

Europe's New Constitutional Democracies as Constitutional "Postmodernity"? (or even the Modernization of Classic Constitutional Models?)

Karel Klíma*

Abstract: Revolutionary political changes in the former socialist states of Central and Eastern Europe, including the Balkans, have taken place since the early 1990s. 20th century and fundamental changes in constitutional systems. The creation of democratic constitutionalism brought several original solutions in the parliamentary form of government, the institutional structure of the constitutional division of power, and territorial self-government. Thus, the protection of constitutionally guaranteed human rights and the protection of constitutionality through a specialized constitutional judiciary has significantly expanded in Europe. The purpose of the article is to demonstrate that the creative constitutionalism of these new democracies brought many new constitutional solutions. At the same time, the construction of democratic constitutionalism made significant use of classical constitutional models of democratic constitutionalism such as the French, English and US. In this way, the article builds on the hypothesis whether it is a modernization of classic constitutional models.

Keywords: democratic constitutionalism, socialist states, parliamentary form of government, territorial self-government, classical constitutional models, protection of human rights and freedoms, specialized constitutional judiciary.

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* Prof. et Doc. (mult.) JUDr. Karel Klíma, CSc., Dr. hab.; Metropolitan University Prague. Contact email: karel.klima@mup.cz ; ORCID://orcid.org/0000-0001-9360-883X.

1. Introduction. The domino effect of the fall of the former so-called socialist states and the originality of the new constitutional reality and creativity.

The revolutionary political changes of the 1990s triggered processes leading to the installation of new constitutional democracies in the countries of Central and Eastern Europe.¹ This was joined by the gradual destruction of 3 socialist federations, and thus the creation of more than 20 new nation states.² The adoption of new constitutions was thus linked both to the use of established models of classical Western democracies and to the constitutional creativity of new democratically elected parties. The constitutional changes thus focused mainly on the installation of a system of competitive democracy, the separation of powers in the form of a parliamentary form of government, the development of the concept of territorial self-government, the installation of so-called independent constitutional bodies, the constitutional anchoring of the classic catalog of fundamental rights and freedoms, and the constitutional establishment of constitutional review through constitutional courts. The purpose of the article is to argue that the constitutional character of the new democracies from a comparative point of view clearly proves their modernization benefits and the enrichment of the experience of classical constitutionalism.

Constitutional law has a special position both in the legal systems of democratic states and in the international university context. Developments in the world, especially in modern times, i.e. basically from the end of the 18th century, gradually meant a certain internationalization of constitutional (constitutional) ideas, and especially after the II. World wars and their globalization. There is a certain global pool of constitutional law ideas, concepts and models, and these are transferred into national arrangements, creating distinctive versions. A comparative analysis of the history of constitutional law shows that inspiration from homogeneous constitutional documents is quite common and undoubtedly has its own logic and effect³. This constitutional, legal, institutional and model transfer historically takes place both gradually and individually over time, as well as

¹ For this, cf. author in the chapter "Constitutional situation after the collapse of the Soviet Union (USSR)", in: KLÍMA, K. *Ústavní právo srovnávací*. Metropolitan University Prague Press, Wolters Kluwer CR, 2020, ISBN 978-80-7598-883-6, p. 158 et seq.

² For comprehensive information on the constitutional system of the Czech Republic, see the author in: KLÍMA, K. *Constitutional Law of the Czech Republic*. Pilsen, Aleš Čeněk, 2008, ISBN 978-80-7380-089-5.

³ In the literature, 3 degrees of intensity of foreign inspiration are distinguished: a) inspiration, b) takeover, and c) transplantation (whether during the creation, change or interpretation of the constitution). For this, cf. K. Léko in the article "Foreign inspiration during constitutional

in historical “waves”, which in this way also have a specific historical-genetic logic and justification.

The 1980s meant the growth of internal political tension in states preserving the regime of the dominion of a single political party based on communist ideology, and thus also the personal ruling sets connected with it. The influence of Gorbachev’s perestroika consisting in a certain effort to liberalize the directiveness of the regime meant the gradual destruction of the totalitarian system of the sui generis model. The revolutionary changes of the former so-called socialist states in their succession in 1986 and beyond (starting with the political-inversion experience of Poland which led to the introduction of the institutions of the rule of law already in the 1980s) had a clear influence on the necessity of fundamental and systemic constitutional changes. Regime political changes consisting in the removal of the previously unchangeable (and totalitarian) leading role of the Marxist-Leninist type of party caused a “domino” effect in the disintegration of the three so-called socialist federations at the time, and thus in the creation of many new states.⁴ It is therefore completely logical that the adoption of new constitutions and the anchoring of the institutions of classical constitutionalism in them, i.e. in the form of certain established, traditional models of the so-called Western constitutionalism, became a certain target solution for the new political sets in the so far independent and even “new” states.⁵ The criterion portfolio of the science of comparative constitutional law is thus able to analyze and deduce the degree of similarity, applicability and use of these models, as well as their

changes”, in: WINTR, J., ANTOŠ, M. (eds.) *Ústavní právo v mezinárodním kontextu*. Prague: Charles University, Faculty of Law, 2013, p.13 et seq.

⁴ In this regard, L. Mezzetti states “the collapse of the internal and external domain of the Soviet empire”, cf. in: MEZZETTI, L. *Le democracy incerte. Constitutional transitions and consolidation of democracy in Eastern Europe, Africa, Latin America, Asia*. Torino: C. Giappichelli Editore, Torino, 2000, ISBN 88-348-0273 X, pp. 15ff.

⁵ The author comprehensively deals with this for the first time in the chapter „Obnova ústavní demokracie v postsocialistických zemích-výběr”, in: KLÍMA, K. *O právu ústavním*. pp. 238 to 254. Prague: Wolters Kluwer, Czech Republic, 2012. Then elaborated more comprehensively in: KLÍMA, K. *Ústavní právo srovnávací*. Prague: Metropolitan University Prague Press, Wolters Kluwer, CR, 2020, pp. 154 to 164. A very important inspirational model for this was the work of Professor de Vergottini, cf. in: VERGOTTINI, G. de. *Diritto costituzionale comparato*. Quarta edizione. Milano, 1993, ISBN 88-13-17737-2. The publication: VERGOTTINI, de G. (ed.) *Giustizia costituzionale e sviluppo democratico nei paesi dell'Europa centro-orientale, is completely comprehensive and specific to individual new democratic constitutional systems*. Torino, Giappichelli editore, 2000, ISBN 88-348-0439-2, containing informative contributions on the constitutional systems of: Armenia, the Czech Republic, Croatia, Hungary, the Republic of Poland, Romania, the Russian Federation, Slovenia, Ukraine, as well as on the situation of the former Yugoslavia, Macedonia, Bosnia-Herzegovina, to which the commenting introduction is the work of prof. de Vergottini and the closing remarks of Prof. S. Bartole.

creative development.⁶ It is also necessary to take into account the varying degrees of historical experience from the functioning of democratic constitutionalism, even short-term.⁷

In the emergence and development of new constitutional systems after 1990, basically two parallel trends were evident, namely, on the one hand, a clear motivation to set up models of constitutionalism according to existing “Western” models, especially European-continental versions of “written” constitutions. The influence of the German constitutional doctrine of the constitution as a “fundamental law” was particularly evident, namely the constitutional style set by the doctrine of the Austrian professor H. Kelsen.⁸ A certain partial institutional influence is also evident in the presence of several elements of the American constitutionalism,⁹ respectively, the ideological and institutional influence of French constitutionalism is significant.¹⁰ At the same time, however, it is quite evident that none of the modern democratic systems mechanically “described” and the creative modern originality of the solution is quite evident.

⁶ Classical concepts of understanding constitutionality and, in particular, the separation of powers also reflected in the consolidated concepts of the scientific-pedagogical interpretation of constitutional law, cf. for example, the teaching structures of textbooks: CONSTANTINESCO, V., PIERRÉ-CAPS, S. *Drept constitutional*. Universul Juridic, Bucuresti, 2022, further for example in: GRAD, F., KAUČIĆ, I., ZAGORC, S. *Ustavno pravo*. Second sprekenka in dopolvena idzaja. Ljubljana, Faculty of Law University of Ljubljana, 2018, ISBN 978-961-64-47-75-1, or in: GIBA, M. et al. *Ústavné právo*. Bratislava, Wolters Kluwer, 2019, ISBN 978-80-571-0086-7, respectively in: Kolektiv. *Konstitucija i narodnyj suverenitet Ukraïna*. Problems of theory and practice of implementation. Kyiv, 2008, ISBN 978-966-8688.

⁷ It is also necessary to consider the varying degrees of historical experience from the functioning of democratic constitutionalism, even short-term.

⁸ The Czech constitutional system in the Kelsen tradition is based on the supremacy of all constitutional laws over “ordinary” laws, with the fact that constitutional laws have a higher “legal force”, and all other laws must be in accordance with them. Article 87, paragraph 1, letter a), according to which, if the Constitutional Court finds that the law does not comply with the constitutional law, it will annul the law or its individual provisions.

⁹ This is currently significantly manifested in the predominance of direct presidential elections, but also references to the creation of a kind of functional balance of the checks and balances type, which, according to V. Sládeček, means that “the Constitutional Court should primarily function as an effective part of the system of checks and balances, within division of state power ...,” and “... preventions against attempts at unauthorized appropriation of a part of public power by one of the state powers ...”, cf. in: SLÁDEČEK, V. MIKULE, V.; SYLLOVÁ, J. *Ústava České republiky. Komentář*. Comment. I. edition. Prague: C.H. Beck, 2007, p. 666, point no. 9. The European-continental constitutional systems (of the former so-called socialist countries) are the French model, which is embedded in the traditions of European republican parliamentarism, closer to the French model, in: CHAGNOLLAUD de SABOURET, D. *Droit constitutionnel contemporain 2, La Constitution de la Vème République*. 8e édition, Paris, DALLOZ, 2017, ISBN 978-2-247-16995-5, pp. 99 ff.

¹⁰ For this especially in: CUBERTI, G. *Grands systemes de droit contemporaines. Introduction on droit comparé*. 3rd edition. Paris, LDGJ, 2016, ISBN 978-2-275-03857-5.

Thus, the purpose of the article is to provide a certain constitutional-comparative, i.e., external audit, which would be able to divide, distinguish, and possibly define a degree of generality as well as conceptually special. In this way, the author does not claim from experience to find out or determine what is optimal, more effective, etc. Constitutionalism has its traditional criteria of regulation, and thus it is primarily a question of whether any solution is functional.¹¹

2. Historical parallels of constitutional democratization after World War II.

A very clear wave of constitutional expansion in the form of restitution, reconstruction and the setting up of new constitutional democracies, i.e. as a group renewal of constitutional democracy, can be seen in “Western” and “Southern” Europe itself after World War II. Liberation from fascist totalitarian systems meant a clear solution – the adoption of new constitutions (or even a return to the “pre-war” constitutions).

Thus, Austria returned to its constitution from 1920, and therefore to the original federation, when the constitution is fundamentally based on the equality of the federation and the federal states. The constitutional basis is based on the parliamentary form of government in the Confederation, in the countries there are regional assemblies.¹² In Italy, the monarchy was abolished by a referendum in 1946, and a republic was declared simultaneously with the establishment of the Constituent Assembly, i.e. the Constituent Assembly. The Constitution of the Italian Republic was then adopted in 1947, establishing a parliamentary form of government with consistent democratization.¹³ The French Republic is historically exceptional for its phenomenal constitutional history. After liberation in 1945, it set up the system of the so-called 4th

¹¹ B. Banaszak’s observation about the context of the expansion and extension of new democracies is certainly apt, as “.... a part of globalization, the aim of which is to unify the principles of socio-economic life of the world...”, to this in: BANASZAK, B. *Porównawcze prawo konstytucyjne współczesnych państw demokratycznych*. 2nd edition. Warszawa: Wolters Kluwer, Poland, 2007, ISBN 978-83-7526-082-3, p. 31.

¹² See in: WALTER, R., MAYER, H. *Grundriß des Österreichischen Bundesverfassungsrecht*. Wien: Manz Verlag, 1996, p. 71.

¹³ The constitutional history of Italy goes back to the middle of the 19th century, when the so-called Albertine Statute was adopted in Sardinia as the so-called tripled constitution of Italy introducing the so-called Salicylic-type monarchy. For the development of Italian constitutionalism, see, for example, A. Pizzorusso in the chapter “Modificazioni anzite di una costituzione rigida” in: SAGADO, F., F. *The Spanish Constitution in the European constitutional context*. Madrid, Dykinson, 2003, ISBN ISBN84-9772-094-6, pp. 805ff.

Republic, confirmed by the Constitution of 1946 regulating the classical parliamentary form of government.¹⁴

Not even Germany had before II. The World War long tradition of constitutionally based democracy, when the concept of the recognized so-called Weimar Constitution from the “twenties” remains a distinctive constitutional attempt. Based on of the Potsdam agreements, Germany’s constitutional development was clearly directed towards democratization and decentralization and was implemented in 1949 with the version of the constitution of the Federal Republic of Germany as the so-called Basic Law (*Grundgesetz*). The constitutional law experience of the Federal Republic of Germany is for constitutional law a comparative stage of constitutional democracy after II. Exceptional during the Second World War, it inspires especially with the concept of so-called chancellor democracy as a stable version of the parliamentary form of government, as well as with the concept of a federal state with a strong position on the constitutionality of the individual federal states. Since the 1970s, the jurisdictional activity of the German Federal Constitutional Court has become an inspiring concept for the protection of basic human rights and freedoms for many countries of the so-called new democracies.¹⁵ The post-war development of Japan must also be followed in this historically conditioned constitutional parallel. Japan with the beginning of II. The World Wars allied Germany and Italy with the fascist states of the so-called “Berlin-Rome-Tokyo” axis. As a country defeated in the war, Japan was subordinated to the directives of the Potsdam Agreements, while the principle of democratization declared in them meant installing a democratic, i.e. constitutionally based, system in Japan. The new constitution of 1947 thus establishes a parliamentary monarchical form of government, while respecting that the emperor does not have executive power.¹⁶ The version of the constitutional

¹⁴ The constitutional solution of French forms of government can be considered an original model as a traditional segment of comparative constitutional law, especially in: FAVOREU, L. et al. *Constitutional law*. 25th edition. Paris, DALLOZ, 2023, ISBN 978-2-247-21682-6, p. 635 et seq., or further drawn from: DUHAMEL, O., MÉNY, Y. *Dictionnaire constitutionnel*. Presses Universitaires de France, 1992, ISBN 2-13044-256-256-0, resp. GINESTE-SIMONJAN, H. *Le Droit constitutionnel en schémas*. 6e édition. Paris, 2016, ISBN 978-2340-013421, respectively in: CHAGNOLLAUD, de S.D. *Droit constitutionnel contemporain*. 8th edition. Paris, DALLOZ, ISBN 978-224716995-5.

¹⁵ To the peculiarities and importance of the Federal Constitutional Court of the Federal Republic of Germany drawn from: FAVOREU, L., MASTOR, W. *Les cours constitutionnelles*, 2ème édition, Paris, DALLOZ, 2016, ISBN 978-2-247-16188-1, p. 40 et seq. respectively p. 51, respectively p. 58, p. 65, respectively p. 82 et seq.

¹⁶ At the same time, *Shintoism*, as the original Japanese state religion, remains a cultural-religious system of binding social values. Closer to the development of Japanese post-war constitutionalism in: DUHAMEL, O., MÉNY, Y. *Dictionnaire constitutionnel*. Presses universitaires France 1992, ISBN 2-13044-256-0, p. 536 ff.

monarchy thus became an original combination of the dynastic-monarchical tradition with a modern parliamentary form of government for Japan. A very special stage of constitutional democratization in post-war Europe is the gradual fall of the fascist regimes of Spain (1975), Greece (1975) and finally Portugal (1976), i.e. only in the 1970s. Above all, the constitutional monarchy of the Kingdom of Spain is a modern constitutional state established by a constitution approved by a referendum in 1978.¹⁷

3. Comparative directions of constitutional changes of former so-called socialist states.

Hypothetically, it is primarily possible to deduce certain common features of the constitutionally based democracy of the so-called post-socialist states of the turn of the nineties and the return of the previous totalitarian states of Western Europe after the Second World War. World War gradually to constitutional democracy. The new wave of this “group” democratization is, however, in some facts completely original in the so-called post-socialist states. From a political point of view, the fact that the fall of the socialist system of the totalitarian type simultaneously had a multiple character played a crucial role. Moreover, it was accompanied by the creation of new states after the collapse of three federations, it was logical (and almost conceptually “programmatic”) to use the experience of already stabilized constitutional democracies of the “Western” type.¹⁸

The kind of “collective” programming was thus also clearly oriented towards the historical sources of constitutionalism and their developmental connotations.¹⁹ The development of modern constitutionalism is thus quite clearly linked to the

¹⁷ The history of Portuguese statehood is also one of the oldest in the world (since 1139), including the large-scale medieval colonial expansion of the Portuguese state, especially into South America. However, after the fall of dictator Salazar in 1976, a completely new constitutionalism was established by the 1982 constitution, including a parliamentary form of government and a constitutional court.

¹⁸ On the process of establishing the new Portuguese constitutionalism treatise in: CHAG-NOLLAUD, D. *Droit constitutionnel contemporaine. Tome 1, Théorie générale Les régimes étranngères*. Paris, DALLOZ, 2009, ISBN978-2-247-08451-7, p. 357 et seq.

¹⁹ It is not out of place for the author to recall that from his knowledge of university academic cooperation within the framework of the former so-called socialist states, it is demonstrable that their law faculties had perfect knowledge of classical constitutional history, as well as the reality of selected “Western” constitutional systems (i.e. USA, Germany, Great Britain, France, Germany and Italy), and as such these systems were taught in the subject “state law of capitalist countries”, for this see the textbook KLOKOČKA, V. *Ústavní právo kapitalistických zemí*. (Constitutional and political institutions of the USA, Great Britain, Germany, France, Italy). Prague, ORBIS, 1967, 11-05-67.

constitutionally initiating English, anti-feudal and, in a way, “nationally” liberating, American revolutions with the creative effect of written constitutionalism, as well as the extremely anti-feudal and anti-totalitarian French revolution.²⁰ The latter was probably most aimed at fulfilling the legacy of the philosophers in the concept of the so-called social contract. Thus, in a consolidated manner, the author permanently lists the directions of the newly installed constitutional solution common to all so-called new democracies. It is therefore an argument in the direction of what the constitutional systems had to incorporate into the new constitutionality to depict the new democratic system, representative democracy and the rule of law.

In the sense of the above, it is thus possible to choose primarily the method of institutional induction. On its basis, in a synthesis, which, based on the previous inductive “entry” into the constitutional systems of the new democracies considered here, it is possible to conclude and arrive at a certain systemic summary of what was the purpose and goal of the constitutional changes:

1. constitutionally establish a system of parliamentary form of government, based on a multi-party-political system and free competition of political parties,
2. to establish an electoral system that would enable the implementation of free selection of candidates for representative bodies of all levels, based on the exercised right to vote and be elected, with a secret ballot,²¹
3. to replace the original planned economy with a system of equality of all types of ownership, with an emphasis on the development of conditions for the restoration and protection of ownership of private and free enterprise,²²
4. to build a system of territorial self-government of a multi-level type, in relation to the size of the country, historical context and experience, the demographic and locational situation of the population, including the constitutional-judicial protection of territorial self-government (see below),
5. to establish (apply) various mechanisms of direct democracy in the system of democratic governance, in the form of decision-making, consultative or initiative forms such as referendum (central, regional and local), consultation

²⁰ Same in notes above and 9, 10, and 11, on the typology of constitutional “models”, see the author in the chapter “Constitutional models of the division of power and their modalities”, in: *Comparative Constitutional Law ...*, *ibid.*, p.47 et seq.

²¹ The work of G. Sartori, in the original as: SARTORI, G. *Comparative Constitutional Engineering*, became a significant inspiration in the reconstruction of electoral systems. *An Inquiry into Structures, Incentives and Outcomes*. Basingstoke and London, Mac Millan Press, Ltd., 1997.

²² It is possible to consider the so-called restitution processes (return of property) as a certain peculiarity in the development of decommunization, which (very prominently) in Czechoslovakia, for example, related to the return of property that was nationalized, confiscated or otherwise illegally seized by the regime after 1948.

with voters, parliamentary petition right, collective proposal to solve the responsibility of top officials' constitutional functionaries, etc.)²³

6. to insert into the constitutional foundations an internationally contractually set, and even binding directly in the Council of Europe system, catalog of rights of people and citizens conceived as a group: basic human rights, political freedoms and economic, social and cultural rights.
7. establish the concept of the rule of law as an institutionally functioning mechanism implementing the right to a fair trial and the protection of human rights and freedoms, with an emphasis on the installation and development of constitutional control and administrative justice,
8. to install in the system of the constitutional so-called horizontal division of power some so-called independent constitutional institutions with a similar systemic effect aimed at deepening the constitutionally horizontal division of power, which effect primarily concerns both the control of the executive power and guarantees of the protection of fundamental rights and freedoms of people. (see below),
9. to implement the constitutional basis of the relationship between national law and international law, and in the form of state loyalty to international contractual obligations, including the direct binding of certain types of contracts, which gained conceptual and jurisdictional precedent acceleration especially in the process of accession of new democracies to the European Union system, (see below)
10. to carry out the implementation of political change consisting in participation in military-defence pacts, including the establishment of a solution to war and civil crisis situations through the concept of a so-called crisis constitution.²⁴

For a certain completeness of our argument about the distinctiveness (and usefulness) of the phenomenon of the constitutions of new democracies, one important feature common to these constitutions must still be added. Namely, the process of getting rid of the political attachment to the so-called Soviet bloc, and especially to the political hegemony of the USSR, and eventually the disintegration of the three federations, meant a free role for states in deciding their national interests. In this sense, the fundamental role of the new constitution as

²³ The scope of the use of the means of direct democracy is not only diverse in terms of number, but also in terms of the forms of solutions, a marked absence, for example, in the Czech Republic, and, in contrast, a wider use in Slovenia, cf. to that in: GRAD, F., KAUČIČ, I., ZAGORC, S. *Ustavno pravo*. Ljubljana: Faculty of Law, University of Ljubljana, 2018, ISBN 978-961-64-47-75-1. p. 243 et seq.

²⁴ More on this in the author's contribution "La gestion administratives des risques en République Tchèque", in: *La gestion administratives des risques, Annuaire européenne d'administration publiques*, XXIX, 2006, Presses universitaires d'Aix-Marseille, 2007, p. 156 et seq.

the basis of national sovereignty and constitutional identity was exercised. It also meant an extensive and multiple expression of the political emancipation of such free peoples, often associated with a gesture and declaration of the political sovereignty of the state. This was primarily manifested not only in fundamental constitutional declarations, but also in the first articles of the constitutions. In that context, the constitutions also greatly emphasized their connection with the sovereignty of the respective nation, which thereby “became independent” and thus also became a state-creating factor.²⁵ This “group” characteristic feature not only represents a new “wave” of creative national constitutionalism, but also confirms the significant role of the constitution in protecting national legitimacy and thus the territorial inviolability of the state, and thus also the position of state-forming nations in the overall development of globalization and its diverse effects.

4. Representative democracy in the concept of variants of the so-called parliamentary form of government in new constitutional democracies.

Establishing the classical type of parliamentarism as historically established and developed by European “Western” democracies, both in the form of constitutional monarchies and French republicanism, became a key political and constitutional creed. However, the key question was certainly not what the optimal solution is, whether a unicameral or a bicameral parliament. Establishing a classical democratic so-called form of government was apparently the main and first goal of democratic regime changes, but it was the result of efforts to fundamentally change the totalitarian system of the previous “leading role of one party” (communist type). This system was based on the permanence and immutability of the political regime. The historical opposite is thus a system of competitive party democracy based on a plurality of political parties and free elections.

In principle, these changes succeeded when diverse party systems were formed and developed from a political point of view in various forms. Although communist-type parties ended relatively early in them, even in the last decade the differences between the so-called left-wing and right-wing groups are disappearing. These relatively typical instabilities of party systems influence the legislative activity of parliaments, and therefore also on the effective representation of

²⁵ Compare Also in: KAMPA, V. M., SAVČIN, M., B. (eds.) *Ustava i narodnyj soverenitet v Ukraine: problemi teorij i praktiki realizacij*. Kyiv: Dodrukarska pidgotovka ta druh, 2008, 978-966-8668-42-5.

citizens' interests, which in turn also affects a potential crisis of a governmental nature. Even the new democracies have already come to the experience that the constitutional responsibility of governments is governed practically by English "leadership". If the government retains the political support of party coalitions, then no one can realistically "depose" it, i.e. with the result of its departure from the ruling position. This fact significantly modifies the original intention of the "new" democratic constitutionalists, which was to establish the controllability of the executive power by the parliament as a representative body representing citizens.²⁶ In this way, the constitutional division of power in the form of the so-called tripartite is significantly modified, as the executive power is politically more or less dependent on the political majority in the parliament.

And how did the so-called third power, i.e. the judicial power, develop? Certainly, a distinct phenomenon of the process of installing the concept of the rule of law was the generally common development of constitutional control in the form of the installation of constitutional courts.²⁷ This fact, consisting of the intention to insert into the constitutional system the institution of checking the constitutional conformity of the laws produced by the parliament over the years, thus created the constitutional courts as a real competitor to the parliament. In fact, the duality of the constitutional separation of powers was thus created, where the constitutional court, in its derogative function towards the attacked laws of the parliament, is not only a body that can annul that law, but also influence the future law through a precedential opinion.²⁸ It is not so illogical that a hypothesis can be set up in the sense that such a real constitutional division of power creates a certain system of "constitutional balance" (checks and balances style a la USA). Even when acknowledging a certain logic of these statements, one cannot

²⁶ Professional literature draws attention to some dilemmas connected with the parliamentary form of government. Thus, J. Drgonec states that "... the parliamentary form of government is marked by the burden of partocracy present behind the scenes of parliaments and pushing democracy out of the exercise of public power, which cannot be separated from the parliamentary form of government...". For this, cf. in: DRGONEC, J. *Constitutional substantive law*. 1st edition. Bratislava: C. H. Beck, 2018, p. 224.

²⁷ In this way, in the new constitutional democracies, we can talk about "group expansion of constitutional courts", for this clearly in: FAVOREU, L., PASTOR, V. *Les Cours constitutionnelles*. 2nd edition. Paris, DALLOZ, 2016, ISBN 978-2-247-16188-1, respectively FROMONT, M. *La justice constitutionnelle dans le monde*. Paris, DALLOZ, 1996, ISBN 2-247-02203-0, respectively ROUSSEAU, D. *La justice constitutionnelle en Europe*. Paris. Montchrétien, 1992, ISBN 2-7076-0524-7.

²⁸ This was typically shown in the Czech Republic in January 2021, when the Constitutional Court of the Czech Republic annulled the provisions of the electoral law governing the closing quotas of coalitions in percentage terms required for entry into the House of Representatives, and the subsequent and "quick" amendment of the electoral law created a favourable situation for the ambitions of especially so-called small parties for the subsequent autumn elections.

undoubtedly abandon the fundamental idea on which the parliamentary form of government and representative democracy is based, namely – the dominance of the parliament in this system.

Comparatively inspiring is the issue of the approach of new constitutional democracies to the structure of parliaments, i.e. to the application of so-called unicameral parliaments, or in the bicameral version of parliaments. From the historical beginnings of the formation of parliament-type bodies, parliaments could be divided in this way. Their development in terms of the concepts of unicameralism and bicameralism is thus also an inspiration for new constitutional democracies, as each parliament is embedded in a system of separation of powers, which for new constitutional democracies meant the application of these two concepts in the system of a parliamentary form of government.

In relation to the development of parliamentary bicameralism, it should be remembered that its modern installation is rather based on the different electoral legitimacy of the so-called second chamber, which in the American version is the concept of the Senate (USA) as the representation of the states (USA), in the French version as the representation of the regions in their Senate, then as the Federation Council in the version of the Constitution of the Russian Federation. The new constitutional democracies thus had no reason to be inspired by the bicameralism just mentioned, due to the overwhelming unitarity of (especially) the new states. The exceptions are Poland, where the French and Italian experience was applied rather symbolically, the Czech Republic tried to restore the idea of the Senate from the First Czechoslovak Republic,²⁹ and Slovenia, by structuring the parliament, partially built on the experience of its own previous coexistence within the former “Yugoslav” constitutional self-government.³⁰

²⁹ The relatively late establishment of the Senate of the Parliament of the Czech Republic (elected from 1997 initially with a mandate of 2, 4 and 6 years, i.e. with gradual re-election every two years for 6 years), as well as its “weak” function in the legislative process, raised permanent doubts about the meaning of its existence. The author of these doubts, especially given the stabilizing role of this chamber in the constitutional system of the Czech Republic, does not share these concerns in principle, see KLÍMA, K. *Ústavní právo*. 5th ed. Pilsen: Aleš Čeněk, 2016, ISBN 978-80-7380-606-4, p. 504.

³⁰ The Slovenian so-called *Državni svet* (40 deputies) is established by groups: employees, employers, trade unions, farmers and other business activities, to which lies in: *Ustavno pravo* ..., *ibid.*, p. 446 et seq.

5. Variability of new party-political systems and new “electoral engineering”.

In the constitutional mechanism of democratic power, the establishment of representative bodies by citizens, especially parliaments, is of fundamental constitutive importance. The science of constitutional law thus follows the various mechanisms of this electoral democracy, in our understanding the so-called electoral technology.³¹ New democracies also set new electoral systems as a priority political change, which was enshrined in the constitutions and concretized in the laws specifying these, which have the character of so-called organic norms.³² Even in the so-called new democracies, certain political, constitutional and legislative organizational principles were accepted, such as universality, equality, directness of the electoral system and the provision of secret ballots. The nomination of candidates (mostly collectively) by political parties was accepted, except for so-called independent candidates. The representative character of parliaments is basically based on how the method of calculation mechanism is organizationally constructed in constitutional systems as a reflection between the voters' votes received for the candidate entities and the “seats” thus obtained in the parliament. This technology of representation is thus manifested in the legal way of allocating mandates to political parties and individual candidates based on election results.

In this direction, even the new constitutional democracies have joined the traditional variability of model mandate allocation systems, with the predominance of the application of so-called proportional representation systems. The latter is also applied in several possible versions, especially the so-called D'Hondt's is applied in Europe (for example: the Czech Republic, Germany, Portugal, Wales, Scotland, etc.). Precisely in connection with the application of the system of proportional representation, several new democracies also inserted a so-called closing clause (of the German type) into the system, as an organizational reduction of the access of some political parties to parliament in a situation where their election result did not exceed the number set by law (in percentages).³³ Even

³¹ It is also necessary to recall the established and recognized term for these processes, such as so-called electoral engineering, according to Sartori: “Although the electoral system does not have to be formally included in the constitutional text, it remains in fact a fundamental part of the operation of the political system”, cf. to that in: SARTORI, G. *Srovnávací ústavní inženýrství*. Prague: SLON, 2011, p. 9.

³² For this, the author refers to the chapter “Les normes réglementaires ordinaires”, in: FA-VOREU, L. et al. *Droit constitutionnel ...*, ibid. p. 1019 et seq.

³³ On the particularities of the German electoral system specifically drawn from: HOCHMANN, T. et al. *Droit constitutionnels français et allemand. Perspectives comparée*. Paris, LDGJ, 2019, ISBN 978-2-275-05386-8, pp. 179 ff.

in connection with the political effort to set up a democratic electoral system, the new constitutional democracies did not avoid such contexts of this search, when individual (new) political subjects (political parties) looked for variants advantageous to them in the classic variants of allocating mandates to political parties.

New constitutional democracies based new political systems on the experience of classical constitutionalism, according to which political parties as a political phenomenon are recognized as a state-forming element of democracy. In this sense, their foundations are confirmed by constitutions, and we can thus speak of the constitutional institutionalization of political parties, and therefore also the basis of democratic competition for representation in parliaments. The new constitutional democracies generally implemented legislative concretization of the position of political parties in constitutional systems, including their possible exclusivity as exclusive electoral subjects.³⁴ Classical “Western democracies” are also inspiring in that the subject of legal regulation is the regulation of the financing of political parties, as well as the mandatory transparency of the activities and sources of income of political parties, including election expenses.

Thus, even in new democracies, political parties are a consolidated part of the constitutional environment as a key factor in de facto constitutionality. In them, the system of political parties completes the so-called de facto constitution, which to a certain extent connects with the principles of the constitution set out in the constitution for the system of the form of government, electoral systems, the structure of the parliament, as well as the control of constitutionality.

The constitutional system of representative democracy also includes the corporative right to territorial self-government as political competition against the central constitutional “supremacy”. Targeted and programmatic political development certainly resulted in a significant elevation of the constitutional concept of the right to territorial self-government. The constitutional anchoring of territorial self-government can be considered a significantly innovative element of constitutionalism after the Second World War. World War, to which the constitutions of the new democracies undoubtedly contributed.³⁵ The constitutional installation of the concept of at least two-tier territorial self-government thus

³⁴ Even “older” constitutions were amended in this way, cf. for example, first Germany and Italy in the sixties, then Greece, Spain, Portugal, etc. Taken here from: SPIROPOULOS, P., C., FORTSAKIS, T. *Constitutional Law in Greece*. Athens, Wolters Kluwer, 2009, ISBN 978-904-11-2878-2.

³⁵ In this sense, it is necessary to emphasize the fact that the membership of the new democracies in the Council of Europe system was also influenced by the fact that the corporate right to territorial self-government is the basis of the relevant Charter of local self-government, within the framework of the Council of Europe’s contractual system. This charter was mostly ratified by the new constitutional democracies considered here, including the Czech Republic. To this, the author in: *Constitutional Law of the Czech Republic ...*, *ibid.* p. 361 et seq.

became a program goal, which basically meant the decentralization of power, i.e. the separation of some functions of public administration (functions of “organization of services of public interest”) and their entrustment to municipal and regional units of territorial self-government. The scope of these functions as executive activities entrusted to municipalities, districts and regions (mostly regions) is thus comparatively diverse, and therefore it is not possible to assess the degree of decentralization under some unifying criterion.

What, however, is a certain fundamental and comparatively significant conditionality of the territorial self-government system in the new democracies? Here we comparatively assess the states that have fundamentally changed their political regime since the end of the 1980s. Thus, these constitutional systems generally geographically belonged to the part of Europe that started with Central European Czechoslovakia, then meant the further democratic development of the eastern part of continental Europe, and significantly also to its continental “Southeast” and especially the Balkan states. Some of these states had exceptional experience of the original Austro-Hungarian administrative decentralization, such as Czechoslovakia, Hungary, Slovenia,³⁶ some followed certain self-governing elements of the former Yugoslav federation (Slovenia, Croatia, Serbian Federation, Montenegro, etc.), certain Polish experiences of decentralization were still built in the system of the PSDS leading role from the seventies.³⁷ However, all European-continental systems have decentralized public administration from the original centralized systems of “absolute monarchy”, and what they have in common – and shared by contemporary European-continental constitutional democracies – is that the central constitutional power retains the function of legislatively defining the scope of “public self-government” and also the executive power in the form of governmental and ministerial power is not only superior in its supervisory function, but also directly manages some administrative functions through offices incorporated into local, district or regional authorities, but in parallel it also manages a number of public administration functions in places through its decentralized or deconcentrated bodies. It is therefore a question to what extent the bodies of territorial self-government are “self-governing”, and to what extent they are not rather the executive apparatus of the executive centre of the state, and whether the right to territorial self-government is not rather a mostly constitutional fiction.

³⁶ As a reminder, the legislative concept of the so-called independent and the so-called transfer of powers was already established by the Austrian law from 1862, the solution was adopted by the First Czechoslovak Republic, while it is permanently present in the current system of territorial self-government of the Czech Republic. For this, cf. author in: *Constitutional Law of the Czech Republic ...*, *ibid.*, p. 364 et seq.

³⁷ More on this in: DABEK, D. *Prawo miejscowe*. Warszawa: Wolters Kluwer, Poland, 2007, ISBN 978-83-7526087-8.

6. Innovative contribution of the new constitutional democracies to the concept of the constitutional and legal state.

The concentration of political power during the period of so-called real socialism significantly suppressed the protection of human rights and freedoms, and especially political ones such as freedom of expression, freedom of assembly, freedom of political corporate association, etc. Thus, since the 1990s, institutions of the rule of law have become the targeted direction of the development of constitutional changes. such as constitutional courts, ombudsmen, so-called supreme councils of the judiciary, administrative judiciary, independent control authorities, etc. It is also related to the historical fact and motivating circumstances when new democratic states also became member states of the Council of Europe and the idea of the right to a fair trial "it's The Convention on Human Rights and Fundamental Freedoms became legally binding on their judicial systems.³⁸ It was therefore a key and literally programmatic issue to establish a classic catalog of human rights and freedoms in the basic constitutional texts. This happened mainly in the binding reflection on the pivotal document of the Council of Europe, which is the Convention on Human Rights and Fundamental Freedoms. After that, the almost universal installation of constitutional courts in new constitutional democracies became a matter of course. In this sense, the original conceptual source of the constitutional judiciary of the Federal Republic of Germany, and thus the experience of the Constitutional Court of the Federal Republic of Germany in Karlsruhe, undoubtedly manifested itself. It is also essential that the concept of specialized constitutional justice has its essence in the constitutional catalog of decision-making powers entrusted to constitutional courts, where the basic idea of the so-called abstract review of constitutionality based on an incident review of the conformity of laws with constitutional norms is developed by a concrete incident review in subject-specific issues of constitutionality.³⁹ It is a question of which constitutional values are further protected in addition to judicial supervision of the constitutionality of the legislative output of parliaments. The special expansion of the new democracies was then aimed particularly at enshrining the authority of constitutional courts to decide on so-called

³⁸ To this in: GRONOWSKA, B. *Europejski trybunał ochrony praw człowieka w poszukiwaniu efektywniej ochrony praw jednostki*, Toruń, 2011, ISBN 978-83-7285615-9, p. 179 et seq.

³⁹ Here, the inspiration from the constitutional judiciary of the Federal Republic of Germany in the form of their so-called *Verfassungsbeschwerden* is very evident. For this in the subsection „Die individuelle Verfassungsbeschwerde“ in: WIESER, B. *Vergleichendes Verfassungsrecht*. Springer Wien New York, 2005, ISBN 13987-3-211-27753-9, pp. 141ff.

constitutional complaints.⁴⁰ In real quantitative competition, the superiority of the idea jurisprudence of these submissions against decision-making in the other jurisdictions of the constitutional courts may turn the constitutional courts into some other (quasi), albeit extraordinary judicial instance of review.

It was during the review of the observance of human rights and freedoms that the judicial administrative judiciary experienced a completely fundamental evolutionary significance in the development of the independent judiciary. The review of the legality and, in many cases, the correctness of the decisions of state and other public administration bodies created controllability of administrative-legal decision-making. Within its framework, the public administration bodies, in a position of legislative supremacy, decide both on so-called public subjective rights and in administrative punishment. Administrative justice thus guarantees the key principle of the concept of the rule of law, consisting in demands for the strict legality of decision-making by the “supreme” public administration. In this sense, it is the administrative judiciary that is essential as a constitutional power distinct from the executive power and its role in the incident control above all the legality of the procedure and decisions of public administration bodies.⁴¹

In the area of the development of controllability of guarantees of human rights and freedoms, a significant expansion of institutions such as the Swedish ombudsman can be noted.⁴² The initial experiences of the Polish *Rzecznik praw obywatelskich* from the second half of the 1980s, i.e. an attempt to bring under some control the constitutionally uncontrollable (and politically untouchable) government and executive power linked to the political leaders of a single leading and dictating political party, are historically completely precedential. The enshrining of this type of body has acquired a constitutional character (for example, in Poland),⁴³ as well as regulation (only) by ordinary law (for example

⁴⁰ The author’s contribution to this in: VERGOTTINI, G. de (ed.) *Giustizia costituzionale e sviluppo democratico ...*, ibid., p. 273 et seq.

⁴¹ For the installation of a completely new concept of the administrative justice system in the Czech Republic only in 2002, see the author in the chapter “Constitutional Principles of Administrative Justice”, in: *Constitutional Law of the Czech Republic ...*, p. 355 et seq. The setting of the administrative justice system in the Czech Republic was significantly influenced by the perspective of the republic’s early admission to the European Union.

⁴² The gradual “expansion” (initiative spread) of the institution of the ombudsman is already evident in the continuity of new constitutional democracies to the constitutional development of states democratized already after II. World War II, when it was introduced: in Finland (as early as 1919), then in Norway (1952), in Denmark (1954), in Germany (1957), in the United Kingdom (1967), in Northern Ireland (1969), in France (1973), Italy (1974), Portugal (1975), Austria (1977), Spain (1971), Poland (1987), Romania (1981), etc.

⁴³ In the Constitution of Romania, in articles 58 to 60, there is an institution of the ombudsman under the name “Avocatul poporului”, see in: DRAGUE, L. *Drept constitutional si instituti politice*,

in the Czech Republic. Many years of practice, however, shows that the actual status and effectiveness of the activities of such independent control bodies is diverse and depends on the overall atmosphere of respect of the general and current policy towards this body.

In connection with the implementation of the concept of the rule of law from the point of view of its implementation in the constitutional context, it should be recalled that in all contemporary constitutional democracies, in the system of their membership in the Council of Europe, the judicial power is clearly subordinated to the observance of precedent law created by the European Court of Human Rights. Related to this are the possibilities for private entities from any member state to initiate a review of the decisions of their judicial authorities with a complaint to this court, in relation to the observance of Article 6 of the Convention in the jurisprudence criterion “right to a fair trial”.⁴⁴ In the case of the Convention, it is thus undoubtedly a quasi-constitutional document of substantive law and, by extension, procedural law as well.⁴⁵ When applying for complaints by natural or legal persons addressed to the European Court of Human Rights, the complainant’s burden of proof rests on proving a violation of the “procedural” Article 6 of the Convention and, as a rule, serious interference by the state authorities of a member state in the basic human rights of the complainant or a gross violation of some of the political freedoms.

7. Europeanization of constitutional law or even constitutionalising of European law.

The sovereignty of modern (classical) state power in its internal and external manifestation is declaratively confirmed by constitutional texts. The new constitutional democracies considered here added to this, especially when the new constitution followed the creation of a new state and the declaration of its

I. Universul Juridic, Bucuresti, 2022, ISBN 978-606-39- 1008-1, pp. 129 et seq.

⁴⁴ For this, cf. in: KMEC, J. et al. *European Convention on Human Rights. Comment.* 1st edition. Prague: C. H. Beck, 2012, p. 565 et seq. Also drawn mainly from: BERGER, V. *Jurisprudence de la Cour Européenne des droits de l'homme.* 11e edition. Paris, SIRREY, 2009, ISBN 978-2-247-08275-9.

⁴⁵ In this way, the author permanently cultivates a hypothetical concept of the existence and justifiability of the so-called European constitutional law, cf. in: Ústavní právo srovnávací ..., *ibid.*, p. 283 et seq. Also see the author’s article “The constitutional nature of the European Union. The theoretical Premises of European Constitutionality”, in: ŠIŠKOVÁ, N. (ed) *The Process of Constitutionalisation of the EU and Related Issues.* Amsterdam, Europa Law Publishing, 2008, ISBN 978-90-76871-87-5, pp. 75 et seq.

sovereignty.⁴⁶ After 1990, however, these new and democratically founded states were gradually admitted to the Council of Europe and subsequently (in 2004) to the European Union. These international associations of a new type deviate from some requirements of international public law, in particular by a certain convergence with elements of constitutional confederalism or even federalism.⁴⁷ At the same time, this process also has a number of other obvious constitutional aspects, in the case of the European Union, these are elements of the internal division of power, both horizontal and vertical, and the role of the judiciary in a “quasi-federation”. In the case of the Council of Europe, it is about enforcing the right to a fair trial. However, it is necessary to consider the development of the world after World War II. The World Wars, when, in connection with the internationalization of international relations and their entry into the constitutional systems of primarily European states, elements of consistency or cooperation with transnational systems begin to penetrate them. One of the reasons for this correlation between state sovereignties and supranational systems is the development of constitutional democracies and democratic constitutionalism, and gradually the democratization of almost all of Europe. At the same time, these new European association units, through their own law, move into a position of contractual supremacy over all state entities of the member states that have voluntarily (and contractually) accepted this supranational obligation. For new constitutional democracies, this aspect occurs immediately after admission to the Council of Europe system, i.e. after the establishment of the constitutional version of democracy and the system of protection of human rights and freedoms.⁴⁸

⁴⁶ A typical example: Slovakia in August 1992 when the traditional anniversary of the so-called Slovak National Uprising, the new Constitution was then announced on September 1, 1992. Day 1.1. 1993, i.e. the date of entry into force of the Constitution of the Slovak Republic, is considered the date of creation of “II. Slovak Republic”, also in: SVÁK, J., CIBULKA, L. Ústavné právo Slovenskej republiky. Bratislava: BVŠP, 2008, p. 19.

⁴⁷ For example, an assessment of the nature of the European Court of Human Rights and the Court of Justice of the European Union, both courts basically “defined themselves” as “federal”, quasi-federal, or “supreme” courts, cf. in: MASQULET, J., C. TURPIN, D. *Libertés publiques et droits fondamentals*. Paris: Vauves Éditions Foucher, 1997, ISBN 978-2-216-11065-0, pp. 26ff. Further to this, for example, in: RENNUCI, J.-F. *Droit européenne droit de l’hommes*. Paris, L.G.D.J., 2001, ISBN 2-275-01930-8, respectively SHAW, J. *Law of the European Union*. New York PALGRAVE, ISBN 0-333-92491-2.

⁴⁸ In that context, the adoption of the Charter of Fundamental Rights and Freedoms in Czechoslovakia in January 1991 was aptly considered to be “a ticket to the Council of Europe”, to which the author in: Constitutional Law of the Czech Republic..., *ibid.*, p. 113 et seq. For example, the articles: Banaszak, B. Verfassungsrecht und die Prozesse der Unifikation der Europe und der Globalisierung, p. 27 et seq., respectively Claret, F. L’influence de l’intégration européenne sur des institutions territoriales des états members, p. 97 et seq., resp. Chronowski, N. Constitutional Consequences of Hungarian EU Membership, pp. 53 et seq., et al. In: ILLÉSSY, I. (ed) *Constitutional consequences of the EU Membership*. Pécs, 2005, ISBN 963-642-039-4.

An assessment of only some aspects of the constitutional relationship of the new constitutional democracies to both supranational power systems allow us to draw some conclusions. Both systems, in terms of their contractual, structural and content structure, resemble a constitutional mechanism, i.e. in the case of the European Union, a power system of the type of separation of powers, with significant elements of a “parliamentary form of government (*sui generis*, of course). In the case of the Council of Europe system, the judicial activity of the European Court of Human Rights based on the European Convention on Human Rights and Fundamental Freedoms creates European case law binding on the constitutional and legal systems of the member states. In both cases, it is a kind of “European constitutional law”. Each member state of these systems is then the addressee, user and binding party. However, the source of a possible concept of European constitutionalism is the common constitutional values of the member states, the constitutional culture of constitutionalism. And this certain constitutional European polycentrism, into which the new constitutional democracies have undoubtedly creatively entered, is not only the Europeanization of constitutional law, but also the constitutionalising of European law.⁴⁹

8. Possible dilemma of constitutional (in)stability of new constitutional democracies.

As part of our discussion, some problems and possible critical evaluations of the constitutional systems of the new democracies must be identified, especially from the point of view of their stability. These are possible questions such as: why the constitutional situation in the states monitored here cannot often be considered fully stabilized after thirty years. Or why political parties are unable to respect constitutional rules. Or what criterion is decisive for stating that a constitutional institution has not proven itself and needs to be changed. In a way, the question arises as to whether the political instability caused by the political clashes of rival parties and coalitions does not put constitutional rules behind so much that it is also possible to state certain latent dangers of the degradation of constitutionality. And what would be even worse – such a humiliation of constitutionality, when the political sphere is able to (perhaps even intentionally) eliminate it as an (allegedly) ineffective system. Another danger arises when election winners

⁴⁹ Similarly, in the chapter “Unfluenta europeana asupra continutului constitutiilor nationale”, in: *Drept constitutional ...*, *ibid.*, p. 278 et seq. Also see R. Arnold’s article “European Constitutional Law”, in: ŠÍŠKOVÁ, N. (ed) *The Process of Constitutionalisation of the EU ...*, *ibid.*, p.41 et seq.

(and post-election hegemons) begin to adapt the constitutional rule to their goals.⁵⁰ Thus, it must be stated that to preserve the formal legal barrier set by the rigidity of constitutional norms, as the difficulty of approving constitutional changes, the political culture struggles with the intentions of arbitrariness and expediency in the conquest of political power.

At the same time, however, a positive developmental construct of new constitutional democracies capable of stabilizing the situation is the development of constitutionally based controllability of constitutional institutions. A special result of this development is the inspiration of Western democracies in the sense that so-called independent constitutional bodies were inserted into the constitutional systems of these states, which formally and effectively strengthened multiple functional control in constitutional systems, namely of a horizontal constitutional type. And it is possible to speak of a kind of “fourth” power, as a control power, if we refer to this to the control function of ombudsmen. Another of the classical constitutional systems transferred by the application of so-called independent bodies are the bodies of the type of accounting courts (in the Czech Republic such as the Supreme Audit Office) and the constitutional anchoring of central banks. In both cases, the purpose is to strengthen the constitutional independence of the executive power, the constitutional setting of government control, respectively the independence of the monetary and exchange rate function and, of course, the protection of the rights and freedoms of private entities.

However, special attention should be paid to the so-called supreme councils of the judiciary. However much bodies of this type can be discussed in connection with the installation of the concept of the so-called rule of law, we prefer to include bodies of this nature in the discussion of bodies strengthening constitutional independence, in this case as a *conditio sine qua non*. The creative diversity of the installation of bodies of this type, including the variability of their composition, the way they are established, and above all their functions in relation to judicial systems, is very inspiring.⁵¹

⁵⁰ This was very clearly demonstrated, for example, in the political turbulence in Poland in 2017 and the following years, with constitutional implications. The ruling Law and Justice party (PiS) controlled the situation to such an extent that, through constitutional changes, it politicized the establishment of judges of the Constitutional Court of the Republic of Poland, as well as the composition and functioning of the Regional Judicial Council. Overall, together with other interventions, it significantly modified the constitutional principle of the independence of the judiciary.

⁵¹ The author thus refers to his analytical comparative study published in *The Lawyer Quarterly*, TLQ 3(2022) “Supreme Judicial Councils as a guarantee of the Independence of judicial Power and their Role in the Appointment and Career Advancement of Judges”, and dedicated to an international grant The Metropolitan University in Prague, together with the University of Vilnius, dealing with the issue of “Selection of Judges” from 2020 to 2024, cf. in: www.ilas.cas.

9. Finally

So, is it possible to consider the new constitutional democracies as a kind of post-modernism, as a unique innovation, and even a potential constitutional benefit of this “wave” of a kind of constitutional globalization? The author is aware that the article can only be an approach to solving the question. Despite this, his answer to this question is unambiguous, and therefore certainly positive and affirmative.

The evaluation of more than thirty years of installation, development and functioning of “new” constitutional democracies primarily testifies to the fundamental (overall) humility of these systems in relation to classical constitutionalism. This primarily concerns the fundamental inspiration of the English, French, American (USA) and German (after World War II from 1949) models of constitutionalism. At the same time, the conceptual variability of these (new democratic) systems completely enriched the comparative textual basis for the evaluation of precisely those peculiarities that potentially enrich constitutionality. It can also be stated that constitutions and constitutional law have become functional and functioning legal instruments in these countries, namely with an emphasis on the fact that the constitution is a “fundamental law” (German inspiration here). The Constitution in that sense, its constitutional principles, as well as the text of the constitutional norms themselves, are the main source of law, which must be implemented and especially concretized by “ordinary” laws. Constitutional norms and constitutional safeguards then become the basis for their use in specific constitutionally judicial conflict situations, and therefore also the subject of interpretation by constitutional courts. To this must be added the fact that the “quantitative” increase in the number of constitutional courts in Europe, as bodies of specialized judicial review of constitutionality, means not only a comparative but also an effective contribution to this modern constitutional phenomenon.

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