 by the individual powers of the Entente as a provisional government. The ideas of an independent Czech state also won recognition at home, in the Czech lands, where two bodies – the Czech Union and the National Committee – were established, aiming to coordinate the efforts of the Czech politics leading to independence.

The fundamental document of the domestic policy was the Declaration of the Czech Deputies of the Imperial Council and Provincial Assemblies, also called the

1 Later on, their sentence was reduced, and after the death of the Emperor Francis Joseph I, they were granted amnesty by the new Emperor Charles.

2 The lands of the Czech Crown were legally established by Charles IV by a bill issued on 7 April 1348. At that time, in addition to Moravia, which was connected to the Czech Kingdom as a margraviate from about 1035, the lands of the Czech Crown also included Silesia (since 1327), Upper and Lower Lusatia, and (temporarily) Brandenburg Margraviate and Luxembourg. The conception of the Czech Crown as a distinctive and independent state played a key role in the nineteenth century in the formation of Czech historical state law.

Epiphany Declaration, adopted on 6 January 1918, which demanded the independence for its nation “in its sovereign, democratic state enjoying full rights and guaranteeing social justice and equal treatment of all its citizens, within the historic frontiers of the Bohemian lands and of Slovakia”.³

The Czechoslovak National Committee was reorganised in July 1918 and declared itself the highest body of domestic resistance movement in Bohemia. The representation of individual political parties was based on the results of the last elections to the Imperial Council in 1911.

T. G. Masaryk responded to the manifesto of Emperor Charles I on the federalisation of the Austrian part of the monarchy – an attempt to save the empire – by solemnly declaring the Czechoslovak independence, which is also known as the Washington Declaration. It already presented the form of the Czechoslovak state, with its author defining it as “a republic that will guarantee full freedom of conscience, religion and science, literature and art, speech, press and the right of assembly and petition... The government will be parliamentary and will recognise the principles of initiative and referendum”. The Declaration rejected the possibility of autonomy within Austria, citing the historical rights of the Czechs and the Slovaks’ right to self-determination; the goal of creating a common state with the Slovaks was thus clearly declared. The Slovak National Council, which declared itself the only body authorised to act on behalf of the Slovak nation, adopted, at its foundation meeting on 30 October 1918, the so-called Martin Declaration, which, together with the Act on the Establishment of the Czechoslovak State adopted on 28 October 1918 by the National Council and later promulgated in the Collection of Laws and Decrees as Act No. 11/1918 Sb., became the second fundamental constitutional document. With the Martin Declaration, the Slovaks claimed allegiance to the common, historically united “Czech-Slovak nation”. They proclaimed the right to independence and self-determination of the Czech-Slovak nation unified in language and culture and manifested their support to the formation of a common state.⁴

The separate notes of Germany and Austria-Hungary on the armistice sent to the US President W. Wilson and, based on his Fourteen Points, were rejected by the United States, which stated that only the nations of the monarchy could decide which actions of the Austro-Hungarian government they would consider eligible for negotiations. The armistice was signed on 3 November 1918, and subsequently, on 11 November Emperor Charles abdicated, and Austria-Hungary ceased to exist. The next day, German Austria was declared a republic.

Czechoslovakia was established as an independent state by a revolutionary act of the Czechoslovak National Committee on 28 October 1918, which on this day declared

3 Cf. The declaration of the Czech Deputies at the Imperial Council and Provincial Assemblies against the course of action of Austria-Hungary during the Brest-Lithuanian Peace Negotiations – the so-called ‘Epiphany Declaration’ (Galandauer, 1988, p. 296).

4 Cf. Gronský, 2005, p. 41.

itself the government of the new state, the executor of state power, and at the same time, a legislative body.⁵

The Act on the Establishment of an Independent Czechoslovak State in its five articles did not yet stipulate the form of a newly established independent state,⁶ which was to be decided by the National Assembly in agreement with the Czechoslovak National Council in Paris.⁷ In the work *New Europe*, written during the war, T. G. Masaryk expressed his conviction that “the Czechoslovak state will undoubtedly be a republic”⁸ and added that “the Czech and Slovak nations are mature for the republic”.⁹ The National Committee declared itself a body of unanimous will of the nation and an executor of state sovereignty and at the same time, the highest body in the state. In Art. 2, the law defined the principles of reception of the still valid law, especially in an effort to prevent possible chaos; however, their implementation caused a very complicated legal situation. It created Czech-Slovak dualism – Austrian law remaining in force in the Czech lands and Hungarian law remaining in force in Slovakia, and later in Subcarpathian Russia – as well as the dualism of the adopted old law and the new Czechoslovak law, with the need to address the provisions based on the existence of the monarchy. The unification of law and the creation of new regulations of civil, criminal and other branches of law were one of the fundamental tasks of the new power.¹⁰ Formal discontinuity with the legal order was expressed by the Act on the Protection of the Czechoslovak Republic, where, in all legal norms, the terms reflecting the existence of Austria-Hungary were replaced retroactively with the words ‘Czechoslovak’ or ‘Czechoslovak Republic’.¹¹

On 13 November 1918, the National Committee promulgated a provisional constitution,¹² and 40 representatives of Slovakia were co-opted to establish the Czechoslovak National Assembly, which subsequently set up a republican system with the form of a parliamentary government and declared the Habsburg-Lorraine dynasty deposed¹³ and Tomáš Garrigue Masaryk president of the new state. With the

5 Cf. Proclamation of the Czechoslovak National Committee on the independence of the Czechoslovak state of 28 October 1918 in Collection of Laws and Decrees as Act No. 11 Sb. z. a n. of 28 October 1918.

6 Vojáček, 2018, p. 145.

7 Karel Kramář, later the first Prime Minister, who led a delegation of the National Committee at the Geneva talks with the representatives of the Czechoslovak foreign government, has long advocated the monarchist establishment, i.e. the Czech Kingdom, to be headed by a prince of the Romanov family. Both delegations agreed while still in Geneva on the republican form of the state and on the fact that prof. T. G. Masaryk would become the president of the republic.

8 Masaryk, 1994, p. 159.

9 Masaryk, 1994, p. 159.

10 Ráth, 1920, pp. 12 et seq. To unification see Fritz, 1926, pp. 411–431 and Vaverka, 1937, pp. 337–365; newer Gábriš, 2006, pp. 232–252 and Gábriš, 2007, pp. 193–208.

11 Act No. 449/1919 Sb. z. a n.

12 Act No. 37/1918 Sb. z. a n. on the Provisional Constitution.

13 Proclamation on the dethroning of the Habsburg-Lorraine dynasty at the first session of the Czechoslovak National Assembly. Joint Czech-Slovak digital parliamentary library, first session of the National Assembly on 14 November 1918.

approval of the constitution, the current Czech, Moravian, and Silesian Provincial Assemblies also formally ceased to exist. The president's constitutional position was rather representative and virtually without effective competencies *vis-à-vis* the parliament and government. This was changed by an amendment in May 1919,¹⁴ which significantly strengthened the president's position, authorising him to appoint the government as a whole as well as individual ministers, to dissolve the government, to preside over the government, to get reports from the government, to name university professors, and to appoint and receive ambassadors. He became a *de facto* head of the executive, which in general was strengthened. To become valid, each governmental act of the president required the countersignature of the relevant responsible member of the government. Once in history, the session of the National Assembly elected the government that was responsible to it; later, the government would always be appointed by the president of the republic. However, the unicameral National Assembly, sometimes referred to as the Revolutionary National Assembly, was constituted not by election but by the decision of the presiding committees of political parties and the subsequent appointment of individual deputies.¹⁵ The key to it was the already mentioned proportional representation of individual political parties according to the results of the elections to the Imperial Council in 1911. Co-optation as a way of constituting representative bodies has then been used several times in emergency situations in Czechoslovak constitutional history.¹⁶ The National Assembly was a body of the Czechoslovak nation, precisely in the sense of the wording of Act No. 11/1918 Sb. z. a n. on the Establishment of an Independent State, understood as a state nation. Hungarians and Germans were not represented in the National Assembly; they later rejected the invitation to participate in the newly constituted state bodies for their disagreement with the recognition of Czechoslovakia within the existing borders and were considered a national minority.

Adhering to the war period conception of a nation, Masaryk understood it as a political category, in the sense of a political, civic nation free from all ethnic features. According to this perception, the 'Czechoslovak' Germans and Hungarians were to be assimilated gradually – politically, not linguistically or culturally – into the Czechoslovak nation.¹⁷ According to the first Czechoslovak census conducted in 1921, the republic had 13,613,172 inhabitants, of which 8,760,937 were Czechs and Slovaks reported as members of the Czechoslovak nation, 3,123,568 Germans, 745,431 Hungarians, 461,849 Ruthenians and 75,853 Poles.¹⁸

14 Act No. 271/1919 Sb. z. a n., amending the Act on the Provisional Constitution.

15 Slovak deputies, due to the impossibility of using the same key as Czech political parties, were appointed by the minister with a power of attorney for the administration of Slovakia.

16 Cf. e.g. Kudrna, 2009, p. 235; Jirásková, 2014, pp. 132–144; Roubal, 2013.

17 Cf. Kosatík, 2010, p. 28.

18 Cf. Rychlík, 2018, p. 144.

The newly constituted state faced several tasks. It was necessary to solve not only the issues of the final constitution, own currency,¹⁹ flag²⁰ and anthem but also of state borders,²¹ the cleansing and building up of state administration,²² status of minorities, regulation of relations between the state and the church, approach of the state towards nobility,²³ the already mentioned unification of legal order, building of the political system, implementation of land reforms²⁴ as well as a range of social and other measures of the young republic.²⁵ Lastly, it was necessary to ensure the defence and security of the state and the republic's accession to the international community.

In addition to national constitutional regulations, the norms of international law were also extremely important for the legal status of an independent Czechoslovakia. The most important international treaty was the Treaty between the Allied and Associated Powers and Czechoslovakia, signed in September 1919 in Saint Germain en Laye (the Treaty of Saint Germain),²⁶ which guaranteed Czechoslovakia security within its borders and recognition of historical countries as the territorial base of the new state. The treaty meant a definitive international recognition of Czechoslovakia,²⁷ and it confirmed the termination of its union with the former Austro-Hungarian monarchy. In Art. 53 of the Treaty, Austria recognised the complete independence of the Czechoslovak state, including the autonomous territory of the Ruthenians south of the Carpathian Mountains. Similarly, the independence of Czechoslovakia was recognised by the peace treaty between the Allied powers and Germany of June 1919 (Treaty of Versailles) and between the powers and Hungary of June 1920 (Treaty of Trianon).

Given its provisional nature, the Revolutionary National Assembly had the most important role – albeit with a lack of time – to draft and approve the fundamental law of the state, which, together with regular elections to the legislature and the

19 Monetary Act No. 187/1919 Sb. z. a. n., provided for the requisites of the new currency, including the name 'koruna', which evoked reminiscences of the common Austro-Hungarian crown. Monetary separation from Austria was conducted in February 1919 and created a quality and stable state currency. All Austro-Hungarian coins expired in the country in December 1924.

20 Act No. 252/1920 Sb. z. a. n., providing for the national flag, national emblems and seals.

21 E.g. Slovak borders were not recognised until the Treaty of Trianon in June 1920. This was preceded by a war with Hungary over Slovakia, which lasted almost 2 months and during which a military dictatorship and martial law were declared in Slovakia. The armistice was declared in June 1919 under pressure from the Entente.

22 Cf. Act No. 2/1918 Sb. z. a. n., on the Establishment of Supreme Administrative Authorities in the Czechoslovak state, Act No. 126/1920 Sb. z. a. n. on the Establishment of Provincial and District Authorities and Act No. 286/1924 Sb. z. a. n. (Restriction Act).

23 Cf. Act No. 61/1918 Sb. z. a. n., Abolishing Nobility, Orders and Titles. For the abolishment of nobility, see Gábriš, 2019.

24 Cf. Act No. 215/1920 Sb. z. a. n. o, Annexation Act, Act No. 81/1920 Sb. z. a. n., Allotment Act, Act No. 339/1920 Sb. z. a. n., Compensation Act. For land reforms, see Horák, 2016, pp. 640–648.

25 Cf. e.g. Act No. 63/1918 Sb. z. a. n. on Subsidising the Unemployed, Act No. 91/1918 Sb. z. a. n. on an Eight-hour Week, Act No. 199/1919 Sb. z. a. n. o on Organising Care for War Veterans.

26 The treaty was published under No. 507/1921 Sb. z. a. n.

27 Cf. Pavlíček, 2002, p. 44.

government, was to end the revolutionary period of the establishment of an independent Czechoslovakia. The constitutional basis of the first pre-Munich republic became the Constitutional Charter of 1920,²⁸ adopted by an unelected parliament, which also fulfilled the role of a constitutional assembly. The approval of the constitution represents the culmination of the formation of the Czechoslovak state.

The Washington Declaration of October 1918, written by T. G. Masaryk and signed on behalf of the Provisional Government of Czechoslovakia by Edvard Beneš and M. R. Štefánik, already contained the main principles of the future constitution of the Czechoslovak nation; in addition to rejecting the Austrian government's proposals for the federalisation of Austria. Above all, it determined the form of the state, namely the republic, ensuring complete freedom of conscience, religion and science, literature and art, speech, press and the right of assembly and petition. It clearly set out the requirement of the separation of church and state as well as the political, social and cultural equality of men and women, who would be granted universal suffrage.²⁹ Minority rights were then to be safeguarded by proportional representation, and national minorities were to enjoy equal rights. The government was to be parliamentary in form. The standing army was to be replaced by militia in defence of the state. Social and economic reforms were to be far-reaching. It also had a requirement for the expropriation of large estates and the abolition of aristocratic privileges as well as a commitment to the future assumption of part of the Austro-Hungarian, pre-war public debt, which would be passed on to the Czechoslovak nation. At the same time, liability for war debts was denied; however, the Washington Declaration left the final decision on the constitution to the duly elected representatives of the liberated and united nation.³⁰

The Constitutional Committee of the National Assembly began discussing the draft constitution at the end of 1919. It was not clear for a long time whether the final constitution would be approved by the unelected Revolutionary National Assembly or whether this role would fall within the prerogatives of the constituent body, the elected Constitutional Assembly. The governmental programme of the Tusar's red-green coalition of June 1919 assumed that the National Assembly would become a constituent body and thus adopt a new definitive constitution.³¹ The task of drafting the constitution was undertaken by the government, requiring that negotiations on the draft constitution, including draft laws related to the constitution, be confidential, expeditious and without the involvement of the general and professional public.³²

The author of the original government draft constitutional charter was prof. Jiří Hoetzel, the negotiations with the political parties were led by the Minister of the Interior Antonín Švehla, and the President, T. G. Masaryk, also had a significant role in the preparation of the document.

28 Act No. 121/1920 Sb. z. a n.

29 Men have had universal and equal voting rights since 1907.

30 Declaration of Czechoslovak independence by the foreign Provisional Government, the so-called Washington Declaration of 16 October 1918 (see Galandauer, 1988, pp. 311–314).

31 By the end of 1919, parliamentary elections had taken place in all European countries.

32 Constitutional Charter (1920). See Kuklík, 2020.

The Constitutional Charter of the Czechoslovak Republic of 29 February 1920 is considered, despite its shortcomings, a legal document which has played and still plays a significant role in constitutional history and influenced both the 1948 Constitution and the 1992 Czech constitution.

It was undoubtedly a democratic constitution, and as such, in the 1920s and 1930s, it survived as the basis for the democratic existence of Czechoslovakia and the functioning of its constitutional system until the Munich Agreement in 1938, despite the growing danger of the fascist threat to Central Europe and the existence of totalitarian or authoritarian regimes in its immediate vicinity. Its models of inspiration were, in particular, the American Constitution (preamble to the Constitution), the French Constitution of the Third Republic (parliamentary form of government), and despite clear efforts in society demanding consistent 'de-austrianisation', the Austrian Constitution of December 1867 (civil rights and freedoms). At the same time, it was a rigid constitution, as passing an amendment or supplement required a form of constitutional act approved by a three-fifths majority of all members in each of the two chambers. The system of designating laws governing constitutional relations as 'constitutional acts' has become a Czechoslovak constitutional custom, and over the years, the constitution has become a polylegal constitution, consisting of the constitutional charter itself, which has never been directly amended during its term, of the laws that the constitutional charter declared a part of it, acts referred to as constitutional, and the constitutional laws by which the National Assembly gave its consent to international treaties on the regulation of state borders, such as the state territory of the Czechoslovak Republic. This group also includes the constitutional decrees of the president of the republic from the period of the Provisional State Establishment of 1940–1945, which were declared by the Provisional National Assembly to be constitutional laws and passed additionally, together with some regulations of the Slovak National Council from 1944–1948 and the constitutional laws of the Provisional National Assembly and the Constituent National Assembly of 1945–1948.

At the same time, the constitution was a document corresponding, at the time of preparation and its passing, to the specific existing balance of power. Its distinctive feature was a compromise between the bourgeois and socialist forces in the National Assembly, between clericals and the supporters of a strict separation of church and state,³³ and between political parties that had a decisive influence but were not mentioned in any of the constitutional provisions. K. Laco states that the compromise was one of the main sources of the constitution.³⁴ It is not without interest that the constitutional charter served as a basis for the constitutional foundations of the state organisation in the preparation of the constitution of the Czech Republic (Constitutional Act No. 1/1993 Sb.) and that during the drafting of the constitutional charter, materials of the National Assembly were thoroughly studied.³⁵

33 The separation of the church from the state, as defined in Section 121 of the government's draft Constitutional Charter, was not included in the approved text of the constitution due to the opposition of the Catholic Church and especially the deputies from Slovakia.

34 For further details, cf. Laco, 1966, p. 404.

35 Cf. Filip, 2002, p. 295.

On Sunday, 29 February 1920,³⁶ the Revolutionary National Assembly approved the Constitutional Charter of the Czechoslovak Republic together with Act No. 121/1920 Sb. z. a n., which introduces the Constitutional Charter of the Czechoslovak Republic. Art. X of the Introductory Act provided for its entering into force together with the Constitutional Charter. Both the Charter and the Introductory Act were promulgated by publication in the Collection of Laws and Regulations on 6 March 1920. Simultaneously with these constitutional documents, Act No. 122/1920 Sb. z. a n., pursuant to Section 129 of the Constitutional Charter, which lays down the principles of language law in the Czechoslovak Republic; Act No. 123/1920 Sb. z. a n., which issues the rules of election to the Chamber of Deputies; Act No. 124/1920 Sb. z. a n., on the Composition and Powers of the Senate; Act No. 125/1920 Sb. z. a n., on the Electoral Court; and Act No. 126/1920 Sb. z. a n., on the Establishment of County and District Offices in the Czechoslovak Republic were approved. The approval of the constitutional charter and the first parliamentary elections in the new state, which took place on 18 April 1920, *de facto* and *de jure* ended the year-and-a-half revolutionary period of building the new state and consolidated the foundations of ‘state building’.

Following an intensive discussion in January and February 1920, the Constitutional Committee submitted to the plenary session of the Revolutionary National Assembly on 25 February 1920 a draft constitutional charter together with the introductory law and the Constitutional Committee’s explanatory memorandum to the Constitutional Charter of the Czechoslovak Republic. It also included an explanatory memorandum to the government bill introducing the Constitutional Charter. The original intention of the government was to include all constitutional norms in the Constitutional Charter; however, despite initial efforts, the constitution has become polylegal. In addition to the actual text of the Constitutional Charter, Art. I (2), which introduces the Constitutional Charter of the Czechoslovak Republic, assumes other laws explicitly marked as parts of the Constitutional Charter as well as laws amending or supplementing the Constitutional Charter, if they are explicitly declared constitutional. Furthermore, the provisions of Section 64 (1) of the Constitutional Charter required that the consent of the National Assembly to a treaty changing the state territory should take the form of a constitutional act. All regulations, the Constitutional Charter, the laws promulgated as part of it and the laws that amended and supplemented the Constitutional Charter were of the same (highest) legal force.

The presumed systematics of this basic law thus consisted of the basic articles embodied in the Introductory Act and marked by Roman numerals, some of which became part of the Constitutional Charter (Art. I, II, III [1] and Art. VI), which, not designated as an act but bearing the title of Charter with a historical justification and without legal, normative significance,³⁷ was divided into six chapters and 134 sections.

36 The 126th session of the National Assembly began on Saturday, 28 February 1920 at 8:30 a.m. and ended on Sunday at 3:35 a.m.

37 Cf. Weyr and Neubauer, 1931, p. 9.

Neither the original governmental proposal nor the proposal submitted by the Constitutional Committee to the National Assembly as a legislative initiative contained any traditional ceremonial introductory text, introduction, preamble, or statement summarising developments to date, giving the characteristics of the state, or defining the basic programme objectives.

The constitution finally got an introduction. It happened under somewhat strange circumstances, which to some extent illustrate the overall situation in the Constituent Assembly. During the discussion over the Language Act (Act No. 122/1920 Sb. z. n., laying down the principles of language law in the Czechoslovak Republic), the debate became considerably tense and emotional, especially with regards to the anchoring of the Czechoslovak language as a state language. Some deputies tried to diffuse the aggravated situation, which threatened even the already reached compromises or the pre-negotiated approval of the Constitutional Charter by appealing to the extraordinary significance of the moment of the constitution's approval "as an act that will be memorable in our history for many centuries".³⁸

A proposal was made to supplement the introduction of the constitutional text. First, it was clear in advance that the constitution of the nation, which gave the world Hus, Comenius, Havlíček, and other thinkers, could not be other than thoroughly democratic. It could thus be argued that at the head of our constitution there may also be words that contain a historical declaration of the United States' independence: "The legitimate governments derive their just powers from the consent of the governed".³⁹

Member of Parliament Jan Herben proposed a broader and more elaborate text of the introduction to the National Assembly, justifying his proposal with the following words:

I would wish, dear National Assembly, to conclude the constitutional work in a chivalrous way I have spoken of. That is why I intended to submit a proposal to the Constitutional Committee through the National Assembly. I would like us to write a slogan at the head of the constitution that we will adopt. Such slogans at the head of the constitution are nothing new; after all, you know that the United States of North America has such a slogan in the declaration of so-called human rights. I also found in our old constitutions that at the beginning they invoke the Holy Trinity, God, etc., and that the Czech constitution begins and ends with verses which reflect some long-standing experience or state wisdom.

I thought it would be appropriate, now that we appear, after 420 years, before Europe and the whole world with a constitution, that we should put this slogan at the head of that constitution: 'We, the Czechoslovak nation, desiring to consolidate the perfect unity of our nation, to establish the reign of justice in the

38 Stenographic record of the 126th session of the National Assembly of 28 February 1920. <http://www.psp.cz/eknih/1918ns/ps/stenprot/126schuz/s126001.htm>.

39 Stenographic record of the 125th session of the National Assembly of 27 February 1920. <http://www.psp.cz/eknih/1918ns/ps/stenprot/125schuz/s125019.htm>.

Republic, to assure the peaceful development of our Czechoslovak homeland, to contribute to the common welfare of all citizens of this state and to secure the blessings of freedom to coming generations, have in our National Assembly on 29th February 1920 adopted the following Constitution for the Czechoslovak Republic. In doing so, we, the Czechoslovak nation, declare that we will endeavour to carry out this constitution as well as all the laws of our country in the spirit of our history as well as in the spirit of the modern principles embodied in the slogan of self-determination; for we want to take our place in the community of nations as a cultivated, peace-loving, democratic and progressive member.’ Due to the huge tensions and, in part, the fury of the parties, I did not commit myself to this proposal. But if any party or any member of this National Assembly would accept this proposal as its own, so that we can really let the world know about us in this way, I would be happy, because I could think that I have convinced you that today we can end the next vote, which is to happen in a few hours, with a chord of conciliation and also a chord of true joy that the Czech nation, after 420 years, was free to work on its own independent constitution again. And even if it were imperfect, it could pass it on to descendants who would be wiser to correct and improve it.

In his memoirs from 1935, J. Herben does not deny that he was inspired by the American Constitution; however, he rejects the opinion of Dr. Spiegel, the Senator and professor at the German University in Prague, who claimed that the formulation referred to as Herben’s formula was wished for by President Masaryk, and Herben only fulfilled the president’s wishes.

The solemn proclamation approved at the head of the constitution became the subject of criticism, especially for its pomp and the absence of a binding force. It was claimed that as such, it could only provide guidance on the interpretation of the Constitutional Charter and it indicated only the ultimate political purpose to be achieved by the issuance of the constitution.⁴⁰ The introduction, as if placed outside the parentheses, was not considered part of the constitutional text, but it stood separately and was completely irrelevant for the assessment of the normative content of the Constitutional Charter.

Another subject of criticism was the reference to the Czechoslovak nation as the constituent entity in the introduction to the preamble. Professor F. Weyr, the main representative of normative theory in Czechoslovakia – but also one of the authors of the Constitutional Charter – considered this designation to be incorrect because the normative entity was the National Assembly rather than the Czechoslovak nation. It was indisputable, however, that this statement only emphasised the fiction of the Czechoslovak nation on which the entire constitutional system was built and also the fact that the Constitutional Charter was approved only by “representatives of the

40 Weyr, 1937, p. 89.

Czechoslovak nation (in the national-political sense), i.e. excluding all other nations inhabiting the territory of the Czechoslovak state".⁴¹

The Constitutional Charter confirmed the form of state bodies and their system, competence and powers, including the regulation of their mutual relations, and it enshrined the traditional rights and freedoms of citizens. On its basis, Czechoslovakia was to be built as a democratic republic, with the people being the source of all power in the state.

The constitutional bodies included the bicameral National Assembly, composed of the Chamber of Deputies, which consisted of 300 deputies, and the Senate, with 150 senators. Both chambers were elected in general and direct elections by a proportional electoral system, and the Chamber of Deputies had a stronger position. They also differed in their passive and active suffrage and in the length of their mandate. The government was accountable to the Chamber of Deputies – the only body that could hold a vote of no confidence to the government.

According to the constitution, the second highest constitutional body was the president of the republic electable by the National Assembly, whose constitutional status was inspired by the French constitutional regulation of the head of state. To become valid, each of his acts of governmental or executive power required the countersignature of a member of the government, who, by attaching his signature to the act of the president of the republic, assumed responsibility for an irresponsible president before the parliament. The constitution contained an enumerative list of the usual powers of the head of state, such as representing the state externally, negotiating and ratifying international treaties, and having the right to dissolve parliament, veto its laws, appoint and remove ministers, declare amnesty and grant pardons.

Unlike the enumerative definition of the powers of the president of the republic, the constitutional charter entrusted the government with universal competence with respect to the principle of the division of power. The government decided on governmental bills, governmental regulations – all matters of a political nature – as well as the appointment of judges and some government officials.

Territorially, the state was divided into countries (Czech, Moravian-Silesian, Slovak and Subcarpathian Russia), which were further divided into political administration districts that differed in their territorial circuits, e.g. from judicial districts. The performance of administration in territorial units was characterised by a duality of self-governing bodies in addition to bodies subject to central power.

The constitution also regulated the exercise of judicial power. Judges were independent in the performance of their duties and bound only by law. The system of courts included district, regional and high courts and the Supreme Court based in Brno. The only administrative court was the Supreme Administrative Court, which reviewed the legality of decisions of administrative bodies and decided on jurisdictional disputes. In addition to the electoral court deciding on electoral matters, a constitutional court was also established to rule on the constitutionality of laws.

41 Weyr, 1937, p. 89.

The constitution ensured basic civil and political rights to all citizens without distinction, and the rights of minorities established by the constitution were an expression of the obligations of the Czechoslovak state arising from international peace treaties. Minorities were guaranteed the right to use their mother tongue in daily life, in schools, and in cultural institutions set up for persons belonging to minorities. In districts where the minority made up more than 20% of the population, it could also use its mother tongue when contacting authorities, including courts.

Art. IX of the Act of 29 February, which introduced the Constitutional Charter of the Czechoslovak Republic,⁴² contained a general derogation clause. The legislator thus avoided the danger that the list of repealed legal norms may be incomplete. This derogation clause repealed, on the one hand, all provisions contrary to the content of the Constitutional Charter and the republican form of the state, which would be repealed or would become obsolete even without an explicit derogating provision, and on the other hand, all constitutional laws regardless of their content. That is, even those whose content would withstand in confrontation with the Constitutional Charter and the republican form of the state. This also applied, for example, to the Austrian State Basic Act No. 142 on the General Rights of Citizens of 1867.

Provisions contrary to the Constitutional Charter were understood to regulate the same matter as the Constitutional Charter, but in a different way. Provisions contrary to the republican form of the state had always ceased to be valid, regardless of the Constitutional Charter.⁴³

The Introductory Act and the Constitutional Charter, together with other constitutional laws, were promulgated in March 1920, and immediately after, the first regular parliamentary elections in the Czechoslovak Republic were called in April. Holding the elections ended the revolutionary period in which Czechoslovakia was devoid of an elected parliament. The reasons for such an approach were justifiable, precisely due to that revolutionary, exceptional situation in which the Czechoslovak state arose, and especially due to the efforts to eliminate possible centrifugal and irredentist forces.

The creation of a constitution and some other laws was considered a task that still had to be performed by the revolutionary corps, because it was not believed that there could be an agreement with the disgraced Germans; the Czechoslovak nation created a state against the will of the Germans, so it must also lay its foundations itself...⁴⁴

The adoption of the Constitutional Charter of the Czechoslovak Republic in February 1920 meant the definitive breakup of the new republic with the constitutional-legal continuity and the tradition of Austrian constitutionality.⁴⁵

42 Act No. 121/1920 Sb. z. a n.

43 Peška, 1935, p. 165.

44 Peroutka, 1991, p. 1076.

45 Cf. Malý, 2011, pp. 9 et seq.

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