

## THE 1848 REVOLUTION: THE DAWN OF THE CZECH CONSTITUTIONALISM

### Abstract

The Czech constitutional development can be divided into several relatively separate phases: pre-modern (until 1848), monarchist (1848 to 1918), republican (1918 to 1938), totalitarian (1938 to 1989), transformational (1989 to 1992) and contemporary (since 1992). The present paper intends to deal firstly with the question of pre-modern constitutionalism and the key documents of this period, i.e. the Land Ordinances, *Landfrýds*, the Czech Confederation and, finally, the General Civil Code, which, given the date of its creation, also contained constitutional material. Each document of the pre-modern era will indicate why they are not yet modern constitutions as understood by recent constitutional law theory. The developments after 1848, triggered by the revolutionary events in many parts of the monarchy, will be discussed in detail. Not only will the constitutional results (individual constitutions and their negations) be analysed, but also the projection of these constitutions into other contexts in which the achievements of the 1848 revolution were fully manifested. The key one from the Czech perspective was the Kroměříž (Kremsier) Draft, which did not come to fruition due to the monarch's decision to impose another legislative act. Still, the content of this draft foreshadowed future modern constitutional developments, where the draft included a catalogue of fundamental rights containing very progressive rights and freedoms. However, the only tangible consequence of the Kroměříž

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parliament was the abolition of serfdom. It should be remembered that until 1918 the Czech lands were part of Austria, and the Austrian arrangement influenced the modern conception of the people as the source of power, laid the foundations of modern Czech political life and, in effect, the contemporary form of the Czech judiciary.

**Keywords:** land ordinances; *Confoederatio Bohemica*; Czech constitutional development, Austrian constitutional development, Kremsier Draft, March Constitution, December Constitution

## 1. Introduction

It is a commonly held view that the Czech Republic came into being on 1 January 1993. Its creation took place already in the framework of the Czechoslovak federalisation on 1 January 1969.<sup>169</sup> However, its constitutional history began to be written before that date, when Czech constitutionalism was closely intertwined with Czechoslovak and Austrian constitutionalism (*Orbis Iuris Austriacus*<sup>170</sup>).

The paper aims to analyse crucial aspects of the constitutional development of the Czech lands, in which the events of the revolutionary year 1848 are essential. At the same time, it should be noted that specific hints of constitutional adjustment can also be traced to the earlier period.

## 2. The first Czech Constitution

The question of the first constitution is quite widely debated in constitutional law theory. In general terms, the constitutional texts of the Union of Utrecht (1579), San Marino (1600), Sweden (1634) and England (1647-1653) are mentioned in contrast to the so-called modern constitution.<sup>171</sup> These modern constitutions regulate the organisation of state power, including a human rights catalogue, providing for the individual's participative rights, and declaring

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<sup>169</sup> Filip, 1999, p. 162.

<sup>170</sup> Neschwara, 2009, p. 218.

<sup>171</sup> Filip, 1999, p. 79-82.

state action's objectives. The first modern constitution in this respect is the Constitution of Virginia (1776)<sup>172</sup> and, in Europe, the constitutions of France and of Poland (1791).<sup>173</sup>

It can be stated that if a legal document contains matters of high importance concerning the organisation of the state system, we speak of a pre-modern constitution. This approach makes it possible to talk of several legal acts as constitutions. The Czech environment is no exception, with land ordinances being the first national constitutions. The Czech lands did not form a homogeneous area, so the development differed in Bohemia and Moravia.<sup>174</sup>

In Bohemia, the first attempts in this area failed due to the disinterest of the Estates (1272, 1294, and 1355).<sup>175</sup> On the other hand, from the middle of the fifteenth century, the Estates sought to adopt the land ordinance as a collection of older laws and decisions of the provincial diet. The final document, the Vladislav Land Ordinance, was published in July 1500 and represented contemporary public and private law collections. Despite the efforts, the Vladislav Land Ordinance should have been revised. The unfinished document was issued in 1530, and since 1545, there had been a preparation of a new land ordinance adopted on 1 October 1549. In 1557, however, the 1549 Land Ordinance was criticised for its internal inconsistencies and the incomprehensibility of some of its provisions. The shortcomings were then corrected by the 1561 Land Ordinance, which was approved during the reign of Ferdinand I, but printed after his death in August 1564 (during the reign of Maximilian II).<sup>176</sup>

A slightly different development was typical for Moravia. At first, the so-called land peace (*Landfriede* or *Landfrýd*) appeared here, which, in addition to their earlier protective function, also began to regulate decisive issues of the country's functioning. The 1496 *Landfrýd* included general injunctions. In 1511, the Moravian Diet adopted a Land Ordinance containing, among other things, the *Landfrýd*. In 1516, the Olomouc Diet issued another Moravian Land Ordinance under the authority of King Vladislav, summarising the

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172 Filip, 1999, p. 81.

173 Filip and Kroupa, 2001, p. 131.

174 For decades, Silesia had tended to belong to the German area (Kalousek, 1892, p. 56.). Silesian Land Ordinances came from 1708 and 1726, and these fundamental laws were the legal base until 1848 (Čížek, 1885a, p. 1).

175 Kalousek, 1892, p. 318-321.

176 Kalousek, 1892, p. 115-116.

old injunctions and the *Landfrýds*. Between 1518 and 1524, various general decrees were issued, which became valid even without the sanction of the monarch and were drawn up at each Diet as a land ordinance, while the ordinance no longer dealt with the Landfrýd, which was considered permanent from 1516.<sup>177</sup> The Book of Tovačovský (*Kniha Tovačovská*; 1480 to 1490; collected by Ctibor Tovačovský of Cimburk) and the Book of Drnovský (*Kniha Drnovská*, 1523 to 1543; compiled by Ctibor Drnovský of Drnovice) also influenced the development of Moravia. In 1535, during the reign of Ferdinand I, the Moravian Land Ordinance was published, based on the 1516 Ordinance and the Book of Tovačovský. Ctibor Drnovský of Drnovice participated in its preparation.<sup>178</sup> Later, the Moravian Land Ordinance was expanded and republished (1545, 1562 and 1604).<sup>179</sup>

The turning point for further development was the Bohemian Revolt. The legal manifestation of these changes was the Bohemian Confederation of July 1619. The term confederation covers not only the name of the document but also a particular *sui generis* federation with confederal elements.<sup>180</sup> In this context, Professor Adamová refers to the Bohemian Confederation as the first modern written constitution. However, she puts it in the context of local ordinances, where she emphasises the question of the union of the Bohemian lands and the union of their estates.<sup>181</sup> However, the Czech Confederation was not fully established in practice when it was ended by the defeat of the Estates at the White Mountain (*Bílá Hora*) in November 1620.<sup>182</sup>

However, this defeat led to the start of work on revising the land ordinance in March 1625. The Prague Commission drafted the text of this fundamental document, but the Vienna Commission revised it. The public law part (the introductory part) was wholly changed; in the case of the private law part, it is not clear to what extent the Prague revision was used in Vienna (in Prague, continuity was assumed, and therefore the existing provincial constitution, which was revised, was used as the basis). The Renewed Land Ordinance for Bohemia was published, imposed, and promulgated in 1627 (patent of 10 May 1627). Its central thesis was that the Kingdom of Bohemia

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177 Teige, 1902, p. 511.

178 Kalousek, 1892, p. 330-333.

179 Janiš, 2001, p. 126-127.

180 Adamová, 1997, p. 60.

181 Adamová, 2000, p. 62-63.

182 Lojek, 2019, p. 121-122.

had risen against the hereditary king, and therefore the opposite of what the Bohemians had defended would be accepted; the Kingdom of Bohemia thus forfeited all its rights, and the king reserved to himself the extension, modification and correction of the provincial constitution and everything related to the law. Then, the Renewed Land Ordinance introduced absolutism and destroyed Czech political life. On the other hand, private Bohemian law was left almost unchanged. At the end of May 1627, the king confirmed all its old privileges, liberties, rights, and customs to the Kingdom of Bohemia, as they were not contrary to and not abolished by the Renewed Land Ordinance. In the conditions of Moravia, modifications were made to the Bohemian Renewed Land Ordinance, especially concerning the different organisations of the authorities, and it was dated 10 May 1628 (just a year after the Bohemian one).<sup>183</sup>

The rather harsh tone of the text was slightly softened by the Royal declarations and amendments of 1640.<sup>184</sup> After 1710, efforts were made to prepare new land ordinances, and work was still underway in the 1750s, but the intended ordinances never came into force.<sup>185</sup> This fact can be associated with the beginning of the preparations for civil codification. Thanks to the developments, however, Emperor Charles VI declared the so-called Pragmatic Sanction in the Privy Council on 19 April 1713. It was based on the fact that all hereditary lands of the House of Habsburg were never to be divided but to remain together until the House died out; the male descendants of the Archduke of Austria were to ascend the throne if there were none, then the female descendants (first the daughter of Charles IV, then Joseph I, then Leopold I and their descendants of both genders and the other lines of the House, with the priority of the male over the female being preserved). The sanction was then submitted to the Estates for accession and commitment (the Bohemian Estates on 16 October 1720, the Moravian Estates a day later and the Silesian Estates on 25 October 1720).<sup>186</sup>

However, none of these documents (the land ordinances, the Czech Confederation) represented a modern constitution in a way understood by the contemporary constitutional law theory. There were no human rights

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183 Kalousek, 1892, p. 422-439.

184 *Ibid.*, p. 460.

185 *Ibid.*, p. 475.

186 Čížek, 1885b, p. 18.

catalogues, no enshrinement of the individual's right to participation, and no declaration of the objectives of state action. In particular, the provincial constitutions were compilations of the law of the time, and just as they contain the material of the present constitutional law, they also contain, to varying degrees, components of criminal, civil or administrative fields of law.

Thus, in the middle of the eighteenth century, there was no modern constitution in the Czech lands (or in Austria), which can be compared to Poland or France. In 1792 it was explicitly stated in Austria, to which the Bohemian lands belonged, that no constitution was needed.<sup>187</sup> The development of the law in this period led to the codification of crucial branches of law, namely civil and criminal law. These trends were crowned in civil law by adopting the General Civil Code (ABGB) of 1811. As it preceded the first modern constitutions, the ABGB contained constitutional law matters, and the residues of this approach can still be seen in current civil codes.<sup>188</sup> Although there are now catalogues of fundamental rights that contemplate the rights and freedoms of the individual, the capacity to be the bearer of such rights and liberties does not derive primarily from constitutional law but just from civil law. This is because the legal capacity and legal personality were historically regulated in the ABGB, on which the constitutional texts were later built.

### **3. Czech-Austrian Modern Constitutionalism**

The beginnings of modern constitutionalism in Czechia (and Austria) are linked to the socio-political changes that took place due to the revolution of 1848, which marked a turning point in understanding the participation of broad sections of society in political power. The revolution broke out due to growing internal political tensions stimulated by social and national divisions. It was triggered by information about events in France, where the July Monarchy was collapsing, and in the still fragmented Italy, partly controlled directly by the Habsburg monarchy (Lombardy and Veneto). The centres of the revolutionary movement became Vienna, Prague, and Pest, in addition to the Habsburg north of Italy. Crucial to the initial success of the revolution in the Habsburg monarchy was the revolutionary uprising in Vienna from

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<sup>187</sup> Kalousek, 1892, p. 509.

<sup>188</sup> Filip, 2011, p. 104-106.

13 to 15 March 1848, when Metternich was forced to resign, and the Emperor promised to issue a constitution and guarantee civil liberty. The monarch declared the transition to constitutionalism in a patent of 15 March 1848.<sup>189</sup>

On 17 March, he appointed a ministerial council (government), established on the model of the Western monarchies, headed by Count Franz Anton von Kolowrat-Liebsteinsky. Immediately after that, the court chancelleries were transformed into ministries based on the monocratic principle. On 18 March, the Hungarian Diet adopted a constitution, which the monarch confirmed on 11 April (the so-called “Bratislava March Constitution” or the “April Laws”).<sup>190</sup> The Habsburg monarchy became a personal union of two almost independent states united only by the person of the monarch. During these days, political life in Bohemia also came alive and demanded the necessary changes (two Prague petitions).<sup>191</sup>

On 25 April 1848, a constitution was issued in Vienna, named after its author Pillersdorf. It was valid for Austria *stricto sensu*, i.e. for the Habsburg states except for Hungary, Croatia and Lombardy-Venetia. The Minister of the Interior, Franz von Pillersdorf, made no secret that the hastily drawn-up constitution with its 59 provisions, as a non-original compilation of foreign models, was intended to meet the call for a constitution and dampen public opinion. Indeed, with the general upheaval of minds, it was not much expected that the Constitution would be subjected to qualified criticism. The Pillersdorf Constitution (“April Constitution”) was based on the Belgian model and introduced rigid centralism. According to this document, the Emperor also guaranteed citizens a wide range of fundamental civil rights.<sup>192</sup>

However, it soon became apparent that the government had underestimated the public tension. A campaign against the constitution began to intensify, culminating on 13-15 May 1848. Thus, instead of calming the situation, the Constitution had the opposite effect, creating a storm of resistance. The Viennese court was forced to flee from Vienna to Innsbruck, where the Emperor proclaimed on 16 May that a new constituent assembly would adopt the constitution. In addition to abolishing the upper house, the right to vote

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189 Brauneder, 2003, p. 115.

190 Saturník, 1931, p. 50-51.

191 Tobolka, 1932, p. 37-44.

192 Schelle and Tauchen, 2013, p. 18.

was extended. The elections were held in Bohemia in the stifling atmosphere of the already suppressed Prague Uprising. The Czech national liberals came to the fore, having rid themselves of their radical democratic rivals through the failed uprising. Nevertheless, the elections were held, and on 10 July 1848, the Austrian Imperial Assembly (*Reichsversammlung*) could meet in Vienna. However, the first working session is considered to be on 22 July.<sup>193</sup>

The Parliament, meeting in Vienna and from October 1848 in Moravian Kroměříž (Kremsier), had as its main task the drafting of a new Austrian constitution. In the initial period, liberal circles seemed dominant, but then wholly opposite forces began to gain strength. Prince Felix Schwarzenberg was put in charge of the Austrian government. Moreover, on 2 December 1848, the previous Emperor's nephew, Franz Joseph I, ascended the imperial throne after Ferdinand V's resignation. The work of the Kroměříž Assembly continued, and its deputies respected the state-law situation created by implementing the Bratislava March Constitution and prepared a constitution for only 17 Austrian provinces (later Cisleithania). The draft was based on recognising the validity of the Pragmatic Sanction and declared the Austrian Empire to be a hereditary and integral constitutional monarchy. Other initial ideas of the constitutional works were the sovereignty of the people, or the parliament representing them, and the separation of powers. Kajetan Mayer's outline was the basis for the draft. The division of the empire into historical states was to be preserved, which were to be granted limited autonomy in matters of provincial importance (science and art, supervision of pious foundations, poor and humanitarian affairs, building and fire regulations, promotion of agriculture and industry) and the right to regulate other matters (education, church affairs, police, etc.) within the limits of imperial legislation. The provincial administration was to be headed by a governor appointed by the Emperor, who presided over the local assembly. The organisation of the individual provinces was to be regulated by local constitutions. The all-Austrian parliament was to be a bicameral Reichstag, consisting of a chamber of the people, elected by direct election, and a chamber of the states, elected by the provincial assemblies. The sovereign's position was to be derived from the constitution, to which he was to swear upon ascending the throne. The Emperor was to have sole executive power and

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193 Ibid., p. 18-19.

exercise it through ministers. He was to have a suspensive veto over imperial laws passed by the Reichstag. A special law was to regulate the system of independent courts, separate from the civil service. A new imperial court was to be established, the members of which were to be appointed partly by the Emperor and partly by the Land Chamber. It was to have jurisdiction over disputes of a constitutional nature, the trial of high state officials and severe attacks against the sovereign and the Diet. The supreme courts of the various countries were also to be constituted. The constitutional work went furthest with the catalogue of fundamental civil rights, also discussed by the plenum of the Constituent Assembly. The draft was based on the natural law concept. Its authors understood fundamental civil and political rights as natural, inherent, and inalienable. The Constitution's final draft was a compromise between the Federalists and the Centralists. Still, the Kroměříž Diet did not have time to approve the constitutional draft because it was dissolved on 7 March. Even before that, on 4 March 1849, a second imposed constitution was promulgated, called Stadion Constitution after its author (or "March Constitution").<sup>194</sup>

For completeness, it should be added that in September 1848, the Moravian Provincial Assembly approved the Moravian Provincial Constitution. The assembly expected the sanction of the constitution by the Imperial Diet and the monarch. Still, the proposal was not subsequently examined in detail, and therefore the constitution did not manifest itself in practice (as did a large part of the Austrian constitutions from 1848 to 1867).<sup>195</sup>

The Stadion Constitution was issued on 4 March 1849, and the authorities were notified of its issuance by the Ministerial Council in a circular dated 6 March 1849. Still, the Constitution did not make much of an impact on real life. Although Emperor Franz Joseph I duly published it in Olomouc with his patent, it was never put into practice, and its adoption was instead a legitimisation of the dissolution of the Constituent Assembly. The constitution was based on the unity of the whole empire, including Hungary. Some issues from the draft of Kroměříž were used for the newly imposed constitution. Unlike the April Constitution, the Stadion Constitution distinguished between imperial and provincial legislation, but the imperial decree was to be decisive. The Imperial bicameral Diet was to exercise legislative power in

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<sup>194</sup> Ibid., p. 19-21.

<sup>195</sup> Dvořák, 1900, p. 86-88.

all-state matters, enumerated exhaustively. According to this constitution, individual non-Hungarian states were given land ordinances. This also happened on 30 December 1849 for Bohemia and Moravia. Still, they never came into force, so the new provincial assemblies never met, and the regional committees were never formed. At the same time as the octroy constitution, a patent was issued containing fundamental civil rights and a patent on the execution of the redemption of serfdom, which followed the framework law of 7 September 1848. This constitutional text was also supplemented by a civil rights catalogue issued as a separate patent. Its validity was limited to non-Hungarian countries, and it was not put into practice. The constitution was, therefore, fictitious and was never implemented.<sup>196</sup>

On 17 May 1849, Stadion resigned due to a severe illness, and Alexander Bach temporarily took over his office until the government's reconstruction. The government was finally reconstituted on 28 July 1849, and Bach took over the Minister of the Interior seat. In his succession circular of 15 August 1849, Bach was particularly keen to stress the nature of the new government and the whole system. At the same time, the Ministry of the Interior continued to elaborate the constitution further. In January and February 1850, the land ordinances for most countries, including all three Bohemian states, were officially published. The convocation of the local assemblies was envisaged for the autumn of 1850, so the *Reichstag* could be convened in the spring of 1851. Although these statutes did not enter into force, they became the de facto basis of the land ordinances of 1861.<sup>197</sup>

In April 1851, Emperor Franz Joseph I appointed the Imperial Council, to the head of which he then appointed Karl Kubeck, who paved the way for the revocation of the imposed constitution. By then, political events had already begun to move very quickly. On 20 August, the Emperor signed three decrees, namely a cabinet letter addressed to Kubeck, which changed the status of the Imperial Council from that of a personal advisory body to that of the Emperor, a cabinet letter to Schwarzenberg, in which the government was relieved of its responsibility to any other political authority and continued to be accountable to the Emperor, and a cabinet letter to Schwarzenberg, in which the government was asked to consider the possibility of implementing the 1849 Constitution. As it soon turned out, this was the penultimate

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<sup>196</sup> Schelle and Tauchen, 2013, p. 21-22.

<sup>197</sup> Ibid., p. 22.

step towards liquidating constitutionalism, which had not yet had time to develop its essential features. The final action was taken after the coup d'état in France on 2 December 1851. At the end of the year, Franz Joseph I called the Imperial Council and the government together for a joint session and had three patents read out, published on 31 December 1851 as the so-called "New Year's Patents". The "neoabsolutism" was much more consistent than that of the Metternich. Under the neoabsolutism, the government imposed a rigid centralised regime persecuting every democratic and national movement. For the first time since Joseph II's efforts, it again tried to fit the Kingdom of Hungary into the ultimately unified framework of a single centralised state, in which new forms of local government were created instead of the traditional county authorities, and Austrian regulations replaced the old Hungarian law.<sup>198</sup>

An essential feature of this period is the assertion of the influence of the Catholic Church, which the Concordat expressed concluded on 18 August 1855 and promulgated by the Bull of Pope Pius IX *Deus humanae salutis auctor*. It introduced the so-called coordinating principle in the relationship between the State and the Church, whereby legal life was divided under the secular and ecclesiastical jurisdiction.<sup>199</sup>

The collapse of the neoabsolutist regime was brought about by foreign policy failures, the financial crisis, and rising internal political tensions in the second half of the 1850s. In the second half of the 1850s, the monarchy began to find itself in an increasingly complicated domestic and mainly foreign policy. In June 1859, Austria succumbed to French and Italian troops at the Battle of Magenta and Solferino. The Emperor then had to cede Milan to the King of Sardinia. In domestic politics, the centralist and absolutist regime was becoming increasingly untenable. The first steps, therefore, had to be taken as soon as possible. Minister Bach was dismissed from office, and on 15 July 1859, an imperial manifesto was issued announcing the first concessions from the positions of absolutism. On March 5, 1860, Patent No. 56 of the Ordinance announced that the sovereign had decided to multiply the Imperial Council with extraordinary members and would periodically convene it to consult it on important financial, legislative, and other questions. In addition to the archdukes, certain ecclesiastical dignitaries and

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<sup>198</sup> Ibid., p. 23.

<sup>199</sup> Valeš, 2008, p. 114.

meritorious persons appointed by the Emperor, 39 representatives of the provincial assemblies, whom the Emperor again selected on the proposal of these assemblies, became extraordinary members of the Imperial Council. There was talk of a multiplied Imperial Council. The result of the deliberations in the Imperial Council was, among other things, the manifesto "To My Peoples" of 20 October 1860, which recalls in general terms why the previous neoabsolutist era was necessary and, at the same time, announces the publication of a law on the basic features of the new state organisation. This manifesto was the so-called October Diploma, authored by the leader of the Hungarian conservative landlords, Antal Szécsen. It was not a constitutional law but a programme restoring constitutional life in Austria. In December 1860, Baron Anton von Schmerling was appointed Prime Minister and immediately put forward his programme based on restoring constitutionalism.<sup>200</sup>

On 26 February 1861, the long-awaited February (Schmerling) Constitution was imposed. Nor did it abandon the centralist tendencies evident in the broad conception of the competence of the imperial parliament. In the mid-1860s, the position of the monarchy began to deteriorate significantly. The war with Prussia ended on July 3, 1866, with the defeat of Austria at Hradec Králové and the German Confederation, which had to leave Austria and give the central role to Prussia. Another sticking point was the Hungarian question, which was resolved by negotiations between the Viennese government and the representatives of the Hungarian Diet in early 1867, which resulted in a political agreement on everyday affairs and how they were to be handled. The Emperor, in the rank of King of Hungary, on 17 February 1867, by a special rescript, restored the Hungarian 1848 Constitution and appointed a Hungarian government, had himself crowned King of Hungary and the whole matter was concluded on the part of Hungary by the issue of Statutory Article 1867:XII, which entered into constitutional history as the Austro-Hungarian Compromise.<sup>201</sup>

The monarchy soon became known as the Austro-Hungarian Empire, a personal union enriched with elements of a real union, with the monarch and the ministries of military, foreign affairs and finance and the so-called delegations in common. The share of the two parts of the monarchy in the

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200 Schelle and Tauchen, 2013, p. 25.

201 Rieger, 1903, p. 13.

payment of common matters and the redemption of the national debt was also stipulated, and a customs and trade association was formed. The western part of the monarchy was called the “The Kingdoms and Lands Represented in the Imperial Council”. Cisleithania (*Zisleithanien*<sup>202</sup>) was also used, while the eastern part was officially the Lands of the Crown of Saint Stephen (or Transleithania<sup>203</sup>). The Cisleithanian constitution was adopted in December 1867; the Transleithanian constitution was the Bratislava Constitution of March 1848.

One cannot then overlook the efforts of the Czech representation for settlement, which were unsuccessful.<sup>204</sup> At the end of 1867, the constitutional process culminated in issuing a set of constitutional laws that were considered the fundamental laws of the state called the December Constitution. Its core, however, was a complex of six constitutional acts that codified the status of the Cisleithanian central bodies and their relations.<sup>205</sup> This series of laws was then supplemented in 1868 by the so-called May

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202 Seebauer, 1988, p. 139.

203 *Ibid.*, p. 81.

204 Kadlec, 1912, p. 77-86.

205 Act No. 141/1867 RGBL. on the Imperial Council transferred the general legislative competence to the Provincial Diets; the competence of the Imperial Council was henceforth defined only exhaustively. However, the combined powers of the existing Reich Council, both broader and narrower, became the basis of its competence. In addition to its legislative competence, the Imperial Council also had a power of control by approving certain acts of the sovereign, examining the state accounts, etc. The law also maintained the curial system of 1861. The absence of changes was also noticeable in the case of the House of Lords, consisting of members appointed by lineage or rank or by special appointment by the sovereign. The number of members of the House of Lords was not fixed. Act No 142/1867 RGBL. on general civil rights contained a catalogue of the fundamental rights of citizens in Cisleithania. Act No 143/1867 RGBL. established the Reich Court of Justice with its seat in Vienna, headed by a president, a deputy president, twelve members and four alternates. The court was to rule on conflicts of competence and disputes in public law matters between the various institutions and on complaints by individual citizens about the possible curtailment of constitutionally guaranteed political rights. Act No 144/1867 RGBL. on the judiciary secured judges' independence; the proceedings' public nature introduced jury trials for certain offences and, in principle, separated the court in all institutions from the executive administrative power. Act No 145/1867 RGBL. concerned the power of government, defining the position of the Emperor as 'sacred, inviolable and unaccountable' and thus guaranteeing important dynastic prerogatives. However, the sovereign power was not explicitly derived solely from God's will. The monarch was formally bound by an oath to rule only according to the laws he had always passed. Act No. 146/1867 RGBL. on the common affairs of all the countries of the Habsburg monarchy was a balancing law of its own, analogous to the Hungarian legal article 1867:XII (Pražák, 1895, p. 21).

Laws,<sup>206</sup> which abrogated the privileged position of the Catholic Church vis-à-vis other religious communities and denominations guaranteed by the Concordat. Cisleithania was a federal state consisting of 17 states and a constitutional monarchy, applying separation of powers and ensuring citizens' fundamental human rights and political freedoms.

After adopting the December Constitution (mainly Act No. 141/1867 RGBL.), the Imperial Council remained the representative body. It consisted of two chambers. The House of Lords consisted of persons designated by family or rank and persons appointed directly by the Emperor. It was intended as a conservative counterweight to the Chamber of Deputies. The provincial assemblies initially delegated the Chamber of Deputies, but only from 1873 onwards were deputies elected by the citizens in direct elections. Until 1907, MPs were divided into interest-based curia suffrage groups.<sup>207</sup> The Imperial Council was to deal with everyday matters and establish common institutions cooperating with the Hungarian Diet. It was also responsible for regulating military affairs, the state's financial management, national economic issues, public health and the organisation of confessional relations, the fundamental regulation of the civil service and the judiciary, civil, criminal, exchange, and mining legislation, etc. It also exercised a controlling function over the executive. Ministers were responsible to it for the sovereign's acts and their administrative acts. The Rules of Procedure introduced the discussion of draft laws in parliamentary committees and the lengthy procedure of their triple reading. If the government requested it, the House of Commons had to act on its proposals as a matter of priority. Members of the Government could take the floor whenever they requested to do so. The closure of a session of the Chamber by the Emperor interrupted the continuity of the discussion of the individual motions, and the whole procedure had to be repeated after the reopening. All this made it possible to obstruct and direct the work of the Austrian Parliament. Obstructions by various groups of deputies were to be prevented by a low quorum.<sup>208</sup>

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206 Act No. 47/1868 RGBL., on marriage law, No. 48/1868 RGBL., on the relationship between the school and the church, and Act No. 49/1868 RGBL., on the inter-confessional relations of citizens (Tretera, 2002, p. 30).

207 Chytilík et al., 2009, p. 266.

208 Schelle and Tauchen, 2013, p. 29-30.

The December Constitution was in force until the end of the Habsburg monarchy.<sup>209</sup> During the First World War, its implementation was affected by emergency measures.

#### 4. 1848 as a source of inspiration

The presented constitutional development, which the Czech lands had in common with Austria, indicates its crucial moment was the revolutionary year of 1848.

A relatively important indicator of the most modern constitutional trends was the Kroměříž Draft.<sup>210</sup> This envisaged that the source of state power was the people. This trend is still present in Czech constitutional development after 1920, albeit with a modification of the ‘working people’ from 1960 to 1992.<sup>211</sup> The Kroměříž Draft also dealt in detail with the catalogue of fundamental rights. The deputies of the (Kroměříž) Constituent Assembly of 1848 subscribed to the natural-law definition of natural, inherent, and inalienable fundamental civil and political rights. In the constitutional draft, Czech politician František Ladislav Rieger prepared the original version in August with the words we know from the French Declaration of the Rights of Man and of the Citizen.<sup>212</sup> The final text, in turn, strongly resembled the relevant passages of the Belgian Constitution of 1831. In addition to individual rights, it also guaranteed the equality of nations and the fundamental rights of municipalities as self-governing corporations. The provisions of the Kroměříž draft were then – without the most radical formulations, such as the principle that all power comes from the people or the abolition of the death penalty – taken up by the framers of the 1849 Constitution. It was not until the December 1867 constitution that a comprehensive catalogue of civil rights was put into practice.

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209 On the other hand, the Catalogue of Fundamental Rights (No. 142/1867 RGBL.) was in force until the adoption of the 1920 Constitutional Charter (Rouček and Sedláček, 1935, p. 293).

210 Adamová, 2007, p. 84.

211 Lakatoš, 1993, p. 45.

212 Hrubec and Bárta, 2006, p. 15.

However, the tangible result of the revolutionary year 1848 was the end of serfdom. Parliament debated the proposal in the summer of 1848 on the motion of its youngest member, Hans Kudlich, who intended the proposal (from the Czech perspective) to prolong the adoption of the Austrian constitution so as not to prevent the annexation of the Austrian lands to Germany.<sup>213</sup> The abolition of serfdom took place in September 1848.<sup>214</sup>

The developments after 1848, however, marked a qualitative change in the development of the judiciary.<sup>215</sup> During the discussion of the proposal to abolish serfdom, some deputies emphasised the need to cancel the patrimonial courts and subordinate the judiciary to the state. This thesis was taken up by the 1849 Constitution, which laid down basic organisational and procedural principles and took account of the revolutionary developments of 1848, providing for a unified system of justice, the existence of a state (not patrimonial) judiciary, the principle of equality of citizens before the law, independence, separation from the administration and, in the context of proceedings, the principles of publicity, orality and, in criminal proceedings, the prosecution and the participation of a lay element. The specific rules of the organisation were then brought about by the decision of 14 June 1849 – the Foundations of the New Judicial Establishment (No. 278/1849 RGBL.), which also brought about a system of courts – district, district collegiate, provincial, superior provincial and Supreme Courts. The existence of causal courts and the subordination of members of the royal family and persons enjoying the right of extraterritoriality to the Supreme Court Marshal and military persons to military courts were envisaged. The general regulation of the Fundamentals was supplemented by special regulations for the civil (No 237/1850 RGBL.) and criminal (No 25/1850 RGBL.) spheres. Another essential regulation was the Provisional Organic Law for the Courts (No. 258/1850 RGBL.), which regulated the matter of the courts, their staffing, procedure and disciplinary rules, and the rules for dealing with the case file. In August 1850, the Supreme Court of Justice and Cassation in Vienna was established (No. 325/1850 RGBL.). In the context of the establishment of the new court system, it was necessary

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213 Adámek, 1888, p. 21.

214 Some sources point out that in fact it was not Kudlich's original proposal that was adopted, but that of Lasser and associates (cf. *ibid*, p. 23.).

215 Schelle, 2008, p. 47-69.

to define the judicial districts, which was carried out by the *Gerichtseinführungskommissionen*, which were based on the principle that the new judicial districts should encompass the entire area of the former patrimonial site, the whole cadastral area, and consider the importance, population, terrain, communication possibilities and linguistic boundaries. The seats of the judicial districts were to be towns with former magistrates, patrimonial courts, or whichever was most appropriate. The system was activated during the 1850s: in the territory of the present-day Czech Republic, 310 district courts, 73 district collegiate courts, 21 provincial courts, and two supreme provincial courts were activated, the whole system being operational from 1 July 1850.<sup>216</sup> With modifications during the neoabsolutism, at the end of the nineteenth century, in 1948 and 1992, this court system still exists in principle.

The Revolution of 1848 also marked the awakening of modern Czech politics.<sup>217</sup> The suppression of the Estates' uprising was a visible shock to Czech political life, and political circles feared a confrontation with the monarch. The revolutionary events led to a certain relaxation, with Czech and German liberals articulating their demands in the First and Second Prague Petitions, which mainly aimed to achieve administrative unification of the lands of the Bohemian Crown and other reforms. The efforts were ended by the military intervention against the armed uprising in Prague; moreover, Moravia, where the Germans were in the majority, also took a hostile stance towards integration. Besides Germans, many elements were behind the Czech-Austrian settlement's failure.<sup>218</sup> The policy of passive resistance, which meant that Czech politicians did not participate in adopting the December constitution,<sup>219</sup> was also not very successful.<sup>220</sup> Despite these partial failures, however, developments in the second half of the nineteenth century laid the foundations for modern Czech political life, fully manifesting in the era of independent Czechoslovakia.

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<sup>216</sup> Šolle, 1968, p. 135-138.

<sup>217</sup> Tomášek, 1923, p. 20-21.

<sup>218</sup> Cibulka, 2000, p. 22.

<sup>219</sup> Thanks to Czech non-participation, the 1867 December constitution was considered octroi in the Czech environment. German authors then applied a similar argumentation in the context of the 1920 constitutional charter thanks to the lack of Germans in the Revolutionary National Assembly (Kolumber, 2022, p. 359).

<sup>220</sup> Malý, 1997, p. 300.

## 5. Conclusion

Despite the lack of information, the revolutionary events from Hungary spread to the rest of the empire. Although there were documents regulating constitutional matters in the past (the land ordinances, *Landfrýds*, the Czech Confederation, and partly also ABGB), modern constitutionalism did not begin until after 1848, when the process towards modern constitutions began. The April, March and February constitutions were imposed, while the December constitution represented a crucial moment in Austrian (and Czech) constitutional tradition, as it was fully put into practice for a long time. It is somewhat interesting that the December Constitution served as the model for the 1920 constitutional charter. On the other hand, that one served as the model for the 1992 Constitution of the Czech Republic. This suggests that the traditions of Austrian constitutionalism and the achievements of the revolutionary year 1848 are still partially present in the contemporary Czech constitutional setting.

The 1848 revolution was a turning point in the history of Europe, Austria and Czechia. It brought about significant changes that would shape the future of constitutional development in this region. One of the revolution's most important outcomes was recognising the people's (nation's) importance in the modern constitution. The revolutionaries believed that the people should have a say in the governance of their country and that a constitution should protect their rights and freedoms.

In Austria, the revolution led to a constitutional monarchy, which granted citizens certain rights and freedoms. It also paved the way for the emergence of political parties and a more democratic system of government. This period was also instrumental in forming the Czech political nation. Czechs sought to assert their identity and gain greater autonomy within the multinational Austro-Hungarian Empire, but they had evolved during the interwar. On the other hand, some of the mistakes that can be objectively found in Vienna's policy towards the Czech nation were then repeated mainly in the Czech (Czechoslovak) attitude towards the minorities of the interwar state. The Versailles system established after the First World War then proved

unsustainable and was subverted in the late 1930s thanks to the aspirations of Nazi Germany at the time.<sup>221</sup>

The 1848 revolution was crucial to establishing modern constitutional systems in Europe, Austria and Czechia. It demonstrated the power of the people to effect change and to demand greater rights and freedoms. It also highlighted the importance of self-identity in developing a modern constitution. As a result, the revolution remains an important event in the history of these regions, and its legacy continues to be felt today. The consequences of the revolution can be seen in the catalogue of fundamental rights contained in all Czechoslovak constitutions (1920, 1948, 1960, and the 1991 Charter) and the Czech Constitution (1992), in the emphasis on the people as the source of power and, last but not least, in the organisation of the Czech judiciary, the foundations of which were laid in the development following the adoption of the 1849 March Constitution.

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221 Kolumber, 2022, p. 359-362.

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