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## Constitutional History 2000–2015: Slovak Republic<sup>1</sup>

### Abstract

In the Slovak historiography, constitutional history was dominant and accounted for the largest number of publications in the researched period of 2000–2015, comprising monographs, journal articles, students' textbooks and collections of conference papers. The contribution provides an overview of production revolving around five major topics of Slovak constitutional historiography, offering an extensive list of works from the 2000–2015 period in the footnotes and in the final list of bibliography. The aim was to include all relevant publications from the period, which explains the number of references and the length of the list of bibliography.

**Keywords:** constitutional history, Slovakia, Great Moravia, Beneš decrees, Slovak State, Slovak Republic, Czechoslovakia.

**Słowa kluczowe:** historia ustroju, Słowacja, Wielkie Morawy, dekret Beneša, Państwo Słowackie, Republika Słowacka, Czechosłowacja.

### Introduction

Constitutional history traditionally plays a leading role in Slovak legal historiography. A reason may lie in the fact that Slovakia is a relatively new state on the map of Europe, its territory retrospectively having formed a part of Czechoslovakia (1918–1992), the Hungarian Kingdom (1000–1918), and going even deeper into history a part of the so-called Great Moravia (833–907 AD) and even older Nitra principality (cca. 800–833 AD). A historical strive of Slovaks for national recognition and for an independent state represents a rich substance to be researched within constitutional historiography. In the second line, one should also not forget the traditional inclination of legal historiography towards constitutional history, dating back to the 18<sup>th</sup> and 19<sup>th</sup> centuries when constitutional history of the Kingdom of Hungary was a tool to resist the centralization

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efforts of Habsburg rulers. This inclination was preserved even in the 20<sup>th</sup> century in Czechoslovak Republic, where constitutional history was given priority by legal historians, since history of other legal branches was still a part of valid law – due to using traditional Hungarian law in Slovakia until 1950. All this frames the current picture of legal historiography in the Slovak Republic – constitutional history remains dominant and accounts for the largest number of publications each year, representing mainly students' textbooks<sup>2</sup> and collections of conference papers.<sup>3</sup>

As far as the institutional aspect of constitutional history is concerned, in Slovakia there are currently six law schools, whereby each of these has a separate Department of Legal History (History of State and Law/History of Law) established, and two law schools even have a separate Department of Roman (and Canon) Law in addition. Within all the law schools, there were only six professors of legal history employed in 2015, who basically specialized mostly in constitutional history, given the above historical reasons. In addition to these six full professors, there were eleven associate professors (including those who specialize in Roman Law), and some two dozens of assistant professors and PhD. students in the field called Theory and History of State and Law, who also largely pay attention to constitutional history. It is thus quite clear why it is constitutional history which accounted for the most of publications in legal history in 2000–2015.

In this paper, we shall try to present to an international audience the most important publications from this field, published in the given period of 2000–2015, basically revolving around five major issues of Slovak constitutional history:

- 1) Great Moravia;
- 2) national revival in the 19<sup>th</sup> and 20<sup>th</sup> century;

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<sup>2</sup> Crosscutting textbooks from the period between 2000 and 2015 include foremost the following: J. Beňa, T. Gábriš, *Dejiny práva na Slovensku I (do roku 1918)* [*History of Law in Slovakia I (until 1918)*], Bratislava 2015, 211 p.; J. Beňa, T. Gábriš, *History of Law in Slovakia I (until 1918)*, Bratislava 2015, 211 p.; M. Laclavíková, A. Švecová, *Praktikum k dejinám štátu a práva na Slovensku: (od najstarších čias do roku 1848)*. 1. [*Practicum on History of State and Law in Slovakia (from ancient times till the 1848)*], 1<sup>st</sup> ed., Trnava 2015, 234 p.; P. Mosný, M. Laclavíková, *Dejiny štátu a práva na území Slovenska: (od najstarších čias do roku 1848)*. 1. [*History of State and Law in Slovakia (from ancient times till the 1848)*], 2<sup>nd</sup> ed., Bratislava 2015, 134 p.; M. Laclavíková, *Slovak legal history (with regard to the state and law until 1918)*, 1<sup>st</sup> ed., Trnava 2013, 1 CD, 143 p.; P. Mosný, M. Laclavíková, *Výbrané kapitoly z vývoja právnych inštitútov* [*Selected chapters from the development of legal institutes*], 1<sup>st</sup> ed., Trnava 2013, 195 p.; *Pramene práva na území Slovenska 2. 1790–1918* [*Sources of Slovak Legal History 2. 1790–1918*], ed. M. Laclavíková, A. Švecová, Bratislava 2012, 673 p.; M. Skaloš, *Slovenské a československé dejiny štátu a práva v rokoch 1945–1989* [*Slovak and Czechoslovak History of State and Law in 1945–1989*], 1<sup>st</sup> ed., Banská Bystrica 2011, 426 p.; P. Mosný, M. Laclavíková, *Dejiny štátu a práva na území Slovenska I. (od najstarších čias do roku 1848)* [*History of the State and Law on the Territory of Slovakia I. (from ancient times till the 1848)*], Bratislava 2010, 103 p.; L. Vojáček, T. Gábriš, *Pramene k právnym dejinám Slovenska II (po roku 1918)* [*Sources of the Legal History of Slovakia II (after 1918)*], Bratislava 2009, 326 p.; M. Lysý, *Pramene k právnym dejinám Slovenska I (do roku 1918)* [*Sources of Slovak Legal History 1. (to 1918)*], Bratislava 2009, 234 p.; P. Mosný, M. Laclavíková, *History of state and law on the territory of Slovakia: from ancient times till 1848*. 1, 1<sup>st</sup> ed., Plzeň 2009, 93 p.; *Pramene práva na území Slovenska 1. (od najstarších čias do roku 1790)* [*Sources of Slovak Legal History I (from ancient times till the 1848)*], ed. M. Laclavíková, A. Švecová, Trnava 2007, 415 p.

<sup>3</sup> Such as *Premeny ústavného práva. Kontinuita a diskontinuita* [*Transformation of Constitutional Law. Continuity and Discontinuity*], ed. M. Lysý, M. Považan, Bratislava 2014, 286 p.; *(Dis)kontinuita práva a kríza (Sekcia právnych dejín a rímskeho práva)* [(Dis)continuity of law and the crisis (Session of legal history and Roman law)], Bratislava 2013, 1948 p.; *Historické právne systémy a integrácia Európy* [*Historical Legal Systems and the Integration of Europe*], Bratislava 2011, 288 p.

- 3) wartime Slovak state (1939–1945);
- 4) Decrees of the President Beneš and Regulations of the Slovak National Council in 1940s, and finally,
- 5) disintegration of Czechoslovak Federation and emergence of the Slovak Republic in 1993.

The contribution will thereby represent a sort of “reverse” annotated bibliography – instead of providing annotations of the individual pieces of scholarship in the period of 2000–2015, we shall offer a number of issues that the scholarship has mostly paid attention to, while referring to those books, articles and papers that dealt with the individual topics. Hence, the footnotes in this paper will not play the usual role of supporting the claims stated in the contribution proper, but rather they will serve to enlist all the major pieces of scholarship published in 2000–2015, dealing with the respective topics and issues. This explains the extensive referencing as well as the extensive list of bibliography in the end of this paper. In contrast, some of the “filler” explanations connecting the key topics to which attention was paid by constitutional historians, build rather on general knowledge that does not require specific referencing and therefore, no references to literature were employed there, knowing they would cause a distortion in the nature of this contribution as an overview of the topics covered by constitutional historians in Slovakia in 2000–2015.

Unfortunately, due to the varying degree of controversies and problematic issues connected to the five areas of constitutional history, it is not possible to use the same structure in each of the subchapters in this contribution – namely, while some of the issues are clearly an object of fierce polemics, and opposing viewpoints can be presented (such as in subchapters 1 and 3), the other topics are often an object of a wider consensus where the issues are discussed in a generally accepted “canon” form of discourse, and no major challenge to this “canonical view” was offered in 2000–2015. Still, in order to provide an overview of all major works of constitutional historiography in Slovakia, we could not omit the “canonical” works in our present contribution.

## 1. Great Moravia as an archetype of Slovak statehood

Great Moravia (833–906/907) is a traditional research object of constitutional historiography in Slovakia.<sup>4</sup> This is mainly due to searching for the earliest roots, or archetypes of “Slovak” statehood in the territory of Slovakia. Still, in the so-called first Czechoslovak Republic (1918–1938) Great Moravia was also considered an archetype of mutual coexistence of Czechs and Slovaks in a common state. This was in clear contrast to the later Nazi-sponsored wartime Slovak state of 1939–1945, where rather a predecessor of Great Moravia in the territory of Slovakia, a so-called Nitra principality,

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<sup>4</sup> P. Mosný, *Štátoprávny náčrt dejín Veľkej Moravy* [State-law sketch of the history of Great Moravia], “Z dziejów prawa” 2012, vol. 5, issue 13, pp. 31–55; E. Semancová, *Zánik Veľkej Moravy v prameňoch* [Fall of Great Moravia in the Sources], “Míľníky práva v stredoeurópskom priestore” 2009, 2. časť, Bratislava 2009, pp. 649–654.

was emphasized.<sup>5</sup> The ruler of the principality, the “Slovakian” Prince Pribina was expelled in 833 by the Moravian Prince Mojmir, which gave rise to Great Moravia, and in the eyes of representatives of the wartime Slovak state also to a sort Czech dominance over Slovakia, echoing the situation in Czechoslovakia in the 20<sup>th</sup> century.

Currently, because of the idea of Nitra principality having been compromised during the wartime Slovak state, but also because of greater cultural legacy of Great Moravia (giving rise to the first Slavic literature, including legal texts, written by missionaries St. Cyril and Methodius), today’s Slovak Republic quite naturally endorses rather the legacy of Great Moravia than that of the Nitra principality. Still, there is a number of issues that resurface regularly in writings of historians and legal historians, where these can not agree on some basic concepts and interpretations.

From among the issues that resonated within 2000–2015 in context of Great Moravia the most, it is in the first place an old and ever-lasting debate on whether Great Moravia was a state or only a tribal realm.<sup>6</sup> One may surely doubt about the modern-day notion of “state” in respect to early medieval realities – even in case of the then most important European power structures, such as the Frankish Empire. For decades already, Western historians speak rather of dominion, lordship, *Herrschaft*, etc. instead of medieval “state”.

Thus, it is accepted even in Slovakia that despite the designation of Samo, a leader of central European Slavs in the 7<sup>th</sup> century as a *rex* (in the Chronicle of Fredegar), and despite referring to the so-called **Samo’s Kingdom** (623–658 AD), this was “only” a barbarian kingdom created to fight against the Avar Khaganate,<sup>7</sup> and no actual “state” in the modern sense. The same reservations as to being a “state” apply also to the already mentioned **Principality of Nitra**, ruled by Pribina.<sup>8</sup>

Recently, however, even the nature of **Great Moravia**, traditionally accepted as being a medieval state, started to be disputed. Reference can be made here e.g. to an article

<sup>5</sup> M. Lysý, *Slovenský štát ako pokračovanie Veľkej Moravy. Pokus o hľadanie historického predchodcu* [*Slovak State as a Continuation of Great Moravia. An Attempt to Find a Historical Predecessor*] [in:] *Premeny ústavného práva*, pp. 139–148.

<sup>6</sup> M. Lysý, “*Veľkomoravský štát*” [“*Great-Moravian State*”] [in:] *Quid leges sine moribus? (Metamorfózy vývoja štátu a práva v dejinách)*, Kraków 2014, pp. 253–271; *idem*, *Kolko gentes tvorilo základ politického zriadenia na Morave v 9. storočí?* [How many Gentes Formed the Basis of the Political Establishment in Moravia in the 9<sup>th</sup> Century?] [in:] *Právo v priestore a čase*, Bratislava 2014, pp. 120–135; *idem*, *Prechod kmeňovej spoločnosti k štátu v strednej Európe a jej charakteristika na základe súčasnej historiografie* [The Transition of the Tribal Society to the State in Central Europe and its Characterization on the Basis of Contemporary Historiography] [in:] *Historické právne systémy a integrácia Európy*, Bratislava 2011, pp. 109–116; *idem*, *Transformácia kmeňovej spoločnosti na štát, vznik Veľkej Moravy a Uhorska* [Transformation of the Tribal Society into the State, Creation of Great Moravia and Hungary], “*Acta Facultatis Iuridicae Universitatis Comenianae*” 2010, 28, Bratislava 2010, pp. 223–235; *idem*, *Štát ako nadetnická organizácia* [State as a Supra-Ethnic Organization], “*Mil’niky práva v stredoeurópskom priestore*” 2008, Bratislava 2008, pp. 406–410; A. Švecová, *Ku charakteru a počiatkom štátogenézy a patrimoniálneho štátu na území Slovenska* [On the character and origin of the state-genesis and patrimonial state in the territory of Slovakia] [in:] *Poceta Eduardu Vlčkovi k 70. narodeninám*, Olomouc 2010, ed. K. Bubelová, pp. 403–413.

<sup>7</sup> M. Lysý, *Avarský kaganát ako zabudnutý útvar slovenských právnych dejín* [Avarian Caganate as a forgotten unit of Slovak Legal History] [in:] *Poceta Karlu Schellemu k 60. narodeninám*, Ostrava 2012, pp. 421–426.

<sup>8</sup> Cf. J. Steinhübel, *Nitrianske kniežatstvo* [Principality of Nitra], Bratislava 2004.

by J. Steinhübel, entitled “Great Moravia on halfway from tribe to state”.<sup>9</sup> According to Steinhübel’s provocative opinion, Great Moravia had never reached the level of a true state, and until its demise it remained only a tribal realm. Still, majority of scholars traditionally presume that the attempts to transform the Great Moravian tribal realm to a dynastic Christian formation (especially under the rule of Svätopluk in 871–894) were successful.

Furthermore, with respect to Great Moravia, great attention was paid in 2000–2015 to Svätopluk’s official title as a sovereign.<sup>10</sup> According to Great Moravian sources, rulers were mostly known as *knežь* (*moravskij* – in the Life of Constantine, ch. 14), only in the Life of Methodius the title *korolь* (ch. 9, 16) is used. Thereby, a prevailing opinion is that it was used here to denote the Frankish Arnulf rather than Svätopluk. In a report from 846–847, Arabian writer Ibn Churdádbi (in his work *Book of roads and kingdoms*) also expressly states that the ruler of Slavs (without specification) is called *k.náz*. Still, some foreign sources of western and papal provenance have used the title *rex* when addressing Svätopluk. Together with a report on “advancing to the kingship”, found in the chronicle by Reginon of Prüm (year 890), these are arguments for those (M. Kučera, M. Homza) who argue that Svätopluk was a true “king”. Other historians, however, dispute this interpretation of Reginon’s Chronicle – they claim it was Arnulf who was elevated to kingship. The same dispute is also linked to the text of Analyst Saxo where a part of historians again see Svätopluk as the one who was lifted to kingship.<sup>11</sup>

These disputes and ambiguous terminology, together with the already outlined discussions on Great Moravia being halfway between a tribal society and a state, may be concluded as that Svätopluk was most probably considered by his contemporaries as somewhere between a tribal prince and a dynastic Christian ruler. This development could potentially lead to the stabilization of royal dynasty of Moymirids, which, however, ultimately failed because of an early breakdown of Great Moravia. It was only the successor dynasty of the Hungarian Arpadians, who attained the title of kings one hundred years later<sup>12</sup> – interestingly, the so-called St. Stephen’s crown of Hungarian Kings bears a Slavic inscription meaning the king – *krales*.<sup>13</sup>

<sup>9</sup> J. Steinhübel, *Veľká Morava na polceste od kmeňa ku štátu* [Great Moravia on Halfway from the Tribe to the State], “Forum Historiae” 2014, vol. 8, issue 2.

<sup>10</sup> M. Homza, *O kráľovskom titule Svätopluka I. († 894)* [On the Royal Title of Svätopluk], “Historický časopis” 2013, issue 4, p. 655; J. Steinhübel, *Bol alebo nebol Svätopluk kráľom?* [Was Svätopluk a King or not?], “Historický časopis” 2013, issue 4, p. 671; on kingship among Germans cf. P. Bystrický, *Kráľovská hodnosť u Germánov* [The Germanic Royal Rank], “Forum Historiae” 2014, vol. 8, issue 2; R. Jáger, *Titulátúra veľkomoravských panovníkov* [Royal Rank of Great Moravian Monarchs], “Teoretické úvahy o práve”, vol. 11, Trnava 2015; M. Lysý, *Titul mojmírovských panovníkov* [Title of Moymirid Monarchs], “Historia et theoria iuris” 2013, vol. 5, issue 1, pp. 24–33.

<sup>11</sup> M. Homza et al., *Svätopluk v európskom písomníctve* [Svätopluk in European Documents], Bratislava 2013, p. 15, ft. 6; in mid 880s he received the title of *rex Sclavorum*, attributed to him by both the Pope and the Emperor.

<sup>12</sup> M. Lysý, *Najstaršia časť uhorskej ústavy* [The Oldest Part of the Hungarian Constitution], “Míľníky práva v stredoeurópskom priestore 2007”, Bratislava 2007, pp. 396–400; M. Rajková, *Uhorská (maďarská historická) ústava v minulosti a dnes* [Hungarian (Historical) Constitution in the Past and Today] [in:] *1. česko-slovenské setkání doktorských studentů a postdoktorandů oboru právní historie a římského práva*, Brno 2013, pp. 219–230.

<sup>13</sup> M. Rajková, *Teórie vzniku svätej koruny Uhorského kráľovstva* [Theory of the creation of the Holy Crown of Hungary], “Historia nova: Štúdie o minulosti”, Bratislava 2014, pp. 67–83; eadem, *Porovnávacie štúdia*

The question of Svätopluk's kingship is not the only issue discussed in relation to this figure. Also his position in the international relations was largely paid attention recently, building upon letters exchanged between Svätopluk and the Pope. There are again some contradictory views – on a scale from the Pope possibly aiming at conferring upon Svätopluk the imperial title,<sup>14</sup> down to stating that Svätopluk had the same position as some minor Anglo-Saxon kings or as the Croatian Prince Branimir.<sup>15</sup>

Finally, some aspects of the internal organization of Great Moravia were also being reconsidered in 2000–2015, e.g. the succession rules in the ruling dynasty of Moymirids.<sup>16</sup> While actual succession was always influenced by Frankish Empire,<sup>17</sup> one must, nevertheless, recognize an indisputably specific status of the reigning dynasty. Both – the special position of the dynasty, as well as interference by the Frankish Empire<sup>18</sup> – thereby cumulatively represent the specific succession rules in Great Moravia, claims the latest scholarship (M. Homza).<sup>19</sup>

Still, less discussed remain some other aspects of the internal organization of Great Moravia – such as its supreme administrative offices. In this context, attention was paid previously only to the Great Moravian army, being funded from a fee called *obrok*. So far, it was claimed that this was a pay belonging to the soldiers.<sup>20</sup> Jan Steinhübel considers, however, that this is a tribute levied on the population.<sup>21</sup>

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*britskej a uhorskej koncepcie Koruny [Comparative Study of the British and Hungarian Crown Concepts]*, “Mířníky práva v stredoeurópskom priestore” 2013, 1. časť, Bratislava 2013, pp. 88–95; A. Švecová, M. Pekarík, *Právohistorická povaha idey svätej uhorskej koruny [Legal-historical aspects of the idea of the Holy Crown of Hungary]*, “Acta Universitatis Tyrnaviensis – Iuridica” 2009, pp. 57–75; M. Rajková, *Právna povaha Svätej Koruny [Legal nature of the Holy Crown]*, “Mířníky práva v stredoeurópskom priestore” 2012, 1. časť, Bratislava 2012, pp. 40–43.

<sup>14</sup> M. Kučera, *Kráľ Svätopluk (830? – 846 – 894) [King Svätopluk (830? – 846 – 894)]*, Martin 2010, p. 108.

<sup>15</sup> M. Lysý, *Moravia, Mojmírovci a Franská ríša. Štúdie k etnogenéze, politickým inštitúciám a ústavnému zriadeniu na území Slovenska vo včasnom stredoveku [Moravians, Moymirid dynasty and the French Empire. Studies on Ethnogenesis, Political Institutions and Constitutional Establishment in Slovakia in the Early Middle Ages]*, Bratislava 2014, p. 206.

<sup>16</sup> M. Lysý, *Štátna forma Veľkej Moravy [State form of Great Moravia]*, “Mířníky práva v stredoeurópskom priestore” 2009, 1. časť, Bratislava 2009, pp. 356–364.

<sup>17</sup> M. Lysý, *Moravia...*, p. 132.

<sup>18</sup> M. Lysý, *Fidelita a prisahy mojmírovcov z rokov 864 a 874 [Fidelity and Oaths of the Moymirid Dynasty in 864 and 874]*, “Mířníky práva v stredoeurópskom priestore” 2014, Bratislava 2014, p. 866.

<sup>19</sup> M. Homza, *Stredná Európa I. Na začiatku stredoveku [Central Europe I. At the Beginning of the Middle Ages]*, Bratislava 2016, pp. 132–135.

<sup>20</sup> P. Žigo, M. Kučera et al., *Na písme zostalo (dokumenty Veľkej Moravy) [On the script remained (documents of Great Moravia)]*, Bratislava 2012, p. 107.

<sup>21</sup> See J. Steinhübel, *Veľká Morava na polceste...*, p. 82.

## 2. National revival of Slovaks and their fight for independence in the 19<sup>th</sup> and 20<sup>th</sup> century

The 18<sup>th</sup> and 19<sup>th</sup> centuries were a period of national revival in East-Central Europe,<sup>22</sup> including the Hungarian Kingdom.<sup>23</sup> Slovak national leaders in this period – especially in the 19<sup>th</sup> century – authored several political declarations and projects (Demands of the Slovak Nation of 1848, the March Petition of 1849, the 1861 Memorandum, and the 1918 Martin Declaration) aimed at collective rights of the Slovak nation, hand in hand with requests for individual political rights.<sup>24</sup>

The political and legal arguments employed in these projects are traditionally in the centre of attention of constitutional historians in Slovakia.<sup>25</sup> In the following lines, a *status quo* with respect to knowledge on Slovak national revival will be presented briefly, with references to some major pieces of scholarship from the 2000–2015 period, elaborating upon partial elements of the picture of Slovak constitutional history of the 19<sup>th</sup> and 20<sup>th</sup> century. No major disputes or discussions are connected to these issues at all, since there was no one challenging the actual state-of-the-art (state-of-the-knowledge) in Slovakia in the period of 2000–2015.

Current and generally accepted approach to the Slovak national revival and to its constitutional aspects is that these are an outcome of contradiction between a political nationalism preferred by Hungarian (ethnically mostly Magyar) nobility, and an ethnic nationalism of non-Magyar intellectual elites.<sup>26</sup> Initially, it seemed that the idea of a single Hungarian political nation will also be embraced by Slovaks. However, the Hungarian parliament approved already in 1792 the first from a series of legislative measures which attributed a privileged position to the Magyar language instead of the official language – Latin, at the expense of other languages of the Hungarian Kingdom. Political Hungarian nationalism thus began to be identified with ethnic Magyar nationalism.<sup>27</sup> Gradually, “*Natio Hungarica*” was transformed into “*Natio Magyarica*”. In 1840s, Ľudovít Štúr (1815–1856) and his fellows took an important step – they ceased to perceive Slovaks as a part of the Hungarian political nation.<sup>28</sup> Under this situation, Slovaks started formulating

<sup>22</sup> P. Šoltés, *Národnopolitické koncepcie slovenských evanjelikov v prvej polovici „dlhého“ 19. storočia* [National Political Concepts of Slovak Lutherans in the first half of the “long” 19<sup>th</sup> Century] [in:] *Sondy do slovenských dejín v dlhom 19. storočí*, ed. D. Kováč et al., Bratislava 2013, p. 58.

<sup>23</sup> R. Jáger, *Jozef Hložanský’s constitutional concept of Hungary*, “Socioekonomické a humanitní studie” 2012, vol. 2, issue 2, pp. 15–21; P. Mosný, R. Jáger, *Štátprávne koncepcie postavenia územia dnešného Slovenska navrhované v druhej polovici 19. storočia* [The State-law Concepts of the Positions of Today’s Slovakia Territory Proposed in the Second Half of the 19<sup>th</sup> Century], “Notitiae Novae Facultatis Iuridicae Universitatis Matthiae Belii Neosolii” 2014, pp. 141–153.

<sup>24</sup> T. Gábriš, M. Patakiová, *Slovakia: The Right of Nation* [in:] *First fundamental rights documents in Europe: commemorating 800 years of Magna Carta*, Cambridge 2015, pp. 309–327.

<sup>25</sup> P. Mosný, R. Jáger, *Štátprávne koncepcie...*, p. 360; *idem*, *Constitutional concept of the White Kingdom of Hungary*, “Forum iuris europaeum: journal for legal science” 2013, vol. 1, issue 2, p. 5–16.

<sup>26</sup> P. Brock, *Slovenské národné obrodenie 1787–1847: k vzniku modernej slovenskej identity* [Slovak National Revival 1787–1847. On the Birth of Modern Slovak Identity], Bratislava 2002, p. 14.

<sup>27</sup> *Ibidem*, pp. 76–78.

<sup>28</sup> J. Chovanec, F. Červeňanský, *Názory Ľudovíta Štúra na štát a právo* [Opinions of Ľudovít Štúr on State and Law], Bratislava 2005, p. 52.

their national demands, aimed in the period up to 1848 only at linguistic and cultural rights, first.<sup>29</sup> Subsequently, Štúr began to regard Slovaks as an independent nation with a right to a certain political independence within a proposed Hungarian federation, the idea of which was publicly presented in 1848 for the first time in the Demands of the Slovak Nation of May 1848.<sup>30</sup> Upon rejection of these 1848 Demands, Slovaks went even further – they created a Slovak National Council in Vienna in September 1848, as a revolutionary body of the Slovak nation, and on its behalf L. Štúr declared Slovakia's independence from the Hungarian government on 19 September 1848.<sup>31</sup> In 1849, Slovaks started promoting a radical idea of their own crown land as an independent state separate from Hungary, but still falling within a broader framework of the Austrian Empire (Habsburg Empire). This was formulated in the so-called **March Petition of 1849**. A following project, being the peak and subsequently a long-term policy agenda of Slovaks (until 1918), was formulated in 1861, titled **Memorandum of the Slovak Nation**. The Memorandum requested to allocate for the Slovaks an autonomous territory within Hungary.<sup>32</sup> All the attempts, however, failed. Slovaks did not exert any impact on the government or administration in Hungary at all,<sup>33</sup> not even in the territory which they inhabited compactly. Nor their individual language and cultural rights could have been fully exploited due to absent legislation on the use of minority languages until the Act of 1868 was enacted.<sup>34</sup> This Act thereby voiced a principle of **only one political nation**, Hungarian nation, which was to overlap step-by-step linguistically and ethnically with the Magyar nation. Other (ethnic) nations in Hungary were considered only nationalities.<sup>35</sup>

<sup>29</sup> On an exceptional private initiative in this respect see R. Jáger, *Jozef Hložanský a jeho štátoprávna koncepcia Bieleho Uhorska* [Jozef Hložanský's constitutional concept of White Hungary] [in:] *Stát a právo v letech 1848–1918 ve stredoevropském kontextu*, Bratislavská vysoká škola práva, Bratislava 2007, pp. 115–121.

<sup>30</sup> A. Letková, *Ludovít Štúr a jeho právo-politické aktivity v revolučných rokoch 1848–1849* [Ludovít Štúr and his Legal and Political Activities in the Revolutionary Years 1848–1849], "Notitiae iudiciales Academiae collegii aedilium in Bratislava" 2015, vol. 1, issue 1, pp. 94–107.

<sup>31</sup> D. Škvarna, *Slovenská národná rada z roku 1848 a jej inšpiračná rola* [The Slovak National Council of 1848 and its Inspiring Role] [in:] *Sondy do slovenských dejín*, p. 94.

<sup>32</sup> M. Turošík, R. Jáger, *Project of autonomous Slovakia within the Kingdom of Hungary*, "Interdisciplinarity in Theory and Practice: Journal for Presentation of Interdisciplinary Approaches in Various Fields" 2015, issue 7, pp. 7–13; R. Jáger, *Zabudnuté návrhy o právnom postavení Slovákov v Uhorsku: pohľad na život Slovákov medzivojnového obdobia: historické súvislosti, pohľad na legislatívu a autonomistické snaženie Slovákov v Československej republike* [Forgotten Proposals on the Legal Status of Slovaks in Hungary: A View of the Life of Slovaks in the Interwar Period: Historical Context, Legislation View and Autonomous Effort of Slovaks in the Czechoslovak Republic], „Právna revue" 2012, vol. 1, issue 2, pp. 74–78.

<sup>33</sup> A. Vitkóová, *Parlamentarizmus v politickom systéme Uhorska v období dualizmu* [Parliamentarism in the Political System of Hungary in the Period of Dualism], "Mílniky práva v stredoeurópskom priestore" 2008, Bratislava 2008, p. 437; eadem, *Vývoj právnej úpravy postavenia poslancov Uhorského snemu po r. 1848* [The development of the Legal Status of the Members of the Diet of Hungary after 1848] [in:] *Stát a právo v letech 1848–1918 ve stredoevropském kontextu: sborník příspěvků z mezinárodní konference*, Bratislava 2007, pp. 284–290.

<sup>34</sup> P. Mosný, R. Jáger, *Důsledky rakúsko-uhorského vyrovnania na slovenský národný pohyb* [Effects of the Austro-Hungarian Compromise on the Slovak national movement] [in:] *Rakousko-uherské vyrovnání 1867 a jeho štátoprávni důsledky v českých zemích a na Slovensku. Sborník příspěvků ke 140. výročí rakousko-uherského vyrovnání*, Ostrava 2007, p. 74.

<sup>35</sup> R. Jáger, *Samospráva uhorských provincií podľa niektorých predstaviteľov tzv. Novej školy* [Autonomy of Hungarian Provinces by Representatives of so-called New School] [in:] *Vybrané otázky samosprávy a práva Európskej únie*, ed. S. Kubincová, Banská Bystrica 2010, pp. 43–49.

In such a situation, during the Great War (World War I), Slovak patriots did not hesitate to cooperate – especially in the circles of the Czech and Slovak emigrants abroad – with the Czech national movement, experiencing similar national resistance against (Austrian) attempts to restrict the Czech national equality.<sup>36</sup> Thus, Agreements of 1915 (Cleveland) and 1918 (Pittsburgh), concluded between Czech and Slovak immigrants in the USA, started calling for establishment of a common state of Czechs and Slovaks. The same objectives were followed also by Czech and Slovak emigrants in Europe, who formed the Czechoslovak National Council in Paris.<sup>37</sup> The Council was subsequently recognized by the Allied powers as a representative of an allied nation, and as the future government of Czechoslovakia – mainly due to having organized military forces – Czechoslovak legions – consisting of Czech and Slovak emigrants.

In response to this evolution, on 28<sup>th</sup> October 1918, Czechoslovak state was spontaneously declared in Prague,<sup>38</sup> supported additionally by Slovaks in their national meeting convened on 30<sup>th</sup> October 1918 in Martin. A **Martin Declaration** stated that the Slovak nation is a part of historically and culturally uniform Czechoslovak nation and for this nation it demanded an **unrestricted right to self-determination based on complete independence**. The Slovaks have thus unconditionally proclaimed their will to become a part of the Czechoslovak State as a state of one nation – the Czechoslovak nation,<sup>39</sup> causing the Hungarian Kingdom (since 1867 dualist Austrian-Hungarian Empire<sup>40</sup>) to definitively disintegrate.<sup>41</sup>

The idea of a Czechoslovak nation, however, showed untenable in long term. While the newly established Czechoslovak Republic was one of few democratic countries on the map of Europe until the end of 1930s,<sup>42</sup> self-identification of Slovaks with this

<sup>36</sup> P. Mosný, *Niektoré problémy vzťahov Čechov a Slovákov pred vznikom ČSR* [Some problems of relations between Czechs and Slovaks before the establishment of Czechoslovak Republic], *Acta Universitatis Tyrnaviensis – Iuridica* 2009, pp. 101–110.

<sup>37</sup> M. Skaloš, *Česko-Slovenská národní rada v Paříži (1940): formování organizačního vyjádření center odboje v zahraničí* [Czecho-Slovak National Council in Paris (1940): Formation of Organizational Expressions of Resistance Centers Abroad] [in:] *Encyklopedie českých právních dějin*, Ostrava 2015, pp. 791–796.

<sup>38</sup> J. Beňa, *k trom ústavnoprávnym počinom Vavra Šrobára* [Three constitutional Acts of Vavro Šrobár] [in:] *Dr. Vavro Šrobár: politik, publicista a národnoosvetový pracovník*, Bratislava 2012, pp. 624–671; Š. Siskovič, *Organické učenie o štáte v recepčnej norme a teória spoločenskej zmluvy v ústavnej listine ČSR z roku 1920* [Organic Theory of State in the Reception Act and the Theory of Social Contract in the Constitutional Charter of Czechoslovakia from 1920], *Teoretické úvahy o práve* 2012, p. 14.

<sup>39</sup> Š. Siskovič, *Československý národ a demokratické základy Národného výboru a Národného zhromaždenia v roku 1918* [The Czechoslovak nation and the democratic basis of the National Council and national Assembly in 1918], *Právnik* 2013, vol. 152, issue 5, pp. 486–498.

<sup>40</sup> A. Švecová, *Zákonný článok 12/1867 – ústavnoprávny základ rakúsko-uhorského dualizmu* [Act No. 12/1867 – constitutional basis of Austro-Hungarian dualism] [in:] *Pocia Karlu Schellemu k 60. narodeninám*, pp. 604–610; T. Gábriš, *Dočasné súdne pravidlá Judexkuriálnej konferencie z roku 1861: monografická štúdia a historickoprávny komentár* [Provisional Judicial Rules of Judex-Curial Conference from 1861: Monographic Study and Legal-Historical Commentary], Bratislava 2014.

<sup>41</sup> J. Beňa, *Uhorsko a Maďarsko – totožnosť, kontinuita, diskontinuita* [Hungary Before and After World War I – Identity, Continuity, Discontinuity], *Právněhistorické studie* 2013, vol. 43, pp. 138–163.

<sup>42</sup> M. Lapčáková, *Ústava Československej republiky z roku 1920* [Constitution of the Czechoslovak Republic of 1920], *Míľníky práva v stredoeurópskom priestore* 2007, Bratislava 2007, p. 355; eadem, *Vývoj a súčasná úprava parlamentných volieb v Slovenskej republike a Českej republike* [The development and the current regulation of parliamentary elections in the Slovak Republic and Czech Republic], *Míľníky práva*

Republic was tarnished by a stern refusal to grant autonomy to Slovaks,<sup>43</sup> despite their repeated requests for improvement of their constitutional status.<sup>44</sup>

v stredoeurópskom priestore” 2008, Bratislava 2008, p. 393; M. Oravec, *ko otázke právnej úpravy voľby prezidenta v prvej ČSR* [On the Question of the Legal Regulation of the Election of the President in the first Czechoslovakia], “Míľníky práva v stredoeurópskom priestore” 2008, Bratislava 2008, p. 418; E. Janigová, R. Jáger, *Droits de l’homme en Tchécoslovaquie avant la seconde guerre mondiale*, “Revue internationale des sciences humaines et naturelles” 2013, issue 1, pp. 79–87; M. Skaloš, *Vývoj právnej úpravy základných ľudských práv a slobôd a ich realizácia na území Čiech a Slovenska* [Development of the legislation of fundamental human rights and freedoms and their realization in the Czech Republic and Slovakia] [in:] *Bezpečnosť, extrémizmus, terorizmus*, ed. N. Kalashnyk, Podhájska 2014, pp. 221–235; E. Štenpien, *Volebné zákony pre voľby do najvyšších štátnych orgánov tzv. predvojnovoj ČSR* [Electoral laws for election to the highest state authorities in so-called pre-war Czechoslovakia] [in:] *Volebné zákonodarstvo v Slovenskej republike. Doterajší vývoj, aktuálny stav, príčiny a dôsledky*, Košice 2014, pp. 36–52; R. Jáger, *Politicko-právne aspekty vývoja systému politických strán v Československu pred II. svetovou vojnou* [Political-legal Aspects of the Development of the System of Political Parties in Czechoslovakia before World War II] [in:] *Interpolis ’12*, ed. A. Kollár, Banská Bystrica 2012, CD-ROM, pp. 96–99; M. Skaloš, *Historicko-právny vývoj inštitútu referenda* [Historical-Legal Development of the Referendum Institute] [in:] *Právna revue: spoločný príbeh úspešných*, ed. J. Reken, Banská Bystrica 2011, pp. 1–7; P. Mosný, *Ústavnoprávne postavenie minorít v medzivojnovom Československu* [in:] *Sociálne poslanstvo Jána Pavla II. pre dnešný svet* [Constitutional status of minorities in the inter-war Czechoslovakia], Ružomberok 2011, pp. 455–460; M. Oravec, *Zmocňovacie zákonodarstvo v Československu v rokoch 1920–1938* [The Empowerment Legislation in Czechoslovakia in 1920–1938], “Míľníky práva v stredoeurópskom priestore” 2007, Bratislava 2007, p. 363; R. Jáger, M. Turošík, *The act empowered to change the constitutional charter and constitutional laws of the Republic of Czechoslovakia and its implications for the treatment of fundamental human rights and freedoms* [in:] *Europe of founding fathers: investment in common future: medzinárodná konferencia o ľudských právach*, ed. B. Szmulik, Olsztyn 2013, pp. 479–484.

<sup>43</sup> In fact, autonomy was given to Subcarpathian Ruthenia only in 1938, albeit it was guaranteed in the 1920 constitution. See P. Mosný, *Podkarpatská Rus. Nerealizovaná autonómia* [Carpathian Ruthenia. Unrealized autonomy], Bratislava 2001; E. Štenpien, *Autonómia Podkarpatskej Rusi pred septembrom 1919* [Autonomy of Sub-Carpathian Ruthenia before September 1919] [in:] *Zakarpattja u politici Čechoslovačiny ta Uhorščiny miž svitovymi vijnamy: materialy naukovej konferenciji: hrudeň 2000 roku, Užhorod-Košice 2001*, Užhorod 2001, pp. 106–113; P. Mosný, *Vplyv druhosvetového vojnového konfliktu na štátoprávnu pozíciu územia Podkarpatskej Rusi* [The impact of the Second World War conflict on the state-law position of the territory of Carpathian Ruthenia] [in:] *Iustitia omnibus*, Kraków 2014, pp. 213–222; E. Štenpien, *Opcia štátneho občianstva, ČSR a Podkarpatská Rus* [Citizenship option, Czechoslovakia and Carpathian Ruthenia], “Sectio Juridica et Politica: A Publication of the University of Miskolc”, vol. XVII, Miskolc 2000, pp. 23–32.

<sup>44</sup> J. Štefanica, *Vývoj koncepcii štátoprávneho postavenia Slovenska v Československej republike z pohľadu trenčiansko-teplického zjazdu mladej slovenskej generácie v roku 1932* [Development of Concepts of the State status of Slovakia in the Czechoslovak Republic from the point of view of the congress of young Slovak generation in Trenčianske Teplice in 1932] [in:] *Premeny ústavného práva*, pp. 245–256; P. Mosný, *Slovenský autonomizmus v parlamentnom prejave poslanca Andreja Hlinku z 20. októbra 1921* [Slovak autonomism in the parliamentary speech of the member of parliament Andrej Hlinka on 20 October 1921] [in:] *Národe môj*, Bratislava 2015; *idem*, *Slovenský názorový patriotizmus v autonomizme Dr. Emila Stodolu* [Slovak opinion patriotism in the autonomism of Dr. Emil Stodola] [in:] *Exemplo ducti*, Trnava 2012, pp. 133–145; *idem*, *Slovenský autonomizmus v parlamentnom prejave poslanca Andreja Hlinku* [Slovak autonomism in the parliamentary speech of the member of parliament Andrej Hlinka] [in:] *De arte boni et aequi*, Trnava 2012, pp. 35–47; M. Skaloš, *Politické a právne aspekty autonómie Slovenska v roku 1938* [Political and Legal Aspects of the autonomy of Slovakia in 1938], “Historia et theoria iuris” (HTI) 2014, vol. 6, issue 2, pp. 48–56; *idem*, *Uzáknenie autonómie Slovenskej krajiny a rozbitie Česko-Slovenskej republiky* [Legalization of the Autonomy of the Slovak Land and the breakdown of the Czechoslovak Republic] [in:] *Období nesvobody*, ed. L. Vojáček, Ostrava 2014, pp. 59–67; M. Považan, *Tukov návrh autonómie Slovenska* [Tuka’s Proposal of Slovak Autonomy] [in:] *Premeny ústavného práva*, pp. 205–218; R. Jáger, *Slováci v Československu medzivojnového obdobia a autonómia Slovenskej krajiny* [Slovaks in Czechoslovakia during Interwar Period and Autonomy of Slovak Land], “Právna revue” 2012, vol. 1, issue 1, pp. 72–77.

### 3. The wartime Slovak state as an anti-model for modern Slovak Republic

Despite the distance of 75 years, historians and legal historians have still not reached a definite conclusion in relation to such a sensitive issue as the wartime Slovak state (1939–1945). Perhaps the most telling proof is here a comparison of available syntheses on Slovak legal history (published for the use of law students mostly), which differ vastly in their evaluation of this period of Slovak constitutional history. Opposing views are present in particular in the works of two active professors of legal history – Jozef Beňa from the Faculty of Law of the Comenius University in Bratislava, and Peter Mosný, currently working at the Faculty of Law of the Trnava University in Trnava, previously employed at the Faculty of Law of the University of Pavol Jozef Šafárik in Košice. Their different legal assessment of the Slovak State may be briefly summarized as follows: Jozef Beňa considers the declaration of the independent Slovak state by the Assembly of the Slovak Land on 14<sup>th</sup> March 1939 as null and void.<sup>45</sup> He offers following arguments for illegitimacy and illegality of the Slovak state:

- a. Constitutional Act no. 1/1939 Sl. z. on the establishment of the Slovak state was adopted by the Assembly only upon an ultimatum from the Nazi Germany. It was therefore not a manifestation of free will of a nation demanding its self-determination. It was an act of self-defence and acting in extreme necessity.
- b. Assembly proclaiming independence was elected in non-democratic elections, and was thus not reflecting the will of Slovak population.<sup>46</sup>
- c. Assembly had under the Act on Autonomy of Slovak Land no. 299/1938 Zb. z. a n.<sup>47</sup> only competence to enact constitution of a Slovak Land within Czechoslovakia, but not to adopt a constitution of an independent state. It had no competence to act as a representative of an international legal entity.<sup>48</sup>

Peter Mosný opposes these arguments. He considers declaration of the Slovak state as performed by a body elected in elections rather than by a revolutionary body, which means that proclamation of the Slovak State was at least legitimate, if not legal.<sup>49</sup> Still, in his assessment he goes even further by stating that the Slovak state was the first independent state of Slovaks in the territory of Slovakia, which also possessed all the

<sup>45</sup> J. Beňa, *Vývoj...*, p. 46.

<sup>46</sup> E. Nižňanský, *Voľby do snemu Slovenskej krajiny v roku 1938* [*Elections to the Diet of Slovak Land in 1938*], “*Studia historica Nitriensia*” 1998, <http://www.niznanskyedo.host.sk/Articles%2017.htm> (date of access: 10.09.2016).

<sup>47</sup> R. Jáger, *Nedemokratické kroky vedúce ku vzniku autonómie Slovenskej krajiny v rámci Česko-Slovenskej republiky* [*Non-democratic steps leading to the creation of the Slovak Land's autonomy within the Czecho-Slovak Republic*] [in:] *Diktatúry v európskych dejinách: slovensko-ukrajinské vedecké kolokvium, materiáli mižnarodnoi naukovej konferencii*, Užhorod 2006, pp. 102–109.

<sup>48</sup> See textbooks: L. Vojáček, J. Kolárik, T. Gábriš, *Československé právne dejiny (1918–1992)* [*Czechoslovak Legal History (1918–1992)*], Bratislava 2013, 424 p.; T. Gábriš, A. Švecová, *Dejiny štátu, správy a súdnictva na Slovensku* [*History of the State and of the Judiciary in Territory of Slovakia*], Plzeň 2009, 256 p.

<sup>49</sup> P. Mosný, L. Hubenák, *Dejiny štátu a práva na Slovensku* [*History of the state and law on the territory of Slovakia*], Košice 2008, p. 270.

attributes of national and international legal sovereignty. He repeats the fact that it was diplomatically (*de iure*) recognized by 27 states.<sup>50</sup>

Opinions of other scholars (constitutional historians) are generally split into three directions here – from an absolute denial of legality and legitimacy of the Slovak state, through a compromise in the form of passing this question in silence, down to express recognition of legality and legitimacy of the wartime Slovak state.

Discord is present first of all in the issue of **creation** of the Slovak state – whether this is to be seen as a legitimate expression of right to self-determination, as it could have been perceived in 1938 by disinterested international community as well as by a relatively large part of the Slovak public.<sup>51</sup> It could then take some time until the actors fully realized the real background and the role that Nazi Germany and Adolf Hitler in person had played in establishment of the Slovak state.<sup>52</sup> *A posteriori*, a detailed historical and archival research thereby proves the role of Hitler and Nazi Germany beyond any doubts.<sup>53</sup> Hitler used the autonomist efforts of Slovaks dissatisfied with the status of Slovakia within Czechoslovakia<sup>54</sup> and – using fake threats of military attack by Poland and Hungary against the integrity of Slovakia – he forced Slovak representatives to declare an independent Slovak state under protection of the German Nazi *Reich*. This is precisely the reason why according to Jozef Beňa proclamation of Slovak State can not be considered a manifestation of people's sovereignty, but rather only a result of pressure from Nazi Germany.

Even later, although the Slovak state was a formal bearer of all attributes of national and international legal sovereignty, in fact, Slovak territory remained a playground of political games of Nazi Germany. It is recognized that Slovakia was completely subjugated to German political, economic and military plans,<sup>55</sup> and Hitler was directly inter-

<sup>50</sup> *Ibidem*, p. 271. In contrast, the exile government was recognized by the United Kingdom and USA – in 1941. *Ibidem*, pp. 307–308. See also: P. Mosný, *Niektoré črty a charakter Slovenskej republiky rokov 1939–1945* [Some Features and Character of the Slovak Republic from 1939 to 1945] [in:] *Bene merito: profesorovi Jozefovi Klimkovi k 70. narodeninám*, Bratislava 2012, pp. 182–188; *idem*, *Sedemdesiat rokov po vyhlásení Slovenského štátu (predovšetkým niektoré východiská a paralely)* [Seventy years after the declaration of the Slovak state (especially some of the bases and parallels)] [in:] *Ius Romanum schola sapientiae. Pocta Petrovi Blahovi k 70. narodeninám*, Trnava 2009, pp. 317–327; P. Mosný, M. Laclavíková, *History of the state and law on the territory of Slovakia (1848–1948) 2.* [History of the State and Law on the Territory of Slovakia II. (1848–1948) 2.], Kraków 2014; *idem*, *Dejiny štátu a práva na území Slovenska II. (1848–1948)* [History of the State and Law on the Territory of Slovakia II. (1848–1948)], Kraków 2014.

<sup>51</sup> R. Jáger, *Boli kroky československej verejnej moci v rokoch 1938–1939 správne a spravodlivé?* [Have the Actions of the Czechoslovak Public Authorities been Correct and Fair in 1938–1939?], “Socioekonomické a humanitní studie” 2012, vol. 2, issue 1, pp. 26–30.

<sup>52</sup> On some contradictory statements see e.g. V. Vondrášek, J. Pešek, *Slovenský poválečný exil a jeho aktivity 1945–1970: mýty a realita* [Slovak post-war exile and its activities 1945–1970: myths and reality], Bratislava 2011, p. 15.

<sup>53</sup> M. Krajčovič, *Medzinárodné súvislosti slovenskej otázky 1927/1936 – 1940/1944* [International Context of the Slovak Issue 1927/1936 – 1940/1944], Bratislava 2008, p. 281.

<sup>54</sup> See V. Bystrický, T. Gábriš, *Kontinuita a diskontinuita v dejinách: Slovenská republika 1939 a Slovenská republika 1993* [The Continuity and Discontinuity in History: Slovak Republic in 1939 and Slovak Republic in 1993] [in:] *20 rokov samostatnej Slovenskej republiky: Jedinečnosť a diskontinuita historického vývoja*, ed. M. Londák, S. Michálek, Bratislava 2013, p. 28 ff.

<sup>55</sup> M. Katuninec, *Režim slovenského štátu a jeho vývojové konotácie* [Regime of Slovak State and its development connotations] [in:] *Slovenský štát 1939–1945: Predstavy a realita*, ed. M. Fiamová, J. Hlavinka, M. Schvarc, Bratislava 2014, p. 125 ff.

fering into internal affairs of Slovakia by openly nominating new Slovakian ministers.<sup>56</sup> Even the only Slovak political Party – Hlinka’s Slovak People’s Party soon took over political models of its German protector: the party was led by a “Leader”, the Constitution was based on Italian, German and Portuguese models, and finally, racial legislation completed and confirmed total dependence of Slovakia on its protector and role model.<sup>57</sup>

Albeit some authors emphasize that in 1939–1942, Slovakia witnessed certain stabilization of the economic situation due to economic boom caused by war and military industry, which led to positive attitudes of the population towards the new State, in fact these tendencies wore out rapidly after 1943, with economic downturn, strong interference by Germany into internal affairs, and a shift in war to the detriment of Germany in general. It is recognized in literature that in evaluating the nature of political regime of the Slovak state in 1939–1945 “we can find many characteristics of dictatorial regimes, including the methods applied and forms of governance”:<sup>58</sup> extremely well-defined anti-Semitism, peaking in Holocaust as early as in 1942,<sup>59</sup> anti-Czech, anti-Hungarian, anti-Roma manifestations, ethnic intolerance etc.

At this point, democratic opposition against the regime grew stronger. This was manifested in the Slovak National Uprising of 1944 aimed both against the German dominance and against the domestic non-democratic regime.<sup>60</sup> The authoritative or totalitarian

<sup>56</sup> R. Jáger, *Zásahy nemeckého diktátorského režimu do Slovenskej vládnej moci a jeho následné zmeny v protizidovskom zákonodarstve* [Interventions of the German Dictatorial Regime in the Slovak Executive power and subsequent changes in Aryanization legislation] [in:] *Diktatúry v európskych dejinách*, pp. 76–85.

<sup>57</sup> J. Beňa, *k Ústave vojnového Slovenského štátu (normatívno-právny pohľad)* [Constitution of War-time Slovak State (Normative and Legal View)], “Acta Universitatis Matthiae Belii. Sekcia spoločenskovedná” 2000, vol. 4, pp. 153–160; M. Malatinský, *Stavovské zriadenie a Slovenská republika (1939–1945)* [The Estates’ System and the Slovak Republic (1939–1945)], “Mířníky práva vstredoerópskom priestore” 2014, ed. V. Minčíč, Bratislava 2014, p. 452; *idem*, *Ludské práva židovskej populácie Slovenska podľa Židovského kódexu a predkódexovej úpravy* [Human rights of the Jewish Population in Slovakia under the Jewish Code and pre-Code Regulations] [in:] *Protizidovské zákonodarstvo na Slovensku a v Európe*, Bratislava 2014, pp. 221–239; R. Jáger, *Dictatorship and discrimination and its consequences in law during war time Slovak republic* [in:] *Právni a ekonomické problémy súčasnosti III.: zborník prací*, Ostrava 2007, pp. 8–15; L. Bujňáčková Spišáková, *Ústavnoprávna úprava vlastníctva v Slovenskej republike (1939–1945)* [The Constitutional Regulation of Property in Slovak Republic (1939–1945)] [in:] *Mířníky práva v stredoerópskom priestore 2009*, I. časť, Bratislava 2009, p. 381 ff; P. Mosný, *Ústavné základy sociálnej doktríny Slovenskej republiky 1939–1945* [Constitutional Bases of the Social Doctrine of Slovak Republic 1939–1945] [in:] *Labor ipse voluptas*, Kraków 2014, pp. 75–89; J. Drgo, *Niektoré myšlienkové a právne aspekty kritiky parlamentnej demokracie v ústave 1. Slovenskej republiky* [Some of Ideological and Legal Aspects of Criticism of Parliamentary Democracy in Constitution of The First Slovak Republic] [in:] *Quid leges sine moribus?*, pp. 83–98.

<sup>58</sup> I. Baka, *Politický systém a režim Slovenskej republiky v rokoch 1939–1940* [Political System and Regime in the Slovak Republic of 1939–1945], Bratislava 2010, p. 281.

<sup>59</sup> E. Nižňanský, *Holokaust na Slovensku. Obdobie autonómie. (6. 10. 1938 – 14. 3. 1939). Dokumenty* [Holocaust in Slovakia. Period of Autonomy. (October 6, 1938 – March 14, 1939). Documents], Bratislava 2001, pp. 51–52.

<sup>60</sup> J. Beňa, *Práce právnikov o SNP do roku 1948* [The Works of Lawyers about Slovak National Uprising written to 1948], “Právny obzor” 2000, vol. 83, issue 3, pp. 207–213; *idem*, *Slovenské národné povstanie v ústavnoprávnom dejepisectve v rokoch 1963–1993* [Slovak National Uprising in constitutional historiography of 1963–1993], “Právny obzor” 2000, vol. 83, issue 2, pp. 156–165; J. Štefanica, *Postavenie a právomoci Slovenskej národnej rady počas Slovenského národného povstania* [Status and Powers of the Slovak National Council during the Slovak National Uprising] [in:] *Období neslobody*, pp. 345–355; J. Beňa, *Gustáv Husák a slovenská demokratická protifašistická štátnosť* [Gustáv Husák and Slovak Democratic

model of the Slovak political system was then finally done away with the defeat of Axis powers<sup>61</sup> and with the restoration of Czechoslovakia in 1945.<sup>62</sup>

It is also recognized that actual **demise** of the Slovak state is associated with the Slovak political leaders leaving the territory of Slovakia for Austria, at the end of March 1945. The president, the government and Slovak state elites voluntarily sought protection of the US troops, which, however, did not recognize them as state representatives. They were no relevant alternative to the Czechoslovak exile government established in London with President Beneš at its forehead, nor to the Slovak National Council being actually in control of the territory of Slovakia. The international political situation subsequently adopted a theory of **international continuity of Czechoslovak Republic and of legal non-existence of the Slovak state**, as proposed by President Edvard Beneš.

#### 4. Presidential Decrees and Regulations of the Slovak National Council as tools of continuity and democratization

Closely connected to the abovementioned polemics on nullity of the Slovak state is also the status and legislation issued by the exile government of Czechoslovakia during the World War II, as well as the status and legislation issued by the Slovak National Council starting from the Slovak National Uprising of August 1944. Mainly foreign (German and Hungarian) authors thereby see the legislation issued by President Beneš (issuing decrees<sup>63</sup>) as illegal, questioning especially so-called retribution decrees (on punishment

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*Antifascist Statehood*], Bratislava 2015, pp. 398–441; M. Skaloš, *Idea česko-slovenskej štátnosti a zápas za nové riešenie slovensko-českých vzťahov po vypuknutí druhej svetovej vojny* [The Idea of Czechoslovak Statehood and the Fight for a new Solution to Slovak-Czech Relations after the Outbreak of the World War II] [in:] *II. česko-slovenské stretnutie doktorandov a postdoktorandov v obore právnych dejín a rímskeho práva*, ed. J. Bílý, Bratislava 2014, pp. 16–28; *idem*, *Miesto a význam Slovenskej národnej rady v politických a štátoprávných dejinách Slovenska* [The Place and Role of Slovak National Council in political and constitutional history of Slovakia] [in:] *Globalizácia a fenomén národnej kultúry*, ed. S. Svaráková, Podhájska 2014, pp. 226–238.

<sup>61</sup> J. Korček, *Slovenská republika 1943–1945* [Slovak Republic 1943–1945], Bratislava 1999, p. 213.

<sup>62</sup> P. Mosný, *Obnovenie československého štátu (1944–1948)* [The Re-Establishment of Czechoslovak State 1944–1948] [in:] *Państwo, prawo, społeczeństwo w dziejach Europy środkowej*, Katowice 2009, pp. 517–528; P. Mosný, M. Laclavíková, R. Jáger, *Prvky povojnového obnovenia právno-demokratického postavenia obyvateľstva v Československu v pomere k vojnovnej autoritárskej dobe* [Elements of post-war renewal of the legal-democratic status of the population in Czechoslovakia in relation to the wartime authoritarian period] [in:] *Historicko-právna analýza príčin a následkov druhej svetovej vojny*, ed. M. Skaloš, Banská Bystrica 2015, pp. 238–254; V. Júda, *Právne a politické základy formovania systému politických strán v Československej republike pred voľbami do Ústavodarného národného zhromaždenia roku 1946 s akcentom na Slovensko* [Legal and Political Bases of the Formation of a System of Political Parties in the Czechoslovak Republic before the Elections to the Constitutional National Assembly in 1946 with an accent on Slovakia], “Notitiae Novae Facultatis Iuridicae Universitatis Matthiae Beli Neosolii”, vol. 4, pp. 86–96.

<sup>63</sup> D. Čierna-Lantajová, M. Štefanovič, Š. Šutaj, M. Štefanský, K. Zavacká, *Slovensko a dekréty prezidenta ČSR Edvarda Beneša v kontexte nariadení Slovenskej národnej rady. Vnútropolitické a zahraničnopolitické súvislosti* [Slovakia and Decrees of President of CSR Edvard Beneš in context of Regulations of Slovak National Council. Internal and International Political Context], Bratislava 2006, 126 p.; J. Beňa, *Vývoj slovenského právneho poriadku* [Development of Slovak legal Order], Bratislava 2001, 391 p.; T. Gábriš, *Právo a dejiny:*

of Nazi and domestic war criminals)<sup>64</sup> and rules governing the loss of citizenship by Germans and Hungarians, as well as expulsion of Germans.<sup>65</sup> However, both Czech Republic and Slovakia insist on legality and legitimacy of this extraordinary type of legislation.

This legislation (especially the decrees issued by President Beneš in London) was thereby also a tool of maintaining and confirming the international continuity of Czechoslovakia and nullity of Slovak state. It is namely (mostly) recognized in Czech and Slovak scholarship nowadays that since the Slovak state did not win an unconditional support of its domestic population, legal concept of international continuity of Czechoslovakia, proposed by President Beneš, was accepted even by Slovaks in the end.<sup>66</sup> This theory essentially means a declaration of nullity of the Munich Agreement of 1938 (on the basis of which Czechoslovakia had to give up its borderland territories inhabited by ethnic Germans, just like under the Vienna Award of 1938 Slovakia gave up territory populated by ethnic Hungarians<sup>67</sup>) and nullity of any facts being in direct causal link with the Munich Agreement – including the split of Czechoslovakia and establishment of the Protectorate of Bohemia and Moravia and of the Slovak State in March 1939. Such a continuity was thereby not specific only for Czechoslovakia – many other countries in Europe and beyond were facing

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*právnohistorická propedeutika [The Law and History: Legal-Historical Propaedeutic]*, Kraków 2012, 387 p.; J. Beňa, *Slovensko a Benešove dekréty [Slovakia and The Beneš Decrees]*, Bratislava 2002, 251 p.

<sup>64</sup> A. Letková, *Ústavnoprávne aspekty dualizmu v retribučnom zákonodarstve na území Československej republiky [Constitutional Aspects of Dualism in Retributive Law in the Territory of the Czechoslovak Republic]* [in: *Premeny ústavného práva*, pp. 119–137; J. Beňa, *Dekrétý prezidenta republiky a nariadenia SNR – denacifikácia ČSR a ustanovenie demokratického Slovenska [Presidential Decrees and Regulations of Slovak National Council – Denazification of Czechoslovak republic and Establishment of Democratic Regime in territory of Slovakia]*, “Paměť národa” 2008, vol. 4, issue 2, pp. 4–26.

<sup>65</sup> J. Štefanica, *Československé štátne občianstvo v kontexte právneho postavenia osôb maďarskej národnosti v rokoch 1945–1948 [Czechoslovak citizenship in the context of the legal status of persons of Hungarian nationality in 1945–1948]* [in: *II. česko-slovenské stretnutie doktorandov a postdoktorandov v obore právnych dejín a rímskeho práva*, Bratislava 2014, pp. 83–93; J. Beňa, *Maďarský štát a štátne občianstvo Maďarov na Slovensku v rokoch 1945–1948 [Hungary and Citizenship of Hungarians in the territory of Slovakia in 1945–1948]* [in: *Povojnové migrácie a výmena obyvateľstva medzi Československom a Maďarskom*, Prešov 2010, pp. 133–146.

<sup>66</sup> M. Skaloš, *Benešova koncepcia právnej kontinuity Československej republiky a slovenská demokratická štátnosť [Beneš Conception of Legal Continuity of the Czechoslovak Republic and the Slovak Democratic Statehood]* [in: *Dekrétý prezidenta republiky 70 let poté: teoretické aspekty, aplikační praxe, komparativní pohled*, ed. O. Horák, Olomouc 2015, pp. 113–126.

<sup>67</sup> *Viedenská arbitráž v roku 1938 a jej európske súvislosti [Vienna Award in 1938 and its European Context]*, ed. D. Šmihula, Bratislava 2008, 112 p.; T. Gábriš, *Viedenská arbitráž a korekcie hraníc Versaillského systému v Európe [Vienna Award and Border Correction of the Versailles System in Europe]*, “Slovenská ročenka medzinárodného práva” 2008, vol. 1, Bratislava 2009, pp. 19–31; M. Skaloš, *Historické a právne aspekty utvárania slovenských hraníc ako štátnych hraníc ČSR [Historical and Legal Aspects of the Formation of the Slovak Border as the State Border of the Czechoslovak Republic]*, “Notitiae Novae Facultatis Iuridicae Universitatis Matthiae Beli Neosolii” 2011, pp. 313–330; J. Beňa, *Hranice Slovenska a Trianon [Borders of Slovakia and Trianon]* [in: *Bene merito: profesorovi Jozefovi Klímkovi k 70. narodeninám*, pp. 23–32; M. Skaloš, *Proces utvárania slovenských hraníc ako štátnych hraníc ČSR a ich zmeny v historicko-právnom kontexte (1918–1947) [Legal-Historical Aspects of Slovak-Czech relations: Division of the CSFR and further Cooperation]* [in: *Mierové zmluvy v kontexte geopolitiky 20. a 21. storočia*, ed. E. Vlček, Bratislava 2013, pp. 102–115; *idem*, *Proces utvárania Slovenských hraníc ako štátnych hraníc ČSR: (historické a právne aspekty) [The process of creating Slovak borders as the state borders of Czechoslovakia (historical and legal aspects)]*, “Z Dziejów Prawa” 2012, vol. 5, issue 13, pp. 139–156.

the same problem.<sup>68</sup> The only obstacle could have been here the Slovak National Council (hereinafter referred to as SNC) as a representative body of Slovak anti-Fascists,<sup>69</sup> which in the beginning of the Slovak National Uprising issued Regulation no. 1/1944, under which it took over all legislative and executive power in Slovakia.<sup>70</sup> However, in a resolution of 29<sup>th</sup> September 1944, the SNC adopted the idea of continuity of Czechoslovakia – but only in its international dimension, insisting in contrast on constitutional discontinuity – refusing a return to unitaristic Czechoslovakia.<sup>71</sup> Thus, at constitutional level, the 1920 Constitution was to serve only as a “framework”; it was not to be applied and binding in all details.<sup>72</sup> The result of this compromise was a seemingly paradoxical situation where international continuity of the Czechoslovak Republic (since 1918) was recognized, but from a national (constitutional) perspective, discontinuity was accepted.<sup>73</sup> The same applies to the legal system from the 1938–1945 period – in contrast to Czech part of Czechoslovakia, the SNC accepted laws from this period as valid at national level,<sup>74</sup> unless the norms were contrary to republican and democratic spirit.<sup>75</sup> In addition, a number of regulations was issued by the SNC since 1944, which were valid only in the territory of Slovakia, creating thus a specific legal system in Slovakia, being since then a perpetual object of attention in constitutional historiography (in 2000–2015, foremost in the works authored by Jozef Beňa).

<sup>68</sup> T. Gábriš, *Medzinárodnoprávne aspekty vzniku, existencie a zániku Slovenského štátu (1939–1945) a kontinuita Československej republiky* [International Aspects of Emergence, Existence and Extinction of Slovak State (1939–1945) and the Continuity of Czechoslovak Republic] [in:] *Slovenský štát 1939–1945*, pp. 55–65.

<sup>69</sup> K. Zavacká, *Slovenská národná rada v rokoch 1944–1948* [Slovak National Council in 1944–1948] [in:] *Vývoj práva v Československu v letech 1945–1989*, ed. K. Malý, L. Soukup, Praha 2004, pp. 606–634; *eadem*, *K tradícii nariadenovacej právomoci na Slovensku (I. časť)* [The Tradition of Regulatory Competence in Slovakia (Part I)], “Právny obzor” 2002, vol. 85, issue 6, pp. 520–529; *eadem*, *K tradícii nariadenovacej právomoci na Slovensku (II. časť)* [The Tradition of Regulatory Competence in Slovakia (Part II)], “Právny obzor” 2003, vol. 86, issue 1, pp. 38–64.

<sup>70</sup> Cf. M. Skaloš, *Historickoprávne aspekty slovensko-českých vzťahov: rozdelenie ČSFR a ďalšia spolupráca* [Legal-Historical Aspects of Slovak-Czech Relations: Division of the CSFR and Further Cooperation], 1. vyd., Banská Bystrica 2008, p. 66.

<sup>71</sup> M. Skaloš, *Predstavy a koncepcie povojnového štátoprávneho usporiadania Československa* [Ideas and Concepts of post-war State Organization of Czechoslovakia] [in:] *Poňatie a charakter práva*, ed. P. Hölländer, Bratislava 2014, pp. 393–403; *idem*, *Štátoprávne postavenie Slovenska v obnovenej Československej republike* [Constitutional Position of Slovakia in the restored Czechoslovak Republic] [in:] *Quid leges sine moribus?*, pp. 99–109.

<sup>72</sup> P. Mosný, L. Hubenák, *Dejiny štátu a práva na Slovensku...*, pp. 337–339.

<sup>73</sup> P. Mosný, *Povstalecké názory na Slovensku na trojnárodné povojnové členenie československého štátu* [Insurgent's views in Slovakia on the trilateral post-war division of the Czechoslovak state] [in:] *Pocta Eduardu Vlčkovi k 70. narodeninám*, pp. 301–306.

<sup>74</sup> J. Beňa, *Slovenská národná štátnosť* [Slovak National Statehood] [in:] *Quid leges sine moribus?*, pp. 39–56; *idem*, *Slovenský štát – právne jestvovanie a forma štátu* [The Slovak State – Legal Being and Form of State] [in:] *Období nesvobody*, pp. 259–280; *idem*, *Diskontinuálna kontinuita slovenských ústavných dejín* [The Discontinuous Continuity of Slovak Constitutional History], Bratislava 2014; O. Podolec, *Medzi kontinuitou a diskontinuitou...: politický systém Slovenskej republiky 1939–1945* [Between Continuity and Discontinuity...: Political System of the Slovak Republic 1939–1945], Bratislava 2014.

<sup>75</sup> M. Považan, *Slovenský právny (sub)poriadok k 1. januáru 1945 a právne jestvovanie Československej republiky v rokoch 1939 až 1945* [Slovak legal (sub)order on 1 January 1945 and the legal status of the Czechoslovak Republic between 1939 and 1945] [in:] *Konštytúcia i deržavotvorennja: nacional 'ni tradycji ta svitovyj dosvid*, Kyjev 2014, pp. 70–87; *idem*, *Slovakia 1939–1945: Statehood and international recognition (De iure or de facto statehood?)*, “UNISCI Discussion Papers” 2014, vol. 36, pp. 67–83.

## 5. Disintegration of Czechoslovakia and emergence of current Slovak Republic

Finally, the historically most recent field of interest for constitutional historians is the dissolution of Czechoslovakia and emergence of the Slovak Republic on 1<sup>st</sup> January 1993.<sup>76</sup>

It is thereby widely accepted, agreed upon and concluded in literature that the fall of communist regimes in neighbouring countries and a clear manifestation of inability of the Soviet Union to reverse this situation represented a new international situation for Czechoslovakia, which was subsequently reflected at constitutional and international level.<sup>77</sup> All analyses by lawyers and political scientists since 1968 (year of federalization of Czechoslovakia) in fact warned of the risks of a federative system consisting of two member states, but they always ended up by saying that fortunately all possible risks are mitigated under the specific Czechoslovak constitutional system where everything is controlled from one political (communist) center.<sup>78</sup> Now it is admitted that these views

<sup>76</sup> J. Beňa, *Nové dokumenty a právny pomer Čechov a Slovákov v rokoch 1944–1945* [New Documents and Legal Relation of Czechs and Slovaks in 1944–1945] [in:] *k 75. narodeninám profesora Hubenáka*, Banská Bystrica 2004, pp. 59–68; L. Vojáček, *První pražská dohoda – přijatelný kompromis nebo úspěch pražského centralismu?* [First Prague Agreement – an acceptable compromise or success of Prague Centralism?] [in:] *k 75. narodeninám profesora Hubenáka*, pp. 69–77; M. Skaloš, *Historicko-právny pohľad na vývoj slovensko-českých vzťahov a rozdelenie Česko-Slovenska v roku 1992* [Historical-legal view of the development of the Slovak-Czech Relations and the Dissolution of the Czech-Slovak Republic in 1992], “Historia et theoria iuris” (HTI) 2013, vol. 5, issue 2, pp. 66–77; J. Minárik, *k niektorým aspektom vzťahov medzi českým a slovenským národom* [On Some Aspects of Relations between the Czech and Slovak Nations] [in:] *Historicko-právna analýza príčin a následkov druhej svetovej vojny*, Banská Bystrica 2015; J. Beňa, *Medzinárodnoprávne a ústavnoprávne metamorfózy štátnosti Čechov a Slovákov v kontexte Európy* [International Legal and Constitutional Metamorphoses of Statehood of Czechs and Slovaks in European Context] [in:] *Historické právne systémy a integrácia Európy*, Bratislava 2011, pp. 305–314; M. Skaloš, *Historickoprávne aspekty slovensko-českých vzťahov...*

<sup>77</sup> 20. výročie Nežnej revolúcie [20. Anniversary of Velvet Revolution], ed. P. Jašek, Bratislava 2010; K. Zavacká, *Prevrat v ústavnoprávnom vývine* [Revolution in Constitutional Evolution] [in:] *1989 na Slovensku. Súvislosti, predpoklady a dôsledky*, ed. J. Pešek, S. Szomolányi, Bratislava 2000, pp. 162–165; J. Beňa, *Sociálno-ekonomické práva v ústavách transformujúcich sa štátov strednej a východnej Európy* [The Social-Economic Rights in Constitutions of Transforming States of Central and Eastern Europe] [in:] *Transformace ústavních systémů zemí střední a východní Evropy: Sborník příspěvků a statí z konference*, 2. část, Praha 2000, pp. 61–72.

<sup>78</sup> T. Gábriš, *Československý parlament a (ne)realizácia princípov parlamentarizmu v rokoch 1945–1954 a 1986–1992* [Czechoslovak Parliament and (non)Implementation of Principles of Parliamentarism between years 1945–1954 and 1986–1992], “Acta Facultatis Iuridicae Universitatis Comenianae” 2010, vol. 28, pp. 133–152; J. Žatkuliak, *Činnosť tzv. Husákovskej vládnjej komisie a proces prípravy federalizácie Československa* [Activity of the so-called Husák Government Commission and the process of preparing the federalization of Czechoslovakia] [in:] S. Michálek et al., *Gustav Husák: moc politiky – politik moci*, Bratislava 2012, pp. 559–608; M. Skaloš, *Federalizácia Česko-Slovenska a ústavnoprávne postavenie Slovenska v rokoch 1969–1992* [Federalization of Czechoslovakia and Constitutional Status of Slovakia in 1969–1992] [in:] *Akademické akcenty 2012: odborný seminár doktorandov a mladých vedeckých pracovníkov*, ed. P. Polák, Žilina 2013, pp. 15–25; *idem*, *Zmena v právnom postavení Slovenska po prijatí ústavného zákona o Československej federácii* [Change in the legal status of Slovakia after the adoption of the Constitutional Act on the Czechoslovak Federation], “Notitiae Novae Facultatis Iuridicae Universitas Matthiae Belii Neosolii” 2012, ed. S. Mráz, pp. 285–299; T. Gábriš, J. Macej, *Suverenita ľudu a štátu v Československu rokov 1948–*

were correct. After the collapse of a centralist system governed by communist party,<sup>79</sup> the two-member federation ceased to function.<sup>80</sup> Member states were able to agree only on democratization,<sup>81</sup> on some changes to the constitution of 1960,<sup>82</sup> and on changes in state symbols,<sup>83</sup> but soon they ran into issues of competences, where they faced a serious deadlock.

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1989 [Sovereignty of the People and the State in Czechoslovakia in 1948–1989] [in:] *Akademické akcenty 2011*, Žilina 2012, pp. 185–209; *idem*, *Postavenie československého parlamentu v rokoch 1948–1989* [Position of the Czechoslovak Parliament in 1948–1989] [in:] *Ius romanum schola sapientiae*, pp. 131–149; T. Gábriš, *Slovenská národná rada a parlamentarizmus v rokoch 1945–1992* [Slovak National Council and Parliamentarism in 1945–1992], “Acta Universitatis Tyrnaviensis. Iuridica” 2009, vol. 6, pp. 9–30; J. Macej, *Postavenie a činnosť Národného zhromaždenia v šesťdesiatych rokoch dvadsiateho storočia* [The Status and Activity of the National Assembly in the 1960s], “Mířníky práva v stredoúropejskom priestore” 2009, 1. časť, Bratislava 2009, pp. 399–408.

<sup>79</sup> V. Júda, *Právne a politické základy vývoja politických strán na území Slovenska do roku 1990* [Legal and Political Basis of Development of Political Parties in the Slovak Republic until 1990] [in:] *Právna úprava politických strán*, Bratislava 2000, pp. 87–94.

<sup>80</sup> M. Skaloš, *Politické a štátoprávne aspekty česko-slovenskej federácie* [Political and Constitutional Aspects of Czecho-Slovak Federation] [in:] *Slovenská a česká republika po dvadsiatich rokoch*, ed. J. Jurková, Podhájska 2013, pp. 290–306; *idem*, *Od Česko-Slovenska k samostatnej Slovenskej republike* [From Czecho-Slovakia to Independent Slovak Republic] [in:] *Právo v priestore a čase*, ed. J. Bílý, Bratislava 2014, pp. 236–250.

<sup>81</sup> A. Lichá, *Teoretické a ideologické dimenzie práv a slobôd občanov v Ústave ČSSR* [The Theoretical and Ideological Dimensions of the Rights and Freedoms Citizens in the Constitution of the CSSR] [in:] *Debaty mladých právnikov*, Olomouc 2007, pp. 243–246; *idem*, *Úvahy nad Ústavou ČSSR z aspektu práv a slobôd občanov* [Reflections on the Constitution of CSSR from the Viewpoint of Rights and Freedoms of Citizens], “Mířníky práva v stredoúropejskom priestore” 2008, Bratislava 2008, pp. 399–405; *idem*, *Niektoré filozofické aspekty ústavnej úpravy subjektov ľudských práv v kontexte vývoja* [Some Philosophical aspects of the Constitutional Regulation of Human Rights Holders in the Context of Historical Development] [in:] *Olomoucké debaty mladých právnikov 2009*, Olomouc 2010, pp. 40–48; T. Gábriš, *Posilňovanie roly štátu a verejného práva v Československu v rokoch 1948–1989* [Strengthening the Role of State and Public Law in Czechoslovakia in 1948–1989] [in:] *Komunistické právo v Československu. Kapitoly z dejín bezpráví*, ed. M. Bobek, P. Molek, V. Šimiček, Brno 2009, pp. 145–166; A. Lichá, *Koncepcia základných práv a slobôd v Ústave 9. mája 1948* [The Concept of Fundamental Rights and Freedoms in the Constitution of 9 May, 1948], “Mířníky práva v stredoúropejskom priestore” 2009, 1. časť, Bratislava 2009, pp. 390–398; *idem*, *Princíp právnej rovnosti v Ústave 9. mája, realita alebo fikcia?* [The Principle of Legal Equality in the Constitution of 9 May, Reality or Fiction?], “Historia et theoria iuris” (HTI) 2009, vol. 1, pp. 6–18; *idem*, *Niektoré aspekty materiálneho jadra Ústavy 9. mája 1948* [Some Aspects of the Material Core of the Constitution on May 9, 1948], “Mířníky práva v stredoúropejskom priestore” 2011, Bratislava 2011, pp. 57–61; I. Šošková, *Vplyv Ústavy 9. mája 1948 na výklad noriem rodinného práva s dôrazom na výživné manželky* [The Impact of the Constitution of 9 May 1948 on the Interpretation of Family law with emphasis on Wife’s Alimention] [in:] *Dny práva 2011 – Days of Law 2011: ovlivňování sféry soukromého práva právem veřejným v minulosti*, ed. J. Kotásek, Brno 2012, pp. 235–244.

<sup>82</sup> J. Macej, *k niektorým otázkam prijímania Ústavy ČSSR z roku 1960* [Some Issues of the Adoption of the Constitution of the CSSR in 1960], “Mířníky práva v stredoúropejskom priestore” 2008, Bratislava 2008, pp. 411–417; *idem*, *Základné princípy socialistickej ústavy ako ústavy nového typu* [Fundamental Principles of the Socialist Constitution as a New Type of Constitution], “Mířníky práva v stredoúropejskom priestore” 2010, 1. časť, Bratislava 2011, pp. 437–447.

<sup>83</sup> M. Skaloš, *Historicko-právny pohľad na vznik a vývoj slovenských národných a štátnych symbolov: VI. Kapitola* [Historical-Legal View of the Emergence and Development of Slovak National and State Symbols: Chapter VI] [in:] *Barvy v právu*, ed. L. Vojáček, Brno–Ostrava 2015, pp. 54–64; *idem*, *Štátne symboly Slovenskej republiky v historicko-právnom kontexte* [State Symbols of the Slovak Republic in the Historical-Legal Context] [in:] *Srbské rozvojové združenie*, ed. A. Lisník, Břežany Petrovec 2015, pp. 171–183.

The literature of 2000–2015 also paid attention to comparison of two somewhat similar situations of the Slovak nation in 1938/1939 and in 1992/1993. They concluded that compared with the interwar and World War II years, the emergence of contemporary Slovak Republic faced no international, and realistically also no substantial domestic political obstacles.<sup>84</sup> Slovak nation could in 1992/1993, unlike in 1938/1939, invoke its officially recognized status within Czechoslovakia as an independent nation, being since 1968/1969 a member of Czechoslovak federation.<sup>85</sup> No one also doubted a natural right of nations to self-determination – fears were only evoked by violent enforcement of the right, by ineligible means – such as terrorism (Basques) and war (in the former Yugoslavia).

It was also pointed to the fact that, just like in 1938/1939, even in 1992 there were several **possible solutions to the constitutional status of Slovakia** available. As in the years 1938/1939, there were at least two camps – for a closer and more independent constitutional relationship between the Czech and Slovak Republics. The political winners of the elections in 1992, ODS (in the Czech Republic) and HZDS (in the Slovak Republic), were not able to reach a consensus on the arrangement of relations between Czechs and Slovaks, though. Czechs considered federation as the only viable form, while for Slovaks the only option was a confederation with the international legal personality of both members. The final solution has thus become a complete independence of the Slovak (and Czech) Republic.

Particular attention has also been paid in constitutional history to adoption of a new Slovak constitution.<sup>86</sup> On 1<sup>st</sup> September 1992, the SNC namely enacted a new Slovak constitution, which was in fact incompatible with existence of Czechoslovakia. A new Czech constitution, in contrast, was approved only on 16<sup>th</sup> December 1992, i.e. only 15 days before the dissolution of federation, after the adoption of a Constitutional Act on dissolution of Federation, setting the date of dissolution to expiration of 31<sup>st</sup> December 1992.

The split of Czechoslovakia at the end of 1992 is thereby perceived as a division, or dissolution (*dismembratio*). The original constitution of Czechoslovakia was not taken over neither by Czech nor by Slovak Republic; on the contrary, both countries have enacted their own constitutions. None of the successor states is identical with Czechoslovakia under international law, nor under the constitutional law. Newly established entities are not continuants, but rather successors of the defunct federation, authors

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<sup>84</sup> V. Štefanský, *Slovenská národná rada a niektoré problémy riešenia slovenskej otázky v rokoch 1945–1947* [Slovak National Council and some problems of solving the Slovak question in 1945–1947] [in:] *Slovenské národné rady*, ed. M. Pekník, Bratislava 1998, pp. 119–130.

<sup>85</sup> M. Skaloš, *Právne postavenie Slovenska po prijatí ústavného zákona o Československej federácii* [The Social-Economic Rights in Constitutions of Transforming States of Central and Eastern Europe] [in:] *Konsenzus v práve*, ed. J. Chmelík, Banská Bystrica 2013, pp. 101–114.

<sup>86</sup> J. Beňa, *Ústavné projekty z rokov 1989–1992* [The Constitutional Projects in 1989–1992] [in:] *Desiate výročie Ústavy Slovenskej republiky a vstup Slovenskej republiky do Európskej únie*, Banská Bystrica 2003, pp. 48–63; *idem*, *Od trojjedinej Ústavy ČSSR, ČSR a SSR k čistej Ústave Slovenskej republiky* [From the Triple Constitution of CSSR, CSR and SSR to the pure Constitution of SR] [in:] *20. výročie Nežnej revolúcie*, Bratislava 2010, pp. 218–238.

keep emphasizing.<sup>87</sup> The successors thereby fully succeeded into contracts, membership in international organizations, state property, archives, and debts of Czechoslovakia.<sup>88</sup>

In conclusion, comparing the two historical periods and two Slovak Republics (of 1939 and 1993), while the idea of an independent Slovak Republic of the years 1939–1945 was abandoned in favour of other, higher values, after 1989 this independence was again made possible without any compromises. It was in no way ingratitude towards the federation or the Czech nation, though; reasons for collapse of Czechoslovakia were in fact numerous and diverse: different values of the Czech and Slovak nations, shock caused by the collapse of communist totalitarian system, and last but not least desire of Slovak elites for recognition at the international level – these factors contributed together to final disintegration of the federation, the authors claim.<sup>89</sup>

## Conclusions

Scholarship of constitutional history of Slovakia oscillated in the years 2000–2015 particularly around five core topics (in addition to a number of non-Slovakian topics,<sup>90</sup> representing the constitutional historiography “in Slovakia” rather than “of Slovakia”):

<sup>87</sup> M. Skaloš, *Slovenské a české vzťahy v historicko-právnom kontexte a zánik spoločného štátu Slovákov a Čechov v roku 1992* [*Slovak and Czech Relations in the Historical-Legal Context and the Extinction of the Common State of the Slovaks and Czechs in 1992*] [in:] *I. česko-slovenské setkání doktorských studentů a postdoktorandů oboru právní historie a římského práva*, ed. L. Vojáček, Brno 2013, pp. 262–280; *idem*, *Štátne nástupníctvo po dismembrácii Českej a Slovenskej federatívnej republiky* [*State Succession after the Dismemberment of the Czech and Slovak Federal Republic*] [in:] *Dny práva 2012*, ed. J. Kotásek, Brno 2013, pp. 483–498; *idem*, *Štátne nástupníctvo po dismembrácii Českej a Slovenskej federatívnej republiky* [*State Succession after the Dismemberment of the Czech and Slovak Federal Republic*] [in:] *Interpolis '12*, p. 39; J. Žatkuliak, *Príprava novej ústavy v druhej polovici 80. rokov* [*Preparation of a new Constitution in the second half of the 1980s*] [in:] V. Bystrický et al., *Kľúčové problémy moderných slovenských dejín 1848–1992*, Bratislava 2012, pp. 334–358.

<sup>88</sup> I. von Münch, G. Hoog, *Zánik československého štátu z medzinárodnoprávneho hľadiska* [*Extinction of the Czechoslovak State from an International Legal Point of View*] [in:] *Dělení Československa: Deset let poté...*, ed. K. Vodička, Praha 2003, pp. 134–137.

<sup>89</sup> Cf. V. Bystrický, T. Gábriš, *Kontinuita a diskontinuita...*

<sup>90</sup> The production on universal constitutional history is not that numerous – it includes the category of textbooks (E. Štenpien, *Svetové dejiny štátu a práva* [*Global History of the State and Law*], Košice 2013; P. Vyšný, J. Puchovský, I. Šošková, *Svetové dejiny štátu a práva* [*Global history of the State and Law*], Trnava 2013, the category of English constitutional history (M. Mlkvý, *Koncepcia koruny v britskom právnom systéme* [*The Concept of the Crown in the British Legal System*], “Mířníky práva v stredo-európskom priestore” 2011, Bratislava 2011, pp. 42–48; *idem*, *Koncepcia prerogatív v britskom ústavném systéme* [*The Concept of Prerogatives in the British Constitutional System*], “Historia et theoria iuris” (HTI) 2011, vol. 3, issue 5, pp. 103–114, and the category of Spanish and Latin-American constitutional history: J. Puchovský, *Postavenie a právomoci hlavy štátu v Španielsku v rokoch 1975–1977* [*Status and Powers of the Head of State in Spain in 1975–1977*] [in:] *Právo v priestore a čase*, Bratislava 2014, pp. 209–219; *idem*, *Ústavný vývoj frankistického Španielska v rokoch 1936–1942* [*Constitutional Development of Francoist Spain in 1936–1942*] [in:] *Právni rozpravy 2013*, Hradec Králové 2013, pp. 442–449; *idem*, *Systém štátnych orgánov Španielska podľa Ústavy z Cádiz (1812)* [*The System of State Authorities of Spain under the Constitution of Cádiz (1812)*], “Historia et theoria iuris” (HTI) 2011, vol. 3, issue 6, pp. 73–88; *idem*, *Leyes fundamentales a ich postavenie v právnom systéme frankistického Španielska* [*Leyes Fundamentales and their Position in the Legal System of Francoist Spain*], “Historia et theoria iuris” (HTI) 2014, vol. 6, issue 1, pp. 26–38; *idem*,

- 1) Great Moravia;
- 2) national revival in the 19<sup>th</sup> century;
- 3) wartime Slovak state (1939–1945);
- 4) Decrees of the President of the Republic and Regulations of the Slovak National Council; and finally,
- 5) disintegration of Czechoslovak Federation and emergence of the Slovak Republic in 1993.

In particular, the issue of Slovak state is still widely discussed in Slovakia, despite the expiry of more than 70 years since the respective historical facts. Closely related to this issue is also the problem of so-called Beneš Decrees and of Regulations of the Slovak National Council, which confirmed the legal non-existence of the wartime Slovak State. These topics are thereby still politically sensitive nowadays – in terms of rise of extremism in Europe, including Slovakia.

The remaining topics are rather of historical value only, albeit these are also often used and abused by politicians as tools of stimulating national pride. It is namely the issues of constitutional history that are mostly linked to politics and often get distorted in political discourses.

Finally, one last question remains to be answered – what is the outlook for both “constitutional history of Slovakia” and “constitutional history in Slovakia”? Witnessing the trend of comparative legal history, and taking into account the traditions common to East-Central Europe, it might be “comparative constitutional history of East-Central Europe” that could be worth further research. However, this would require an enhanced cooperation and exchange of information between the respective national scholars. Still, the “*Krakowskie Studia*” journal and the team surrounding it might provide a superb

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*Ústavnoprávne aspekty prechodu Španielska k demokracii [Constitutional aspects of Spain's Transition to Democracy]*, Kraków 2015; *idem, Kortesy na konci frankizmu a po prechode k demokracii v Španielsku [Cortes at the End of Francoism and after the Transition to Democracy in Spain]*, “*Historia et theoria iuris*” (HTI) 2015, vol. 7, issue 1, pp. 74–86; *idem, Demokratická transformácia Španielska (1975–1978) a inštitúcia vlády [Democratic Transformation of Spain (1975–1978) and the Institution of Government]* [in:] *III. česko-slovenské právnehistorické setkání doktorandů a postdoktorandů*, Brno 2015, pp. 252–262; *idem, Štát a právo v juhoamerických kolóniách Španielska [State and Law in South American Colonies of Spain]*, Bratislava 2013; *idem, Právne dejiny ríše Inkov a miestokráľovstva Peru [The Legal History of the Inca Empire and the Viceroyalty of Peru]*, Bratislava 2010; *idem, Spoločnosť a štátna organizácia ríše Inkov [Society and State Organization of Inca Empire]* [in:] *Súkromné a verejné právo súčasnosti*, Trnava 2005, pp. 229–242; P. Vyšný, *Proces vzniku štátu u Aztékov [The process of formation of the Aztecs state]* [in:] *Právni Rozpravy 2013*, Hradec Králové 2013, pp. 472–479; *idem, Štát a právo Aztékov [The State and Law of Aztecs]*, Trnava 2012; *idem, Štruktúra aztéckeho štátu a problém jeho teoretickej interpretácie [The structure of the Aztec state and the problem of its theoretical interpretation]*, “*Acta Universitatis Tyrnaviensis, Iuridica*” 2008, pp. 141–176; *idem, k ideovým základom aztéckeho štátu [On ideological foundations of the Aztec state]* [in:] *Pocťa Karlu Schellemu k 60. narodeninám*, pp. 704–720; J. Puchovský, *Ústava Španielskej republiky z roku 1931 [Constitution of the Republic of Spain from 1931]* [in:] *Pocťa Karlu Schellemu k 60. narodeninám*, pp. 460–470; *idem, Panovník a ďalšie ústredné štátne orgány ríše Inkov [The Monarch and Other Central State Authorities of the Inca Empire]* [in:] *Právni rozpravy 2012*, Hradec Králové 2012, pp. 258–266; or authoritarian regimes of the interwar Europe – J. Drgo, *Výkonná moc v ústavách niektorých autoritatívnych štátov v medzivojnovnej Európe [Executive Power in Constitutions of Some State with Authoritarian Regime in Interwar Europe]* [in:] *III. česko-slovenské právnehistorické setkání doktorandů a postdoktorandů*, Brno 2015; *idem, Úloha parlamentu v ústavách niektorých autoritatívnych štátov v medzivojnovnej Európe [The Role of Parliament in Constitutions of Some State with Authoritarian Regime in Interwar Europe]* [in:] *Ako právo reaguje na novoty*, Bratislava 2015, pp. 234–246.

platform for such an attempt – uncovering similarities as well as specificities of constitutional history of this part of Europe in a comparative perspective.

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## *Historia ustroju 2000–2015: Republika Słowacka*

### Abstrakt

W historiografii słowackiej dominowała historia konstytucyjna i stanowiła największą liczbę publikacji w badanym okresie 2000–2015, obejmujących monografie, artykuły z czasopism, podręczniki dla studentów i zbiory artykułów konferencyjnych. Artykuł zawiera przegląd publikacji, które sklasyfikowano w pięciu głównych obszarach tematycznych słowackiej historii ustroju, oferując obszerną listę prac z okresu 2000–2015 w przypisach i w końcowej bibliografii. Celem było uwzględnienie wszystkich istotnych publikacji z tego okresu, co wyjaśnia liczbę odniesień i długość bibliografii.