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Artur Olechno

POLITICAL SYSTEMS OF THE CENTRAL AND EASTERN EUROPEAN COUNTRIES

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LIST OF ABBREVIATIONS

art.	– article
c.	- century
D.D.R.	–(Deutsche DemokratikRepublik) East Germany
e.g.	– (exempli grati) for example
E.U.	– European Union
g8	– group of Eight
i.e.	– (id est) that is
jr.	– junior
M.P.	– Member of Parliament
N.A.T.O.	– North Atlantic Treaty Organization
op.cit.	– (opus citatumest) the work has been cited
O.S.C.E.	– Organization for Security and Co-operation in Europe
p.	– page
R.F.	– Russian Federation
R.F.S.S.R.	- Russian Federal Socialistic Soviet Republic
S.S.R.	– Soviet Socialist Republic
U.N.O.	– United Nation Organization
U.S.A.	– United States of America
U.S.S.R.	- Union of Soviet Socialist Republics
W.T.O.	– World Trade Organization

INTRODUCTION

Constitutional changes have been present in the countries of Central and Eastern Europe for over 20 years. They encourage to take a closer look at the procedures of the governments' creation and transformation, as well as at their final effects[1].

Establishment of the democratic state and its further consolidation necessarily requires reform of the so far functiong mechanisms, including creation of a number of institutions essential to the functioning of a new state system. The crucial and first place task is to establish positions of the major state organs, their placement in the accepted classical model of Montesquieu's division of powers, conferral of the respected competences and regulation of their mutual relations. Due to limitations set by this series edition, the presented publication focuses on the above mentioned elements and dedicates particular chapters mainly to the analysis of constitutional solutions (the citations of numbers always refer to the articles of the given constitutional act of the state described), usually leaving aside the political practice and other than constitutional acts of law.

Particular democratic institutions are presented in the light of Polish and world used models, focusing on their constitutional position, competences and administartive structure. Author intends to show the genesis and evolution of the discussed institutions in the times of the political transformations. In other words, the idea is to present, at least slightly, an interesting subject of "constitutional engineering" of the newly established state. In addition, the book touches upon the problems of reception of the constitutional laws existing in the Western countries

1 Example of the new Constitution of Hungary approved in April 2011 seems to be a perfect example of the ongoing changes. As the Constitution came out after the work on this publication had been done, Author removed the chapter dedicated to Hungary based on the old law and hopes to present Hungarian new order in the future publications.

in the systems of Central and Eastern European countries, as well as in the countries of the former Soviet Union.

Selection of countries for this publication is subjective, but at the same time mainly based on the experience coming from lecturing on the topic and the interest of students or even their suggestions to examine those countries in the first place.

A longlasting process of state establishment has not been finished. At any moment we may expect further consitutional news in our region.

Artur Olechno

Part 1

SYSTEM TRANSFORMATIONS IN COUNTRIES OF CENTRAL AND EASTERN EUROPE

1. System transformation

The fall of the communistic system reaches back to the beginning of the 80s and the time when Solidarity was founded in Poland. Aftermath of these events was the growth of oppositional movement and consequently first attempts of reforms in socialistic states, including pierestrojka and glasnost in the USSR. At the end of the decade, the disintegration and collapse of the "eastern bloc" seemed inevitable. The Round Table Talks in Poland and the success of the opposition in parliamentary elections in 1989 were the signal for similar transformations in other socialistic states of the Central and Eastern Europe, especially in Hungary, Czechoslovakia, DDR, Bulgaria, Romania, Albania. As a result transformations spread to all spheres of life of the state and its citizens, including obviously system transformations.

These transformations should be perceived as the first step on the path to consolidated democracy that characterizes countries like the United States of America, Great Britain, Switzerland, or Federal Republic of Germany[1]. Analysis of obstacles found by the transforming states on the path to consolidated democracy, differences in development of separate countries allow distinguishing a few phases in the process of system transformation[2]. First phase is the democratic initiation that

1 A. Antoszewski, R. Herbut, *Systemy polityczne współczesnego świata*, Gdańsk 2001, p. 23 and next.

2 W. Sokół, Transformacja ustrojowa państw Europy Środkowej i Wschodniej – próba bilansu [in:] W. Sokół, M. Żmigrodzki (ed.): Systemy polityczne państw Europy Środkowej i Wschodniej, Lublin 2005, p. 15 and next.

sparks the transformations in post–communistic countries in various ways: peaceful – like talks at the round table, transitional elections, but sometimes violent – in the form of turbulent coups. It must be stressed, however, that in most cases the changes did not have revolutionary character and proceeded in a peaceful manner[3]. Second phase is the real system transformation, connected with the creation of institutional infrastructure. Third phase is defined as system stabilization and it strengthens accepted democratic standards, both in structural and behavioural dimension, avoiding restoration attempts of a given form of authoritarian rule. Finally, the last phase is consolidated democracy which characterizes the mentioned states of western democracy.

One can distinguish a few **key elements** that decide about the fall of real socialism system in discussed region[4]:

Firstly, legitimization crisis that manifests with big social groups growing disapprobation of the system and simultaneous doubt in legitimization from the governing elite which did not find ways of securing political stabilization within existing system procedures.

Secondly, the reform of the policy of the USSR led by Michail S. Gorbachev, which departed from so called "Brezniev doctrine" that took intervention in states of real socialism into account in case the foundations of the socialistic systems were in danger.

Thirdly, crisis of planned economy which consequently proved its ineffectiveness, especially in contrast with the market economy of capitalistic countries.

The **fourth reason** were disagreements in the governing communistic elite which split into supporters of reforms (so called party liberals) and opponents of system changes (hard–liners), which led not only to de–legitimization of the system, but also to attempts of so called active adaptation that would enable maximization of advantages (by taking over state property) in new system conditions.

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3 Thus frequently used term „resolution" which illustrates the changes that combine revolution and evolution of the system. See: M. Granat, *Zmiany prawnoustrojowe w państwach Europy Środkowej i Wschodniej*, [in:] K. Motyka (ed.), *Konstytucjonalizm we współczesnym świecie*, Lublin 1998, p. 151.

4 W. Sokół, *Transformacja*..., *op. cit.*, p. 16–17.

The **final fifth** was the role of the opposition during initiation of the democratization process; consensual political behaviour adopted by the representatives of democratic (non–confrontational) opposition and reformers from the communistic party facilitated disassembly of the former system.

Among fundamental activities leading to the system change we could mention introduction of the principle of power alternation and the principle of political plurality, creation of socio–economic system based on free market mechanisms, accession to new political and military allies, and western international structures. Normative manifestation of those activities were new Constitutions, election statues, and acts on political parties.

One must turn the attention to some characteristic features of those transformations. Those in Central and Eastern Europe were mostly peaceful, which was the result of reform oriented cooperation of governing elites and the democratic opposition[5]. Although for communists the cooperation meant that apart from Albania, Bulgaria, and Romania they lost the first, contract or so called transition elections, on the other hand it also meant that they retained strong position in economy and sometimes even in politics, which again was the consequence of lack of radical de–communisation in the state apparatus[6]. Influence of 40 years of communistic government and planned economy turned out to be a great obstacle for introduction of new values, behavioural models, and formation of political elites of Western calibre. Lack of political culture in society and long–lasting indoctrination brought about idealization of former system shared by considerable part of the society, which longed for the former protective state and disliked the present which did not put them in the role of beneficiaries. Such situation usually bred all sorts of populists which did not seem to appeal to voters with higher political culture[7].

5 Exceptions are Romania or Lithuania.

6 See among others: J.J. Wiatr, Europa pokomunistyczna. Przemiany państw i społeczeństw po 1989 roku, Warszawa 2006, passim.

7 R. Rose, *Ex–Communists In post–communist societies*, Glasgow, 1995, p. 3 and next.

States on the verge of system transformation had to make decisions on three levels of legal solutions: first, choose political system in macro scale, deciding between democratic solutions or authoritarian rule, second, choose specific form of a given system in medio–scale (parliamentary–cabinet, presidential, or mixed system of government) and finally in micro–scale choose specific institutional solutions[8].

According to W. Sokół, in macro scale we can suggest division of Graeme Gill, who having assessed effects of transformation in Central and Eastern Europe, suggested two most important criteria[9]:

1. **Respect of procedural principles of democracy** which basically means free and fair elections. According to the rule of power alternation, the elections are held regularly and in such a way that all who apply for mandate have equal rights to do so and can fearlessly express their preferences. These are to guarantee real observance of election law such as universality, equality, confidentiality. The ability of choice guarantees existence of political parties that compete within the framework of political plurality. It is also essential that the winners of elections, chosen representatives of the nation, during their term realize the program thanks to which they obtained their mandate from the voters.
2. **Observance of political and civic rights**. Main rights and civic freedoms like: freedom of speech, right to form unions, to assembly, freedom of denomination should be guaranteed constitutionally and observed. Only in specific situations (e.g. exceptional circumstances) these rights can be temporarily suspended.

On the ground of these two criteria we can divide post–communistic states into three categories:

Democracies – states which apply procedural minimum and observe civic and political rights.

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8 W. Sokolewicz, *Konstytucjonalizm europejski i przyszłą polska konstytucja*, „Państwo i Prawo", no. 8, 1992, p. 5.

9 W. Sokół, *Transformacja*..., *op. cit.*, p. 23.

Façade democracies – states which observe only some democratic procedures and which generally fulfil standards on respect of civic and political rights. Most of the time and due to various circumstances, however, part of the population has limited possibility of political participation and does not fully enjoy its civic and political rights.

Non–democracies – states which do not meet necessary procedural minimum and the observance of civic and political rights is at best limited[10].

According to the above criteria, G. Gill qualified six of post–communistic countries as democracies. They are: Bulgaria, Czech Republic, Lithuania, Poland, Slovenia, and Hungary. As "façade democracies" the following were qualified: Albania, Croatia, Estonia, Latvia, Russia, Romania, Slovakia, Ukraine, and also Georgia, Macedonia, and Moldavia. Although election procedures were formally similar to those of western democratic standards, there were cases of:

a) impediments created for the opposition candidates (especially during registration and by invalidation of collected votes);

b) multiple votes by the same voters (infringement of equal election in formal sense);

c) manipulation with the borders of constituency (infringement of equality in material sense);

d) infringement of secrecy criteria (opening ballot boxes before the formal end of election);

e) infringement of election silence by biased media;

f) manipulation with the election formula in order to optimize the result of the governing parties and discriminate the opposition, etc.

The same applied to the protection of political and civil rights and freedoms. In most cases democratic constitutional regulations were in conflict with the political practice. Inclusion of Latvia and Estonia to "façade democracies" had its reason in their treatment of national minorities. These states passed restrictive acts regulating reception

10 *Ibidem*, p. 25.

of citizenship, so that certain groups, especially Russians, would be deprived of political and civic rights. In Slovakia, apart form the issues with respect of rights of national minorities, during the government of V. Mećiar, the political system showed oligarchical tendencies. It must be noted that in the last decade, the assessment of the discussed criteria considerably improved both in Baltic states and, after 1998, in Slovakia. On the other hand, Ukraine or Russia experienced regression in observance of democratic principles.

The last group of states labelled as non–democratic comprises: Armenia, Azerbaijan, Byelorussia, Yugoslavian Federation (presently: Serbia, Bosnia, Montenegro, and Kosovo), Kazakhstan, Kyrgyzstan, Turkmenistan and Uzbekistan. The amount of abnormality in reference to procedures and election practices is bigger than in façade democracies. Although the elections have a competitive character (except Turkmenistan), the opposition is faced with all kinds of obstacles. Similarly, civic rights and freedoms were hardly observed no matter what official declarations were made. And so limitations relate to both possibility of political participation and defiance of those in opposition to the present government. Thus, non–democracy is a sort of authoritarian system that ineffectively seeks legitimization in disguise of democratic procedures.

It must also be noted that in case of, for example Serbia, Bosnia, Montenegro, or the Caucasian republics changes taking place in the recent years do instil with some optimism. The author also points to some regularities that characterize system transformations in discussed region: geographically speaking, the democracies are located in the north–west of Central and Eastern Europe, non–democracies lie in the south–east, and "façade democracies" can be found in the central belt; culturally speaking, democracies flourished in countries rooted in Christian traditions (especially Roman–Catholic), "façade democracies" are quite frequent in Orthodox cultures; non–democracies are typical in Islamic post–soviet republics; the higher the economic development, the more probable the occurrence of democracy; the lower the development, the more probable occurrence of "non–democracy". Finally, "democracies" are harder to identify within borders of former

Soviet Union than in Central Europe. The exception are the Baltic states.

2. Main government systems

Transformations in political and economic life of Central and Eastern Europe states found their reflection in new legal and institutional solutions. Construction of the democratic system was based on the principles of: sovereignty, division of power, state of law, plurality of political life, and development of stable democratic government[11].

Leaders of transformations in post–communistic states took from system solutions rooted in the following: structure models and procedures traditionally existing in West–European democracies; system traditions existing in specific states before communism; institutions and experience existing in previous system (e.g. parliamentary procedures)[12].

First thing to do was to make up the minds about the choice of the government system[13]. Having in mind relations between all forms of authority, especially between legislative and executive ones, on can distinguish several fundamental models of governments:

a) parliamentary cabinet system (undoubtedly being the most characteristic form of parliamentary rule),

b) chancellery system (a form of parliamentary system),

c) presidential system,

d) semi–presidential system,

e) committee system.

Parliamentary cabinet system, developed during XVIII c. in England and in almost unchanged version functioning today, is made from principles that define mutual relationships between three main bodies of a state: the parliament, the head of state and the government

11 T. Mołdowa, *Zagadnienia konstytucjonalizmu krajów Europy Środkowo–Wschodniej*, Warszawa 2003, p. 7 and next.

12 W. Sokół, *Transformacja*..., *op. cit.*, p. 29.

13 Understood as a set of organizational and functional rules determining relations between constitutionally distinguished bodies of legislative, executive, and judicial powers.

(cabinet). Parliamentary cabinet system is characterized by the following:

1. Legislative branch is represented by one or two–chamber parliament elected in general and direct elections (at least the lower chamber in the two–chamber parliament is elected).
2. Executive branch consists of two bodies: one is the head of the state (president or monarch) and the other is the government with the Prime Minister in charge.
3. The real role of the head of state in this system is rather limited. President (monarch) usually does not possess discretionary rights and performs representative and ceremonial tasks.
4. Head of the state is not politically responsible before the parliament and so he/she cannot by removed by the parliament from the office. One consequence of the lack of political responsibility is the institution of countersignature, that is the obligation of the Prime Minister or any other member of the government to sign each official act of the head of state and in this way take responsibility for such an act before the parliament.
5. The government formally created by the head of the state must have the trust of the parliament, which means that it must have support of parliamentary majority. Creation of government is based on the principle that it is created by the party (or coalition of parties) which has most mandates in the parliament, and the post of prime minister is given to the leader of the strongest party.
6. The government is politically responsible before the parliament for the directions and means of realization of its politics. This means that the parliament may pass vote of no confidence to all government (collective responsibility), but also to its specific members (individual responsibility).
7. The executive branch has got the power to dissolve the parliament and shorten its term. This right belongs to the head of the state but the decision lies in the hands of the head of the government.

8. The executive branch has the guarantee of participation in the legislative process, mainly by carrying out government legislative initiatives[14].

In spite of its popularity, the two–party system has not always been effective form of organization, especially in situation where there were multiple parties. In such case, it was necessary to form coalition government based on unstable party allies, which in consequence led to serious instances of government crisis and frequent alterations of cabinets. As a result, it became vital to modify classic parliamentary system so that the potential disturbances in mutual relationships between the parliament and the executive branch could be avoided. Taken measures and system changes were defined as rationalization of parliamentary rule.

The most radical rationalization took place in Federal Republic of Germany on the basis of Bonn Fundamental Statute from 1949. It gave birth to currently functioning system of government in Germany called **the chancellor system**, which is characterized below.

1. In the structure of executive branch there is a strong position of the head of government (chancellor), who is endowed with the task of outlining main policy of the government. This can be seen both in his relation with the parliament and in relation with other members of the cabinet (ministers).
2. The chancellor is appointed by the first chamber of the parliament (Bundestag) with absolute majority of votes. All ministers, on the other hand, are appointed and recalled by the president but on the motion of the chancellor. Government appointed this way is not obliged to apply for vote of confidence from the parliament.
3. Only the chancellor is politically responsible before the parliament for the performance of the whole government and its members. Ministers, though, are not responsible for they are subordinate to the chancellor only.

14 S. Bożyk, *System organów państwowych*, [in:] M. Grzybowski (ed.) *Prawo Konstytucyjne*, Białystok 2009, p. 142 and next.

4. Fundamental form of chancellor's political responsibility before the parliament is the so called constructive vote of no confidence. Basically, the Bundestag may express its vote of no confidence only when it simultaneously elects a new chancellor with absolute majority of votes that come from the members of the present chamber of parliament.
5. Chancellor who does not have support of parliament majority (so called chancellor of minority) may resort to the institution of higher legislative necessity. It basically means that a project of new law that is rejected by Bundestag may become a binding legislative act by the agreement of the other chamber (Bundesrat).
6. The role of the president appointed by the Federal Assembly (comprising members of Bundestag and representatives elected by domestic parliaments) is considerably limited and narrowed to performance of representative functions.
7. Bundesrat is the only second chamber in the world that is made of executive bodies (it comprises delegates from specific domestic governments).
8. The executive branch has limited possibilities of dissolving parliament before the end of its term. The president can only do this in two cases: when the chamber did not manage to appoint a chancellor in three rounds with absolute majority of votes and when it rejects the chancellor's motion to give him the vote of confidence[15].

The presidential system, based on the Constitution of the United States from 1787 which since then remained practically unchanged, is the opposite of the classical parliamentary cabinet model. The main difference lies in the specific construction of the executive branch, maximal separation of each branch on the federal level and the system of balance between them (especially in relation between the legislative and executive branches):

15 *Ibidem*, p. 144 and next.

1. In the structure of the executive branch there is only single executive, because the president performs the functions of both the head of the state and the head of the federal administration. This means that there is no post of prime minister and the government (understood as collegial body of the executive branch). The ministers appointed by the president (secretaries of state) do not possess own constitutional competences and only carry out his decisions.
2. Just like both chambers of Congress, the president is not elected in general elections. Unlike in parliamentary elections where the members and the senators are chosen directly by the voters, the president is elected in indirect way since the voters choose only the electors and they in turn choose the president. All in all, this way ensures that the president is democratically legitimized to run the state in the same degree as the parliament is.
3. The rule of separation of the parliamentary mandate and the position in federal administration is strictly observed.
4. President is not authorized to call in and close ordinary sessions of Congress. He does not have the right to take legislative initiative either (the same applies to all officials in federal administration).
5. President cannot take decision to dissolve the chambers of Congress and to order earlier elections.
6. In this system does not exist the institution of political responsibility of the political branch before the parliament. The secretaries of state and the high–rank officials are not responsible before the parliament either because they are responsible only before the president.
7. Official acts of the president do not require any signatures of any federal officials in order to be valid. Thus, there is no institution of countersignature.
8. In order to guarantee balance between the legislative branch (Congress), the executive branch (president) and the judicial branch (The Supreme Court) a whole system of brakes was

introduced. They are means and institutions which shape mutual interdependence of federal authorities[16].

The so called mixed systems presents yet another, separate category of government system. Their characteristic feature is the fact that they mix specific elements of the parliament and president systems. Other names are applied as well and they are: half–presidential system, semi–presidential system (when features of the president system dominate) and president–parliament system (when features of the parliament system dominate).

Especially the **semi–presidential system** deserves closer examination among other contemporary mixed government systems. It has been realized in the political system of the V Republic of France since 1958 and possesses several characteristic features that distinguish it from other systems:

1. The executive branch is two–piece and comprises the president (head of the state) and the government (collegial body of executive branch consisting of ministers and the prime minister). The real head of the executive branch, however, is the president who is authorized by the Constitution to chair the meetings of the Council of Ministers.
2. The president is appointed via general and direct elections for the term of five years, and the number of terms is not limited by the Constitution.
3. The president enjoys a wide scope of rights, including personal rights (discretional ones), which he uses independently and for which he does not need countersignature of the prime minister or an appropriate minister. His prerogatives include the right to dissolve the parliament, nominate the prime minister, put the article project to referendum, or introduce state of emergency.
4. President is constitutionally responsible for treason and then he can be accused by the mutual act of both chambers of parliament.

16 *Ibidem*, p. 146 and next.

5. The prime minister and the ministers are appointed by the president but the government must have the trust of the parliament. The government is politically responsible both before the parliament and before the head of state.
6. In French Constitution there is the principle of separation of the parliamentary mandate and the government positions.
7. The role of the parliament is considerably limited in comparison with the executive branch because it can only perform the legislative function in the areas specified by the Constitution (the principle of presumption of legislative competences by the executive branch was applied here).
8. The relations between the president and the parliament is influenced by periodic cohabitation, that is situation where the president, parliament majority, and the appointed government represent different political views[17].

Yet another government system deserves to be examined here. It is not based on the division of power but refers to the concept of unity of the state authority. It is the committee government (also called parliament–committee system). It is in use in slightly modified forming the Swiss Confederation and its characteristic is as follows:

1. The basic system principle is the rule of primacy of the parliament over other state bodies.
2. The parliament holds not only legislative competences but also some executive ones (e.g. in managing the armed forces and ensuring the state security).
3. The head of the state is appointed by and responsible before the parliament.
4. The head of the state does not possess creative rights towards the executive branch. The composition of the government is decided in direct way by the parliament.
5. The government possesses features of executive committee of the parliament. This means that it does not perform its

17 *Ibidem*, p. 148.

own competences, but only carries out decisions taken by the parliament.

6. The government is politically responsible before the parliament and may be dismissed at any moment.
7. The executive branch has a limited influence on the parliament, because it only has the right for legislative initiative and the right to call for an emergency session of the parliament.
8. The executive branch is not authorized to dissolve the parliament[18].

In practice occurrence of presidential, chancellor, or assembly governments is quite rare. Thus, the there was choice to be made between parliament–cabinet and the half–presidential models. Alternatively, the mixed model based on the two above models was taken into consideration as well.

Foundation of a democratic state and its consolidation is connected with introduction of reform of all functioning mechanisms. The most burning issue was the decision about the position of the leading state bodies, their place in adopted, classical Montenescue division of power, appointment of rights suitable to this place and regulation of mutual relationships. Argument for adoption of presidential system equipped with broad prerogatives in the countries of Central and Eastern Europe was the need for strong executive branch in the face of social and economical transformations.

The beginning of the nineties was the time of transition from soviet or communistic form of government to the democratic system, where the institution of president could play a crucial role. He became an important factor in the formation process of independent state, a genuine solution for the rejection of totalitarian system of rule in favour of democratic solutions. It was not only a symbol of new system but an active participator in introduction of principles of democratic state of law and civic society. On the other hand, a strong presidency could be a threat leading to repetition of authoritarian rule. The

18 *Ibidem*, p. 149.

groups opposing the democracy stressed the potential threat to young democratic institutions from an individual equipped with excessive power and pointed out that there should be an increase in legitimization of new system via participation of many political powers.

The above arguments, plus the Central European tradition and standards developed in majority of Western democracies, contributed to the choice of the parliament–cabinet system. In the context of the threat mentioned above, it must be repeated that parliamentary system is more beneficial for democratic policy and is more open towards varied social interests enabling their articulation on the forum of the parliament and offering tools of debate and compromise.

As a result, power in this system is divided according to the representation that the numerous political parties have in parliament. Policy then is not a "sum–zero" game where one branch wins and all others are losers. In presidential system only one person wins and the rest gain nothing. Policy is a game of sum zero with stakes appropriately higher than in parliamentary system. Thus, the choice between the parliamentary system and some form of presidency was considered especially crucial within the framework of system transformation.

States such as Belarus, Ukraine, or Russia resolved to accept strong executive branch due to the lack of democratic tradition and the influence of the Soviet rule. However, the example of Ukraine shows that in spite of such system tendencies (expressed during the transition times and in the initial version of the Constitution from 1996), it was possible, with the passage of time, to evolve towards the parliamentary system. Actually, the numerous shifts in political system of Ukraine, from the president–parliament system towards the parliament–cabinet system, inspires to discussion on the two government systems. On the other hand, the transformation in post–communist republics of Central Asia confirms existence of threats that emerge on the border of new democracy and the head of the state equipped with extensive prerogatives.

3. Legal and institutional solutions

Analysis of detailed institutional decisions (system micro–scale) shows that legislators in Central and Eastern Europe applied a wide range of possible solutions. When working on the construction of the parliament, there were used unicameral and bicameral models. The latter is actually used in characterized by federalism Russia, but also other unitarian states such as: Belarus, Croatia (until 2001), Czech Republic, Poland, Romania, Slovenia. Unicameral model is used in big states like Ukraine, but also smaller ones like Lithuania, Latvia, Estonia, Albania, Slovakia, Hungary, or Bulgaria. In all states the "lower" chambers are formed via general and direct elections, whereas the "higher" ones are created in various ways. In Czech Republic, Poland, Romania, or Slovenia they come from direct elections, but in Russia and Slovenia from indirect elections. In Belarus, on the other hand, some members of the Council of Republics are delegated by the local councils and some by the president. Unicameral parliaments and the "lower" chambers within bicameralism are elected for a four–year term. Some of the "higher" chambers (Belarus, Croatia, Poland, Romania) has got terms equal to those of the "lower" chambers. In Slovenia, the term of the Council of the State is a year longer and equals 5 years. In Czech Republic, Senate is elected for a 6-year term (additionally every 2 years 1/3 of the composition changes). It is worth pointing out here that there is a view that the existence of the second chamber has got a beneficial influence on the improvement of the quality of the legislation process[19].

The real position of the parliament in the constitutional system of state bodies is determined by factors such as: legislative exclusiveness or its lack, qualifications (creative and control ones) towards the executive branch, party composition (level of fragmentation), the practice of creating law at the constitutional or statutory level with the omission of the parliament (referendum called for by the head of state), qualifications of the members of parliament. Strong parliaments are

19 J. Szymanek, *Struktura parlamentu w państwach Europy Środkowo–Wschodniej*, [in:] T. Mołdowa (ed.) *Zagadnienia konstytucjonalizmu krajów Europy Środkowo–Wschodniej*, Warszawa 2003, p. 21 and next.

those that have the legislative monopoly, independently appoint and control (dissolve) cabinets and are not excessively fragmented.

The executive branch or the executive authority has got a two–body representation in all discussed states and it belongs to the president and the government with the prime minister at its lead. Formally, none of the states dared to adopt purely presidential model. This institution was a novelty to post–communistic countries, both for the structure of the authority, politicians, and common citizens. For this reason this office has been constantly changing and undergoing major improvement attempts.

Characteristic feature of post–communistic democracies is that they give presidents the right to express protest at acts (veto). Such right is not granted only to the presidents of Slovenia and Croatia. Such protest can only be overruled by the parliament with the majority of votes (Czech Republic, Hungary, Slovenia) or, like in Poland, with qualified majority (Russia, Belarus). The necessity to possess qualified majority to rescind the president's veto undoubtedly reinforces the head of the state's political position. It is even more reinforced with the possibility to overtake the legislative power, of which a good example is the president of Belarus. Presidents are not politically but constitutionally responsible, including responsibility realized by the parliament within the impeachment procedures (Estonia, Russia, Lithuania). The parliament of Slovakia has even stronger position towards the president, where he can lose the power (in the event of formal reasons), if he is faced with 3/5 opposition.

The mode of president election, just like in case of other high state bodies, is one of the most important factors defining their position in the power division system. The way of selecting the head of the state has special significance for it influences not only system and political position of the office itself, but is one of the criteria qualifying the model of the government[20].

20 S. Gebethner, *System rządów parlamentarno–gabinetowych, system rządów prezydenckich oraz rozwiązania pośrednie*, [in:] M. Domagała (ed.), *Konstytucyjne Systemy Rządów*, Warszawa 1997, p. 80 and next. Evident influence of general election on the political position of the president does not ultimately determine it, which can be seen on the example of varied political status of presidents in Austria and Ireland, who are elected in general elections, and

Acceptance of one of possible ways of selecting president is usually connected with the choice of one concrete vision of presidency, and consequently government model[21].

The problem becomes even more burning in case of a new state or a state undergoing system transformation, without own proper experiences, and the baggage of negative past examples.

At present, there are three ways of electing a president:

– General presidential elections which can be divided into direct and indirect elections[22],
– Election of the president by the parliament (chambers of parliament),
– Election of the president by especially for this purpose created separate body.

The president is directly elected in Poland, Bulgaria, Croatia, Romania, Slovenia, Slovakia (parliamentary systems), Russia, Ukraine, Lithuania, Belarus, Albania (half–presidential systems). In Czech republic, Estonia, Latvia, and Hungary the president is elected by the parliaments. This way of election was influenced by numerous factors.

The state needed strong executive branch, both in the moment of birth, as in the long–term process of development and evolution of government bodies[23]. Even in states which adopted parliamentary model this election mode seemed tempting. Direct legitimization of citizens places the president on the same level as the parliament, at

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on the other hand, presidents in Germany and Czech Republic, who are elected by the representative bodies.

21 J. Ciapała, *Prezydent w systemie ustrojowym Polski (1989–1997)*, Warszawa 1999, p. 55.

22 As J. Ciapała, notices, the difference between direct and indirect general elections in contemporary world gets blurred. Indirect election, in case of electors who are genuinely bound by the votes, is a sheer formality. The winner of presidential elections is known after the election of electors (though there are exceptions, for example the election of Bush, jr, in Florida in 2000). J. Ciapała *System wyborów prezydenckich w Stanach Zjednoczonych – prawo i praktyka*, „Roczniki Prawnicze" no. 4, Szczecin 1993, p. 29 and next.

23 Such solution was adopted in numerous states of the former Eastern Bloc: Poland, Romania, Bulgaria, Russia, Croatia, Slovenia, Slovakia, Lithuania, and Belarus. The election of the President by the parliament was adopted in Czech Republic, Estonia, Hungary, and Latvia.

least as far as appointment is concerned[24]. President taking office does it by the will of the citizens as it obtains the mandate of the nation. Government bodies must then treat and respect him accordingly – his position does not diminish towards the parliament which is deemed the nation's representative.

Another factor was the idea of elections in itself. General elections, organized in a free and fully democratic way, seemed incredibly attractive in comparison with the way the communistic authorities were chosen – with hardly any legitimization of the society.

Another advantage of general elections is the promotion of charismatic individuals with leading skills and not groups, which would lead to "trade" of positions and accidental decisions on the forum of the parliament or the National Assembly consisting of the parliament chambers.

What is more, president chosen in general elections is a kind of institutional factor that confirms national identity, symbolizes the state and guarantees its unity[25].

Finally, in cases of Ukraine, Russia, Lithuania, Belarus, or Albania, general elections are a logical consequence of adopted system solutions, i.e. competences of the head of state, which are closer to presidential and half–presidential systems, which are characterized by the general presidential elections.

Presidential term in discussed states is similar and equals 5 years (unless it gets shortened as a result of, for example, impeachment in Lithuania in 2004). Only in Russia, according to the initial version of the Constitution, the president is elected for four years. Amendment to the Constitution from 2008 extended the term to 5 years and the change will become valid after next presidential elections scheduled for 2012. Almost in all states (except Estonia and Romania) presidents have the right to be re–elected once so they can hold the office for two terms. In case of Russia, the president can hold the office two terms

24 Which is not a rule in Western democracies, look at the example of Austria, Ireland, or Iceland.

25 J. Ciapała, *Prezydent…, op. cit.*, p. 65.

in a row, which means that he can be elected for two terms after a one term "grace period".

Parliamentary democracy does not require president to take active part in issues on internal or foreign affairs, but rather perform representative function. However, in systems that adopted specific kind of presidency, head of states take part in governing and political games, though it is the prime minister who is in charge of the government.

Attempts to increase competences of the head of government did not always lead to chancellor solutions. Power of the head of government has been reinforced in Hungary, Czech Republic and Poland, though the Prime Minister is still only the first of ministers (it is possible to dismiss the minister by the parliament). The institution of constructive vote of no confidence was devised to ensure the stability of the executive branch and it allows for election of a new prime minister. This solution can be found in the Constitution of Poland and Hungary. This way the creators of the system do not permit "common" vote of no confidence, i.e. removal of government by politically inconsistent "negative" majority, unable to amicably support another government. The adopted concept of constructive vote of dissent, modelled on the fundamental statute of Germany from 1949, is meant to prevent government crisis and ensure functional continuity of this body.

Introduction of constructive vote of no confidence does not necessarily mean adoption of general solutions typical for chancellor's system of government; it is rather an attempt to rationalize the already existing parliamentary system.

4. Election systems

The right to elect the ruling group by the society is today considered as the main element of theory and practice of democratic rule, "the heart of democratic process", regardless of the proclaimed concept of democracy. Elections, being written into the nature of contemporary democratic state, are the most important consequence of constitutional idea of sovereignty of people (nation) and the rule of political

representation. Free elections were one of the most important steps of the post–communistic states on the way to complete democratization.

What is more, one of the key indicators of political democracy is the principle of alteration of rule. It should take place as a result of elections in which the society confirms its legitimization for the current ruling majority or refuses it, selecting a new majority. Thus, election campaign verifies the activity of the governing group that runs the state and in case of negative assessment provides opportunity to remove them from their position. The campaign also creates conditions for individual assessment of the deputies in their realization of their representative role; negative outcome means lack of mandate in the next term.

Main principles of the election law of the post–communistic states are included in the fundamental statutes. They include the principle of universality, equality, **secret**, directness, and principles on ways of counting the votes for mandates, i.e. the principle of proportionality and majority.

The **principle of elections' universality** specifies subjects that possess election rights, assuming that all adult citizens possess active election rights and any exclusions must be based on justified criteria that do not infringe values lying at the core of citizen rights in a democratic government system. Such natural limitations, which are fully justified, include electoral qualification of age and exclusion of persons suffering from mental illness. Other acceptable limitations include the ones relating to members of some communities, which means qualification of citizenship and domicile, exclusion of "unworthy" persons (condemned to prison, found guilty of some crimes, or generally criminal convicts). Discriminations which are unacceptable are the ones that result from belonging to some social groups, qualifications of wealth, education, religion, race, or sex.

Conditions to stand for elections relate to solutions adopted in case of active electoral rights, allowing some additional limitations that narrow down number of persons possessing passive electoral rights by, for example, rising the limit.

The **principle of equality of elections**, which guarantees relatively identical influence of all voters on the final outcome of elections, is analyzed in two aspects: the formal and the material one. The former equality means that each voter has the same number of votes, the latter means that the "strength" of the vote of each voter is the same, i.e. for a specific number of people or eligible voters in a given constituency, there should be the same number of mandates as in the same number of people in other constituency. This actually means that to ensure equal strength of votes, all one–mandate constituencies must count an approximate number of residents who are eligible voters.

In electoral system based on multiple mandate constituencies, the number of mandates for those constituencies must depend on the number of residents (voters). This means that prior to setting one–mandate constituencies or setting the number of mandates in specific multi–mandate constituencies, it is necessary to calculate so called electoral quota, which specifies how man residents or voters there should be for one mandate.

The **principle of electoral directness** means that voters directly decide about composition of representative body, voting in person and giving their votes to preferred candidates, and not only expressing preferences connected with specific policy or political program.

Multistage electoral formula is considered as a departure from the principle of directness and as a factor that diminishes the influence of voters on the composition of representative assemblies. The reason for this is that such solution is based on system where limited number of members acts as a go–between in expression of voters' will. The role of voters in granting mandates to specific persons gets also degraded in case of voting system which excludes expression of personal preference, that is where votes are given to whole lists of candidates who later are granted mandates in alphabetical order.

One principle element of directness of elections is personal vote. This requirement, though, is not strictly observed in many states – many exceptions are made in order to increase the voter turnout and consequently reinforce the principle of universality. One of such exceptions is proxy vote where a proxy is authorized to give the vote in

somebody else's name, another is mail vote (voting via correspondence or electronic mail). Regulations of elections statute which allow voting outside the polling station in case of, for example, bedridden persons, can be treated in similar way.

The **principle of secret ballot** has two basic functions. The first one guarantees unreserved expression of individual electoral preferences in accordance with one's conscience. The second one effectively prevents vote trading, corruption, intimidation of voters, and other illegal influences. Both functions are closely knit together and aim to give democratic dimension to the elections. The only permitted exception are cases where disabled persons rely on other persons' help in the electoral act.

It is the voters responsibility, and not right, to observe the principle of confidence. However, literature provides a point of view that the rule of confidence could be up to an individual, because it imposes certain responsibilities on the bodies that organize and run elections, giving the voter freedom to choose if he wants to apply this principle. Such interpretation is based on the text of electoral acts, which do not provide any sanctions for failure to use facilities at the polling station that ensure confidence and failure to throw the ballot card face down. It would be unacceptable to consider such votes as invalid – it would only be possible to put forward electoral protest for ostentatious voting which violates regulations of the election statute which forbids electoral campaigning at a polling station. Application of the rule of confidence is justified in those post–communistic states where electoral statutes enabled voting without crossing–outs, automatically giving votes to people on the first positions of the list[26].

The catalogue of fundamental principles of electoral law includes also the **principle of mandate apportionment**, which decides about acceptance of a specific electoral system and is understood as a way of determining the results of election. In contemporary democracies there are varied way of implementing electoral systems. Most frequently is the system of division into three groups: ph, proportional, and mixed.

26 For example elections to the parliament of communistic Republic of Poland.

Acceptance of any of the three depends on the local conditions and needs; it often results from existing political layout and tradition. Specific kinds of electoral systems and their variants lead to different distribution of mandates and consequently bring about various political and social consequences. Thus, the choice of electoral system is dictated by the intended effects.

Majority systems are applied in two fundamental forms: simple and absolute majority. The former requires majority of votes in order to obtain mandate, regardless of what part of all votes they are. The latter requires over 50% of all valid votes. If one of the candidates does not have such support, there is usually another round, where there are: a) only two candidates who got most votes in the first round; b) all candidates that applied for mandate in the first round, but the choice is made according to the principle of relative majority (in the second round some states exclude candidates who did not achieve a certain minimum of votes in the first round).

Distribution of mandates that takes place on the basis of majority systems is usually unfair, because it does not reflect the real arrangement of political powers and does not provide reflection of public opinion. These systems (especially of relative majority) usually favour the strongest groups and lead to their over–representation in the representative body, in this way limiting or completely eliminating participation of others in the division of mandates. What is more, in assessment of majority systems, there is quite a big number of ineffective votes. On the other hand, their most important advantage is creation of stable and lasting majority and conditions for effective performance of a given body.

The idea of proportional systems is the division of mandates between groups rivalling in the elections proportionally to the support they achieved, that is the number of votes they obtained. Such situation gives the groups the kind of representation in parliament which reflects their influence in the society. The principle of proportionality can be used only in multi–mandate constituencies, in which there are various political forces that rival between one another and enter the elections with their electoral programs and separate lists of candidates. The

effect of proportional division of mandates is often limited because of creation of small, in terms of the number of filled mandates, constituencies, and by introduction of electoral thresholds which aim to prevent fragmentation of the parliament composition. A political party has to have a certain percentage of support to be qualified to participate in distribution of mandates, which effectively eliminates the weakest political forces.

States of Central and Eastern Europe used various electoral systems. In the first elections, no matter if they were free or so called "contact" ones (1989–1990), three group of electoral systems were used: proportional (Czechoslovakia, Romania, DDR), and mixed (Bulgaria, Hungary). Some states of this part of Europe tended to experiment with majority systems at the initial stage of system transformation. Such tendencies were reinforced with typical for that stage political division into two groups: post–communistic and connected with the opposition. Majority system with two rounds was also provided by the electoral statute from 7 April 1989 in Poland. Victory in the first round required support of absolute majority of voters, and the second round was successful for the candidate who obtained relative majority. Similar solution was considered in Hungary, Russia, Ukraine, and Belarus. However, in search of system combining stability and high representation, states resorted to mixed solutions. Such system was used in elections of 1990 in Hungary and Bulgaria. However, proportional systems, quite beneficial for middle and small parties, led to fragmentation of the political scene. Unfortunately, recurring suggestion to introduce majority elections in one–mandate constituencies met with protests of the parties already sitting in parliament. The truth was that majority elections were not favourable for political parties in general, but especially unfavourable for young democratic parties, poorly rooted in society.

As a result, majority system, where in one–mandate constituency it is enough to achieve relative majority of votes in that constituency to get a mandate, can only be found in elections to Croatian Representative Chamber and concerns only about 20 percent of mandates. Absolute majority system with two rounds was more popular and its good example were the elections from 1994 in Ukraine. It could be seen that the shortcoming of such solution was inability to fill all available

mandates. Because of high electoral limits, only 387 mandates were filled and later, as a result of repeated elections, the number rose to only 403. In spite of more by–elections, it was not possible to fill all mandates till the end of the term[27].

Majority segment can be found within the framework of mixed system in Russia, Ukraine, Lithuania, and Albania. However, the discussed states most often applied variations of the proportional system.

Relatively frequent changes of the electoral statutes were characteristic for the states of Central and Eastern Europe. In Poland, for example, new electoral solutions were enacted in 1991, 1993, and 2001. One of the reasons was instrumental approach to electoral statutes. Governing groups frequently attempted to modify them in order to gain maximum political advantage[28]. Attempts were justified in various ways, usually in a manner that appealed to the general interest and democratic values. One could risk a statement that the process of searching for the final version of statute is not finished and it is difficult to predict which system legislators will find most suitable. The consequence of using electoral systems is the emergence of specific system of political power in parliament and eventually various possibilities of appointing one–party or coalition, majority or minority government cabinets. Against the intentions of the creators of electoral systems, the discussed states usually had coalition government cabinets with all stabilization problems and other negative consequences that they carried.

Electoral systems of some post–communist states featured national lists as an additional means of mandate division. However, while in the western democratic states such solution (called compensation lists) aimed to improve the level of proportionality of electoral outcome, in the discussed states they aimed to guarantee mandates for party leaders, increasing assets of the biggest political party. Criticism of national lists usually focused on these two aspects. As a result, the national

27 R. Gortat *Ukraińskie wybory. Elekcja parlamentarna '98 a partie polityczne*, Warszawa 1998, p. 30 and next.

28 W. Sokół, *Transformacja*..., *op. cit.*, p. 37.

lists, which undoubtedly played a positive role in institutionalization of political parties, were eliminated from electoral statues (e.g. in Czech Republic, Poland).

Another object of criticism is the complexity of some electoral system (e.g. Hungarian, Estonian). An average voter finds it hard to comprehend how the votes are transformed into mandates and consequently cannot correctly perform their role in the electoral process. This results in a big number of invalid votes. On the other hand, the most complicated, Hungarian electoral system is considered most effective system in other areas, such as concentration of party system, stabilization of political system, etc. Therefore, effectiveness is not always linked with simplicity.

Part 2

LATVIA

1. Introduction

Latvia (the Republic of Latvia) is a state situated on the Eastern coast of the Baltic Sea. It is divided into four regions: Livland (Vidzeme), located in the middle with the capital Riga, Kurland (Kurzeme), situated by the Baltic Sea, Semigal (Zemgele), which borders with Estonia, and Latgale, which is part of former Inflants. Population is in a characteristic way ethnically varied. Among 12,5 million people, Latvians make 51,8% them. National minorities include: Russians (33,8%), Byelorussians, Ukrainians (3,5%), Polish (2,3%), and Lithuanians (1,3%). The territory of Latvia today, defined until the half of XVI c. as Inflants, became the domicile of Order of Sword Knights, which shortly after its creation joined the Order of Teutonic Knights and conquered the territory of today's Latvia from one of the Baltic tribes called Latvians. The fall of the Order in 1561 started period of Inflant's dependence on neighbouring states and as a result, the Infants ended up in Russian hands. It was only due to the World War One events that led to Latvia's independence in 1918. However, as a result of Ribbentrop–Molotov pact from 1940, Baltic countries were occupied by the Soviet Army and Latvia became Russian republic for about half a century.

Struggle for independence could become effective because of system transformation of 80s and 90s of the XX century. Latvia once again became an independent state in 1991. The country became a member of the European Union on 1 May 2004 and joined NATO on 29 March 2004. It is also a member of UN, OSCE, Council of Europe, Baltic Council, and Security Council of the Baltic Sea.

2. History of Latvian constitutional law

After gaining independence in 1918 and recovery of territory in 1920, which until then was occupied by the Red Army, there came the time to start organization of the government system. In the same year, the legislative assembly enacted temporary Constitution including two acts: declaration of independence with fundamental system principles and temporary statute with citizen rights and freedoms[1].

Full Constitution, which was the result of compromise between the political parties sitting in parliament, was enacted on 15 February 1922. It introduced parliamentary system which was characteristic for solutions adopted in remaining Baltic republics. Decision to not include regulations on civic freedoms in the Constitution was a source of disagreements during the debate of the Constituent Assembly[2].

Just like in other Baltic states, the parliamentary system was characterized by immense fragmentation of the parliament and government instability. That is why, at the beginning of the 1930s, there appeared suggestions to strengthen the executive branch, which was supposed to help in overcoming raging economic crisis. However, when the Constitution amendment project was proposed in 1934, it turned out that during work in the parliament there were introduced changes that weakened political position of the head of state. This was when the then prime minister, K. Ulmanis seized power in a coup d'état and introduced presidential authoritarian rule.

During the Latvian SRR two communistic Constitutions were enacted – first in 1940 and the second in 1978. In 1989 the Latvian SRR announced Latvian as the official state language and defined its economic independence, while still within the USSR. In elections to the Highest Council from March 1990, most mandates were passed to independence–oriented parties. On 4 May 1990 the declaration on restoration of independence of the Republic of Latvia was passed and it was followed by restoration of Constitution from 1922. The transitory period began, which lasted until the parliamentary elections.

1 *Konstytucja Łotwy*, introduction P. Kierończyk, Warszawa 2001, p. 10.
2 *Ibidem*, p. 11.

Restoration of the pre–war Constitution had a symbolic and formal–legal dimension, for its execution was held back till the enactment of new regulation, with the exception of articles on the constitution–legal base of the Republic of Latvia[3].

On the power of the fundamental act, their modification required calling a general election, on March 1991 a referendum was organized, where over 73% of voters were for independent and democratic character of the state. On 21 August 1991 the Highest Council of Latvia proclaimed declaration on total and immediate independence. The first elections to the Parliament were organized as late as on 5 and 6 June 1993.

3. Latvian political system

At present, the highest valid act is the Constitution of the Republic of Latvia from 1922 with over a dozen amendments, of which first were added by the parliament on 21 March 1993 and 27 January 1994. Amendments aimed to improve regulations in accordance with current civilisation solutions and current understanding of various issues[4]. In 1996 the Constitutional Court was appointed and three–instance character of courts was introduced; additionally, the age qualification of active electoral right was lowered to 18 years in 1994 and the terms of president and the parliament were extended to 4 years in 1997. On 10 December 1991, in order to complete various gaps, the constitutional Law Act and responsibilities of a human being and a citizen were enacted, and later the Constitution was extended with chapter VIII called Fundamental Human Rights (1998). Last amendments concerned the status of a member of parliament (2002), membership in the European union (2003), competences of president and human rights (2004), definition of marriage as an relationship of a woman and a man (2006), and dissolution of parliament (2009).

3 J. Zieliński, *Parlament Łotwy*, Warszawa 1997, p. 8.
4 J. Zieliński, *Systemy konstytucyjne Łotwy, Estonii i Litwy*, Warszawa 2000, p. 17.

In spite of numerous amendments, the Latvian fundamental statute possesses features of Constitutions enacted after the First World War[5]. They are: brevity of regulations, conservative layout of contents, different stress of regulated issues. In its original shape, the Constitution did not mention human rights, but even the modified text lacks regulations concerning local authority and local administration. It is worth stressing that regulations of the Latvian Constitution are often imprecise and allow misinterpretations, which is a serious shortcoming in case of a fundamental act like this[6].

The Constitution presently comprises 116 acts grouped in 8 chapters. It is opened by a one sentence preamble in which the overlord proclaims appointment of Constitution unto himself via representatives gathered in the Legislative Assembly.

Due to the time of enactment, the Latvian Constitution very generally defines the system foundations and does not include many characteristic values and ideas that are typical for post–communistic fundamental acts. In the short first chapter, including only four articles, it tells about the republican principle and democratic form of the state, nation's sovereignty, the nation's command performed by its representatives and defines the national symbols – colours and the Latvian language.

Bodies in the Latvian government system functions on the base of the principle of apportionment and cooperation. The Constitution precisely describes situations which oblige or prohibit mutual intervention. One–chamber Parliament (Saeima) has particularly strong position which was characteristic for the pre–war Baltic Constitutions. The president is the head of the state and enjoys limited competences in comparison with other authority bodies. The executive power belongs to the Cabinet of Ministers with quite strong position of prime minister who is in charge.

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5 T. Bichta, K. Hetman, *System polityczny Łotwy,* [w:] W. Sokół, M. Żmigrodzki, *Systemy polityczne państw Europy Środkowej i Wschodniej*, Lublin 2005, p. 356.

6 *Konstytucja Łotwy*, *op. cit.*, p. 25.

Chapter V is devoted to judicial branch and it mentions the Supreme Court, District Courts, and in times of war or emergency states also Court Martial.

The judges are independent and subordinate to law only. Their election is approved by the Parliament. The Constitution treats about their irrevocability, though the fundamental statute provides some exceptions. In case of adjudications of penal administrative board or the court's verdict in a criminal case, the judge could be dismissed against his will by the Parliament.

4. Human and civil rights and liberties

Catalogue of rights and freedoms contained in chapter VIII of the Constitution and added there in 1998 is of open character and includes only the most important ones. The state guarantees and secures the rights contained in the Constitution, in common acts, and in international agreements of which Latvia is a party. The Constitution recognizes about the principle of equality, prohibition of discrimination, the right to life in freedom, personal inviolability, rights to residence and correspondence, freedom to migrate and choose one's residence, ability to return to homeland. Besides all these, the fundamental statute introduces freedom to form political and social organizations, freedom of creative thought and denomination with simultaneous separation of the church and the state.

Limitations of rights and freedoms are possible only in case of protection of rights of other people, the democratic system, social security, wealth and welfare of the state, or in situations provided by the law (Art. 116 of the Constitution).

Non–constitutional body that monitors observance of the rights and freedoms of people and citizens is the Latvian National Bureau on Human Rights.

5. Parliament

The Parliament (saeima) comprises of 100 representatives of the nation, chosen for 4-year term in general, equal, direct, and proportional, elections by means of secret ballot. The state was divided into five constituencies: 4 historical lands and the city of Riga.

Citizens of 18 or more years of age have active voting right and those who are over 21 have passive one. A person who is in custody or who has been found incapacitated by the court can be deprived of active voting right. In case of passive voting right, persons that cannot be appointed to the parliament are the ones who: have been found legally incapacitated, serve a sentence, and, among other reasons, those who were full–time employees of the national security service in USSR, Latvian SSR, in services of alien states, or belong to the communistic party after 1991[7]. Additionally, there are also excluded persons who do not know Latvian language at the third level[8]. The Statute introduces the principle of separation of being a candidate and holding a state office. Persons holding offices like: president, state controller, member of National Control Council, audit committee member, judge, prosecutor, or a military man must resign after registration of electoral lists. However, members of parliament can be members of the government.

The elections are run by the Central Election Committee which comprises eight voters. One of them is selected from the judges of the Supreme Court at the plenary session, the rest are appointed by the parliament, one of them, however, is appointed by the motion of the board of Union of Free Latvians of the World and one by the motion of the Society of Latvians in Russia.

Political parties and coalition blocks have the right to put forward election lists. The lists are registered in the Central Election Committee. One can be a candidate only from one list. Since the depute represents the whole nation, it is not necessary for the candidate to live in the constituency from which the candidate stands – he can be on the list in all constituencies.

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7 J. Zieliński, *Systemy*…, p. 26.
8 J. Zieliński, *Parlament*…, p. 15.

The mandates are divided by the Sainte–Lague method. The candidate who won in a few constituencies, obtains mandate from the one where he received the biggest number of votes.

In case of earlier expiration of mandate, the place is taken by the next candidate from the given list.

Members of parliament use a free mandate and are protected by immunity. Material immunity, provided by art. 28 of the Constitution has got especially wide scope. According to it, "member of Parliament cannot hold judicial, administrative or disciplinary responsibility for voting or views expressed during performing his duty". The Constitution does not limit the scope of immunity to views expressed in parliament but also outside of it. However, immunity can be limited if the information spreads slander or defames somebody, giving information about private life or family life. Formal immunity is also extended. A member of parliament cannot become subject of criminal proceeding and administrative punishment. If there is consent about bringing proceedings against a member of parliament, according to the Parliament regulations in art. 17 Section 2, the member cannot take part in sitting of Parliament, commissions, or other parliamentary bodies until the proceedings are lawfully finished with a verdict or dismissal.

The member of Parliament also enjoys the principle of parliamentary inviolability – he cannot be arrested, searched, or have his personal freedom limited without the Saeima's consent. The only exception is when he is caught red–handed; then the agreement to arrest him is issued by the Saeima, and between sessions the decision about his arrest is taken solely by the presidium of the Saeima. Just like in case of formal immunity, arrested member loses his right to participate in the sitting of Parliament.

Presidium with the chairperson, permanent and special committees (including Investigation Committee), and Fraction Council composed of fractions and parliamentary blocks representatives with members of the presidium belong to the internal organs of Saeima.

Constitution regulates activity of parliament in two chapters. The first one is called "Saeima" and defines election principles, mode of

calling and holding sessions and sittings, rules of appointing bodies of parliament and structural units, immunities and privileges of deputes. The second one, called "Legislature", regulates the law of legislative initiative and the mode of enacting articles. Other issues, such as principles of legal validity of mandates, modes of cooptation of new deputies, ways of their election to the bodies of parliament, bodies' functions, detailed modes of calling and holding sessions and sittings, mode of putting forward legislative initiatives, enactment of acts, and voting is determined by the regulations of the chamber[9].

Inaugural sitting of parliament ends powers of the former Saeima. According to Art. 17 of the Constitution, the first sitting of newly elected Saeima is opened by the chairperson of the former Saeima or by another member of Presidium appointed by the chairperson. The sittings of Saeima are valid if at least half of its members are present. The sittings are open, however, by motion of ten deputies, with majority of votes and attendance of at least 2/3 of deputies, Saeima may decide to hold a secret sitting.

The Latvian parliaments its in common and extraordinary sessions. During the year Saeima holds three ordinary sessions, i.e. autumn, winter and spring ones. The presidium calls sessions and determines the agenda. The suggested agenda may be changed by the president, representatives of the Cabinet of Ministers, parliamentary commissions, or a group of at least 5 deputies. On the motion of the Presidium of Saeima, the president, or at least 1/3 of deputies, there could be called an extraordinary session.

The sitting of Saeima is opened by the chairperson. He can find a sitting not held if within half an hour since its beginning, there are not as many deputies as it is required.

The acts are passed with absolute majority of members' votes, except cases defined by the Constitution (art. 24). Exceptional cases have been defined in six situations: secret sitting (requires attendance of 2/3), election of president (majority of at least 51 of votes), dismissal of president (majority of 2/3 of Saeima's composition), repeat voting

9 J. Zieliński, *Parlament*…, p. 9 and 10.

through on the motion of at least 1/3 of deputies, an act suspended by the president (3/4 of deputies), blockage of the ability of the president to request re–examination of an act by Saeima on the basis of its urgency (2/3 of votes), and amendment of Constitution, which requires 2/3 attendance Saeima members 2/3 majority of votes.

According to the art. 64 of the Constitution, legislative power is held by the Saeima and the nation in the scope provided by the Latvian Constitution. Constitutional bodies are free to act in legislative areas, with the exception of amendments of Constitution concerning the system and territorial shape of the Republic.

The right to legislative initiative belongs to the president, Cabinet of Ministers, parliamentary commissions, at least 5 deputies, and minimum 1/10 of voters.

Bills are put forward by the applicant to the Presidium of Saeima. The Presidium suggests which commission should take the leading role, and then it passes it to the deputies, the president and the prime minister. The Presidium of Saeima passes the bill with its opinion to Saeima. At the same time Saeima appoints a commission responsible for the bill. In case when the bill put forward by voters is rejected by Saeima, as it may occur according to the act on nationwide voting and legislative initiative, then the bills put through nationwide voting. If the commission issues positive opinion on it, it is directed back to Saeima to first reading. The commission has the right to develop alternative bill and put it forward to the parliament[10].

Saeima enacts a bill in three readings with absolute majority of present deputies. The president may sign, express reservations about, or hold an act that is passed to promulgation.

Saeima decides about filling the posts in all bodies of government as they are provided by the Constitution and fully controls activity of the executive branch. Its competences also include the election of president, which it can dismiss at any moment, and vote of confidence for the government, which can also be withdrawn at any moment.

10 T. Bichta, K. Hetman, *op. cit.*, p. 376.

Moreover, it appoints judges and members of Constitutional Court and State Control.

6. The President

The president of Latvia performs mainly representative function, characteristic for parliamentary system of government. He is elected by Saeima for four–year term. The same person cannot be the head of state for longer than eight years in a row.

The president is elected in secret voting with majority of at least 51 votes of members of parliament, with the total of 100 of deputies. The office of president can be held by a citizen of Latvia, who is more than 40 years old and enjoys all rights. However, it cannot be had by a person with double citizenship.

Early vacancy of office post occurs in case of resignation from the office, death, or dismissal before the end of the term. In such case the responsibilities of the head of state are taken over by the chairperson of the parliament, until Saeima elects a new president. What is more, the chairperson fulfils responsibilities of the head of state, if he is abroad, or if there are other obstacles that make fulfilment of duties impossible.

The Constitution provides for situations of president's dismissal from his office before the end of the term. First, when the president applies for dissolution of Saeima. Such proposal is put through referendum and the president will be dismissed if over half of people taking part in referendum are for – in this case Saeima m is authorized to elect a new head of state (art. 50). Saeima can also dismiss the president from his office at any moment but it must be motioned by at least half of all members of parliament and the decision is taken with 2/3 votes of Saeima members.

Thus, one may find the content of art. 53 of the Constitution dubious, because it guarantees lack of political responsibility for president's actions. However, against the formal assurance, the Latvian president is de facto politically responsible before Saeima, which amounts for an exception in traditional cabinet–government understanding of the

position of the head of state. The problem is not solved by the further part of the mentioned article, which states that all president's directives are countersigned by the prime minister or appropriate minister, who take over full responsibility for those decisions. The only exception are proposals to dissolve Saeima (nation decides) and designation of the prime minister.

In spite of limited position, the president has certain rights towards the government and the parliament. The Cabinet of Ministers is composed by a person assigned by the president and then it must get the vote of confidence from the parliament. What is more, the president has the right to call and chair emergency sitting of the government and determine its order of the day.

In relation to the parliament, the president has the right to initiate the process leading to the dissolution of Saeima. He must take into account, though, that in case of unfavourable result, it may lead to his resignation. President has the right to request to call the sitting of Saeima which in such case must be called by the presidium. He can also motion to make the sitting secret, though it must be approved by 2/3 deputies. In case of war or violation of Latvia's borders, president has the right to take necessary measures of military defence and in such situation he must call Saeima, which decides whether to declare and start the war, as quickly as possible.

President has the right of legislative initiative and the right to request their re–examination by Saeima. If Saeima does not introduce any changes to the act, the president may refuse to sign it for the next time. The head of the state has also got the right to postpone signature of an act for two months.

The president represent the state in international relations, possesses the right of passive and active legation and has the traditional competences of the head of state, for example the prerogative of mercy.

7. The Government

The Cabinet of Ministers of the Republic of Latvia is composed of the prime minister and ministers (art. 55 of the Constitution). The government is composed of the prime minister and department ministers, whose appointment is obligatory. What is more, prime minister may also invite another person to work in the government as his deputy, may invite unlimited number of ministers carrying out commissioned tasks, and choose from department ministers other deputies[11]. The act provides for institution of state minister, who is fully independent, but works within a specific department and deals with precisely assigned issues. In practice the institution of state minister is used to secure interests of political groups that the government coalition is composed of[12].

Saeima may recall the prime minister which leads to resignation of the whole Cabinet, or give a vote of no confidence to a specific department minister. In such case, the prime minister may make decision to independently manage the ministry, pass the additional responsibilities to another department minister or request the parliament to appoint another person, indicated by the president, for this post.

The government is authorized to introduce new bills to Saeima and enables the ministers or responsible civil servants authorized by the appropriate minister to take part in sittings of Saeima and its commissions, and to introduce complements or corrections to bills.

A crucial right of the Cabinet of Ministers is the issuing of orders that have the strength of acts. This may take place between the sessions of Saeima (art. 81 of the Constitution) and the orders cannot alter the elections statute to Saeima, the act on the judicial system and court proceedings, the act on the budget and budget law, nor the acts passed by Saeima of the current term. Additionally, they cannot refer to amnesty, state taxes, customs and loans. Orders issued in this mode are invalid if they are not put forward to the deputies at least three days after the next session of Saeima opens.

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11 J. Zieliński, *Systemy…*, p. 60.
12 T. Bichta, K. Hetman, *op. cit.*, p. 383.

The Constitution, before the beginning of the financial year, imposes on the government the obligation of annual presentation of project on income and outcome budget of the state. Similarly, after the budget year ends, the government present a report on realization of the budget.

In case of outside enemy or internal riots that are a threat to the system, the Cabinet of Ministers is authorized to introduce emergency state and notify about it the Presidium of Saeima within 24 hours. The Presidium should present the act on introduction of emergency state before Saeima as soon as possible.

8. Constitutional Court

Article 85 of the Constitution provides for appointment of Constitutional Court, which basic activity is analysis of compliance of acts with the Constitution and other competences included in the act: analysis of compliance of international agreements with the Constitution, analysis of hierarchical compliance of normative acts and examination of constitutional complaints.

This body, created in 1996, comprises 7 judges appointed for 10-year term. Three candidates may be suggested by the members of parliament, two by the Cabinet of Ministers, two by the Supreme Court. The judges are appointed for the dime defined by the Saeima in a secret voting with at least 51 votes. Re–election is not allowed. The judges in a secret voting, select among themselves a chairperson and his deputies for three–year terms.

The judges of the Constitutional Court cannot be recalled before the end of term, except situations when their state of health prevents them from realization of duties, when they are found guilty in court, or committed acts not worthy the position of a judge[13].

13 J. Zieliński, *Systemy*…, p. 93.

Part 3

BULGARIA

1. Introduction

Bulgaria (the Republic of Bulgaria) is a state situated in the south–eastern Europe, in the Balkans. Bulgaria has been a member of UN since 1955, member of NATO since 2004, and a member of the European Union since 2007.

The territory of today's Bulgaria was settled by Slavic tribes in V century. The Bulgarian–Slovak state was formed in 681 under the leadership of khan Asparuch and had its capital in Plisce. In 866 Boris adopted Christianity of the eastern order. During the reign of Symeon I The Great (893–927) the state and the early medieval Bulgarian culture flourished. At the end of the X century though, the Bulgarian territory was the subject of Byzantine conquest. In XIII century the Bulgarian state flourished again. However, since the second half of the XIV c., troubled with Turkish raids, and defeated at Warna in 1444, the state became part of the Ottoman Empire for several hundreds of years.

2. History of Bulgarian constitutional law

The national consciousness and aspirations to independence began to reappear towards the end of XVIII c. Year 1850 witnessed creation of, independent from Greek patriarchy in Constantinople, Bulgarian orthodox church and in 1873, the April National Uprising took place. In 1878, by the force of the San Stefano treaty that put an end to the

Russian–Turkish war, Bulgaria was liberated[1]. According to the treaty, The Great Bulgaria under complete influence of Russia was to be created. That aroused uneasiness of Great Britain and Austria–Hungary, which feared that Russia's growing power in the Balkans and taking control of the Straits. Russia was discouraged to put this plan into practice at the Berlin Congress and the newly created Bulgarian Duchy was limited to the territories between The Dune River, Old Planin, and the Sofia region and put into vassal dependence from Turkey. In Southern Bulgaria autonomous Turkish province was created, so called East Rumelia.

National Assembly, gathered in Tyrnow on 15 April 1879, enacted the Constitution of reborn state[2]. It was the first fundamental statute in the history of Bulgaria[3]. The state became constitutional monarchy with the duke as the head of the state, and in 1908 officially proclaimed its independence and transformation into kingdom.

The between–wars period was the time of tumultuous political fight, with its climax in years between 1934–1935. After dissolution of the parliament and suspension of the Constitution, the government remained as the only center of power and endowed itself with legislative competences[4].

After the death of tsar Borys III, his son, Symeon II became the successor but as a result of communistic uprising in 1944 and forgery of parliament elections in 1945, the system transformed and the People's Republic of Bulgaria came into being. The state found itself within the influence of the Soviet Union.

Soon after the elections commenced drafting of the new Constitution, based on the Constitution of the USSR from 1936 and the Constitution of the Federal People's Republic of Yugoslavia from

1 J. Karp, M. Grzybowski, *System konstytucyjny Bułgarii*, Warszawa 2002, p. 5.

2 The Duke (later Tsar) held the executive power, but also possessed legislative rights. The Constitution provided numerous civic freedoms, such as freedom of speech, electoral rights of the citizens, or protection of private property. B. Szmulik, M. Żmigrodzki, System polityczny Bułgarii [in:] *Systemy polityczne państw Europy Środkowej i Wschodniej*, ed. W. Sokół, M. Żmigrodzki, Lublin 2005, p. 162.

3 In its content it referred to the solutions of Belgian Constitution from 1831. J. Karp, M. Grzybowski, *op. cit.*, p. 6.

4 *Ibidem*, p. 6.

1946. The Constitution of communist Bulgaria was enacted in 1947 and later replaced by the fundamental statute from 1971.

Political changes and pressure at the turn of the 80s and 90s led to peaceful resignation of many–years–standing communistic leader of Bulgaria, T. Ziwkow. During ecological conference of OSCE in Sofia between October and November 1989, the opposition organized numerous demonstrations and rallies, demanding democratization of public life, political plurality, and organization of free elections[5].

Some communistic activists were aware of inevitability of democratic changes, especially after events in Poland and other states of Central–Eastern Europe. Thus, they aimed to "liberalize" the system, hoping to keep the power and avoid responsibility for activity of the totalitarian state. In November 1989, T. Ziwkow resigned from the post of general secretary and member of political bureau, and next from the function of chairman of the Council of State. His successor was long–standing minister of foreign affairs, P. Mladenow.

Until the end of 1989, the capital of Bulgaria was the arena of mass demonstrations that were calling for dismantlement of communism and introduction of political pluralism. On 15 January 1990, the parliament decided to remove the clause on the leading role of the communistic party from the Constitution. A day later began the talks of the Bulgarian "round table", with the representatives of the government and the opposition.

The talks of the "round table" finished on 12 March 1990 with the signature of an agreement that provided for organization of free parliamentary elections. The opposition did not accept seats in the government and on the 3 April, the Bulgarian Communistic Party transformed into the Bulgarian Socialistic Party and distanced itself from the communistic ideology. On the same day, as a result of amendment of the Constitution, the State Council was dissolved and the new post of president was taken by P. Mladenow[6]. Another amendment, which took

5 G. Koksanowicz, Republika Bułgarii, [in:] *Ustroje państw współczesnych.* Volume 2, ed. E. Gdulewicz, Lublin 2005, p. 35.

6 In January 1990 r. T. Żiwkow, many–years–standing leader of the country, was brought before the court with charges of corruption and abuse of power, and finally sentenced in 1992 for 7 years of imprisonment.

place in April, fundamentally revised the Constitution making it suitable for the requirement of a democratic state. The elections to the parliament were won by the communists, which came as a surprise to the international public opinion. In October 1991, first parliamentary elections took place, and the winner was the Association of Democratic Powers with the new prime minister, F. Dymitrow, as its leader.

3. Bulgarian political system

Bulgaria was the first state in the Central–Eastern Europe that enacted and brought into force new, non–communistic Constitution, based on liberal–democratic principles. According to the Bulgarian constitutional tradition, the role of the Constituent Assembly took the Great National Assembly, which lasted from 10 July 1990 to 12 July 1991. It gave the present Constitution of Bulgaria enacted on 12 July 1991.

The Grand National Assembly surfaced for the first time in Tarnovo Constitution in 1879. Until its liquidation in 1947 it was called seven times. In 1990, after the fall of the communist system, it appeared again in the Bulgarian legislature. At present, its activity is regulated by chapter IX of the Constitution, devoted to the procedures that change it (which actually belongs to the competences of the parliament, except issues restricted for the Grand National Assembly) and enact a new Constitution. The Grand National Assembly can be called to solve system issues, such as introduction of a new Constitution, changes in the borderline of the state, government system changes, modification of chapter IX of the Constitution, or limitations of rights and freedoms in time of war or emergency states (art. 158). The Grand National Assembly may also take over all competences of The National Assembly. It consists of 400 deputies elected in general elections. The right of initiative in this matter belongs to the president and a group of 1/3 of parliament members. The decision to organize elections to the Grand Assembly is taken by the National Assembly with 2/3 of votes. The acts that are presented to the Constituent Assembly enter into force if 2/3 of deputies support them in three voting sessions taking place on different days.

With the exception of regulations reserved for the Great National Assembly, all others may be changed and amended by the parliament – The National Assembly. Amendment to a bill requires ¾ of votes of all members in three voting sessions taking place on different days. If, however, changes were not supported by ¾ but more than 2/3, then after two months (and not later than 5 months), the bill may be voted again and to be passed, it requires 2/3 of votes (art. 154 of the Constitution).

The Constitution of the Republic of Bulgaria from 12 July 1991 contains 169 Articles organized in ten chapters and prefaced with preamble, which states that the creators were inspired by the idea of respect of "human values of freedom, peace, humanity, equality, justice, and tolerance […]" and also the rights of an individual, protection of Bulgarian national and state unity. The Constitution aims to "[…] create a democratic, lawful, and social state […]". The system of the state was based on the principles of: nation's sovereignty, state of law, political plurality, division of power and republican form of the state. The power comes from the people and is executed in direct or indirect way by constitutional bodies selected in general elections.

The power is divided into legislative, executive, and judicial. The legislative power is held by the National Assembly – a one–chamber parliament comprising 240 deputies, the executive power by the Council of Ministers and the President (dualistic executive). The judicial branch is held by independent courts – The Supreme Court, The Court of Cassation, The Highest Administrative Court and Courts of Appeal and District Courts. Besides the traditional division, there is also Constitutional Court – body of quasi–judicial character.

4. Human and civil rights and liberties

Human and civil rights and freedoms have been traditionally placed in chapter II of the Constitution. It basically includes all fundamental rights and freedoms of a democratic state. The Constitution finds that the most fundamental are personal freedoms, where an individual enjoys a sphere without state's interference. Next, the Constitution lists a catalogue of political rights and socio–economic ones (including the

right to work). Common courts and Constitutional Court guarantee observance and realization of the above rights.

The institution of ombudsman has a relatively short history in Bulgaria and dates back to the Act from 1 January 2004. The first ombudsman, however, was appointed in April 2005. Ombudsman is an independent state body functioning on the basis of regulations of Constitution, acts and international agreements, of which Bulgaria is a party. It is selected by the National Assembly with absolute majority of votes for a 5-year term. Re–election is possible only once. The deputy of ombudsman is subject to similar regulations.

5. Parliament

One–chamber parliament, the National Assembly, which according to the Art. 62 of the Constitution exercises legislative power and parliamentary control, consists of 240 representatives chosen in general elections which are equal, direct, and proportional, in a secret voting (five–adjective elections) with the use of d'Hondt method and 4% electoral threshold. Active election right belongs to citizens who finished 18 year of age. Candidate for a depute can be every person who finished 21 year of age and has only Bulgarian citizenship. Persons serving sentence of imprisonment are deprived of election rights.

Elections are organized in 31 multi–mandate constituencies. The candidates are proposed by the political parties, party coalitions and civic election committees, which propose non–organized candidates[7]. A necessary requirement for registering election list is collection of sufficient amount of signatures, depending on the size of the constituency[8]. An interesting thing to note is that candidates and their proxies cannot be kept in custody or arrested because they are protected by immunity during the election campaign.

7 In this case, to obtain a mandate one must exceed the electoral quotient set by the Central Electoral Commission for the given constituency.

8 E.g, in four–mandate constituencies it is required to collect 1200 signatures, and in the biggest constituency, thirteen–mandate, 2000 signatures.

According to the Constitution, the term of the National Assembly lasts four years. It begins on the day of the first sitting of the newly elected parliament and lasts till the day preceding the Assembly of the next term. The term may be prolonged in case of war, martial law, or other emergency state, until reasons for these states disappear and new elections are organized within two months after the previous ones lapse.

The creators of the system did not take self–dissolution of the parliament into account. It is possible to shorten the term by the president in case the parliament is unable to appoint the government in the procedure provided by art. 99 of the Constitution. The president cannot dissolve the parliament during the last three months of his office.

People's representatives have a free mandate. They are protected by the material and formal immunity, which can be enacted only by the agreement of the National Assembly. The principle of incompatibilitas means that parliamentary mandate does not go together with government administration career, posts in bodies of local authorities, the office of a judge, and in case of appointment for a minister, the mandate is suspended. Moreover, they cannot be in boards of state shareholding companies or foreign subjects.

The mandate of the deputy expires earlier in case of resignation, binding sentence of imprisonment for a premeditated crime or if the execution of imprisonment was suspended, loss of the right of eligibility or infringement of the principle of not connecting posts (decided by the Constitutional Court) or death.

The Assembly operates on the principle of permanence, which is understood differently than in Poland. Here it means the ability of the parliament to individually set gaps in the in–between sessions time[9].

The parliament works in three session during the calendar year, divided by three breaks (holiday breaks from 22 December to 10 January, Easter break which lasts 10 days, and holiday break in August). In emergency situations, it is possible to organize sittings during the break

9 J. Karp, M. Grzybowski, *op. cit.*, p. 34.

on the application of 1/5 of people's representatives, the president or the government.

The sittings of the parliament are open[10]. It is possible to make them secret on the application of 1/10 of members of parliament or the Council of Ministers.

The first sitting is called by the president within one month after elections. At the first sitting of newly elected National Assembly, a chairperson and his four deputies are elected.

The National Assembly chairperson represents it outside. His competences include presentation of the order of the day, opening, running, and closing the sittings, announcement of acts, declarations and appeals passed by the National Assembly. The Council of Chairpersons, comprising chairperson's deputies and leaders of parliamentary groups, is the auxiliary body.

The parliament appoints permanent and temporary commissions to its composition. Permanent commissions reinforce the activity of the National Assembly and control the parliamentary activities, whereas temporary commissions are appointed in order to examine specific cases and to conduct investigations.

Art. 62 of the Constitution points out two main functions of the parliament: legislative and control ones. Additionally, one could distinguish creative function as well.

The National Assembly is authorized to legislate, amend, complete, and overrule acts, to pass the budget, specify taxes and set their rates, terminate international agreements, call national referendum, set dates of presidential election, appoint and recall the prime minister, recall the Council of Ministers on the application of the president, to create, transform, dissolve ministry and change the composition of the government on the application of the prime minister, and within the control competences to loyal (vote of no confidence and vote of confidence) and individual control over the policy of the government (the

10 They are broadcast by the state radio and television. Friday sessions, because of their control function towards the government, are obligatorily broadcast live.

institution of queries and parliamentary questions), appoint and recall the director of the Bulgarian National Bank, appoint members of the Account Chamber and Ombudsman.

Bills or resolutions enacted by the National Assembly are binding for all government bodies, organizations and citizens. Every people's representative and the Council of Ministers has got the right of legislative initiative. The legislative process goes through two readings taking place at different sittings. In exceptional situations the parliament may decide to have both readings at the same sitting. The bill is passed, if it is supported by the present majority of people's representatives (with the obligatory quorum of 121 members of the chamber).

The president is obliged to put forward justified veto to a bill within fifteen days after its enactment by the parliament. It could be overruled by the parliament with absolute majority of members of parliament, i.e. 121 votes. Re–enactment of the bill by the parliament means that the president is obliged to sign and announce it within seven days.

6. The President

The office of president and vice–president came into being in 1990. It was created by the act from 3 April 1990 about amendment and completion of Constitution of the People's Republic[11]. On the basis of the April amendment, the president was elected by the General Assembly with 2/3 of votes of people's representatives present during the voting at the end of the Constituent Assembly's mandate. The vice–president, on the other hand, was elected on the application of the president by the National Assembly with common majority of votes.

Constitution from 1991 retained the institution of president and vice–president of the Republic. According to the art. 92 of the Constitution, the President of the Republic is the head of the state. He personifies nation's unity and represents the Republic in international relationships. Another characteristic solution adopted in Bulgaria is the

11 G. Koksanowicz, Republika Bułgarii, [in:] *Ustroje państw współczesnych*. Vol. 2, ed. E. Gdulewicz, Lublin 2005, p. 53.

office of vice–president who supports the head of the state in his activities (art. 92, Section 2). Closer analysis of the regulations leads to a thesis that the government is not an independent body. It does not have permanent competences, the president only commissions it to perform some actions of legislative and specific character in his name[12].

The President of the Republic of Bulgaria is elected in general elections based on the principle of equality, directness and secrecy of voting. A person applying for the highest office in the country must have Bulgarian citizenship from birth, must be 40 years old, qualify for the function of a member of parliament, for 5 years preceding the election must have lived in the county. The application must be supported with 15 thousand signatures of persons possessing active election rights to the parliament.

The election is legally valid if the candidate obtains more than a half of valid votes with attendance of over 50% of eligible voters. If none of the candidates obtains required majority, then within seven days second round is organized with two candidates who obtained most votes. In the second round the winner is the person who has more votes. Vice–president is elected from one list and at the same time as the president, by the same principles and in the same mode. Prerequisite to taking the office is to swear an oath in the presence of the members of the National Assembly, which takes place three days before the term of the predecessors expires[13]. The term of the president and vice–president lasts five years. The Bulgarian Constitution provides for one possible re–election of the president and vice–president. The validity of the elections is checked by the Constitutional Court.

The post of president and vice–president cannot be connected with other civic service or participation in executive committees of political parties. Also, they cannot conduct any social or business activities.

An early expiration of president's and vice–president's powers occurs in case of resignation, permanent inability to perform its duties due to an illness, treason of state or infringement of Constitution (in all

12 B. Szmulik, M. Żmigrodzki, *op. cit.*, p. 178.
13 J. Karp, M. Grzybowski, *op. cit.*, p. 49.

cases the vacant must be certified by the Constitutional Court),or death. In case the president is not able to carry out his duties, his roles is taken over by the vice–president as it is provided for by the art. 97, Section 3 of the Constitution from 1991. Next in succession there is the chairman of the National Assembly. The Constitution does not mention a temporary inability of the president to be in power, but it seems quite obvious that vice–president would act as his substitution.

The president and vice–president cannot be held responsible for actions relating to their duties. An exception would be an infringement of Constitution and treason. In such case, each can be taken to Constitutional Court. The procedure of impeachment is started on the application of at least ¼ of the people's representatives, and charges can be brought with 2/3 of votes of the National Assembly. Charges are examined by the Constitutional Court within one month of filing. A verdict stating that the president or vice–president are guilty of treason or infringement of Constitution, equals expiration of their terms. (art. 103).

As the head of the state, the president of the Republic represents the country on the international arena, appoints and recalls diplomatic representatives on the application of the Council of Ministers, accepts letters of credence and letters that recall diplomatic representatives of alien states, and in some circumstances specified by the act, signs international agreements. What is more, the classical rights of the head of state express themselves in the right to deliver an address to the Nation and National Assembly, to award orders and distinctions, to grant, restore, revoke citizenships, grant the right to asylum and the act of pardon.

The most important competences that the president has towards the parliament are the right to dissolve the National Assembly and the ability to return the bill to the Assembly for re–examination. The Bulgarian Constitution does not equip the president with the right to legislative initiative, however, he has the right to initiative relating to the system. The head of the state also announces acts.

The president takes part in appointment of the government, although he is bound by the will of the parliament. On the other hand,

the president has got an effective instrument preventing crisis inside the parliament, for he can appoint the provisional governments.

Other president's competences relate to the Armed Forces. On the appointment of the Council of Ministers, he can appoint and recall the high command and on the appointment of the government he can announce general or partial mobilization. In cases when the National Assembly is not working, the president can announce martial law, state of war, or emergency state. However, circumstances such as these require immediate summoning of the National Assembly, which must express its opinions on taken decisions.

Apart from the above competences, the president also calls the elections to the bodies of local authorities, and on the appointment of the government approves border changes and seats of local administration governments.

According to art. 104 of the Constitution, the president may transfer some of his executive powers to the vice–president. They include the granting of the right to asylum; application of prerogative of mercy; granting, restoration, deprivation of citizenship; appointment and recalling of state officials as specified by the acts. The vice–president does not have his "own" competences, because the scope of his tasks within the regulation provided by the Constitution depends on the decisions of the head of state.

On principle, the president's acts do not require countersignature of the prime minister or an appropriate minister. However, part of his competences is excluded from this obligation. Within the framework of his prerogatives, the president appoints the provisional government, defines the organization and performance of his office and appoints the staff, announces the acts, returns the bill passed by the National Assembly for re–examination, specifies the date of elections and referendum.

7. The Government

The Council of Ministers is the principle body of executive branch, which works under the control of the parliament and is responsible for internal and external policy of the state, national security and public order, and is in charge of the government administration[14]. Additionally, the main competences of this body include: realization of the state's budget, management of the state wealth, signature, approval and termination of international agreements. The council also accepts directives, makes decisions and passes bills. It comprises the prime minister, deputy prime ministers and ministers. The prime minister is the person who coordinates the general policy of the government; on his application, the government creates, closes or modifies the ministries and changes the composition of the government.

The process of cabinet creation starts after consultations of the president with parliamentary groups[15]. The mission of government formation is entrusted to a person indicated by the party that has most mandates in the National Assembly. The candidature for prime minister is binding for the president. The candidate has seven days to present the composition of the Council of Ministers. If he fails to do it within the specified term, the formation is entrusted to a candidate with the second biggest parliamentary club. However, if the composition of the Council of Ministers is not proposed, the president, within seven days, entrusts one of the remaining parliamentary groups to appoint the candidate. When the formation of the cabinet succeeds, the president presents the candidature for the office of prime minister to the National Assembly. The head of the government, and other members of the government appointed on his application, are elected with absolute majority of votes with at least half of the statutory composition of the parliament present.

If the successive attempts of three biggest parliamentary groups to form the Council of Ministers prove futile, then the art. 99 section 5 of the Constitution is used and the appointment of the Council of

14 B. Szmulik, M. Żmigrodzki, *op. cit.*, p. 181.

15 The mode of government formation is regulated by Art. 99 of part IV of the Constitution, which is on the office of the president.

Ministers takes place without the participation of the parliament. The president is authorized to form so called provisional government on his own, to dissolve the National Assembly and order new parliamentary elections, which have to be organized within two months after the dissolution of the parliament.

The fundamental statute assumes that the competences of the Council of Ministers expire in the following cases: vote of no confidence to all the council or the prime minister (with the political responsibility only towards the prime minister), resignation of the government or the prime minister, the death of prime minister, resignation of the government on account of newly elected National Assembly. Current government performs its duties until the new Council of Ministers gets elected.

Application on the vote of no confidence can be put forward by 1/5 of statutory composition of the National Assembly and it is passed with majority of all members of the chamber. If the application gets rejected, another voting may not take place sooner than after the period of 6 months.

8. Constitutional Court

The Constitutional Court is beyond the classical system resulting from the division of power. Thus it is not an element of internal judicial structure but a specialized body appointed to control the compliance of law with the Constitution[16]. It comprises 12 judges who are elected for a 9-year term. 4 of them are elected by the National Assembly, 4 by the President, and 4 by the general assembly of judges of the Supreme Court of Cassation and Supreme Administrative Court (art. 147 Section 1). Judges are elected from lawyers of high professional and moral qualifications, with at least fifteen years of seniority. The chairperson of the Court is elected in a secret voting for the term of 3 years.

The Constitutional Court operates from the initiative of at least one fifth of the people's representatives, the president, Council of Ministers,

16 G. Koksanowicz, *op. cit.,* p. 44.

the Supreme Court of Cassation, Supreme Administrative Court, and the Attorney General. In accordance with its constitutional rights, it approves the interpretation of the Constitution, issues statements on contradictions of acts, National Assembly acts, and president's acts with the Constitution; it settles competence disagreements between the National Assembly, the president, and the Council of Ministers, as well as between the bodies of local authorities and the central executive bodies; it issues statement on the compliance of the international agreements with the Constitution; it assesses the compliance of the activity of political parties and societies with the Constitution; it issues statements on accusations filed by the National Assembly towards the president and vice–president[17]. An interesting fact is that it does not guarantee observance of human rights in the form of individual constitutional complaint. All the settlements are taken with the majority of over half votes of all judges.

17 M. Żmigrodzki, Sąd Konstytucyjny Republiki Bułgarii, [in] ed. J. Trzciński, Sądy Konstytucyjne w Europie. Bułgaria, Czechy, Rumunia, Słowacja, Węgry, vol. 2, Warszawa 1997, p. 7 and next.

Part 4

ROMANIA

1. Introduction

Romania is situated in South–East Europe and it is a republic with rationalized (individual) cabinet–parliament system of government. Since 29 March 2004 Romania is a member of NATO, and since 1 January 2007 a member of the European Union. After accession, Romania became the seventh state of the community in terms of population.

2. History of Romanian constitutional law

In the second half of the XIX c. two Danubian duchies, Moldavia and Wallachia, created a new state called Romania. In July 1866, Constitution modelled on the Belgian Constitution from 1831 was enacted and it introduced parliamentary system with the monarch as the head of the state[1]. After the I World War, Romania, which was now much bigger in terms of territory, adopted a new liberal–democratic fundamental statute (1923). Tendencies of the 30s of the last century which marked a departure from parliamentary system solutions, led to enactment of new Constitution which concentrated all the power in the hands of the monarch. Soon Charles II abdicated and the power from the underage Michael I was taken over by the fascist Iron Guard, introducing dictatorial rule of Ion Antonescu.

1 W. Skrzydło, *Republika Rumunii* [in:] E. Gdulewicz (ed.) *Ustroje państw współczesnych 2*, Lublin 2002, p. 155.

In 1944, the rule was regained by Michael I, however, the encroachment of the Red Army forced him to abdicate and the People's Republic of Romania was proclaimed. Next communistic Constitution (1948, 1952, 1965) reinforced totalitarian rule. Bloody riots of 1989 overthrew the dictatorial regime of Nicolaue Caucescu and Romania entered the path of system transformation, which led to the enactment of Constitution of the Romanian Republic in 1991.

3. Romanian political system

As soon as in December 1989, after the dictatorship had been overthrown, first important system transformation began: the name of the state, the flag were changed, two–chamber parliament in relation to the Constitution from 1923 was reinstated, and the structures of the communistic government were disbanded[2]. In 1990, the place of National Salvation Front was taken over by Temporary Council of National Unity with temporary president and prime minister in its lead. They were to play the role of temporary legislative body until new parliament was elected[3]. In 1990, by the power of the new election statute, which acted as a temporary Constitution, new president and the parliament composition were elected. The main aim of the parliament, which at the same time acted as Constituent Assembly, was to enact new Constitution within eighteen months. Prepared by both chambers of the parliament, constituted as Constituent Assembly, the fundamental statute was passed on 21 November 1991 with required 2/3 majority of all members, and on 8 December 1991 it was to undergo national referendum. The Constitution, enacted in referendum with staggering majority of votes (almost 78%), introduced republican system based on democratic principles of the state of law and political plurality[4]. Although legislators did not openly express the principle of three–division of the power, the constitutional regulations leave no

2 B. Dziemidok–Olszewska, *Instytucja prezydenta w państwach Europy Środkowo–Wschodniej*, Lublin 2003, 70.

3 W. Brodziński, *System konstytucyjny Rumunii*, Warszawa 2006, p. 10.

4 The Constitution of Romania – http://www.cdep.ro/pls/dic/site.page?id=371 (Official site of The Romanian Parliament – Chamber of Deputies).

doubt that it lies at the foundation of the adopted system of rule. The legislative power belongs to two–chamber parliament – The Chamber of Deputies (lower chamber) and Senate. The executive power is held by the government and the president, and the judicial by the courts and tribunals.

The constitutional researchers are divided about the adopted model of rule in the Constitution. Although solutions of the Constitution of the V French Republic were widely adopted, at the same time the position of parliament was strengthened[5]. Thus, frequent attempts to identify it as a parliamentary system with elements of presidential one, a clear parliament–cabinet system, or even an undefined one. The parliamentary character of the system definitely shows in two–piece executive branch, responsibility of the government before the parliament, or the right of the president to shorten the terms of the chambers.

What is more, the general systematic of the Constitution, which in the first place and before the executive bodies, regulates issues related with the parliament, reveals the intentions of the legislators.

Among other fundamental principles of the Constitution one can distinguish the following principles: democratic and social state of law, political plurality, political representation (representative rule and direct democracy), or equality and prohibition of discrimination.

In 2003 the Constitution was amended, though without any significant changes as to the system of government. Some changes included articles on European integration and membership in NATO. The amendment underwent ratification referendum organized on 18–19 October 2003. As for now, the Constitution of Romania includes 18 chapters with 156 articles altogether.

4. Human and civil rights and liberties

5 W. Sokolewicz, *Pomiędzy systemem parlamentarno–gabinetowym a systemem prezydencko–parlamentarnym, prezydentura ograniczona, lecz aktywna w Polsce i Rumunii*, „Przegląd Sejmowy" 1996, no. 3, p. 34.

Dissociating from infamous history of communistic period and relating to the democratic standards, the Constitution quite extensively approaches regulation of freedoms, rights, and duties of an individual and citizen – almost 1/3 of its content. Chapter that is devoted to those matters was placed as second, before description of government bodies, which stresses adoption of the individualistic concept. Additionally, creators of the system imposed interpretation of the Constitution in accordance with the Universal Declaration of Human Rights, pacts and international agreements, giving them the right of way.

The Constitution created the institution of Ombudsman (People's Attorney), appointed for 5-year term by both chambers of the parliament at one commons session. Ombudsman performs duties relating to the protection of persons whose rights and freedoms have been violated[6]. Candidate for the office of ombudsman should meet requirements similar to the ones for the office of the judge of Constitutional Court. Expiration of mandate happens in the event of death, resignation, refusal to swear an oath, infringement of the principle of non–connection, and inability to perform the duties because of an illness for longer than 90 days. In case of the infringement of the Constitution or acts, he may be recalled with a resolution taken by both chambers at the same sitting.

5. Parliament

According to the art. 61 of the Constitution, "the parliament is the highest representative body of the people and the only legislative authority in the state". The parliament of Romania consists of a Deputies Chamber (Rom. Camera Deputaţilor) and Senate (Rom. Senatul), which relates to the Constitution from 1923[7]. The Deputies Chamber currently comprises 224 deputies, and the Senate 137 senators. The number of members of parliaments is not specified by the Constitution, but the organic act, setting "changeable representative norm": in elections to

6 W. Skrzydło, *Republika*..., *op. cit.*, p. 164.

7 Referendum took place in Romania in November 2009 in which most citizens supported the liquidation of Senate and limitation of parliamentary members to maximum 300 persons. The voting, however, had consultative character and in order for the changes to enter into force before next elections due 2012, constitutional amendment will be necessary.

the Chamber for one deputy there are 70 thousand citizens, and for one senator 160 thousand citizens.

The parliament of Romania is elected in general elections which are free, proportional, direct, equal and secret. Active election rights in all elections have those citizens who turn 18 on the day of the election the latest. Passive election right is limited by permanent residence in the country and higher age qualification: 23 years in elections to the Deputies Chamber and 33 years in elections to the Senate. The right to candidate in elections is not held by citizens excluded by the constitutional ban of affiliation to political parties (judges, military men in active military service).

The elections are held on the day set by the government, three months before the end of the term or dissolution of parliament the latest. The deputies and senators are elected on the principles of , so called, mixed statute in multi–mandate constituencies[8]. The mandate is won by the candidate who gets more than 50% of votes. The votes of other candidates are divided on the principle of proportionality in order to fill the remaining mandates. In the elections to the Deputies Chamber the elections lists and coalition lists the electoral thresholds are observed. For parties it is 5%, for two–party coalitions 8%, for three–party 9%, and for bigger ones 10%. If a party wins the elections in at least 6 one–mandate constituencies, and additionally achieves at least 3 seats in Senate, the principle of electoral threshold does not apply. Special rules also concern national minorities. If a party that represent a minority does not achieve any mandate in any chambers, but receives not less than 10% votes of all average votes given to the winners in one–mandate constituencies, then such a party receives one seat in the Deputies Chamber.

Four–year term may be prolonged with an organic act in the even of war or catastrophe, shortened with majority of votes of members of both chambers, or dissolved by the president. The second option

8 In 42 constituencies (41 plus Bucharest) by d'Hondt method. W. Sokół, *Charakterystyka współczesnych systemów partyjnych wybranych państw*, [in:] W. Sokół, M. Żmigrodzki (ed.), *Współczesne partie i systemy partyjne. Zagadnienia teorii i praktyki politycznej*, Lublin 2003, p. 378.

requires the opinion of the chairpersons of both chambers and leaders of parliamentary groups, it is possible only if the parliament does not give vote of confidence necessary to form the government within 60 days since the first application on this issue and only after two instances of rejection by the parliament. Moreover, the president can dissolve the parliament only once a year and he cannot do it in the last 6 months of his term, during emergency states or a state of siege. The Constitution does not provide for the possibility of shortening the term of only one chamber.

The first session of the parliament is called by the president 20 days after the elections. The day marks the end of the term of the previous parliament. During the time between the elections and the first sitting, i.e. the time when newly elected chambers have not constituted, no changes can be made to the Constitution and the organic acts cannot be enacted or amended. Until the election of a new presidium, the first sitting is chaired by the oldest depute or senator.

Both chambers of the Romanian parliament gather every year for two ordinary sessions. The first one starts in February and cannot last longer than till the end of June. The second starts in September and cannot last longer than till the end of December. Emergency sessions can be called on the application of the president, each chamber's presidium, or 1/3 of its members. Common sittings of both chambers are also called. Their task is to accept the address of the president, suspension of the president in the event of constitutional infringement, hearing of the prime minister's expose and expression of vote of confidence to for government, state budget endorsement, national social security budget endorsement, and declaration of the state of war (art. 65 Section 2).

The chambers' bodies are: presidium, chairperson, permanent commissions, investigation commissions, and emergency commissions. Common commissions of both chambers are also possible. The chairperson is appointed for the term of the parliament on the first sitting with the majority of votes of a given chamber. All other members of the presidium are appointed at the beginning of each session proportionally

to the number of mandates of specific parliamentary clubs and they can be recalled before its end[9].

Presidium responsibilities include: setting the opening and closing times of the sessions, initiative to call emergency session, presentation of the order of the day to the chamber, monitoring prompt completion of chamber's work, accepting bills and reports of parliamentary commissions.

The chairperson's responsibilities include calling plenary sessions, monitoring the discussion in the chamber, setting the order of voting and announcing their results. Moreover, the chairperson runs the work of the presidium and represent the chamber outside, he has the right to put forward an application to the Constitutional Court to verify the compliance of a bill with the Constitution before it is promulgated by the president, of international agreements and the regulations of the chamber, and also to sort out competence disagreements between the constitutional bodies of the public authority. Every deputy can be a member of one permanent commission. Each chamber may appoint investigation commission on the application of 1/3 of all members.

Parliamentary club may be formed by ten deputies and seven senators. According to the regulations of the Deputies Chamber, members of parliament who represent national minorities other than Hungarian, may form a common parliamentary club[10]

The deputies and the senators have representative mandate (free) and the Constitution excludes the possibility of imperative mandate. What is more, the members of parliament have material and formal immunity and are protected by the principle of personal inviolability. They cannot be held responsible because of voting or expressing political opinions during the time they fulfill the representative mandate. For actions unrelated with the mandate, towards members of parliament there may started preparatory proceeding and they may be faced with bill of indictment in criminal cases. Agreement on the arrest of a member of parliament must be expressed by a given chamber in

9 W. Brodziński, *System...*, *op. cit.*, p. 29.
10 *Ibidem*, p. 30.

secret voting with the majority of 2/3 votes in Deputies Chamber or with absolute majority of votes in Senate. The appropriate body for trial is the Supreme Court. The principle of non–connectivity applies to the deputy and senator, performing public functions except members of government and cases specified in organic acts. The mandate of a member of parliament expires earlier in case of a meeting of a newly elected chamber, resignation, loss of electoral rights, non–connectivity of mandate, or death.

The parliament enacts constitutional bills, organic and ordinary ones. The constitutional refer to the changes in the Constitution. The initiative may come from the president on the application of government, ¼ of deputies or senators, and at least 500 thousand citizens coming from at least half of all constituencies, and in each of them the initiative should get the support of at least 20 thousand citizens. The bill on the change of Constitution is passed with majority of 2/3 of members of each chamber or, in case of disagreement on the content of such act, both chambers at a common sitting with the majority of ¾ of members of parliament. The bill on the changes in the Constitution obligatorily undergoes the procedure of approving referendum. It should be ordered by the president and organized within 30 days after the date the changes were approved. The Constitution outlines the limits of changes and the subject matter which cannot be changed. They concern: national, independent, universal and undividable character of the Romanian state, republican form of government, territorial integrity, independence of judiciary, political plurality, official language, and guarantee of fundamental civic rights and freedoms.

The main subject of organic acts are: electoral system, organization and functioning of political parties, organization of government, general principles of ownership, and general principles of religious denominations.

The right of legislative initiative belongs to the government, deputies, senators, and 100 thousand citizens coming from at least ¼ of constituencies in quantity of at least 5 thousand from each one (before the amendment the number was 250 thousand citizens). The project can be filed to any chamber of the parliament which examines

it first. The government, just like any chamber, has the right to put forward an application on the use of urgent mode. The bills are enacted in three readings. The bill project passed by one chamber moves on to the next one, and in case of rejection, returns and may be enacted again. However, another rejection by the second chamber is final. In case of divergence on the content of the enacted bill, the mediation in both chambers is undertaken by a common commission, and in case of negative outcome, it is directed to the common sessions of both chambers. The text of the bill is finally accepted there with the majority of members of each chamber or the majority of all present members (organic acts or ordinary ones). The president signs the bill within 20 days, unless he requests the parliament for re–examination (suspending veto). The bill re–enacted by the parliament must be signed by the president within 10 days.

Additionally, the parliament's responsibility is to monitor the activity of the government through lack of vote of confidence, parliamentary questions, budget realization control (with the aid of the Financial Chamber, which also puts forward annual reports to the parliament on the realization of the budget), realization of the creative function which includes appointment of the Romanian Information Service (on the application of the president), members of the Highest Judicial Council and Financial Chamber, members of the Constitutional Court (three from each chamber and the president) and Ombudsman[11].

6. The President

Romania belonged to those few communistic states that introduced the institution of president as early as in 1974, so the Constitution from 1991 only supported the existence of the institution modelling it on the president of V French Republic, which, together with numerous solutions characteristic for parliamentary system, established characteristic individual system of power.

11 W. Brodziński, *Parlament Rumunii*, Warszawa 2002, *passim*.

The president is elected for 5-year term in general, equal, direct and free elections via secret voting[12]. To appoint a candidature (age qualification is set to 35 years of age), it is necessary to have the support of 200 thousand citizens, where each voter can support only one candidate. The Constitution introduces a specific principle of (really) absolute majority. To be considered elected, the candidate has to achieve majority of votes of voters from the electoral lists in the first round. If none of the candidates manages to achieve the majority, another round is organized with two candidates who obtained the biggest amount of votes in the previous round. The validity of election is pronounced by the Constitutional Court.

The president assumes the office the moment he swears the oath before both chambers of the parliament. The same person may fulfil the functions of the president two terms the longest. The term may be prolonged with a proper organic act in the event of war or catastrophe.

Just like in Poland, the president does not have the status of the state's plenipotentiary (restricted for the parliament), but only representative and guarantee of independence, unity, and inviolability of state's territory. The president monitors the observance of the Constitution and proper operation of public authorities. Thus, he is a mediator between the government authorities and the state and between the state and the society.

In accordance with his competences, the president calls the first sitting of the chambers of parliament, dissolves the parliament (as it was mentioned earlier), calls the emergency session of the parliament, has the right of system initiative (does not have the right of legislative initiative, though), promulgation of acts, the right of suspension veto, the right to send the act to the Constitutional Court, the right to call referendum after an opinion from the parliament, introduce an emergency state and the state of siege (approved by the parliament within 5 days), designate a candidate for the prime minister, change the composition of the government, appoint judges, 1/3 of members of the Constitutional Court and other traditional rights of the head of state in

12 Present term, introduced by the amendment of 2003, has been binding since 2004; in the initial version the term equalled 4 years.

international affairs, command of the military forces, award orders and distinctions, or grant a presidential pardon.

Fulfilling his competences, the president issues decrees which as a rule do not need countersignature of the prime minister. According to art. 99 Section 2 of the Romanian Constitution from 1991, degrees issued by the president within some of his competences are countersigned by the prime minister. Furthermore, in the name of the Romania, the head of the state signs international agreements negotiated by the government and puts it forward to the parliament for ratification within 60 days. Also, on the application of the government, he appoints and recalls diplomatic representatives of the Romanian state and also approves creation, dissolution or rank change of diplomatic posts. He is also in command of military forces and is the chairman of the Highest Council of State Defence, grants awards and honorary titles, grants the ranks of marshal, general, and admiral, and grants individual pardons.

The office of the president can be emptied in four cases: resignation of the president, his suspension, his temporary inability to run the office, and in the event of death. In such situations, the head of the state is substituted by the Senate's chairperson or, in succession, the chairperson of the Deputies Chamber. The substitute president cannot dissolve the parliament, cannot call referendums or sign international agreements.

During running of his office, the president has the right to material and formal immunity. Additionally, within his function, he is not politically responsible.

The issue of impeachment looks a bit different here than in other states of the Eastern block. The scope of responsibility covers treason, violation of Constitution and the procedures vary depending on the charges. In the event when the president is found guilty of treason, both chambers, the Chamber of Deputies and Senate, at a common session adopt a resolution with 2/3 votes of all deputies and senators. Adjudication in this matter belongs to the competences of the Supreme Court. Likewise, in case of constitutional infringement, the president can be suspended with majority of votes of both chambers (art. 95)

The application on suspension is put forward by 1/3 of deputies and senators. Opinion of the Constitutional Court is obligatory, though not binding. If the parliament approves the suspension, a referendum on the suspension must be called within 30 days and if the attendance is over 50% of eligible voters and the application is supported by the majority of valid votes, the chambers, at a common sitting, adopt a resolution on the removal of the president from his office.

The institution of impeachment has been used in Romania twice. In both cases the presidents have been charged with the violation of the Constitution. First, in 1994 against Ion Iliescu when the application of the opposition did not get the support of the Supreme Court and did not obtain the required majority of both chambers. In second case, of February 2007, things got much further. Charges pressed against president Trian Basescu were supported by the required majority of the Deputies Chamber and Senate (322 and 108). The president was suspended in his duties, but against earlier promises, did not resign and waited for the result of the referendum. On 19 May 2007 the Romanians did not approve the decision of the parliament and the president returned to his duties[13].

7. The Government

The government, which is the second part of the executive branch, is appointed by a body independent from the president. The government comprises the prime minister, ministers and other members featured by the organic act. The government realizes external and internal policy of the state, inspired both by the parliament and the president and it manages public administration.

Prime minister, who is designated by the president, is in charge of the government and manages and coordinates its work. However, before he is appointed, the president requests the opinion of the party that has absolute majority in the parliament, and if it does not have one, request opinions of all parties sitting in parliament. The candidate for

13 Citizens expressed their support in 2009, electing T. Basescu for another term.

the post of prime minister has got 10 days to apply to the parliament for a vote of confidence, after his presentation of new government's program and its composition. The program and the composition are examined at a common meeting of the Chamber of Deputies and Senate. Vote of confidence is expressed with the majority of deputies and senators' votes. In case of no vote of confidence, prime minister may apply for it twice within 60 days. Lack of vote of confidence during this term grants the president the right to dissolve the parliament. During a year this may happen once though. It cannot be dissolved during the last 6 months of the president's term or during an emergency state. The appointed members of the government swear an oath before the president individually.

The government is politically responsible only before the parliament[14]. Vote of no confidence is granted on the application of ¼ of general number of deputies and senators, also with the majority of votes of both chambers at one sitting. If the application gets rejected, the members of parliament who signed it cannot put it forward again during the same session.

The prime minister's mandate expires when the president recalls him (exclusively on the application of prime minister), he resigns, loses its electoral rights, cannot connect another function, dies or is unable to fulfill his competences for longer than 45 days (art. 110 section 1 and 2). In such cases, the president temporarily appoints one of the ministers as his substitute and such person carries out the prime minister's tasks until a new government is appointed.

Ministers hold individual responsibility before the prime ministers and joint one before both chambers of the parliament. They are not politically responsible before the president but are constitutionally responsible before the Supreme Court, which on the appointment of the president or each chamber institutes proceedings.

14 Due to the lack of explicit regulations until the amendment of the Constitution in 2003, the prime minister was politically responsible also towards the president who could recall him. In 1999, the then prime minister R. Vasile refused to resign when dismissed by the president E. Constantinescu and as a result Romania had two prime ministers for a couple of days.

The government issues bills, which are legal acts undertaken to prepare execution of acts and directives, which are acts of fundamental executive character[15]. The Constitution of Romania provides for government's realization of so called delegated legislature. On the statutory authorization of the parliament, the government may issue directives with the power of acts in fields not covered by the organic acts but requiring approval of the parliament if the authorizing act states so[16].

Moreover, the government may, in emergency situations, issue directives with the power of an act without statutory authorization when their regulation cannot be postponed, however, only in cases when their urgency can be justified[17]. Such directive becomes effective only after examination by the appropriate chamber within 30 days and silence is a sign of approval.

The basic tasks of the government traditionally include preparation of the budget project, national social security budget and their presentation to the chambers for their approval. If the budget acts are not passed at least three days before the end of the budget year, last year budgets are applied[18].

8. Constitutional Court

The Constitutional Court (CC) of Romania was formed in June 1992 as an independent and organizationally separate body of public authority, which does not belong to the judicial branch. The Court comprises 9 judges appointed for the term of 9 years, three judges appointed by the Deputies Chamber, three by Senate, and three by the president. The composition of the CC is renewed every three years. The judges appoint a chairperson from among its members in a secret voting. The judges of the CC must be graduates of Law Faculty, be

15 W. Skrzydło, *Republika*..., *op. cit.*, p. 180.
16 In other words, authorizing act does not have to require submission of those acts for approval by the parliament. *Ibidem*, p. 164.
17 W. Brodziński, *System*..., *op. cit.*, p. 43.
18 W. Brodziński, *Parlament*..., *op. cit.*, p. 30.

highly qualified and have at least 18 years of experience of legal activity or higher law education.

Competences of the Constitutional Court include: adjudication on the compliance of acts, regulations of the parliament chambers with the Constitution, monitoring and observance of procedures on election of the president of Romania, statements on the validity of elections, opinions on the applications on suspension of the president of Romania, control and monitoring of procedures concerning organization and performance of referendum and analysis of its validity.

The right to initiate control is held by the president, chairpersons of both parliament chambers, government, Supreme Court, Ombudsman, and a group of 50 deputies and 25 senators. Possession of this right by a group of parliament members gives the opposition an argument in discussion with the majority that passed a given bill[19].

19 W. Sokolewicz, *Sąd Konstytucyjny w Rumunii*, [in:] J. Trzciński (ed.) *Sądy konstytucyjne w europie, vol. II*, Warszawa 1997, p. 145 and next.

Part 5

ESTONIA

1. Introduction

Estonia (the Republic of Estonia) is a small state in Northern Europe by the Baltic Sea. It was created after the First World War and has been a member of NATO and UE since 2004.

Since the XIII century the territory of today's Estonia was called the Inflants and over the centuries belonged to several countries: The Order of Teutonic Knights, Rysk Archbishop, Kurland Archbishop, Dorpack Archbishop, Ozylijsk Archbishop and Denmark. Since the XV c. Inflants were the object of interest of Moscow State, Poland (with Lithuania), Denmark and Sweden. As a result of the Inflants War, Estonia was bound with Poland and Lithuania, and part of it was occupied by the Swedes and Danes. Eventually, it was the Swedes who united Estonia under its rule in 1645. XVI and XVII c. was the time when religious denominations (Catholic, Lutheran, Orthodox) and social structure (German minority having most privileges – barons) solidified in Estonia. Reforms carried out during the Swedish rule did away with land ownership and decreased peasants' dependence and workload. Estonian national consciousness began to emerge. Unfortunately, as a result of the Northern War (1700–1721), Estonia got under the reign of Russia. Since the 30s of the XIX c., Estonian national emancipation has been becoming stronger and stronger, giving rise to contemporary modern Estonian nation.

Towards the end of the World War I, the territory of today's Estonia was occupied by the Germans. Nevertheless, at the end of February 1918 the state proclaimed its independence. After the Germans surrendered and the Russians, then again Germans and again White

Russians were driven back in 1919, a peace treaty in Tartu was signed on 2 February 1920. Soviet Russia recognized Estonia's independence and on 26 January 1921 the new Baltic state was also recognized by the Entente states and on 22 September of the same year accepted to the League of Nations.

In 1940 the USSR annexed Estonia, as a result of Ribbentrop–Molotov treaty, creating Estonian SRR. In 1941–44 Estonia was occupied by Germans and again by the Red Army, after which it was incorporated into the USSR until the beginning of the 90s of the XX c, when it finally regained independence.

2. History of Estonian constitutional law

On 24 February 1918 the Senior Council of the domestic parliament proclaimed the Declaration of Independence of Estonia and made the legislative and executive power over to the Salvation Committee[1]. On 5–7 April, the first independent parliament, performing the role of the Constituent Assembly, was chosen in the elections to the Estonian Legislative Assembly. It enacted the first temporary Constitution of Estonia on 4 June 1919. It defined the state as an independent democratic republic and regulated operation of the highest bodies of authority and, in contrast with other Baltic states, also guarantees of civic and minority rights[2].

Simultaneously, work on the full version of the Constitution was in progress and it finally got enacted on 15 June 1920. After its coming into force on 21 December 1920, it gave Estonia parliamentary system of government with extraordinarily powerful one–chamber National Assembly (Riigikogu).

The parliament's competences include: nomination of ministers, control of the government, appointment of judges and army commanders. The Constitution did not provide for the institution of a president and the role of the head of the state plays the prime minister. One char-

1 J. Zieliński, Systemy konstytucyjne Łotwy, Estonii i Litwy, Warszawa 2000, p. 7.
2 *Ibidem*, p. 8.

acteristic feature of the fundamental statute was the specific role of direct democracy. Nation could come forward with legislative initiative after collection of 25 thousand signatures under the bill project. The project would then be voted in the parliament and in case of rejection would be put to the referendum. If the citizens had supported the project, then it would have become legally binding and the whole procedure would lead to dissolution of Riigikogu.

The necessity for the parliamentary system reform led to enactment of Constitution amendment in 1932, which introduced the office of president, though with limited competences. However, the amendment was rejected in two successive referendums. Another attempt to reform the system came with radical project of amendment with strong presidency coming from general elections. On 14–16 October 1933, the citizens approved the amendment in referendum and it came into force on 24 January 1934. Growing internal crisis led to the introduction of emergency state on 12 March 1934 and the presidential elections did not take place. The competences of the head of state were taken over by the prime minister, K. Päts, who was in fact an authoritarian ruler. However, work on the political reform of the state did not cease and consequently a new Constitution was enacted (came into force on 1 January 1938). It introduced two–chamber parliament and the institution of regent president.

After communists occupation and electoral fraud Estonia was incorporated into the USSR on 6 August 1940. Within Estonian SRR, a Constitution modelled on the fundamental statutes of the USSR were enacted in 1940 and 1978.

Not until the turn of the 80s and 90s of the XX c. the transformations did lead to independence and on 16 November 1988, earlier created People's Front, proclaimed Declaration of Estonian SSR Independence and then, on 2 February 1990, proclaimed Declaration on the independence of the Estonian state itself. Next, on the basis of the act on the symbolism of Estonia from 8 May 1990, some articles of

the Constitution form 1938 relating to the status of the republic, legal system, language and national symbolic came into force[3].

3. Estonian political system

The Constitution of the Republic of Estonia, enacted on 28 June 1992 in a referendum based on the fundamental statute from 1938 (61% support), came into force on 3 July 1992[4]. It consists of an introduction (preamble) and 168 articles in 15 chapters. Its regulations base on Western European standards of human rights and continue parliamentary democracy system initiated in the Constitutions of 1920 and 1938.

The Constitution introduces multi–party parliamentary–cabinet system of government. The relations between the main state bodies are based on three–division and balance of power. The legislative power lies in the hands of one–chamber parliament. The executive branch is dualistic – consists of president and the government, the judicial system is based on independent courts.

The first chapter of the Constitution contains the most important legal and system issues. The creators of the system stress the willingness to continue Estonian national independence and the nation realizes its power in indirect way through the elections to Riigikogu, and in a direct way through a referendum (§ 56). What is interesting, the realization of power is discussed in a separate chapter III called "Nation". The principle of division of power balances out and imposes cooperation of each branch of power in the state (§ 4). The Constitution stresses the principle of legalism, generally accepted international legal norms and their place in the legal system of the state, unitarian territorial system, language and national colours. One distinguishing feature of the fundamental statute of Estonia is lack of well defined principle of a legal state, which belongs to the fundamental catalogue of European democratic Constitutions.

3 *Ibidem*, p. 15.
4 The Constitution of the Republic of Estonia – http://www.just.ee/43731 – (4.2011)

The initiative of amendment have 1/5 members of the parliament and the president. Amendment cannot be started and introduced during an emergency state. Amendments may happen in three ways. First, in a referendum, second, with enactments of two successive sessions of the parliament, and, exceptionally, with the decision of one–term National Assembly. The first chapter entitled "General Principles" and chapter XV called "Constitution Amendments" can be changed only via referendum. Other changes may also be adopted in this way. Constitutional referendum is called with 3/5 votes of National Assembly members. Second procedure provides for enactment of amendments in two successive compositions of the parliament. With the majority of one session of National Assembly and qualified majority of 3/5 of the next term. Emergency procedures may be introduced with the decision of 4/5 majority of Riigikogu members, which allows amendments with 2/3 majority of parliament members. Additionally, the Constitution forbids application of amendment already rejected by the parliament or amendments via referendum earlier than a year after their negative assessment.

4. Human and civil rights and liberties

The second chapter of the Constitution on fundamental rights, freedoms and obligations is modelled on the European Convention on Human Rights. Rights, freedoms and civic liberties included in the Constitution are granted to all citizens of Estonia, citizens of other countries, and stateless persons residing on the territory of Estonia (§ 9), and legal persons. The constitutional catalogue of rights and freedoms has got an open character and does not exclude "other rights, freedoms and duties which arise from the spirit of the Constitution or are in accordance therewith, and conform to the principles of human dignity and of a state based on social justice, democracy, and the rule of law (§ 10).

The prohibition of discrimination and torture, the principles of personal inviolability and presumption of innocence were also given status of constitutional regulations. From other fundamental statutes, the Estonian Constitution distinguishes itself by quite narrow catalogue

of socio–economic rights and very cautious approach to such issues. Another characteristic feature is inclusion of natural environment protection among the duties of an individual and citizen.

Otherness of the Constitution is also evident in resolutions on the citizenship and language. It is the result of modern history of the state and its demographic situation (large Russian minority)[5]. The citizenship and the use of minority languages in judicial and police proceedings are all determined by the act (§ 52 section 3). However, it guarantees minorities the right to use their own language in schools and autonomy institutions that are formed to retain and develop their own culture.

5. The Chancellor of Justice

Chancellor of Justice is a specific body in the structure of principal bodies of authority in Estonia. On the appointment of the president, the parliament appoints the Chancellor for a 7-year term and he can be recalled only on the basis of a court's adjudication.

The Chancellor of Justice, whom the Constitution devotes chapter XII, is an independent civic servant who monitors the compliance of legislative and executive acts of government and local authorities with the Constitution and other acts (§ 139). His activity is based on the applications on amendments and reports on the civil service[6].

Within his duties, he sends an application to the body, an author of a legal act that is thought to not comply with the act or Constitution, to take action in order to bring it into compliance within 20 days. In the event of failure to do so, the Chancellor puts forward an application to the Supreme Court to adjudicate invalidity.

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5 According to the binding restrictive act, Estonian citizenship is held by persons that had the citizenship before 1940 and their descendants. All other persons may apply for the citizenship after a 2-year period of residence on the territory of the state after it proclaimed its independence in 1990 and after passing state examination on Estonian language and culture and sign declaration of loyalty. Military men of the Red Army and agents of Soviet security services cannot become citizens of Estonia. M. Kowalska, M. Michalczuk, W. Szefke, *System polityczny Estonii* [in:] W. Sokół, M. Żmigrodzki (ed.) *Systemy polityczne państwa Europy Środkowej i Wschodniej*, Lublin 2005, p. 293.

6 M. Kowalska, M. Michalczuk, W. Szefke, *System…, op. cit.,* p. 301.

The Chancellor also puts forward an application to bring to criminal responsibility: members of the National Assembly, President of the Republic, members of the Republic's government, state controller, chairperson and judges of the Supreme Court. The scope of his competences resembles that of a minister in his own department. He has the right to attend the sittings of the government and the parliament with the right to have the floor.

The Chancellor is obliged to present a report from his activity at the sitting of the parliament, in which he informs about the compliance of acts issued by the legislative and executive branches and local authorities with the Constitution. The Chancellor may be brought to criminal responsibility on the appointment of the president and with the decision of the majority of Riigikogu.

6. Parliament

One–chamber parliament, Riigikogu, is in charge of the legislative branch in the Republic of Estonia. It consists of 101 deputes elected for a four–year term in free, general, equal and direct elections via secret voting[7].

Active election right belongs to citizens who finished 18 year of age and have not been legally incapacitated by the court. In case of convicts and inmates of penalty institutions, the act may limit their participation in the elections (§ 58). Passive election rights to Riigikogu have the citizens of Estonia who finished 21 years of age and have full election rights.

According to the fundamental statute, elections to Riigikogu take place on the first Sunday of March, four years after the previous elections to Riigikogu.

The elections are prepared and performed by the Election Committee of the Republic of Estonia[8]. In order to carry out the elec-

7 Initially, the term equaled 3 years, the current 4-year term has been in use since 1995.
8 J. Zieliński, Systemy…, *op. cit.*, p. 28.

tions, twelve multi–mandate constituencies are formed with respect to the number of residents.

The right to appoint candidates within the local and domestic election list or as an independent candidates is held by the political groups and their coalitions. Independent candidates may also be appointed individually by the citizens[9].

Specific political groups may operate within only one coalition and candidates may start from one district list or from district list and domestic list at the same time, provided they have an identical name. The party which enters candidates in more than one constituency, comes forward with a domestic list. Entry on the election list requires the consent of the candidate and confirmation of citizenship of the Republic of Estonia. In order to put forward a candidate or a list, one must deposit the equivalent of a half a month's pay of the deputy for one name. The deposit is returned if the candidate does not obtain the number of votes equal to at least a half of the amount required to obtain a mandate[10]. The election campaign cannot be financed from the state or local government funds.

The mandates are divided on the basis of proportional system of Hare, and in case of multi–mandate domestic list, the supplementary results are calculated on the basis of modified d'Hondt formula. The mandate is obtained by candidates who received the biggest number of votes on a given list. In the division of compensation mandates participate lists of which candidates obtain at least 5% of valid votes on the domestic scale or of which at least 3 candidates entered Riigikogu.

Earlier elections must be carried out not earlier than twenty days before and not later than forty days after they are ordered. Earlier elections to Riigikogu are ordered in four cases: inability to appoint the government by the parliament (§ 89), lack of budget approval two months after the beginning of the budget year (§ 119), rejection by the society via the referendum on the bill (§ 105), and enactment of vote of

9 M. Mróz, Parlament Republiki Estońskiej, „Przegląd Sejmowy" nr 1, 1997, s. 63.

10 W. Sokół, Partie polityczne i systemy partyjne krajów postkomunistycznych, [in:] J.A. Rybczyńska (ed.) Europa Środkowo–Wschodnia: Region, państwa i społeczeństwa w czasie transformacji, Lublin 2000, p. 121.

no confidence by Riigikogu against the government and the prime minister (§ 97). Earlier elections are ordered by the president. In the three first cases early elections are obligatory, in the last one facultative. The mandate of deputy is obtained on the day the elections are announced, when the mandates of the former term of Riigikogu members expire. Deputies come into possession of full rights and duties once they swear the oath of faithfulness to the Republic and its constitutional system[11].

Riigikogu members have free mandates. During their term, members are exempted from the military service and in article 63 the Constitution forbids them to hold any state office. If a deputy is nominated to the government post, his mandate is suspended and restored when he is dismissed from the state office. The mandate expires earlier if: he takes up a state office, is the subject of a guilty verdict of a court, his resignation form mandate as provided by the act, court's adjudication on his permanent inability to perform his duties, deputy's death (§ 64).

In the event of suspension or expiration of mandate, the responsibilities of a member of Riigikogu are taken over by a substitute deputy, who is the next candidate from the same domestic list. If there are no other names on the list, then the additional mandate is shared by the remaining domestic lists. The substitute has all the rights and responsibilities of a member of National Assembly. The moment the suspension of a member of Riigikogu ends, all authorization of the substitute deputy ceases as well.

Members of Riikikog are protected by formal and material immunity. He can be brought to penalty justice only on the appointment of the Chancellor of Justice, after an agreement of the majority of Riigikogu members. The material immunity enables bringing to legal justice a member of parliament for actions resulting from execution of mandate, both during the term and after its expiration as well, unless it infringes personal goods of other people.

The first sitting of a new term is ordered by the President of the Republic within ten days after the results of the elections. The parlia-

11 M. Kowalska, M. Michalczuk, W. Szefke, *System…, op. cit.,* p. 300.

ment works in sessions. Two plenary sessions in a year last from the second Monday of January to the third Thursday of June and from the second Monday of September to the third Thursday of December. The chairperson of Riikikog calls emergency sessions on the application of the President of the Republic, the government, or at least one fifth of Riigikogu members. The emergency sessions require attendance of half of parliament members. Riigikogu acts are passed with a common majority of votes, except cases described by the Constitution. Sittings are governed by the rule of openness, which may be revoked by the 2/3 majority of members' votes.

Presidium comprises the Chairperson and his two deputies who are elected from the members of parliament. Presidium's tasks include: representation of Riigikogu, organization of its work, preparation of drafts on the sittings' order of the day.

The members of Riigikogu have the right to form parliamentary factions. They can be formed by at least six members of Riigikogu who had been elected from the same party or the same election alliance. There are permanent, facultative, temporary, and special commissions formed in the parliament, however, the chairperson and his two deputies cannot be members of any commission. All other members of Riigokog may take part in work of one permanent commission and, on the decision of the fraction, be a substitute member of other permanent commission[12].

The parliament performs three basic functions: legislative, creative, and control one. The legislative initiative is held by the members of Riigikogu, its fractions and commissions, the Government of the Republic and the President of the Republic as far as amendments are concerned. The bills are examined by the National Assembly in at least two readings. The bill on the state budget, supplementary budget bill, and bills on introduction of the state budget are examined in three readings. The bills are announced by the president, who has the right to reject a specific bill and return it with his justification to Riigikogu within fourteen days after its reception for another examination. If the parlia-

12 *Ibidem*, p. 303–304.

ment passes the bill without any corrections, then the president may apply to the Supreme Court to deem the bill as unconstitutional. However, if the Supreme Court finds the bill compatible with the fundamental statute, then the president is obliged to announce it. Riigikogu may order a referendum on the bill project or any other state issue. A bill enacted via referendum (with the majority of valid votes) is announced by the president as soon as possible. If the bill project does not receive necessary support in referendum, the president orders earlier elections to the parliament. The Constitution contains a enumeration of acts and issues that cannot be subjected to referendum. These are issues relating to the budget, taxes, financial obligations of the state, ratification and cancellation of international agreements, introduction and cancellation of emergency state, and state defense.

The parliament appoints the President of the Republic, grants the prime minister candidate power to form the government, on the application of the president nominates the chairperson of the Supreme Court, president of the board of the Estonian Bank, state controller, Chancellor of Justice, commander or the main commander of the Defense Forces, appoints members of the Estonian Bank Council, and, on the application of the Supreme Court Chairperson, other judges of the court.

Within their control functions, the members of Riigikogu are authorized to apply in writing with questions to the government, its specific members, Chairman of the Estonian Bank, President of the Estonian Bank, state controller, the Chancellor of Justice, and the commander or the main commander of State Defense Forces.

Additionally, the parliament ratifies and cancels international agreements, approves the budget and the report on its realization, on the application of the government makes decisions on state loans and adoption of other financial responsibilities, appeals to the Estonian nation and other states or international organizations, grants state awards, military awards and diplomatic ranks, makes decision on introduction of state of war, settles state issues that are not constitutionally linked with the competences of the president, the state, or local authorities.

7. The President

President of the Republic is a head of the state. He is elected in indirect elections by Riigikogu in secret voting. The candidates are entered by at least 1/5 of the Riigikogu members. Candidate must have finished 40 years of age and must be born Estonian citizen. The presidential term equals 5 years and the fundamental statute does not allow election for more than two terms (§ 80). The presidential elections may not take place earlier than 60 and not later than 10 days before the end of the term.

To become a president, the candidates must obtain 2/3 votes of the Riigkog composition. If none of candidates achieves required majority, second round is organized by new entry of candidates. The rules in both rounds are identical but if the outcome is negative, the third round is organized which takes place on the same day as the second round. In the third round only two candidates, who received most votes, take part.

However, if the outcome is still negative, the Riigikogu's chairperson calls Electoral College which must elect a president within one month. The college includes members of Riigikogu and representatives of local authorities. The two persons who received most votes in the election organized by the parliament are obligatory candidates. 21 members of the college have got the right to enter candidates and the college elects with absolute majority of votes. If none of the candidates achieves majority, another round is organized on the same day with two most successful candidates.

The power of the president expires in the event of resignation, a legally binding guilty verdict of the court, death, or appointment of a new President of the Republic. The Supreme Court is authorized to adjudicate temporary or permanent inability of the president to fulfill his duties in cases provided by the act. In such an event, or in case the office vacates earlier, the continuity of rule is falls on the chairperson of the Riigikogu.

The President of the Republic of Estonia: represents the Republic in international relations; appoints and recalls diplomatic representatives

of the Republic, receives letters of accreditation of diplomatic representatives in the Republic of Estonia; orders elections to the parliament and calls its first session, puts forward a proposal to the parliament's chairperson to call an emergency session; announces acts and signs ratification letters, issues decrees, puts forward projects on constitutional amendments, designates a candidate for prime minister, appoints and recalls members of the government, puts forward an application to the parliament to appoint the Chairperson of the Supreme Court, President of the Board of the Estonian Bank, state controller, the Chancellor of Justice, commander or the main commander of State Defense Forces, on the application of the Council of Estonian Bank appoints the President of the Estonian Bank, on the application of the Supreme Court nominates the judges, on the application of the government of the Republic and the commander of Defense Forces nominates and recalls the commandment of the Defense Forces, grants state awards, grants military and diplomatic ranks, is the Head of the Defense Forces, puts forward to the parliament proposal to introduce martial law, announces mobilization and demobilization, introduces an emergency state, in the event of attack introduces martial law, appoints the main commander of the Defence Forces, grants presidential pardon, initiates criminal proceedings against the Chancellor of Justice.

The President of the Republic of Estonia bears no political and constitutional responsibility. He may only be brought to criminal justice on the application of the Chancellor of Justice, with the agreement of the majority of Riigikogu.

According to § 109 of the Constitution, when the Riigikogu cannot assemble, or cases of higher necessity, the president may issue decrees with the power of acts, which require countersignature of the prime minister and the chairperson of Riigikogu. On the first sitting the parliament enacts the bill on acceptance or cancellation of subject decrees. The president's decrees cannot concern the mode of enactment, amendment, or cancellation of Fundamental Statute, but also acts on taxes and the budget.

8. The Government of Republic

The Government of the Republic is the body of executive branch. It comprises the prime minister and ministers. The Constitution does not provide for the position of vice–prime minister, but prime minister may appoint two ministers who will substitute him in the event of his absence. The presidents appoints and recalls the prime minister and members of the government on his application. The Constitution provides three stages of this procedure: the standard and two reserve.

The president is obliged to designate a new candidate for the office of prime minister within fourteen days of resignation of the outgoing cabinet. The president's designation is independent, however, it is not possible to form a government without the support of the parliament. The candidate for the office of prime minister, within fourteen days since the day he received the mission to form the government, puts forward to Riigikogu the main assumptions of the future government, and the parliament in an open voting decides whether to grant the candidate the power to form such government. Within seven days the candidate for the office of prime minister presents full composition of the future government to the president who is obliged to appoint it within three days.

If Riigikogu does not support the president's proposed candidature, the mission to form the government ends in fiasco, or the person designated for the office of prime minister resigns, then the president may put forward another candidate within the time of seven days. However, if this does not happen, or the president's candidate does not receive authorization to from the cabinet, the right to appoint a candidate for the office of prime minister goes to Riigikogu. It then appoints a candidate for the office of prime minister who presents the future cabinet to the president. If within fourteen days since the transfer of the right to designated the prime minister to Riigikogu the composition of the government is still unknown, the president orders earlier elections to Riigikogu (§ 89).

As a rule, the government debates behind the closed door and the decisions are made on the appointment of the prime minister or appro-

priate ministers. The members of the government cannot hold any additional functions in state administration nor belong to managerial boards and boards of trustees. The have the right to participate and have the floor in the sittings of Riigikogu and its commissions. They also have the immunity and can be brought to penalty justice only on the application of the Chancellor of Justice with the approval of majority of Riigikogu members. The moment the court's guilty verdict comes into force, the powers of a member of the government expire.

Riigikogu may give a vote of no confidence to the government, prime minister or appropriate minister via an act supported with majority of votes of Riigikogu members. The vote of no confidence may be put forward by at least 1/5 of the members of Riigikogu. In such circumstances, the government may apply to the president to order earlier elections to Riigikogu within three days. The president plays the role of a mediator who may either support the application and order earlier elections to Riigikogu or support the parliament and reject the government's application, at the same time forcing it to resign[13].

The government may link voting on a bill, which was put forward to Riigikogu, with the application on vote of confidence, where rejection of the bill is identical with the resignation of the cabinet.

Apart from traditional competences, such as realization of the internal and external policy of the state, preparation and realization of the budget, the Government of the Republic applies to the parliament for an introduction of emergency state for the period of three months.

13 J. Zieliński, Systemy…, *op. cit.*, p. 89.

Part 6

LITHUANIA

1. Introduction

Lithuania (The Republic of Lithuania) state in Europe, one of Baltic states, member of the European Union and NATO since 2004, borders with Russia from the West (Kaliningrad District), Poland from the South–West, Belarus from the East, and Latvia from the North.

At the turn of the XII and XIII c. small tribes dwelling on the territory of today's Lithuania began to merge and the local dukes grew into power[1]. The greatest of them all, Mendog, was baptized and took the throne of Lithuania. At the turn of XIII and XIV c. the rule was taken by Giedymin and his family who divided the state into districts ruled by his sons. In 1377 Giedymin's grandson, Jagiello, became the great duch. In the meantime Lithuanians conquered great expanses of Western and Southern Russia, founding The Great Duchy of Lithuania. Developing country needed new legal and system institutions, so Jagiello decided to create a union with the Polish Crown and be baptized in the Western order (in contrast to the conquered Russians)[2]. In 1385, by the power of the act of Krewo, Jegiello was baptized in Cracow, married Polish queen Jadwiga and entered the Polish throne. Despite various political disturbances, contacts between Lithuania and Poland tightened, leading to the Union of Lublin in 1569, which in turn gave rise to dualistic state made of the Polish Crown and The Great Duchy of Lithuania called

1 *Konstytucja Republiki Litewskiej*, transl. H. Wisner, introduction A.B. Zakrzewski, Warszawa 2006, p. 4.
2 *Ibidem*, p. 4 and next.

Rzeczpospolita[3]. Partitions in the second half of the XVIII c. put an end to the state and the Lithuanian territory went under the Moscow rule.

During the World War I, Lithuania was occupied by the Germans. On 18 September 1917 Lithuanian Council called "Taryba" was elected in Vilnius, which declared independence and creation of sovereign Kingdom of Lithuanuia[4]. However, due to dangerous proximity of the Red Army, in 1919 the Lithuanian government relocated to Kaunas, which, after "Żeligowski uprising" and incorporation of Vilenian district into Poland, became the capital of the pre–war Lithuania.

2. History of Lithuanian constitutional law

As a result of German defeat, Taryba, the Council of the Lithuanian State, put an end to the existing dependence on Germany and on 2 November 1918 announced first temporary Constitution of the Lithuanian State. Successive temporary Constitution were enacted in 1919 and 1920.

On 1 August 1922, Constituent Assembly enacted Constitution that adopted republican for of government, based on three–division of power, with the supremacy of one–chamber parliament[5]. Thanks to domination of one party (Christian Democracy), the Lithuanian system did not face the obstacles prevalent in other parliamentary republics of that time.

After the parliamentary defeat in 1926, Christian Democracy organized coup d'état and the power was taken over by A. Smetona, proclaimed as the "father of the nation". After a couple of months, the new president dissolved the parliament, which was not called again until 1936. In 1928 A. Smetona imposed a new Constitution. It did not

3 "Rzeczpospolita" is a traditional name of the Polish State. It comes from the words: "rzecz" (thing) and "pospolita" (common), literally, a "common thing". In terms of etymology and meaning, the closest English term is "commonwealth" (i.e. "common wealth", "common good"), but a more modern translation is "republic" (a form of governance) (translator's note).

4 *Ibidem*, p. 9.

5 J. Zieliński, *Systemy konstytucyjne Łotwy, Estonii i Litwy*, Warszawa 2000, p. 9.

differ from the former one, with the obvious exception of strengthened role of the head of the state.

Elections to parliament were organized as late as in 1936 and the newly elected parliament enacted next Constitution in 1938 which sanctioned authoritarian rule of A. Smetona.

As a result of Ribbentrop–Molotov pact, Lithuania came under the Russian influence and the state, occupied in 1940 by the Red Army, lost its independence for almost half a century. During this time, Constitutions of Lithuanian SSR from 1940 and 1978 were in force.

The beginning of system changes is marked by the X session of the Highest Council of Lithuania from November 1988. In spite of formal victory of conservative force, the real victory could be attributed to the Lithuanian Movement for the Restoration (Sajudis), striving for Lithuania's independence and proclaiming Declaration on Lithuania's Sovereignty and Moral Independence of the State[6].

The elections to the Highest Lithuanian SSR Council in 1990 were unquestionably won by Sajudis. On 11 March 1990, the parliament passed the bill on reinstatement of independent Lithuanian state and changed into The Highest Council of the Lithuanian Republic. The Constitutions of the Lithuanian SSR from 1978 were rescinded and the one from 1938 was restored, however all the acts that did not correspond with contemporary Lithuania were rescinded as well. The Temporary Fundamental Statute of the Lithuanian republic was enacted on the same day and it was to remain valid until enactment of full Constitution.

On the motion of the Highest Council of Lithuanian Republic, in plebiscite organized on 9 February 1991, ¾ of Lithuanians voted in favour of Lithuanian state as an independent democratic republic. The Constitutional Statute on the Lithuanian State was enacted on 11 February 1991, which stated that "The state of Lithuania is an independent democratic republic".

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6 M. Podolak, P. Pochodyła, System polityczny Litwy, [in:] W. Sokół, M. Żmigrodzki (ed), *Systemy polityczne państw Europy Środkowej i Wschodniej*, Lublin 2005, p. 318.

At the same time the Highest Council kept working on the full version of Constitution. Two main concepts about the future system of the state clashed during the work[7]. The majority preferred presidential system and the minority tried to force through parliamentary one. Eventually, compromise was reached and parliament–presidential system principles were established.

3. Lithuanian political system

Except the elections to the parliament on 25 October 1992, there was also constitutional referendum that took place on that day. The constitutional bill was supported by almost 57% of voters with 75% attendance. The Constitution and its enactment bill were signed and announced by the Chairman of the Highest Council of the Republic of Lithuania.

At present, the Lithuanian Constitution consists of four acts. The main body of the text enacted in 1992 in referendum, constitutional bill from 11 February 1991 On Lithuanian State, constitutional act from 8 June 1992 on not joining post–soviet Eastern associations by the Republic of Lithuania, and constitutional act from 13 July 2004 on the membership of the Republic of Lithuania in the European Union.

The main text consists of 154 articles which are included in 14 chapters preceded with a preamble and concluded with final resolutions. System principles include statements that the Republic of Lithuania is a republic, democratic, indivisible into other state forms, and social state. The nation exercises power directly or through democratically selected representatives. State authority, based on the principle of legality and for the service of the people, is exercised by Parliament, The President of the Republic, Government, and the Courts (art. 5).

According to chapter XVI on amendment of the Constitution of the Republic of Lithuania, the amendment initiative may come form a group of Seimas members that amounts for ¼ of total number of

7 W. Kręcisz, Republika Litewska, [in:] E. Gdulewicz (ed.), *Ustroje państw współczesnych*, Lublin 2002, p. 102.

Seimas members, or at least 300000 voters. The bill must be examined twice, enacted with Sejm's majority of at least 2/3 of total number of members of parliament, and the recess between the votings cannot be shorter than 3 months. Amendment of art. 1, which states that "Lithuanian state is an independent democratic republic", may only take place via referendum with the ¾ majority of eligible Lithuanian citizens. The same applies to amendment of regulations of Chapter I on the Lithuanian State and Chapter XIV on Constitution Amendments.

The enacted bill is on the amendment of Constitution is signed by the president who officially announces it within 5 days and not later. If the act is not signed within this time, the signature and promulgation of the act on the amendment of Constitution is done by the chairperson of Sejm.

Lithuanian Constitution has been amended several times, twice in 1996 (the right of state ownership, local authority), in 2002 (local authority), twice in 2003 (creative competences of the president towards the judges and the prosecutor's office, parliamentary elections), and in 2006 (Lithuanian Bank)[8].

4. Human and civil rights and liberties

Lithuanian Constitution very precisely regulates citizen's rights and freedoms. Apart from general system principles from chapter I, as many as three successive chapters also include norms on human rights and freedoms: part II – The Human Being and the State, part III – Society and the State, part IV – National Economy and Labour.

There, one can find catalogue of rights and freedoms characteristic for a democratic state. Extensive number of guaranteed rights is unquestionably caused by frequent instances of human rights violation in the time when the Republic of Lithuania was the part of the USSR.

The Constitution does not directly mention the prohibition of discrimination but the legislator's intention is evident in Art. 29, which

8 R. Grabowski, S. Grabowska, Zasady zmiany konstytucji w państwach europejskich, Warszawa 2008, p. 193.

states that limitation of human rights or establishment of privileges on the account of sex, race, nationality, language, background, social situation, denomination, convictions, and views are unlawful. The rights of minorities were approached quite generally by guarantee of state support, freedom of choosing educational solutions, and the right to preserve the language, culture and customs[9].

Lithuanian ombudsman was appointed in 1994. The spokespeople – Seimes controllers are elected by Seimes on the application of the parliament's chairperson for 5-year terms[10]. One of the ombudsmen has the function of a chairperson, but they all have the same rights and obligations, which they realize on their own and independently from others.

5. Parliament

One–chamber parliament (Seimas) is the body of legislative power in Lithuania. It comprises 141 members appointed for a 4-year term in general, direct, free, and equal elections via secret voting. Active election right is had by Lithuanian citizens who finished 18 years of age on the day of elections and who have not been found legally incapacitated. Passive election rights is had by all Lithuanian citizens who finish 25 years of age, are eligible voters and have a permanent residence in Lighuania. People who are in military service, serve in state's defence system, police, internal agencies, non–commissioned officers, past–term soldiers, workers of military units and security services who are on the payroll, and convicts are deprived of the right to candidate.

The elections are held on the second Sunday of October, in the year in which the term of the members of parliament expires. Interesting thing to note is that the date of ordinary elections organized after early elections is the same. This means that the term of the Seimas may last

9 J. Zieliński, *Systemy..., op. cit.,* p. 103.
10 The number of Seimas' Controllers fluctuates between two (presently) and five (e.g. in 1994).

a couple of months longer or shorter than the 4-year term provided by the Constitution (Art. 57).

Earlier elections are organized within three months after decision on their order. They can be held on the basis of Seimas's act supported with 3/5 majority of total number of members or on the order of the president in two situations: if Seimas does not pass a bill within 30 days after presentation of a new programme by the government or if Seimas rejects it twice within 60 days on the application of the government towards whom Seimas expressed a vote of no confidence.

From 141 deputies to Seimas, 71 of them are elected in one–mandate constituencies (majority system), and 70 in one multi–mandate constituency (proportional system). As a result, each voter obtains two voting cards. To obtain a mandate in one–mandate constituency, one must obtain majority of votes with at least 40% turnout. If the attendance is poorer, second round is organized[11]. In multi–mandate constituency candidates are registered on the district lists, all lists take part in the division of mandates, provided they obtained 5% of all votes (7% for election blocks) with the required 25% attendance.

Mandate of a member of parliament is free and the obligations of a member of Seimas cannot be shared with other posts in state institutions and organizations and work in private institutions (art. 60). He can only be appointed for a prime minister or minister. Members of parliament cannot receive any other remuneration other than for the work as a member of parliament, which comes from the state budget, and remuneration for creative work. The members are protected by material and formal immunity. A member of parliament cannot be brought to criminal justice, arrested, or have his freedom restricted in any other way.

Expiration of member of Seimas' mandate happen in following situations: end of his term, the moment of first sitting of parliament elected in earlier elections, incapacitation by the court, death, resignation from the mandate, dismissal by Seimas as a result of disciplinary proceedings, invalidity of elections or serious infringement of electoral

11 J. Zieliński, *Seimas. Parlament Litwy*, Warszawa 2003, p. 20.

statute, start of work that cannot be connected with obligations of a member of Seimas, deprivation of citizenship of the Republic of Lithuania (art. 63).

The parliament meets in ordinary and emergency sessions. The spring one begins on 10 March and ends on 30 June. The autumn session starts on 10 September and ends on 23 December. By the decision of the Chairperson of the Parliament, the session can be prolonged on the application of 1/3 of total number of deputies and by the decision of the president. Emergency sessions are called by the chairperson (on the application of 1/3 of members of parliament) and in cases provided by the Constitution. The first sitting of newly elected parliament is called by the president (within 15 days after elections), and if not, the members may assemble by themselves on the next day after the 15 day period.

The Chairperson of Seimas is elected at the first sitting with absolute majority of votes. The Chairperson appoints one of deputies on the position of the first deputy of the chairperson. His competences, apart from representative and organizational ones, include: substitution of president in case of vacancy, signing and announcing acts if president renounces his right to do so.

Presidium is an internal body of the parliament of advisory and organizational character, consisting of a chairperson, his deputies and the leader of the opposition[12]. Another advisory body is Council of Senior Members (comprising members of Presidium and representatives of political groups in parliament). Additionally, there are committees and facultative commissions that work obligatory (permanent, temporary, including investigation commission).

The Seimas holds full system and legislative power; it examines and accepts amendment to the Constitution, enacts bills, passes bills on referendum, orders election of the president, creates state institutions, appoints their directors, accepts and approves their candidature for the office of prime minister, examines and decides on adoption of government programme, appoints and terminates ministries, exercises control over the government, may express a vote of no

12 J. Zieliński, *Seimas, op. cit.*, p. 14.

confidence towards the government, appoints judges and chairpersons of Constitutional Court, Supreme Court, state controller and the chairperson of the board of The Bank of Lithuania, orders elections to local governments, appoints the Main Electoral Commission, approves the state budget and monitors its realization, sets taxes and binding fees, ratifies and cancels international agreements, examines issues of foreign affairs, decides on the administrative division of the state, grants state awards, declares amnesty, introduces direct management[13], marital law, emergency state, announces mobilization, and makes decision on the use of armed forces (art. 67).

The right of legislative initiative is held by the members of the parliament, the president, the government, and a group of 50000 citizens (with eligible voting rights). The bills are considered enacted if they receive the support of majority of Seimas' members present at the sitting. The enter into force after signature and official publishing by the president. If the president does not sign and return the bill in specified period of time, the bill is signed and ordered for publishing by the Chairperson of the Seimas.

6. The President

According to art. 77 of the Constitution, the President of the Republic is the head of the state; he represents the state and fulfils all duties bestowed on him by the Constitution and the acts.

The president's term lasts 5 years. He is elected by the nation in universal, equal, direct elections, in a secret voting with absolute majority of votes. The same person may be elected not more than twice in a row. The presidential elections are held on the last Sunday, two months before the end of the term of the former president. The candidate must have 40 years finished before the elections and for the last 3 years reside on the territory of Lithuania and be eligible to be

13 It allows management of local activities from the central level, with the omission of local authorities' powers.

elected to parliament. To register a candidate in presidential elections requires collection of at least 20 thousand signatures of voters.

Elected candidate is the one who managed to collect at least 50% of votes with at least 50% turnout. With poorer turnout, the office of president goes to a person who obtained most votes, but not less than 1/3 of general number of voters. If the first round is ineffective, in the second there are two candidates with the highest result. The winner is the one who obtains most votes. If there are more than two candidates in the first round and none of them obtained the required number of votes, the elections are repeated.

Newly elected president takes the office on the next day after expiration of the former president and after swearing an oath. He is obliged to suspend his activities in the parties and political organizations until the beginning of a new campaign. He cannot be a member of the Seimas or receive remuneration other than the Republic President's or for creative activites.

According to art. 89 of the Constitution of the Republic of Lithuania from 1992, the responsibilities of the president can be taken over by the chairperson of the Seimas in the event of his death, resignation, loss of office as a result of Seimas' impeachment procedure, temporary absence in the country, state of health that disables realization of his duties (by Seimas' decision, with 3/5 majority of all members, and after opinion of the Constitutional Court)[14].

In the above cases, the Seimas' Chairperson loses his competences in Seimas and his activities are fulfilled by his deputy. Also, Seimas is obliged to order new elections for the office of the President of the Republic within 10 days. The elections must be organized within 2 months and not later. If Seimas cannot assemble for this purpose, the decision is taken by the Government.

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14 The first and the only case when the head of office vacated the office took place in April 2004. The then president, R. Paksas, was removed from his office by the decision of the parliament in the procedure of constitutional responsibility with the charge of treason. His responsibilities were taken over by the chairperson of the parliament, A. Paulauskas, who in July of the current year handed his office over to V. Adamkus who was elected in earlier elections. It is worth mentioning that that later adjudication of the Supreme Court annulled the decision of the Court of Appeal and R. Paksasa was exonerated from charges of treason.

Apart from the prohibition of announcing earlier elections to the parliament, the Lithuanian fundamental statute forbids the chairperson who substitutes the president appointing and dismissing ministers without prior consent of the Seimas. Additionally, during this time, the parliament cannot examine applications on the vote of no confidence towards the chairperson of the chamber. It is worth noting that while fulfilling presidential obligations, he is no longer in charge of the chambers' proceedings – they are taken care of by his deputy. Art. 89 concludes an interesting statement that "The powers of the President of the Republic may not be executed in any other cases, or by any other persons or institutions".

The president has the privilege of formal immunity and is not parliamentary responsible for official acts. Lithuanian Constitution from 1992 provides for president's responsibility for constitutional infringement, breaking the presidential oath, or offences (art. 86). The parliament decides about bringing act of accusation or the character of adjudication. In case the president is found guilty, the one–chamber Seimas may remove him from the office with 3/5 majority.

The parliament–presidential system adopted in the Constitution gives the president an exceptional role of an arbiter between the legislative branch and the government. This is why the fundamental statute equips the president with powers towards the government and Seimas, with the principle of balance of power and state functional efficiency.

The president has the right of legislative initiative, he signs and orders publication of bills enacted by Seimas (within 10 days of reception), may return the bill to Seimas (with proper justification) for re–examination. He cannot use the right to veto in relation to bills enacted in referendum and bills which received ½ support of total number of Seimas members. The president also orders ordinary and early elections to Seimas and may order emergency sessions of Seimas. Once a year he gives a public address on the condition of the state and on internal and foreign policy.

As a part of relations with the Council of Ministers, the president cooperates with the government on foreign policy, signs international

agreements and puts them forward for ratification by the parliament; appoints the prime minister and gives him the mission of government formation; approves the composition of the government presented by the prime minister, applies for a vote of confidence after presentation of government programme to the chamber.

On the consent of Seimas, the president nominates and recalls army commanders; manages the Council of State Defence, makes decision on defence issues, introduction of marital law or mobilization. He puts his decisions forward to Seimas for approval. What is more, he appoints candidates for the posts of judges of the Supreme Court, Court of Appeal, and Constitutional Court, and the candidate for the post of state controller and the chairperson of the Board of the Bank of Lithuania.

Within his traditional powers, the head of the state may also grants citizenship, apply prerogative of mercy and grant state awards.

As a rule, the acts of the president of Lithuania do not require countersignature. Apart from a few exceptions on acts that require countersignature of the prime minister or appropriate minister, enumerated in art. 85 of the Constitution, the president appoints and recalls representatives of foreign diplomatic posts and international organizations of the Republic of Lithuania; accepts letters of confirmation and letters recalling diplomatic representatives; grants the highest diplomatic ranks and special awards; appoints the highest military ranks; in a way provided by the statute announces emergency state and puts this decision forward for approval at the nearest sitting of Seima; grants citizenship of the Republic of Lithuania.

7. The Government

According to the Constitution, the government is composed of the President of the Council of Ministers and ministers. The President is appointed and recalled by the president, by the approval of the parliament. He also appoints and recalls the ministers on the application of the prime minister. The President of the Council of Ministers must, within 15 days, present formed and accepted by the president

government and its programme. It starts operating after the parliament's approval of common majority of votes[15].

The mission of government ends with its resignation put forward to the president in the following situations: when the parliament does not approve the programme two times in a row; the parliament, in secret voting, expresses vote of no confidence towards the prime minister or the government; when the prime minister resigns or dies; after each parliamentary or presidential elections.

Prime Minister is in charge of the government activities and represents it outside. Constitution provides for this institution and temporary substitution. In case of resignation, the president may entrust the cabinet or a minister with the prime minister's duties. In case of temporary inability to run the office, the prime minister's duties (though not all) are taken over by the minister appointed by the president.

Members of the government enjoy immunity, cannot be brought to criminal justice or arrested without the Seimas' consent, and between sessions, the president's consent.

According to the art. 94 of the Constitution, within its rights and duties, the government shall: protect the inviolability of the territory of the Republic of Lithuania, guarantee State security and public order, execute laws and resolutions of the Seimas on the implementation of the laws as well as the decrees of the President of the Republic, co–ordinate the activities of the ministries and other establishments of the Government, prepare a draft State Budget and submit it to the Seimas; execute the State Budget and submit to the Seimas a report on the execution of the budget, establish diplomatic ties and maintain relations with foreign states and international organisations.

15 J. Zieliński, *Systemy..., op. cit.,* p. 90.

8. Constitutional Court

The Constitutional Court comprises 9 judges appointed for the period of 9 years with no possibility of re–election. Judges are appointed by Seimas from among candidates designated in threes by the president, Chairperson of Seimas and the President of the Supreme Court. 1/3 of the Court's composition undergoes renewal every three years. The Chairperson of the Constitutional Court is appointed by Seimas on the application of the president.

The judges of the Constitutional Court enjoy the same inviolability regulations as the members of parliament and the same limitations concerning employment and political activity as other judges.

The main task of the Constitutional Court is examination and adjudication whether bills and other acts passed by the Seimas are in accordance with the Constitution of the Republic of Lithuania and whether president's and government's acts are not in conflict with the Constitution and acts (art. 105 Act 1 & 2).

The Constitutional Court also presents conclusions whether:

1) there were violations of election laws during elections of the President of the Republic or elections of members of the Seimas;
2) the state of health of the President of the Republic allows him to continue to hold office;
3) international treaties of the Republic of Lithuania are not in conflict with the Constitution;
4) concrete actions of Members of the Seimas and State officials against whom an impeachment case has been instituted are in conflict with the Constitution (art. 105 Act. 3).

Decisions of the Constitutional Court are final and cannot be appealed.

Part 7

CZECH REPUBLIC

1. Introduction

Czech Republic is historically composed of three lands – Czech itself, Moravia, and part of Austrian Silesia. The capital and the biggest city is Prague. In 1918 the territory of contemporary Czech Republic became newly created Czechoslovakian Republic, existing till 1939 and recreated in 1945 as a communistic state within the influence orbit of the USSR. In 1989, after the fall of the communist regime and as a result of so called "velvet revolution", Czechoslovakia became a democratic state. On 1 January 1993 it was divided into two independent states – Czech Republic and Slovakia. The former joined NATO in 1999 and was accepted to the European Union in 2004, together with Poland, Hungary and Slovakia. The four states forme so called Visegrad Group.

2. History of Czech constitutional law

Created on 18 October 1918 as a result of independence movements and liberation struggle after World War I, during the in–between wars period, Czechoslovakia remained a parliamentary republic. On the day of independence, the National Committee of the new state passed a bill which defined fundamental principles of taking control over administration. At the beginning, there were two bodies pretending to the status of the highest representative of the state[1]. The first one was the

1 R. Glajcar, *Instytucja prezydenta w Polsce, Czechach i Słowacji w latach 1989–2000. Analiza porównawcza*, Toruń 2004, p. 48.

Temporary Czechoslovakian government which operated in exile, and the second was the National Committee operating in Prague.

On 13 November 1918, the temporary National Assembly enacted temporary Constitution modeled on the fundamental statute of the IIIrd French Republic.[2] The Constitution sanctioned creation of independent Czechoslovakian Republic, and the highest body of state power became the National Assembly, president elected by the parliament, and the government.

Temporary character of the system ended on 20 February 1920, when the National Assembly enacted full fundamental statute in the form of the Constitutional Charter of the Czech Republic, giving it a parliamentary character[3]. Article 2 of the Constitution stated that "Czechoslovakian state is a democratic republic, with the president as the head of the state"[4] In 1918–1935 the office was held by the "father" of independence regained in October 1918, Tomas G. Masaryk, who in 1935 was succeeded by Eduard Beneš. As a result of Hitler's aggressive policy towards Czechoslovakia, Beneš gave up his office and his successor, Emil Hacha agreed in 1939 to become the president of puppet Protectorate of Czech and Moravia. In 1940 E. Beneš came back to politics and, ignoring the political changes after 30 September 1938, recognized himself as the valid president of Czechoslovakia.

After communists won the elections in May 1946, the president ordered their leader, K. Gottwald, formation of a government. In February 1948 communists staged a coup and gained full power, which led to enactment of communistic Constitution in May of the same year. It was later replaced by the Constitution from 11 July 1960, which introduced uniformity of the system according to the Soviet model, retaining, however, the office of the president[5]. Another fundamental statute from 27 October 1968 transformed the state into a federation.

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2 *Ibidem*, p. 49.
3 E. Gdulewicz, *Republika Czeska* [in:] E. Gdulewicz (ed.), *Ustroje państw współczesnych*, Lublin 2002, p. 65.
4 R. Glajcar, *op. cit.*, p. 71.
5 B. Dziemidok–Olszewska, *Instytucja Prezydenta w Państwach Europy Środkowo–Wschodniej*, Lublin 2003, p. 64.

The events of the "Prague Spring" awakened the Czechoslovakian opposition and inspired to an underground activity and fight with the communists[6]. Numerous intellectual emigrated and fought with a pen, informing about the internal situation in Czechoslovakia. More and more people became involved in politics, forming genuine opposition which could lead to the fall of the communistic regime.

In 1989 "velvet revolution" broke out and led to the takeover of power within 10 days[7]. In December 1989, A. Dubczek became the chairman of the Federal Assembly, and two days later Vaclav Havel was elected for the president of the republic. In June 1990 elections were organized to 3 parliaments for 2-year terms: Federal Assembly, Czech National Council, and Slovakian National Council. In the next elections, from June 1992, new groups rose to power: Civic Democratic Party of Vaclav Klaus in Czech Republic and Movement for Democratic Slovakia of Vladimir Meciar in Slovakia. Both politicians decided that there will be common referendum called on the break–up of Czechoslovakia (most citizens of the federation were against the break–up) and the decision will be made by democratically elected deputies.

On 17 July 1992 the Slovakian parliament in Bratislava enacted Slovakian declaration of independence.[8] As a result the Federal Assembly enacted constitutional statute on the end of federation, and on 1 January 1993 the Constitution of Czech Republic, enacted by the Czech National Council, entered into force.

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6 The term is used to define the time of political liberalization in Czechoslovakia in 1968, which lasted from 5 January to the moment when the USSR and other members of the Warsaw Group (Poland, Hungary, DDR, and Bulgaria) invaded the state at night from 20 to 21 August of the same year. The term is used to define a period of political liberalization in Czechoslovakia, lasting from 5 January 1968.

7 Apart from other events in the states of the Eastern block, the events were triggered by the pacification of students' demonstration to honour the death of J. Opletal – a student who 50 years earlier protested against Nazi invasion. As a sign of protest against the brutal way in which the "Prague Spring" was put down, a student named J. Palach set fire to himself and became the martyr of anti–communistic revolution.

8 W. Sokół, *System polityczny Czech* [in:] W. Sokół, M. Żmigrodzki (ed.) *Systemy polityczne państwa Europy Środkowej i Wschodniej*, Lublin 2005, p. 227.

3. Czech political system

Constitution of the Czech Republic was enacted on 16 December 1992, still during the federation period. Up till now it has been amended six times, for example, on the change of territorial system of the state (1997), on regulation of emergency states (1998), membership in NATO (2000), or referendum on the accession to the European Union (2002). The text of the Constitution consists of Preamble and eight chapters. Constitution may be amended or supplemented only via constitutional bills enacted by the parliament in a special mode, with statutory 3/5 majority of parliament members and senators, without possibility of presidential veto.

The system principles included in the Preamble and Chapter I of the Constitution can be considered as typical for post–communistic states, i.e. apart from traditional principles typical for most democratic states, there are also ones that aim to underline the departure from the communistic system. Specifically, the mention of the republican form of the state (used in the title of the Constitution), individual, sovereign, uniform, and democratic state of law, based on the respect of human rights and values (art. 1), political plurality, superiority of Constitution and local authority of local authority bodies. Constitution also relates to the principle of nation's sovereignty, showing people as the subject of the highest state authority. The people exercise power through the bodies of legislative, executive, and judicial authority. Appropriate constitutional acts also provides for realization of power through direct democracy. In spite of many projects attempted in the past, Czech legal system lacks acts on all–country referendum.[9] The main bodies of the state comprise: two–chamber Parliament of the Czech Republic including Chambers of Parliament and Senate, president, government, court, prosecutor's office, Constitutional Courts, courts of general jurisdiction, Supreme Inspection Office and Czech National Bank.

Analysis of constitutional relations between specific authorities indicates their parliamentary–cabinet character. Small modifications re-

9 So far the all–country referendum has been held only once, on accession of the Czech Republic to the European Union, on the basis of special constitutional act. V. Jiraskova, K. Skotnicki, *Parlament Republiki Czeskiej*, Warszawa 2009, p. 14.

late mainly to the strengthening of the position of government and, in comparison with the period of I Republic, slight weakening of the president's position[10].

4. Human and civil rights and liberties

First works on the preparation of new, non–communistic Constitution focused on the protection and guarantee of human rights. The result was enactment of Charter of Fundamental Rights and Freedoms on 9 January 1991, which has since then been a part of Czech Republic's constitutional block. Constitution itself does not include chapters on rights and freedoms, but only fundamental principles and reference to the Charter (art. 3). Constitution points out exceptional value of human dignity and freedom, equality of citizens, respect of human rights (Preamble), and subjects them fundamental rights and freedoms to the protection of judicial branch. It also guarantees freedom to do everything that is not forbidden by law to each citizen, and forbids imposing anything that the statute does not impose.

In 1999, the institution of Ombudsman was introduced (Public Defendant of Rights). Czech ombudsman is appointed for a 6-year term by the Parliamentary Chamber from among candidates proposed by the president and two appointed by Senate. Apolitical ombudsman is equipped with immunity and can be recalled by the Parliamentary Chamber only in cases specified by the act, for example, for breaking his oath[11].

5. Parliament

The parliament, body of legislative power, comprises two chambers: Chamber of Deputies and Senate. After the break–up of Czechoslovakia, parliament's competences were taken over by the Czech National Council, which was renamed as Chamber of Deputies.

10 K. Skotnicki, *System konstytucyjny Czech*, Warszawa 2000, p. 40–41.
11 E. Gdulewicz, *op. cit.,* p. 71.

Senate was also reactivated and the first elections to Senate took place in 1996[12]. The composition of the Chamber of Deputies comprises 200 members of parliament, elected for 4-year term, and Senate has 81 senators elected for 6-year terms with 1/3 of the composition renewed every two years. Elections to both chambers of parliament are secret, universal, equal, direct, and the voting lasts two days. The elections to both chambers are ordered by the president, the latest 90 days before they are introduced, with the date set on any of the 30 days before the end of the term. In the event of dissolution of Chamber of Deputies, the elections take place within 60 days. They last two days and by the power of the act, they are Friday (afternoon) and Saturday (since morning to 2 p.m.).

Chamber of Deputies is elected every 4 years, in accordance with proportional election statute, in 14 constituencies. Active electoral rights possess all citizens who finished 18 years of age. The right to elect to the lower chamber of Czech parliament belongs to the citizens of the Czech Republic after finishing 21 years of age. The elections are based on so called "barrage clause", which means that in the division of mandates take place parties which exceeded the 5% electoral threshold on the scale of the whole country. For coalitions of two, three, or more parties, this threshold equals: 10, 15, 20% respectively[13]. The mandates are divided in a few phases with the use of Hare–Niemayer method, which specifies the number of mandates for a given constituency and d'Hondt method, which bases on genuine participation of mandates (Hagenbach–Bischoff method was used before).

Senators are elected in majority elections in 81 one–mandate constituencies with absolute majority of votes. If no candidate receives such majority, then, six days later second round is organized with two candidates who obtained the biggest number of votes in the fires round. Age qualification in case of passive electoral right equals 40 years. In the elections there may take part independent candidates who must col-

12 E. Gdulewicz, *op. cit.*, p. 74.

13 If at least two participating subjects do not obtain mandates because of that, the thresholds are lowered to 4,6,8,10% respectively.

lect 1000 signatures of adult citizens who support their participation in elections, and must pay a deposit of 20 thousand Czech crowns.

The term lasts 6 years and 1/3 of composition is renewed every two years. In the first elections, senators from constituencies 1, 4, 7, … 79 are elected, and two years later from constituencies 3, 6, 9, … 81, and then others.

Objections to validity of elections are examined by the Supreme Court of Administration.

One specific feature of the Czech electoral system is the deposit that the electoral committee must pay before registering electoral list[14]. In case of elections to Parliamentary Chamber the deposit equals 15 thousand crowns in every constituency where the list is registered, and for each registered candidate the deposit is 20 thousand crowns. The deposit is returned if the candidate for a senator collects at least 6% of votes from all votes given in the constituency in the first round.

Member of parliament's or senator's mandate is obtained in the moment of election and it expires at the end of the term. Since the elections take place 30 days before the end of the term, for some time there function members of the old and the new term, thought after the elections the old chamber is not called and the sitting of the new one is planned after the mandates of the former term members expire[15].

Chamber of Deputies can be dissolved by the president in the following cases provided by the Constitution (art. 35): when the Chamber of Deputies fails to vote confidence in a newly appointed Government the Prime Minister whereof was appointed by the President on the proposal of the Chairman of the Chamber of Deputies; if the Chamber of Deputies has not decided on a Government Bill the consideration whereof the Government tied to the question of confidence; the session of the Chamber of Deputies has been recessed for a longer than admissible term; and the Chamber of Deputies has not had a quorum for a period longer than three months although its session was not recessed and although during the said period it had been repeatedly convened to

14 V. Jiraskova, K. Skotnicki, *Parlament.., op. cit.*, p. 25.
15 *Ibidem*, p. 16.

meet. However, the Chamber of Deputies may not be dissolved three months prior to the end of its electoral term. Additionally, it is possible to dissolve the chamber by itself with the 3/5 majority of all members. It is not possible to shorten the term of Senate.

It is possible to prolong the term of the chambers but only in emergency situations, such as inability to organize elections in constitutional terms after the announcement of emergency state, martial law or situations when the state may be in danger[16]. The term is prolonged by a bill and cannot last longer than six months.

In both chambers of Czech parliament the mandate is free. It expires before the end of the term in cases of: refusal to take the oath of office or by taking the oath with reservation; expiration of the electoral term; resignation from office; loss of eligibility; dissolution of the Chamber of Deputies in the case of Deputies; and emergence of incompatibility of office under Article 22. When the mandate is vacant, the place takes next person from the electoral list, and in Senate, in case of vacancy at least a year before the end of the term, there must be complementary elections organized.

The principle of incompatibilitas includes prohibition of connecting the mandate of member of parliament and senator, connecting the post of a judge with the office of the President of the Republic, and exercising function of a judge and other functions defined in the act (including employment in the ministry, prosecutor's office, judicial branch, security bodies, armed forces, Supreme Inspection Office, president's office, ombudsman, both chambers of parliament, or investigation committee).

Members of parliament enjoy material and formal immunity. Without the chambers' consent understood in perpetuum, they cannot be brought to criminal justice. Decision on this and on possible custody must be taken by appropriate chamber, with absolute majority of votes at the nearest sitting, counting from the day on which the application was filed by appropriate body.

16 *Ibidem*, p. 17.

The immunity is complemented by the right to refuse to testify on cases, about which the deputy found out in relation with his parliamentary mandate. This right is also valid after the mandate expires.

Each chamber elects a chairperson (with absolute majority of votes) and vice–chairperson (with common majority). Regulations of chambers do not give the chairperson the status of a body of the Parliamentary Chamber (Senate), but refer to them as chambers' functionaries. Their competences include organizational and representative matters (including the ones of a presidium, which no longer exists in the new Constitution).

Outside competences of the Chairperson of the lower chamber of parliament include: signing of acts (together with the president and the prime minister), opening and closing of a common sitting of both chambers, reception of president's oath and oaths of other constitutional state bodies and servants, reception of resignation of the President of the Republic, or substitution of the President in some functions, when the office is vacated.

Members of parliament and senators organize in clubs in accordance with their party preferences (minimum of 10 or 5 persons respectively). The size of the club matters in proportional representation in Chamber's bodies and in the amount of subsidy granted for the club's activity from the Chamber's budget.

Constitution mentions committees and commissions as bodies of Parliamentary Chamber. Committees may consist only of members of parliaments and their task is to examine cases presented by the Chamber but also the ones chosen by the committee out of its own initiative. According to its competences, The Parliamentary Chamber may also form permanent commissions, emergency (temporary), and investigation ones. They operate on the same principles as committees, although their members (apart from investigation committee) can be persons without a mandate[17].

17 W. Sokół, *op. cit.*, p. 255.

Both chambers work permanently, but it is possible to break (suspend) their work with an appropriate act for the period of not more than 120 days in a year altogether. Although, to give tradition its due, the legislator uses the term "session", but in practice it lasts from the beginning till the end of the term of each chamber. The sittings of both chambers are open and alteration to this rule can only be applied via an act.

The Parliamentary Chamber has the strongest position in the parliament. The right to put forward a bill to the Parliamentary Chamber have: a member of parliament, Senate, government, and a representative body of a higher level of local government. The bill is obligatorily put forward to the government, which must take a stand within thirty days and where silence means approval. It is possible, then, to put forward a government bill towards which the government expressed a vote of confidence. Such project must be examined by the Parliamentary Chamber within three months since its reception. The bill accepted by the Parliamentary Chamber is then put forward to Senate which has 30 days to either enact it or reject it and return to Parliamentary Chamber with suggestions of amendments. Senate may also not deal with it in the specified term which means approval. Parliamentary Chamber may once and for all enact a rejected or modified bill in the second voting with the majority of total number of members of parliament. Before the signature and publication by the president, he has the right to return the bill and justification of re–examination to the Parliamentary Chamber within fifteen days. This right does not apply to constitutional acts. It is not possible to put forward any amendments to the bill project. This prerogative does not require countersignature, but constitutional regulation of this institution does not allow the president to prolong and effectively block legislative process. Just like in case of Senate's remarks, the presidential veto may be rejected by the Parliamentary Chamber and re–enact the bill with majority of total number of members of parliament.

In emergency circumstances (state of war, endangering of rights and freedoms, state security, failure to implement the decision of the Unites Nations) there may be announced state of legislative provisional measures, during which the Parliamentary Chamber has 72 hours to

examine a bill project put forward by the government, Senate has 24 hours, and the president has not got the right to a veto[18].

Within its control functions, the Parliamentary Chamber expresses a vote of confidence and no confidence to the government, applies question procedures and enacts bills on their obligatory presence at the Chamber's sitting.

Creative competences of the Parliamentary Chamber include suggestions for the President of the Republic on candidates for the post of president and vice–president of the Supreme Inspection Office.

The position of both chambers of the parliament is parallel on some issues. For example, on enactment of constitutional bills, international agreements on the rights and fundamental freedoms of a human being (art. 39, act 4), enactment of electoral statute, act on the principles of debate and mutual contacts of both chambers, on external relations (art. 40), elections of the President of Republic in the first and second round (art. 58); decisions on the Presidents inability to discharge his office (art. 66), introduction of martial law, acceptance of presence of an alien army on the territory of the Czech Republic and dispatch of military forces outside the state territory (art. 13).

Exclusive competences of Senate include: bringing president to Constitutional Court for treason, approval of president's appointment of Constitutional Court judges and their persecution. One special right of Senate is enactment of statutory resolutions during the time when Parliamentary Chamber is dissolved and on the application of the government (art. 33). However, the statutory resolutions cannot regulate constitutional matters, state budget, finalization of state accounts, electoral statute, and international agreements on the rights and freedoms of human beings. Statutory resolutions must be approved by the Parliamentary Chamber at its first session.

18 V. Jiraskova, K. Skotnicki, *Parlament..., op. cit.*, p. 57.

6. The President

Czechoslovakia used to be a state which retained the institution of president during the post–war period and in all communistic Constitutions in spite of tendency to depart from one–man bodies towards collegial ones. The institution of president, obviously adapted to the principles of socialistic state, remained in the system till the "velvet revolution" and the moment when independence was regained.

After the events of "velvet revolution" there were no considerable changes in the statutory position of the head of state[19]. It resembles the positions in parliamentary–cabinet systems[20]. The president, elected by the parliament, exercises stabilizing role of a state symbol but devoid of real executive power. In his activities he is limited by the political order in the Parliamentary Chamber. The scope and area of president's activity are strictly limited by Constitution and based on the cooperation with the government[21]. He can act independently only in situations when the Constitution appoints him the role of an arbiter in internal relations of Parliamentary Chamber and along the government – Parliamentary Chamber line, and also when his actions are closely related with the formation and existence of government. In all other situations, he is deprived of legal instruments for policy creation, though practically he has got a lot of influence in this area. The president also attends meetings, has access to information, may consult various issues, unite politicians and political groups around specific issues.

Traditionally in Czech Republic, the President is elected by the parliament at a common sitting of both chambers via secret voting[22].

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19 T. Mołdawa, Zagadnienia konstytucjonalizmu krajów Europy Środkowo–Wschodniej, Warszawa 2003, p. 109.

20 See below: remarks on the proposed amendments on the election mode of the President of the Republic.

21 Osiński J., Prezydent w Państwach Współczesnych. Modernizacja Instytucji, Warszawa 2009, p. 137.

22 On 2 March 2011 Czech parliamentary groups decided that the president will be elected in universal elections, in two rounds, and not by the parliament. As for now, the decisions require amendment of the Constitution. Elections based on the new principles could take place after the end of V. Klaus's term at the beginning of 2013. According to the party arrangements, the right to appoint candidates would be had by 10 senators, 20 MPs or 50 thousand citizens. The winner would be a candidate who achieved over 50% of votes. If none of candidates meets this requirement, the winner would emerge in the second round from two participating candidates.

Any citizen eligible to be elected to Senate may be elected for the post of President of the Republic. This right is denied to persons who, on the basis of Senate's complaint, were sentenced by the Constitutional Court for loss of office and ability of re–election for the treason of Homeland. The office of president can be exercised only two times in a row[23].

The right to appoint a candidate is exercised by at least ten members of parliament or ten senators, 48 hours before election the latest[24].

Constitution provides for three election rounds. The first round is won by a candidate who in separate votings achieves absolute majority of votes of all members of parliament and absolute majority of all senators. If none of candidates manages to achieve the required majority, a second round is organized within 14 days.

The second round, where two candidates participate, is won by the candidate who achieved more votes in the Parliamentary Chamber and who received most votes in Senate. If in the first round more than one candidate achieves the same, biggest number of votes in the Parliamentary Chamber or Senate, the votes achieved in both chambers are add up and the winner is the candidate who received most support in both chambers. In the second round, the winner is the candidate who received the support of absolute majority of present members of parliament and absolute majority of present senators.

If the procedure does not successfully emerges the head of state, within 14 days the third round is organized with candidates who qualified to the second round. In the third round the votes of members of parliament and senators are not counted separately. The Office of President is won by the person who received more support of all present deputies. If the president is not elected in the third round, another elections are called.

The term of the president starts on the day he swears an oath to the chairperson of the Parliamentary Chamber, at the common sitting of both chambers. If the President of the Republic refuses to swear an oath

23 V. Havel held the office for three terms, first as the president of Czechoslovakia, and two successive ones as the president of Czech Republic. W. Sokół, *op. cit.*, p. 276.

24 B. Dziemidok–Olszewska, *op. cit.*, p. 172.

or swears an oath with restrictions, the election is not valid. The office of the president is vacated as a result of resignation put forward to the chairperson of the Parliamentary Chamber, or as a result of adjudication on the loss of office issued by the Constitutional Court on the basis of accusation of treason.

In case of vacancy or situation when a new President of the Republic has not been elected or has not sworn an oath, or when the Parliamentary Chamber and Senate claim that the President of the Republic cannot exercise his office due to important reasons, his duties are split between the prime minister and the chairperson of the Parliamentary Chamber. If the Parliamentary Chamber is dissolved, the duties fall on the chairperson of Senate.

Czech Constitution provides for a situation in which the president cannot exercise his office due to important reasons, however it does not require specification why and how long the president will not be able to fulfil his duties. These matters are determined by the Parliamentary Chamber and Senate in a common bill. If it is enacted, the president has the right to apply on its revocation.

The president may always participate at the sittings of the chambers of parliament but he has no legislative initiative, i.e. he cannot issue decrees with the power of bills or call referendum. Since he cannot directly appeal to the will of the nation, he traditionally exercises functions of the head of the state.

Within his constitutional prerogatives (art. 62), the President of the Republic: convenes sessions of the Parliamentary Chamber, dissolves the Parliamentary Chamber, has the right to return to Parliament adopted laws with the exception of constitutional laws, signs the bills, appoints and dismisses the Premier and other members of the Government and accepts their resignation, dismisses the Government and accepts its resignation, entrusts the Government whose resignation he has accepted or which he has dismissed with discharging its functions temporarily until a new Government is appointed, appoints the President and Vice–President of the Supreme Inspection Office, appoints judges of the Constitutional Court, its Chairman and Deputy Chairmen, appoints from judges the Chairman and Deputy Chairmen of the Supreme Court,

appoints members of the Bank Council of the Czech National Bank, pardons and mitigates penalties imposed by penal courts, orders that criminal proceedings be not opened, and if they have been, orders their discontinuation, and expunges previous sentences.

Exercising most of his right, the president needs countersignature of the government (prime minister or his authorized minister), where the signature means that the Parliamentary Chamber takes political responsibility. Thus, president bears no political responsibility for his activities, including punishable acts committed during his office. These acts include: representation of the state outside, ordering of parliamentary elections, appointment of the high command of armed forces and exercising other traditional rights of the head of state.

The President of the Republic is not accountable for the discharge of his office (art. 54 act 3). He bears no political, civic, or criminal responsibility[25]. The President of the Republic cannot be detained, exposed to criminal prosecution, or prosecuted for a misdemeanor or other administrative offence. Criminal prosecution for criminal acts committed while discharging the office of the President of the Republic is rendered impossible forever.

The President of the Republic can be prosecuted for high treason before the Constitutional Court on the basis of an indictment by the Senate. Punishment can be the loss of presidential office and of the qualification to hold it again. According to the Act of 16 June 1993 on Constitutional Court, high treason means activity aiming to harm sovereignty and unity of the state and its democratic order[26]. Senate's application on such accusation to the Constitutional Court requires 1/3 support of senators and introduction of the appropriate decision requires absolute majority. The matter is decided by the Constitutional Court with absolute majority of votes, with the turnout of at least one third of its members. Adjudicated punishment may be the loss of presidential office and of the qualification to hold it again.

25 J. Osiński, Prezydent w Państwach…, *op. cit.*, p. 159.
26 E. Gdulewicz, *op. cit.*, p. 87.

Parliamentary–cabinet system of government is characterized by some modifications reinforcing position of the government at the expense of presidential authority, though limited responsibility of the head of state, or parliament's inability to recall him are meant to strengthen system position of this office[27].

7. The Government

Constitution defines government as the main body of the executive power (art. 67 act 1). Its competences include everything that the Constitution and acts has not appointed to president, ministry, or other administrative body. It is composed of the prime minister, the Deputy Prime Minister, and the Ministers. The government is not subordinate to other bodies of executive branch, such as the president, Parliamentary Chamber, before which it hold political responsibility. The government coordinates and organizes activities of specific ministries and public administration offices.

Czech Constitution provides three stages of government formation. President's prerogative is to appoint the prime minister and, on his suggestion, appoints other members of the Government and entrusts them with managing the ministries or other bodies (art. 68 act. 2). In practice, newly appointed government must obtain confidence of the Parliamentary Chamber, otherwise it must resign.

In the first stage, the president designates the prime minister. Regulations do not impose any restrictions so, formally speaking, everything is up to the president. Obviously, when making the decision, he takes the political arrangement in the Parliamentary Chamber into account, otherwise he may get the government and himself as well, into a conflict with the representative body[28].

Next, on the application of the prime minister, the president appoints other members of the government and entrusts them with management of ministries and other offices. Constitution does not specify

27 K. Skotnicki, *op. cit.*, p. 40–41.
28 W. Sokół, *op. cit.*, p. 280.

any requirements as to the candidates, so formally speaking, the government's chairperson has got free will. In practice, he takes political criteria into account, for example, arrangements of the members of cabinet coalition, etc. At this stage, the fundamental statute does not give the president any legal possibility to influence the composition of forming government.

The third and last stage is the prime minister's obligation to present the programme of his government within 30 days at the forum of the Parliamentary Chamber in order to obtain their vote of confidence. In case of its lack, the prime minister offers his resignation to the President of the Republic in accordance with art. 73 of the Constitution. The remaining members of the government offer their resignation via the prime minister. This means that appointing the prime minister, the president must take the existing parliamentary majority into account, if he wants to avoid a conflict with the parliament.

In case of two failures to appoint the government in cooperation with the parliament, the latter has the right to appoint a government with only formal participation of the president, limited to appointment of the prime minister on the application of the Parliamentary Chamber chairperson.

Such government must also obtain vote of confidence from the Parliamentary Chamber. However, in this case lack of vote of confidence results in possibility of dissolution of the Parliamentary Chamber and early elections. This is a facultative right, because the president may still attempt to end the political crisis by finding a candidate capable of forming a government with the support of the chamber.

The government offers resignation to the president in three constitutionally specified situations: when the parliament rejects application on vote of confidence, when the parliament passes vote of no confidence to the government, and when the newly elected Parliamentary Chamber gets constituted. Accepting resignation of the government or its dismissal, the president , in order to secure continuity of power, entrusts it with realization of its duties until the appointment of a new government.

President may change the composition of the government at any time on the application of its leader. The leader also organizes the work of the government, presides its sittings, acts on its behalf, signs directives and exercises numerous other activities provided by the law.

The government debates at sittings which are closed and may call representatives of other bodies of state administration to participate in them. The sittings of the government may be attended by President of the Czech National Bank in an advisory capacity.

Members of government have the right to participate, with the voting right, in the sittings of both chambers, their committees and commissions.

8. Constitutional Court

Constitutional Court is a body for protection of constitutionality. This institution has a long tradition in Czech Republic because Constitutional Court, based on the work of an Austrian, H. Kelsen and enacted by the power of Constitutional Charter from 1920, was the first such body in the world[29]. At present, it consists of 15 judges appointed by the president and Senate's consent for the period of 10 years. Competences of the Constitutional Court have been defined very widely. According to art. 87 of the Constitution, the body adjudicates on: the nullification of other legal regulations or their individual provisions if they are in contradiction with a constitutional law, legislation, or international agreement, constitutional complaints by bodies of territorial self–administration against unlawful interference by the state, constitutional complaints against authorized decisions and other interference by bodies of public power with fundamental rights and freedoms guaranteed by the Constitution, legal remedies against decisions on matters of the verification of election of a Deputy or a Senator, a constitutional indictment by the Senate against the President of the Republic accord-

29 It was appointed on the basis of Austrian solutions of the transitory period, a couple of months earlier than a very similar body in post–war Austria (Constitution of the Republic of Austria from 1.10.1920. See: E. Zwierzchowski, *Sądownictwo Konstytucyjne*, Białystok 1994, p. 45 and next.

ing to article 65 act. 2, measures necessary to effect a decision by an international court which is binding for the Czech Republic, if it cannot be effected otherwise, the congruency of a decision to dissolve a political party or other decisions concerning the activities of a political party with constitutional laws and other acts, controversies on the scope of powers of state bodies and bodies of territorial self–administration, if, according to law, these do not fall under the jurisdiction of another body.

Part 8

SLOVAKIA

1. Introduction

Slovakia (The Republic of Slovakia) came into being as a sovereign state in 1993. Until that time it was part of Czechoslovakia. The capital of the state is Bratislava. Since March 2004 Slovakia has been a member of NATO, and since May 2004 a member of the European Union. On 1 January 2009 the Republic of Slovakia accessed the Euro zone. Together with Poland, Hungary and Czech Republic, Slovakia forms the Visehrad Group. In 1918, the territory of today's Slovakia, (before – a part of the Hungarian Crown within Austro–Hungary monarchy), was incorporated into the newly created Czech Republic that existed since 1939 and was reborn in 1945 as a communistic state under the influence of the USSR. As a result of the fall of the communistic regime and the velvet revolution in 1989, Czechoslovakia became a democratic state which on 1 January 1993 split into two independent and sovereign states – Slovakia and the Czech Republic.

2. History of Slovakian constitutional law

Throughout the centuries the Slovakian nation did not build their own state. Little tribal state that existed in IX c. was incorporated into the Great Moravian State, and after its fall in X–XI c. the territory was occupied by the Hungarians for many centuries[1]. In 1526 Slovakia became a part of the Habsburg Monarch, remaining one of the states of the Hungarian Crown.

1 *Konstytucja Słowacji*, translation and introduction K. Skotnicki, Warszawa 2003, p. 4.

The end of World War I witnessed an increase in liberation activity and aspirations for independence. On 30 October 1918, the Slovakian National Council proclaimed separation of Slovakia from Hungary and formation of a common state with the Czech nation. Although the declaration assumed full autonomy within 10 years the latest, neither the Small Constitution from 1918 nor Czechoslovakian Constitution from 1920 (Czechoslovakian concept of the nation) did not tackle the issue of Slovakian aspirations in its regulations[2]. Nevertheless, in successive years there appeared demands to create Slovakian national parliament and government[3].

More important changes occurred in 1938 when the anschluss of Austria by Nazis brought the Czech and Slovaks closer to one another. The name of the state was changed to the Czech–Slovakian Republic and Slovakian parliament was created. After the treaty of Munich from 29 September 1938, Czechoslovakia was forced to give the area of Sudety to the Germans and this was followed with territorial concessions towards Hungary and Poland.

In this situation, on 6 October 1938 Slovakian autonomy was proclaimed in Zylin, and on 14 March 1939, under pressure from Germany, the Slovakian parliament announced creation of independent Slovakian Republic. On 21 July 1939 Constitution was enacted, which was an attempt to connect parliamentary democracy with elements of Italian and German fascism[4]. After the end of the II World War, Slovakia found itself again in unified Czechoslovakian state[5]. Constitutional history of both states: Czech Republic and Slovakia were connected again until the time of velvet revolution and events of 1989–1993.

In relation to the part of the book on Czech Republic, it is worth mentioning two regulations. After the Prague Spring of 1968, Constitution of Czechoslovakian federation from 27 October 1968 was enacted (entered into force on 1 January 1969), which meant that two

2 Since November 1918 there existed a Club of Slovakian Members of Parliament in the National Assembly, and in the government there was appointed a Minister for Slovakian management
3 *Ibidem*, p. 7.
4 *Konstytucja Słowacji*, *op. cit.*, p. 8.
5 Desire to restore Czechoslovakia was declared during the Slovakian national uprising in 1944.

republics were created: Czech and Slovakian, with own competences and bodies each but with existing alongside federation structures. Another thing was the change of the name of the state in March 1990, where initially it was named as Czechoslovakian Federation Republic, and after Slovakian objections (so called "war on dash") it was changed to the Czech and Slovakian Federation Republic[6].

In August 1990, talks were initiated on the extension of republican authority and limitation of federal authority. As a result, the Competence Act[7] was enacted by the National Assembly on 12 December 1990. However, this did not put an end to the dispute about the constitutional shape of the state because there was no progress in negotiations on the change of the system of Czechoslovakia.

After parliamentary elections from June 1992, Czech National Council obliged its government to discuss the issue of transformation of the state into a union republic with the Slovakian government. However, on 17 July 1992 Slovakian parliament passed declaration on sovereignty, which, in spite of the will of most of Czechoslovakian citizen, brought about a breakdown of the state. On 20 July, as a sign of protest, president V. Havel gave up his office, and the prime ministers of both governments (Czech – V. Klaus and Slovakian – V.Meciar) decided that the end of the state and all its institutions will become binding on 1 January 1993.

3. Slovakian political system

Work on the Constitution, initiated right after declaration of independence, lasted short and on 1 September 1992, Slovakian National Council enacted Constitution of the Republic of Slovakia which entered into force on 1 October 1992.

It consists of an introduction and 156 articles contained in nine chapters. The introduction includes genesis of statehood and the will to create democratic form of the government. An interesting thing is the

6 *Konstytucja Słowacji*, *op. cit.*, p. 16.
7 *Ibidem*

differentiation of subjects into "Slovakian Nation" and "citizens belonging to national minorities and ethic groups living on the territory of the Slovakian Republic".

The state authority comes from citizens who exercise it through its representatives or in a direct way. Referendum is ordered by the president if it is requested in a form of petition by at least 350 thousand citizens or if the National Council (on the application of MPs or the government). The results are binding if at least half of the eligible voters took part in it and when more than a half of participants were for. Referendum is used to confirm the constitutional statute, accession to or withdrawal from the state union, to decide on important public issues, except those relating to the fundamental human rights and freedoms, taxes, conscription, or state budget.

The principles contained in the Constitution, headed by the rights freedoms, and guarantees of an individual, form a classic catalogue of fundamental principles of a democratic state. Functions of the highest state bodies have been regulated in accordance with the principle of power division and the relations between legislative and executive branch have been based on the foundations of parliamentary system. In its initial version the Constitution had quite a few flaws that made running the state difficult. Unclear statements and lack of coherent system concept aroused a lot of tensions among members of the Slovakian political scene, affecting even the state's position on the international arena[8]. The need for reforms was more and more evident.

According to art. 84, act 4, amendment requires approval of 3/5 of all MPs, that is 90 votes in a parliament of 150 members.

Slovakian Constitution was amended nine times in the years 1999–2010 and most changes were introduced by the amendments from first three years: 1998, 1999, and 2001. The amendments entered into force on 1 January 2002 and they retained the number of articles, but developed and extended them, which increased the size of the Constitution by 1/3. Amendments introduced crucial changes in the election of the president; they replaced election of president by the National Council

8 *Konstytucja Słowacji*, *op. cit.*, *passim*.

with election in universal elections, introduced the institution of countersignature, and limited the influence of the president on the government formation process. Additionally, major changes underwent the judicial branch and control bodies.

In relation with Slovakia's accession to the EU, one of the aims was to adapt the internal law to the international law. For this reason so called European clause was included in Part I.

As a consequence, present version of the Constitution differs diametrically from its original one. The amendments not only eradicated the flaws, but introduced new system solutions. Present model clearly relates to the parliament–cabinet government system with strong position of the parliament.

4. Human and civil rights and liberties

Part II of the Constitution contains traditional catalogue of rights, freedoms, and obligations of a human being and a citizen, together with their guarantees. Separate sub–chapter is devoted to the rights of national minorities and ethnic groups, with guarantees for development of their own culture, language and education.

Amendment of the Constitution from 2001 crated institution of ombudsman in the form of Public Defender of Rights. Ombudsman is appointed by the National Council of the Slovakian Republic for a 5-year term. According to art. 151 he is an independent organ which works in accordance with means provided by the act on the protection of fundamental rights and freedom of natural and legal persons in relation to proceedings, adjudications, and abandonment of action by the bodies of public administration, if their mentioned actions are in conflict with the legal order or principles of democratic and legal state.

5. Parliament

One–chamber parliament in the form of National Council of the Slovak Republic is a legislative body of the Republic of Slovakia. It

comprises 150 members of parliament elected in five–adjective elections, for a 4-year term. There are barrage clauses of electoral law: 5% percent for separate parties and political movements, 7% for coalitions of two or three parties, and 10% for coalitions of four or more parties. In case the thresholds are not exceeded, the Electoral Commission lowers it to 4, 5, and 8% respectively.

Active election right is held by citizens who are 18 years of age or older, and passive one by citizens who are 21 years of age or older, have active election right, and reside permanently on the territory of the Republic of Slovakia. Election statute permits registering lists of candidates of a group, provided they have at least 10 thousand members. Missing part may be replaced by a petition on admissibility to elections signed by authorized voters in the number substituting the missing members. The statute introduced a proportional election system with the use of one 150-mandate constituency and the Hagenbach–Bischoff method, which is a modification of d`Hondt method[9].

The term of the parliament may be shortened in a couple of cases. The president may dissolve the National Council of the Slovakian Republic if it does not accept his programme declaration within six months after the appointment of the government of the Republic of Slovakia, if the National Council of the Slovak Republic does not pass a government bill project within three months, on which the government expresses a vote of confidence, if the National Council of the Slovak Republic is not capable to assemble for longer than three months, though its sitting was not recessed and it was called for a sitting for the second time, or if the session of the National Council of the Slovakian Republic was recessed for longer than provided by the Constitution. This right cannot be applied during last six months of its term, during war, martial law, or emergency state. The president dissolves the

9 In this method the outcome of the voting is determined as follows: a) sum of all valid votes in the constituency is determined; b) the sum is divided by the number of mandates in this constituency enlarged by 1; c) the result is rounded to an integral number and the electoral quotient is achieved; d) the number of valid votes for each list is divided by the electoral quotient; e) achieved integral numbers (remainder is not taken into account) determine the number of mandates for each list, some mandates remain unfilled as a rule. W. Sokół, R. Serej, *System polityczny Słowacji* [in:] W. Sokół, M. Żmigrodzki (ed.) *Systemy polityczne państwa Europy Środkowej i Wschodniej*, Lublin 2005, p. 480.

National Council of the Slovak Republic when in the people's voting on dismissal of the president, the president is not dismissed.

Parliamentary mandate is free. It cannot be linked with the post of a judge, prosecutor, Public Defender of Rights, positions in Armed Forces and uniform services. When exercising functions in the government, the mandate is suspended. A deputy enjoys material immunity which encompasses his activity on the forum of the parliament, and formal immunity which relates criminal persecution and disciplinary measures. Decision on arrest is issued by the parliamentary Mandate–Immunity Commission[10]. Parliamentary mandate expires at the end of the term, resignation, loss of voting eligibility, dissolution of the National Council, connection of positions, and on the day when the adjudication of the Court that sentenced the MP enters into force.

The National Council of the Slovak Republic sits all the time (permanent session). First sitting of the parliament is called within 30 days after the announcement on the election outcome. If it does not do so, the National Council assembles on the 30th day after the announcement on the election outcome. The parliament may enact suspension of its own session, thought the suspension cannot last longer than four months in a year. During the suspension, the chairperson, vice–chairperson and the committees exercise their functions and the chairperson may also call a sitting before the specified term on the application of the government or at least 1/5 of MPs. The session of the National Council ends at the end of the term or as a result of its dissolution.

National Council bodies are: chairperson, vice–chairperson, commissions and councils. The chairperson and vice–chairperson are appointed in a secret voting by the National Council with majority of over half of all members' votes. The chairperson of the National Council possesses many internal and external competences: calls and chairs the sittings, signs the Constitution, constitutional statutes and acts, receives the pledges of the National Council members, orders elections to the National Council, elections for a president and elections to the bodies of local authority, orders people's voting on president's dismissal. In

10 J. Ciągwa, *Rada Narodowa Republiki Słowackiej*, Warszawa 1998, p. 20 and next.

the event of vacancy of the president's post, some of his competences are handed over to the chairperson of the National Council.

Commissions are initiative and control bodies of the parliament. Three of them have obligatory character: Mandate and Immunity, Non–Connectivity of Posts, and Constitutional–Legal ones. Both the Council and its commissions may form councils which serve as forums for consultations of issues and preparations of stands on issues within their competences[11].

Parliamentary clubs cannot have fewer than 8 members (art. 64 of National Council Regulations) and they can be connected and divided. The representatives of the clubs delegate their representatives to the Parliamentary Committee, which is an opinion–forming body[12].

Main task of the National Council is to exercise its system, legislative, control, and creative functions. Competences of the parliament can be characterized as extensive, especially in relation to legislature. Legislative scope is constitutionally unlimited and encompasses: enactment of bills and examination of more important international agreements.

National Council is capable of passing bills when more than a half of all members are present and for the validity of National Council's acts, (except those specified by the Constitution) the consent of over half of all present members is needed.

According to art. 84 act 4, support of 3/5 of all members of parliament is needed to enact the Constitution, to amend it, to pass a constitutional act on the consent about an international agreement within the "European clause", to pass a bill on people's voting on the dismissal of president of the Republic of Slovakia, to bring the president to justice, and to declare war on another state.

Bill project can be put forward by the commissions of the National Council, MPs, and the government of the Republic of Slovakia. The president has got the right to a weak suspension veto, which forces the

11 W. Sokół, R. Serej, *System, op. cit.,* p. 488.
12 *Ibidem*, p. 489.

parliament to vote through a bill for the second time. The bill is signed by the president, chairperson of the National Council and the prime minister. If after re–examination the National Council passes the bill against the remarks of the president and the president does not sign it, it is announced without the president's signature.

Within in control and creative functions of the National Council one can distinguish: examination of program declaration of the government (basing on it, the Council controls the work of the government), enactment of the state budget and assessment of its realization, examination of application on the vote of no confidence. Control rights are exercised by the whole chamber, parliamentary commissions and separate MPs. Another control means are parliamentary questions. Unsatisfactory reply to an MP's question may lead to a plenary debate and adoption of resolution. The subjects of question may be: the government, members of the government, and central government bodies. "Question time" which is an obligatory part of the National Council's agenda, allows also to ask questions to the general prosecutor and the president of the Supreme Control Office (SCO).

Among other competences of the Slovakian parliament, one can mention: formation of central bodies, appointment and dismissal of the president of SCO and the general prosecutor, the right to make peace and declare war, consent on the presence of alien forces on the state territory, consent on ratification of important international agreements, the right to appoint and recall the Public Defendant of Rights, the right to adopt a resolution on application to the voters to recall the president in general election.

6. The President

Present position of the President of the Republic of Slovakia was shaped by the two above mentioned amendments[13]. System authority of the president was reinforced by direct president elections and constitu-

13 J. Osiński, Prezydent w Państwach współczesnych. Modernizacja instytucji, Warszawa 2009, p. 621.

tional guarantee, which says that the head of the state cannot be bound by any obligations. The president runs his office in accordance with his conscience and conviction.

In 1999 Slovakia joined the group of states where the president is elected in universal elections. He is elected in universal, direct, equal, and confidential elections for the term of 5 years. The same person may hold the office two times in a row. Comparing to previous solutions relating to requirement for candidates, only the age qualification was changed. According to the binding regulations, a candidate must have Slovakian citizenship, have 40 years of age finished on the day of the elections, must have a permanent residence on the state territory and enjoy full public and legal rights (art. 101).

Candidates for the office of the president can be entered by at least 15 members of the National Council of the Republic of Slovakia and citizens by application with 15 thousand signatures 21 days the latest after the order on elections. First round is won by a candidate who receives more than a half of votes of all eligible voters. If none of candidates fulfils this requirement, second round is organized in 14 days. Only two candidates take part in it – the ones who managed to collect most valid votes. The second round is decisive, which means that the office of the president goes to the candidate who received most valid votes.

If there is only one candidate for the post of the President of the Republic, he must have the support of more than a half of all valid votes.

Constitutional Court of the Republic of Slovakia is authorized to decide about constitutionality and legality of the presidential elections.

Newly appointed president takes his office after swearing the oath before the deputies of the National Council of the Republic of Slovakia, and to the President of the Constitutional Court of the Republic of Slovakia. Refusal to swear the oath or an oath with restriction results in invalidity of the presidential elections.

President may resign at any time and the end of his function falls on the day on which he puts forward written announcement of his decision

to the president of the Constitutional Court. Next, the president of the Constitutional Court, informs in writing the chairperson of the National Council about the resignation from the office of the president.

If the president is unable to exercise his functions for longer than six months, the Constitutional Court of the Republic of Slovakia announces that the office of the president has been vacated. On the day when the decision of the Constitutional Court of the Republic of Slovakia is issued, the term of the present president finishes.

Slovakian fundamental statute provides for people's voting to recall the president. For that to happen, the National Council of the Republic of Slovakia must pass an appropriate bill with qualified 3/5 majority of votes of the chamber composition. People's voting is ordered by the chairperson of the National Council within thirty days since of the enactment, and voting must take place within sixty days of its ordering.

If the president is not recalled via people's voting, the president dissolves the National Council of the Republic of Slovakia within thirty days after the result is announced. Then, its chairperson orders early parliamentary elections within seven days after the dissolution of the parliament[14]. In the event like this the president begins a new term.

If the president is not elected, the position has been vacated and the new one has not yet been appointed, or if the president cannot exercise his function because of important reasons, the Constitution from 1992 provides for the substitution of the head of the state. The president's responsibilities are quite extensive. He is responsible for treason of Homeland and infringement of Constitution (art. 107 of the Constitution). The indictment against the president is filed by the National Council of the Slovak Republic with 3/5 majority of votes (90) of the parliament. The Constitutional Court of the Slovak Republic decides on the indictment and dismissal from the office. The Court also decides on dismissal in case the president is incapable of exercising his function for longer than six months

14 Slovakian Constitution, Art. 106 Act 3.

Part of president's competences are taken over by the executive branch, the rest are passed to the chairperson of the Slovakian parliament – the National Council. According to art. 105 of the Constitution, these competences are passed to the Government of the Republic of Slovakia, which can in turn pass it to its chairperson[15].

Some competences, in case of vacancy of the office of the President of the Republic of Slovakia, are not realized at all. During this time, its substitutes cannot: dissolve the National Council of the Republic of Slovakia, sign acts, grant awards, unless another body is authorized to do so, grant amnesty and pardon, realize the function of the supreme commander of the armed forces, request information from the government of the Republic of Slovakia and from its members needed to realize his competences.

As the head of the state, he represents it outside, also his competences allow him to sign and ratify international agreements, appoint and recall chiefs of diplomatic missions.

In internal relations, with his decisions, the President of the Republic of Slovakia must guarantee proper functioning of the constitutional bodies and, if necessary, their protection. He can make use of his rights in case of violation of the fundamental statute: he may apply

15 The president represents the Slovak Republic outwardly and concludes and ratifies international treaties, receives and accredits ambassadors, calls the constituent meeting of the National Council of the Slovak Republic, calls referendums and has the right to suspension veto. Within competences, which during this time fall onto the chairperson of the parliament, the president appoints and recalls the prime minister and other members of the Government of the Slovak Republic, appoints and recalls the heads of central bodies and higher–level state officials in cases specified by law, appoints university professors and rectors, appoints and promotes generals, awards distinctions, unless he empowers another body to perform this task, grants amnesty and pardon, lowers punishments meted out by criminal courts, issues orders not to initiate or not to continue criminal proceedings, and nullifies punishments, acts as supreme commander of the Armed Forces, declares martial law at the recommendation of the Government of the Slovak Republic and declares war on the basis of a decision of the National Council of the Slovak Republic, if the Slovak Republic is attacked or as a result of commitments arising from international treaties on common defence against aggression, declares a state of emergency on the basis of a constitutional law, can return to the National Council of the Slovak Republic constitutional and other laws with comments. He can do so within 15 days after their approval, presents to the National Council of the Slovak Republic reports on the state of the Slovak Republic and on important political issues, submits to it draft laws and proposals for other measures, has the right to be present at meetings of the National Council of the Slovak Republic, has the right to be present at meetings of the Government of the Slovak Republic, to chair them, and to demand reports from the Government or its members.

to the Constitutional Court of the Republic of Slovakia with application on adjudication of compliance with the Constitution and constitutional acts, or on establishment of a competence dispute between the central bodies of state administration. Very important for the president is the regulation stating that the government is not the highest, principal body of executive authority. The president is not the head of Slovakian executive branch, but in the systematic of the fundamental statute the sub–chapter on the head of the state was placed before the chapter on collegial body of executive authority.

President is the supreme commander of the armed forces and he can fulfil his competences on defence and security of the state together with the National Council of the Republic of Slovakia and the government. He has the right to declare war, however, it is not only his decision[16] – he declares the war on the basis of the decision of the National Council of the Republic of Slovakia made with 3/5 majority of all members. It is made in case of an armed aggression on the Republic of Slovakia and is a result of international agreements about common defence against an attack. The president can also make peace, order mobilization, declare marital law or emergency state. He also appoints the Chief of Staff, Head of the Military Office of the President of the Republic of Slovakia, President of Higher Military Academy, and appoints generals.

Main areas of relationship of the president and parliament are the rights of the latter concerning dissolution of the parliament, ordering of parliamentary elections, and calling, postponing, and closing sessions of the parliament. The president of the Republic of Slovakia does not have legislative initiative but has the right of so called constructive veto, which can be applied once towards a specific act. An important element of the mentioned relation is also the president's obligation to file reports on the condition of the state and important political issues of Slovakia. Such report should be filed at least once a year.

16 B. Dziemidok–Olszewska, Instytucja Prezydenta…, *op. cit.*, p. 272.

President appoints the leader of the government and other members on the application of the leader. He entrusts them with the management of ministries and receives their oath[17].

President appoints and recalls judges on the appointment of the Judicial Council of the Republic of Slovakia. According to the amendment from 2001, the president appoints 13 Judges of the Constitutional Court for a 12-year term, electing them from 26 candidates presented by the National Council. If a judge gives up his function or is recalled, the president appoints a new judge for the new term from two candidates proposed by the National Council. The president also appoints the chairperson and vice–chairperson of the Supreme Court of the Republic of Slovakia for a 5-year term[18]. Additionally, the president appoints and recalls the General Prosecutor on the application of the National Council of the Republic of Slovakia.

Traditional competences of the President of the Republic of Slovakia include awards distinctions, granting of amnesty and pardon, lowering of punishments meted out by criminal courts and lowering punishments in the form of individual prerogative of mercy.

Also, the president orders referendum and is the only supreme body of government power, which can make a decision in this matter.

Activities of the President of the Republic do not require countersignature. Only a few cases provided by the Constitution require signature of the prime minister or authorized minister. Approval is needed in case of decisions that relate to accreditation of ambassadors, declaration of amnesty and exercising of function of the supreme commander of the Slovakian armed forces.

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17 By the power of original constitutional regulations, the president held the right to participate in government sittings, to chair them and request reports from the government and its members. As a result of the amendment, the president lost the right to participate in sittings and to chair them. However, his right to request information from the government and its ministers, which is needed for the president to realize his obligations as the head of the state, was strengthened. *Konstytucja Słowacji*…, *op. cit.*, p. 31.

18 B. Dziemidok–Olszewska., Instytucja Prezydenta…, *op. cit.*, p. 260.

7. The Government

Constitution's amendment of 2001 caused the government to be the "supreme body of executive power" and not the "highest" one (art. 108). It consists of a prime minister who runs it, ministers and vice–ministers. The prime minister is appointed by the president, and on the application of the prime minister, the head of the state appoints the rest of the members of government. The president is not obliged to obey the proposals put forward by the chairperson of the government. If the proposed candidates arouse president's doubt, he can apply to the chairperson of the government for recommendation of another candidate.

The function of the member of government cannot be linked with the parliamentary mandate. A member of the government cannot be a president, judge, or a member of Supreme Control Office.

The prime minister is obliged to present program declaration to the National Council within 30 days of the appointment. If the parliament does not accept the program declaration within 6 months after the parliamentary elections, the president may dissolve the National Council. Members of the government bear individual and joint political responsibility before the parliament. Application on recalling a member of the government may also be put forward to the president by the prime minister. In this situation the president decides about temporary substitution of the dismissed minister with one of the government members.

The government collegially settles issues connected with: government programme which requires parliament's approval, budget, enactment of bill project, examination of international agreements, presentation of application on verification of constitutional compatibility to the Constitutional Court, etc. The catalogue may be statutorily extended.

Slovakian Constitution does not regulate prime minister's tasks of government management, realization of government acts, or independent issuing of directives.

8. Constitutional Court

Constitutional Court of the Republic of Slovakia is an independent body with evident influences of between–war constitutional judicature of Czechoslovakia and of the time after 1989. It comprises 13 judges appointed for a 12-year term, without possibility of holding the office two times. The judges are appointed by the president from a double number of candidates presented by the parliament.

Control is concentrated, consequent (except international agreements which require parliament's consent) and single–instance. The right to initiate control is held by 1/5 of members of the National Council, president, government, court, General Attorney. All commonly valid normative acts are subject to constitutional control. Adjudications of the Court are final.

Other numerous competences of the Constitutional Court include: examination of constitutional complaints, examination of competence conflicts, interpretation of Constitution, decisions on validity of elections, people's voting, referendum, and introduction of emergency states, it also adjudicates on president's constitutional responsibility and examines compliance of activities of political parties with the Constitution.

Part 9

RUSSIAN FEDERATION

1. Introduction

Russia or Russian Federation (according to art. 1 of the Constitution, both names are official terms[1]) is the biggest state in the world, stretching from the Eastern Europe, through the Northern Asia, to the Pacific. In USSR Russia (Russian Federal Socialistic Soviet Republic, short RFSSR) played a dominant role, but since 1991 has been a self–reliant state. Russia is a member of numerous international organizations, including Security Council of the UN, G8, Community of Independent States, Eurasian Economic Community, Shanghai Cooperation Organization.

2. History of Russian constitutional law

Constitution of Russian Federation (RF) is basically the first democratic fundamental statute in this country. The beginnings of constitutionality in Russia can be traced back to XVIII . However, constitutional commission appointed by empress Catherine II did not prepare a project of Russian first fundamental statute, because it could not combine absolute system with the concept of written Constitution[2]. Next attempts to draft a Constitution, undertaken in XIX c. by tsar Alexander I and Alexander II did not succeed either, although the latter appointed so called Zemstvo (Russian: Земство) with decree on property rights

1 The Constitution of the Russian Federation art. 1 sec. 1, 2 http://www.constitution.ru/en/10003000–01.htm

2 *Konstytucja Rosji*, wstęp A. Bosiacki, trans. A. Kubik, Warszawa 2000, p. 4.

for peasants in 1864, which granted them some authority competences. During successive years the competences were change many times.

Absolute power created by Peter I existed in unaltered form until the constitutional statute of Nicholas II in 1895 was published (October Manifest). Although the act did not use the word "Constitution", it is considered as the first fundamental statute of the Russian state[3].

After the abolishment of tsar, Legislative Assembly started work on the new Constitution, but after it was dispelled by Bolsheviks, the new authorities decided to prepare a Constitution project of the Soviet state. It was enacted in 1918 by the V All–Russian Meeting of Councils. In 1922 Union Act was passed that gave birth to the new state called the Union of Socialistic Soviet Republics. The Constitution was adopted in 1924 and the amendments occurred in 1936, as a result of enactment of new, "Stalinist" Constitution, which was to become a model for other Constitutions of communistic states. The system of government from 1936 survived till the end of the USSR, and some of its regulations are present in today's fundamental statue[4]. Changes initiated after J. Stalin's death led to enactment of new Constitution in 1977[5].

Present political system of Russian Federation was formed as a result of transformations during mid–eighties and the beginning of nineties of the XX c. After Michail Gorbachev got to power in 1985, there came the time of perestroika (reconstruction, change of socio–political relations) and glasnost (openness of political life), which based on softening of censorship and limited economic and political liberalization. The willingness to reform the communistic system led to its collapse and break–up of the state.

On 1 December 1988 the Supreme Council of the USSR enacted amendment which started a whole cycle of system transformations.

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3 Manifest assumed appointment of civic freedoms and calling of first legislative parliament. E. Zieliński, *Parlament federacji Rosyjskiej*, Warszawa 2002, p. 6.

4 *Konstytucja Rosji*, *op. cit.*, p. 19.

5 During communism the bicameral Supreme Council of the USSR was the highest state body. It comprised: Union Council (750 representatives elected by the citizens) and the National Councils (750 representatives of each autonomic region). Sessions took place two times a year and did not last longer than 2–3 days, because all decision had been prepared earlier by the Presidium of the National Council (working permanently) and approved by the Politic Bureau.

New parliament was created – Convention of People's Deputies that was the highest authority assembling at least once a year and new electoral statute was developed, which contained some traces of political plurality[6]. Next changes were the creation of the office of president of the USSR in March 1990 and the president of Russia in April 1990[7].

In December 1991, after declaration of independence of the last Baltic States, Georgia (1990), and unsuccessful putsch of G. Janajev (August 1991) the last phase of break–up of the USSR took place. Leaders of three republics: Russia, Ukraine, and Belarus, decided to liquidate the USSR and create the Unity of Independent States. In about the same time M. Gorbachev gave up his office and the Council of Republics of Supreme Council of the USSR made a decision about self–dissolution[8].

With every amendment the Constitution was growing more and more inconsistent, which led to necessity of enacting new fundamental statute.

On 12 May 1993 B. Jelcyn appointed a commission which was to develop a project of new Constitution. Next, the president called Constitutional Assembly, which on 12 July 1993 passed the project of the fundamental statute with 433 votes out of 685 participants.

An important event at that time was the parliamentary crisis. State Duma (comprising deputies elected in communistic times) led by R. Chasbulatov, in their project proposed parliamentary–cabinet system against the president's will. As a result of growing conflict, on 21 September 1993 the president issued a decree by the power of which

6 M. Czajkowski, *Federacja Rosyjska*, [in:] W. Baluk i A. Czajowski (ed.) *Ustroje polityczne krajów Wspólnoty Niepodległych Państw*, Wrocław 2007, p. 41.

7 E. Zieliński, System konstytucyjny Federacji Rosyjskiej, Warszawa 2005, p. 56.

8 Earlier, in March 1990, the last reform of the USSR system took place. The office of president, elected in direct elections for 5 years, was created. He was to reinforce the central management, to be a decisive centre (important in the face of planned thorough reforms) and a symbol of multi–national reconciliation of the society. Advisory bodies were created, such as Presidential Council, Security Council of the USSR, and Federation Council (information and control body working on behalf of the president). Legislative power was held by the Convention of People's Deputies (2250 persons assembling fro two sessions – in a similar manner to the old Highest Council) and the Supreme Council of the USSR (542 persons, elected for 5 years, working permanently, with annual rotation of 1/5 composition; divided into the Union Council and National Council). The president was the chairperson of the Supreme Council – in the person of the party leader legislative and executive powers were united.

the Convention of People's Deputies and the Supreme Council were dissolved and a new date of elections was set to 12 December, the same time when constitutional referendum, based on presidential project of fundamental statute, was to take place.

3. Russian federalism and political system

Present Russian Constitution was enacted in all–national referendum organized on 12 December 1993. The requirements of 50% votes for and 50% turnout were met. With 55% turnout, 58,4% voters were for the enactment of Constitution.

Russian Federation comprises 21 republics, 6 states, 49 districts, Jewish autonomic district, 10 autonomic districts, and two cities of federal significance – Moscow and Saint Petersburg. Current federation treaty was signed on 31 March 1992 and confirmed by the Constitution. Depending on the signatories, the treaty had three versions. The broadest rights had the republics, which have their own Constitution and corresponding competences. States, districts, and states became typically administrative subjects. The third version referred to autonomy districts, which are guaranteed national and language autonomy by the treaty, but not, for example, economical one.

According to art. 5 act 3 of the Constitution, federalism is based on the following principles: state integrity, uniformity of state authority, division of competences, and equality and self–definition of nations within the framework of federation. As art. 71 of the Constitution provides, federal authorities have exclusive rights to: enact Constitution and its amendment, federal legislature, regulation of the scope of rights, freedoms and civic responsibilities, management of federal property, regulations on development policy, legislature on finances, budget, monetary and price policy, management of uniform energy system, plus questions of defence, state security, foreign policy, judicial system, prosecutor's office, and court procedures.

Common rights include: guarantee of compliance of republican law with the Constitution and federal acts, human rights protection (in-

cluding national minorities), law and order, tax system, and foreign economic relationships.

Federation subjects have the following rights: right to enact the Constitution and statutes, enact acts and pass resolutions (in accordance with the Constitution and federal acts), make decision on the system of authority bodies, pass own competences to higher bodies (with possibility of their recovery), to present on the federal level (two representatives in Federation Council).

State authority in Russia is based on the principle of division and independence of bodies from the authority. Authority is exercised by the President of Russian Federation, two–chamber Federal Assembly, Government of RF, and courts. Constitution introduced strong power of the president, who is a head of state and superior of executive branch. Each Federation state authority has distinctly drawn scopes of activities and competences.

Apart from federalism, the fundamental statute from 1993 mentions, among main principles, the principle of democratic state of law, republican system of government, nation sovereignty, who exercises power basing on direct democracy (this form is mentioned as first in the Constitution), but also through bodies of state authority, the principle of integrity and inviolability of the territory, secular nature of the state, political plurality, social state and the right to private, state, and municipal property, and local authority[9].

Constitution grants the right of legislative initiative to the president, Federation Council, State Duma, the government, legislative (representative) bodies of Federation subjects, and the group of at least 1/5 of Federation Council members or deputies of State Duma. Federal constitutional acts are passed with 2/3 majority of total number of deputies of Duma and ¾ of total number of Federation Council members.

Federal Assembly cannot change regulations of chapter I (System constitutional foundations), II (Rights and freedoms of a human being and a citizen, and IX (Constitutional amendments and corrections).

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9 J. Kowalski, *Konstytucja Federacji Rosyjskiej a rosyjska i europejska tradycja konstytucyjna*, Warszawa–Poznań 2009, p. 167 and next.

However, if an application on changes of regulations is supported by 3/5 of total number of members of Federation Council and Deputies of State Duma, Constitutional Assembly is called, which either confirms that Constitution cannot be changed or drafts a new fundamental statute project, which gets adopted with 2/3 votes of all its members or is subjected to all–national voting, with 50% turnout requirement.

Additionally, amendments to chapters III–VIII enter into force after their approval by at least 2/3 of Russian Federation subjects.

Constitution's amendment was passed in 2008, where the term of the president was prolonged from 4 to 6 years (art. 81 of the Constitution) and State Duma's term from 4 to 5 years (art. 96 of the Constitution). Also, control competences were appointed to State Duma towards the government (art. 103 and 114 of the Constitution) by prime minister's obligation to file annual reports of his activities before the State Duma. The amendments were introduced via federal constitutional acts enacted on 21 November 2008 by Duma, 26 November by the Federation Council, and then passed by all 83 parliaments of the Russian Federation subjects, which has been confirmed by the act of 22 December 2008 by the Federation Council. President W. Miedwiediew signed the acts on 30 December 2008. Changes came into force after presidential elections of 2 March 2008 and parliamentary elections of 2 December 2007.

4. Human and civil rights and liberties

Among fundamental principles, in chapter I the Constitution mentions the primacy of human rights and freedoms. Second chapter is devoted to rights and freedoms that are held by everyone and are inalienable. They include general principles: inalienability of rights and freedoms, state's duty to protect them, support in international law or direct application of rights and freedoms contained in the Constitution. Wide catalogue of fundamental rights and freedoms is accompanied by the statement that they cannot limit other, generally known, rights and freedoms of a human being and a citizen (art. 55). Guaranteed are inherent rights like the right to life, freedom, personal inviolability, equal-

ity towards law, etc. The citizens also enjoy the right to property, entrepreneurship, secrecy of correspondence and telephone conversations, right to freedom of residence, to cross the borders of the state, to minimal pay, health protection and social support from the state. The catalogue mentioned in that chapter corresponds with generally accepted international standards on human rights[10]. An interesting thing to note is the special treatment of extended social rights. In practice, however, there is a noticeable problem of their observance[11].

5. The President

President's office of the then USSR was created in March 1990. It was an attempt to legally define competences of the General Secretary. The president was going to be a head of state, elected in universal elections for a 5-year term. Constitution of 1993 brought numerous changes on, for example, position of the president in the system of constitutional state bodies, his competences, the mode of election or dismissal. However, the most important change was placing him on top of hierarchy of state authority bodies[12]. His position is visible in general systematic of the Constitution, where regulations on the head of the state precede the ones of Federal Assembly.

According to art. 80 of the Constitution, the President of FR is the head of state, guarantee of Constitution, civic rights and freedoms, system values of the state, independence and sovereignty of the state. The president also outlines directions of external and internal policy of the state and represents the federation inside the country and in international relations.

Extended term, introduced by the amendments of 2008, equals 6 years (present last 4-year term ends in 2012). The head of the state is appointed by the citizens of the Russian Federation with absolute majority of votes on the basis of universal, equal, direct electoral law in

10 M. Granat, *Federacja Rosyjska*, [in:] E. Gdulewicz (ed.) *Ustroje państw współczesnych*, Lublin, 2002, p. 143.

11 *Ibidem*

12 T. Bichta, M. Kowalska, W. Sokół, *System polityczny Rosji*, [in;] W. Sokół, M. Żmigrodzki (ed.) *Systemy polityczne państw Europy Środkowej i Wschodniej*, Lublin 2005, p. 415.

secret voting[13]. Only Federation citizens who are not younger than 35 years and have resided at least 10 years on the territory of the country can be elected president. The same person cannot hold the office longer than two terms in a row[14]. Candidates can be proposed by initiative groups of at least 100 persons, after collection of 1 million signatures of valid voters. However, not more than 7% of total number of required signatures may be collected in one Federation subject.

The beginning and end of the term is marked by the oath of a newly elected president. In case of vacancy, the elections should be organized within 3 months and not later. The responsibilities of the president are then taken over by the prime minister, however, without the right to dissolve State Duma, order a referendum, or apply for an amendment of the Constitution[15].

Constitution guarantees inviolability for the president. He can be dismissed only on the basis of accusation of treason or commitment of other serious crime. Dismissal takes place on the application of State Duma and must be supported with adjudications of the Supreme Court on his guilt and the Constitutional Court on observance of binging mode of filing an accusation. The bill on dismissal of the president is passed by the Federation Council with 2/3 of statutory number of votes of each chamber, on application of at least 1/3 of Duma's deputies, and after calling a special commission by Duma. The Council's decision should be reached within three months of bringing charges by Duma.

The president has the right to issue decrees which are in accordance with the Constitution and acts, which do not require countersignature, and which are not provided by the Constitution of the RF. Decrees, except the one on emergency state, are not subject to parliamentary control and are treated in the same way as acts[16]. Directives are acts of executive nature.

13 The act introduces 50% turnout requirement.
14 Which allows for W. Putin's candidacy in 2012 elections, since his two terms are divided by the term of D. Miedviediev.
15 In transition periond of 1991–1993 there existed the office of vice–president in Russia.
16 T. Bichta, M. Kowalska, W. Sokół, *op. cit.,* p. 423.

Head of the state has got corresponding level of competences. As the only subject, the president is free to call a referendum, including constitutional one.

In relation towards the parliament, the president has got the right to dissolve the State Duma: obligatorily after three rejections of the candidate for the prime minister by the lower chambers of the parliament (art.111), and optionally when the Duma does not express a vote of confidence for the government within 3 months or refuses to give the vote of confidence to the prime minister (art. 117). As for the restrictions of president's rights, one should note that he cannot dissolve the chamber during proceedings on constitutional responsibility of the president, during emergency states and during last 6 months of the president's term, and that cannot apply art. 117 during the first year after the election. Within his rights, the presidents orders elections to the State Duma, has got the right to sign and announce acts, right to suspension veto (rejected with 2/3 of statutory votes in both chambers of the parliament), the right to direct acts to the Constitutional Court, and to deliver an address to the nation.

Among president's rights towards the government, one can mention: the right to appoint the prime minister by the consent of the State Duma and on the application of vice–prime ministers and ministers, to chair the sitting of the government, and the right to recall the federal government.

In foreign affairs, the president manages the foreign policy of the Federation, conducts negotiations, signs international agreements, ratification letters (authorizing to conduct negotiations on behalf of Russia), receives letters of credence and recalling accredited diplomatic representatives, and appoints and recalls diplomatic representatives in alien states or at international organizations after consultations with appropriate committees or commissions of Federal Assembly.

In the area of security and state defence, the president is the Highest Superior of Armed Forces who appoints or recalls the highest command of Armed Forces. In the event of aggression or direct threat of aggression, announces martial law, notifying the parliament about it as fast as possible.

Among creation competences of the president there are: presentation of candidature for the post of the head of the Central Bank to the State Duma, presentation of candidature of judges of Constitutional Court, Supreme Court, Principal Arbitrary Court, judges of other federal courts, and the Attorney General to the Federation Council. He also appoints members of the Security Council, whom he personally presides, representatives of the president of RF and president's administration staff.

6. Parliament

Federal Assembly consists of two chambers: Federation Council and State Duma. The chambers debate separately but can also assemble together in order to listen to the president's address, Constitutional Court, and leaders of foreign states.

The Federation Council is composed of two representatives of each Federation subject: one representative of executive branch and one of legislative branch. It has 178 deputies elected by the legislative bodies of specific Federation subjects or appointed by higher clerks of those organizations (representatives of higher bodies of executive branch). Chairpersons of parliaments and heads of executive authority of those subjects cannot be nominated[17]. It is possible, however, to connect the function of a member of Federation Council with the mandate of representative body deputy of federation subject. The term of deputies equals the term of the bodies by which they were elected. At the same time, the authorities may recall a deputy in the same mode in which they were appointed – imperative mandate. The session of the Federation Council lasts from 16 September to 15 July. Sittings are called when desired, however, not less frequently than two times a month.

Federation Council competences (art. 102 of the Constitution) include: approval of changes in borders between subjects of the Russian Federation; approval of the decree of the President of the Russian Federation on the declaration of war; deciding on the possibility of us-

17 Until 2000 it was them who sat in the Federation Council.

ing the Armed Forces of the Russian Federation outside the territory of the Russian Federation; appointment of elections of the President of the Russian Federation; impeachment of the President of the Russian Federation; appointment of judges of the Constitution Court of the Russian Federation, of the Supreme Court of the Russian Federation, of the Higher Arbitration Court of the Russian Federation; appointment and dismissal of the Procurator–General of the Russian Federation; appointment and dismissal of Deputy Chairman and half of the auditors of the all Accounting Chamber. In addition, projects adopted by Duma on federal budget, federal taxes and fees, financial, currency, credit, custom regulations, money emission, ratification and dismissal of international agreements, status and protection of state borders, war and peace are obligatorily examined by the Federation Council,

Resolutions of Federation Council are enacted with majority votes of total number of members, unless the Constitution provides other modes of enactment.

State Duma comprises 450 deputies, elected for the period of 5 years[18]. Passive election rights are held by eligible persons who turned 21 years of age. The elections are proportional, with the application of 5% electoral threshold for a party and 7% one for blocks[19]. The right to appoint candidates is held by the voters and political organizations. The act on political parties from 2001 states that only political parties can take part in elections, other organizations can do it only in blocks with parties[20].

Unless the president calls the sitting earlier, the State Duma assembles for the first sitting on the thirtieth day after the elections. The first two sittings are opened by the eldest deputy. Duma meets for two sessions: the spring one from 12 January to 20 July and the shorter, autumn session from 1 October to 25 December. The sittings of Duma,

18 Initially, the term lasted 4 years, but was extended by the power of constitutional amendments of 30 December 2008.

19 Until 2005 elections had a mixed character. Half of deputies were elected in accordance with the majority system in one–mandate constituencies created on the territory of Federation, the other half in accordance with proportional system, with 5% electoral threshold (d'Hondt method). The possibility of voting "against all" was liquidated in all kinds of elections, i.e. local, regional, presidential, and parliamentary.

20 M. Czajkowski, *Federacja…, op. cit.*, p. 50.

similarly to the sittings of the Federation Council, are open, though they can be made secret by the act of the chamber. The sittings are valid only if majority of total number of deputies take part in it. The acts are passed with majority of total number of deputies and in procedural questions with the majority of deputies taking part in the voting.

Mandate of the Duma's deputy is free. He cannot be a member of the Federation Council, member of the government, or deputy of other representative bodies, either of the state or local government. Mandate has also got a professional character, which means that the deputy cannot be in the state service, be involved in any paid business, except didactics, research, and creative activities. State Duma and Federation Council members possess formal immunity, of which they can only be deprived by the appropriate chamber on the application of the Attorney General. They cannot be kept in custody, arrested, searched, except when caught red–handed.

Deputies can unite in parliamentary fractions and groups of deputies of at least 35 persons[21]. They are registered in the State Duma Secretariat. The deputies have the right to become members of only one association. Fractions and groups that enjoy numerous privileges resulting from membership in internal bodies of a chamber, organization of its work, or financial benefits for organization activity.

In both chambers the internal bodies are: Chairperson, his deputies, committees and commissions. State Duma appoints the chairperson, the first deputy of the chairperson, and his deputies in secret voting. The Chairperson chairs the sittings, organizes work, supervises observance of the regulations, and represents the chamber outside. State Duma is an auxiliary body and it comprises the chairperson of the chamber and leaders of fractions with groups of deputies. The Council helps the chairperson in the chamber activities. Committees, consisting of 12 to 35 deputies, are appointed on the department basis and the commissions on the issue basis. The Federation Council also appoints its chairperson and two deputies coming from different federation subjects.

21 E. Zieliński, *Parlament…, op. cit.*, p. 6.

The main function of the parliament is legislative activity. The initiative belongs to the president, Federation Council, specific members of the Council, Duma's deputies, the government, legislative bodies of the Federation subjects, Constitutional Court, Supreme Court, Supreme Arbitrary Court, on the issues within their competences. Project on changes in taxes, tax exemptions, state loans, changes in financial state obligations, and other projects involving expenses from federal budget can only be introduced on the application of the government.

Federal bills are enacted by the State Duma with the majority of votes of deputies and passed on to the Federation Council within 5 days. The Council may enact the bill with statutory majority of members, approve it in silence (lack of examination within 14 days), or reject it. In case of federal bill's rejection, the chambers may appoint an arrangement commission, and then the act is subjected to another voting in Duma. If the lower chamber disagrees with the decision of the Federation Council, the bill requires 2/3 majority of statutory number of deputies in the second voting. The possibility of bill enactment against the will of the Federation Council does not apply in cases relating to the federal budget, federal taxes and fees, financial regulations, currency and credit regulations, money issuing, ratification of international agreements, state borders, war and peace.

Federal bill is passed on to the President within 5 days and the head of the state has 14 days to sign and announce it. If the president decides to veto the bill, during the second voting in parliament the bill must get the support of 2/3 votes of total number of members of each chamber, and then the president is obliged to sign the bill within the time of seven days.

State Duma rights include: consent on appointment of the prime minister, whose candidature was proposed by the president; vote of confidence to the government; appointment and recalling of the president of the Central Bank, chairperson of Financial Chamber and half of its composition, and ombudsman; declaration of amnesty and putting forward accusations towards the president.

7. The Government

Government of Russian Federation is composed of the Chairperson of the Russian Federation Government (prime minister), deputies of the chairperson (vice–prime ministers) and federal ministers. Apart from sensu stricte notion of the government (Cabinet), there is a broadly understood government that comprises members of the Cabinet, representatives of the state committees, representatives of federal committees, chiefs of services (specialized ones, for example, veterinary supervision, dosimetric services, FSS), chiefs of agencies, department director (serving the prime minister), chairperson of radiolocation supervision agency. Altogether 70 persons.

Prime minister's candidature is proposed by the president two weeks, and not later, after the beginning of the new president's term, from the moment of government resignation, or within a week of Duma's rejection of the candidate. Within a week of filing an application, Duma examines the proposal, though after the third rejection of proposed candidates, the president appoints the prime minister, dissolves Duma and orders new elections.

Within a week of reception of vote of confidence, the prime minister puts forward his proposal of executive branch structure to the president, including candidatures of vice–prime ministers and ministers.

Government's authorization expires the moment the presidents receives its resignation (received obligatorily by the newly elected president), government's dismissal by the president, and president's acceptance of vote of no confidence towards the government, expressed with majority of total number of Duma's deputies. In the last, third, case, the president may refuse dismissal, but if within three months Duma passes the vote of no confidence again, the president recalls the government or dissolves the State Duma (art. 117).

Prime minister may put forward an application on vote of confidence at any time. If Duma refuses the vote of confidence, the president dismisses the government within 7 days or dissolves Duma and orders new elections.

Within its basic competences, the government: drafts and presents Federation budget to Duma and ensures its realization; puts forward a report on its realization to Duma; ensures realization of unified financial, credit, and monetary policy; ensures realization of unified policy on culture, science, education, health protection, social policy and environmental protection, manages state property, decides on issues connected with defence, state security, realization of internal policy; looks after law and order, observance of civic rights and freedoms, protection of ownership, social order and fight with crime.

The government sessions are chaired by the prime minister who defines main directions of its activity and organizes its work. Once a year the government debates under the leadership of the president – this is when the most important decisions take place. In extended composition the government meets once for three months.

On the basis of and in order to realize the Constitution, acts, and decrees, the government issues bills and directives and ensures their realization. These acts may be overruled by the President of the Federation if they are in conflict with the Constitution, acts, and decrees of the president.

8. Constitutional Court

The Constitutional Court of the Russian Federation is composed of 19 judges appointed from among person above 40 years of age (maximum age of a judge equals 65 years), who have worked in the law profession for at least 15 years, with the statutory majority of Federation Council members on the application of the president. Initial applications to the president, which serve as the basis for his decisions, can be filed by: parliamentary members, legislative bodies of Federation subjects, principal bodies of judicial authority, Russian law associations, science and research law institutions. The term of the judge of Constitutional Court lasts 12 years without the right to re–election.

Its tasks include adjudication on the application of the president, Federation Council, State Duma, 1/5 members of the Council or Duma, the government, the Supreme Court, the Arbitrary Court, or legisla-

tive and executive authority bodies of the Federation on compliance of acts and normative acts of the president, parliament, government, Constitution, statutes and acts of Russian Federation subjects, and international agreements with the Constitution[22].

The Court also deals with examination of constitutional complaints filed by the citizens and foreigners on infringement of constitutional rights and civic freedoms, official interpretation of the constitutional regulations on the application of the president, Federation Council, State Duma, and legislative bodies of the Federation, on competence conflicts between the federal bodies of state authority, federal authority and the Federation subjects, and between the higher bodies of authority in federation subjects.

What is more, as it was already mentioned, the Constitutional Court has got the right of legislative initiative on issues within its competences, and the right to issue opinion on the correctness of bringing the president to the constitutional responsibility (impeachment).

22 E. Zieliński, *System*…, *op. cit.*, p. 81 and next.

Part 10

UKRAINE

1. Introduction

Ukraine (The Republic of Ukraine) is a relatively young state formed in 1991 after the fall of the United Soviet Socialist Republic. In terms of territory, the biggest state in Europe except the Russian Federation. Ukraine is a founding member of UN, member of WTO, Council of Europe, International Atomic Energy Agency, regional and sub–regional organizations, i.e. Commonwealth of Independent States. OSCE, Organization for Democracy and Economic Development, and Organization of the Black Sea States.

2. History of Ukrainian constitutional law

Trying to get to the beginnings of Ukrainian Constitution, one must start with the Zaporoski Bastion[1] that existed at the turn of the XVI and XVII century. The then Cossack Council can be considered as the prototype of Ukrainian parliament (precisely speaking the Bastion Council or the General Military Council)[2]. It comprised all members of the Cossackhood, sometimes including peasants and middle class, and held the main legislative and judicial competences. Greater meaning was later given to Elders Council elected in indirect elections. In 1710 it enacted the first Ukrainian fundamental statute – the Constitution of rights and freedoms of Zaporoski Bastion, which introduced three–division of power into: legislative (General Council), executive (hetman),

1 E. Wiszka, *Systemy polityczne Ukrainy*, Toruń 2007, p. 40 and next.
2 E. Zieliński, *System konstytucyjny Ukrainy*, Warszawa 2007, p. 9.

and judicial (General Court)[3]. The Constitution remained binding only 4 years and did not become the beginning of statehood. After the III partition of Poland, Ukrainian territory became a part of the Russian Empire and a part of the Habsburg monarchy.

Revolutionary events of 1917–1920 made the attempts to create the Ukrainian state possible and on 17 March 1817 Central Ukrainian Council was formed in Kiev, with M. Hruszewski as its leader[4]. The Central Council became the parliament of Ukraine and the executive power was entrusted to so called Small Council.

On 23 June 1917, in Universal I, the Central Council proclaimed Ukraine's autonomy and formed autonomic government in the form of General Secretariat. The Central Council proclaimed the creation of independent People's Republic of Ukraine, however, within the federation framework of Russia (Universal III).

On 9 January 1918, in Universal IV, the Central Council proclaimed full sovereignty of People's Republic of Ukraine (Ukraińska Narodna Respublika – UNR). Because the Germans, who were then occupying Ukraine, decided to dissolve the parliament, on 28 April 1918 the Central Council enacted the Constitution of People's Republic of Ukraine and appointed H. Hruszewski for the president[5]. On the same day coup d'état of the Cossack Ataman – general P. Skoropadski took place and the pre–revolutionary order was restored.

Activists of the Central Council tried to regain power in autumn 1918, creating body of the highest state authority that was to compete with the pro–Russian Workers and Peasants Temporary Government. It was UNR Directorate, which was a sort of collegial head of the state[6]. Directorate formed a temporary government and at the end of 1918 Council of UNR Ministers. In May 1920 all highest authority was transferred to S. Petlura. This way the Directorate lost its collegial character, concentrating head of the state authority in one hands. Formally speak-

3 *Ibidem*
4 K. Wolczuk *The Moulding of Ukraine*, Londyn 2002 p. 36 and T.A. Olszański *Historia Ukrainy XX wieku*, Warszawa 1991, p. 38.
5 O. Subtelny *Ukrajina, Istorija*, Kyjiw 1991, p. 438 and next.
6 A. Chojnowski *Ukraina*, Wydawnictwo Trio, Warszawa 1997, p. 41 and next.

ing, Petlura was in power until the end of UNR, creation of the USSR, and later during exile in France, until his death in 1926.

Losing independence, Ukraine found itself within the borders of the USSR for another a couple of tens of years, becoming part of the Soviet empire[7]. The USSR Constitution from March 1919 declared Ukraine sovereignty, confirmed with appointment of executive authority in the form of the Central Executive Committee of Ukraine Councils, with the right for independent foreign policy and hope for closer cooperation with the rest of socialistic republics.

Three Constitutions were enacted within the Soviet Socialistic Republic of Ukraine (in 1929, 1937, 1978)[8]. Next acts did not result in change of fundamental soviet political system, that is lack of distinct division of legislative and executive power.

On 16 July 1990 the Verkhovna Rada of Ukraine proclaimed declaration on Ukraine's sovereignty. Despite the lack of future vision of statehood and relation with the USSR, declaration announced "Ukraine's sovereignty, that is command, independence, plenitude and indivisibility of republic's authority within its territory, independence and equality in foreign affairs", and became "the basis for a new Constitution and law of Ukraine…". The work was entrusted to the Constitutional Commission, appointed at the end of October 1990, which was in charge of developing general assumptions of the future Constitution and presenting the project on the forum of the parliament[9].

The question of Ukraine's independence was to be eventually settled in state referendum set for the first day of December 1991. Over 84% of eligible voters took part in it, of which 95% voted for adoption of the Act on Ukraine's independence. On the same day the Ukrainians were to elect their president – the choice of L. Krawczuk proved that Ukrainians supported "old authority in a new guise" and that they are not ready for radical changes.

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7 Although the pre–war Ukraine existed in years 1917–1921, for the time when Ukraine was under Russian influence is given the period between 1919–1991, because of a pro–soviet government that worked in Kiev since 1919.

8 E. Zieliński, *System…*, p. 12 and next.

9 K. Wolczuk, *op. cit.,* p. 72.

There began a period of constitutional amendments and proper adjustment of Ukrainian legislature towards the reinforcement of executive authority in the system of power division. On 14 February 1992 the Verkhovna Rada enacted the bill "On changes and amendment of Constitution of Ukraine". Actually, the declaration of 16 July 1990 proclaimed introduction of three–division of power, but only now this division into legislative branch in the form of the Verkhovna Rada, executive branch embodied by the President and Cabinet of Ministers, was becoming a reality.

Meanwhile the activity of the Constitutional Commission was blocked and even suspended a couple of times. The work on the new Constitution was resumed after parliamentary and presidential elections in 1994. In October of that year a new Constitutional Commission was appointed[10]. Preparations to the amendments, heated by the key issue whether the system should have more presidential or more parliamentary character, supported by growing sympathy of the society for the strong executive branch, led to adoption of the so called Constitutional Agreement in May 1995, which modified the binding Constitution of USRR from 1987[11]. The agreement provided for fundamental division of power between the president and the parliament, ensuring strong position of the head of the state and executive branch.

The work of Constitutional Commission was delayed when the Constitutional Agreement entered into force. As a result, in September 1995 a smaller body, within Constitutional Commission, was created which was responsible for preparation of Constitution project. As it turned out, this solution proved to be very effective, because a group of ten experts (4 presidential, 4 parliamentary, and 2 judicial representatives) completed the task in a month and as early as in October a full constitutional project was ready – the third one since October 1990. Unfortunately the progress was threatened by some members' unwillingness to accept some of the project's resolutions, mainly on the authority of the head of state and relations between the president and the

10 A. Tkaczuk *Nowij derżawji nowu konstituciju*, *Polityka i Czas*, No. 10, 1994, p. 30–7.
11 T.A. Olszański *Ukraiński System Partyjny*, Ośrodek Studiów Wschodnich, „Analizy" no. 9, Warszawa, November 1999, p. 14.

parliament. On the application of a centre deputy – Mychail Syrota – an informal group was formed in the parliament which aimed to transform the March project into a more balanced one. At the beginning of May 1996 the group became formalized itself by the initiative of O. Moroz as "Temporary Special Commission on Preparation of Constitution Project" and at the end of May presented so called "Syrota project".

The debate on this project began in June 1996. Eventually, facing unwillingness of parliamentary members, the president resorted to political blackmail, threatening to put forward his own project and vote it in all–state referendum[12]. Such perspective made the parliament take a more flexible approach and during the night between 27 and 28 June 1996, after a 23 hour parliamentary debate, the agreement was reached.

3. Ukrainian political system

The new Constitution of Ukraine was enacted on 28 June 1996, at the fifth session of the Verkhovna Rada. Thus, the Constitution of Ukrainian SSR from 1978 ceased to be binding at the end of the fifth year of independence. This marked the end of long and first period of state system formation and the end of Soviet communism epoch.

Fundamental statute makes Ukraine a republic with presidential–parliamentary system[13]. Constitutional regulation of this form of government was connected with the desire to reject Soviet authority system (party monopoly), introduction of democratic principle of power division and the necessity to create strong executive power, which was supposed to help overcome political and economical crisis[14]. Creators of the presidential–parliamentary system took other European half–presidential systems as an example (French, Finnish, or Portuguese), keeping, however, the national specificity in mind. Thus, it contained significant differences and contained features characteristic for Ukrainian system of government, noticeable mainly in the division of authorities

12 *Ibidem*
13 Konstytucja Ukrainy, introduction and translation E. Toczek, Warszawa 1999, p. 20.
14 A.P Zajec *Nowa Konstytucja Ukrainy*, „Przegląd Sejmowy" 6(23)/97, p. 54.

between the highest bodies and state position of specific authorities, for example, the strengthening of president's position in his relationships with the government.

Most place was devoted to the relationships between the president and the Verkhovna Rada, and between the president and the Cabinet of Ministers. Quite extensively was also discussed the necessary scope of procedures and rights of Ukrainian check and balance system.

The president was given a significant influence on the legislative activity, which actually limited the rights of parliament in this matter. According to art. 106 p. 29/30, the president signed the acts enacted by the Verkhovna Rada and had the right of veto towards acts; issued decrees, which in most cases required countersignature of the prime minister and an appropriate minister; had the right of legislative initiative and the right to introduce urgent procedure in relation to his bill projects.

The Verkhovna Rada was given many control rights towards the president: listening to his annual address, filing questions, final decision on the choice of prime minister. The Council was at last able to apply the impeachment procedure in case of state treason or a serious crime committed by the president.

The president had to cooperate not only with the Verkhovna Rada in the government appointment procedure, but also with heads of many state offices. Especially crucial decisions of the president had to be approved by the Verkhovna Rada, for example, introduction of marital law or emergency state, state of natural disaster, universal or partial mobilization, declaration of war, use of armed forces, or making peace.

In spite of lack of regulation on president's supervision over the executive branch, de facto it was exercised[15]. The president appointed the prime minister (by the Verkhovna Rada's consent) and members of Cabinet of Ministers, heads of other central bodies of executive branch, and heads of local state administration bodies. He had the right to over-

15 A. Olechno, *Instytucja Prezydenta w systemie konstytucyjnych organów Ukrainy (1996–2005)*, Toruń 2009, p. 151 and next.

rule acts and resolutions of the Cabinet of Ministers and the Council of Ministers of Autonomous Republic of Crimea.

President–parliamentary system model set the responsibility of Cabinet of Ministers before the president, giving the Verkhovna Rada the right to control the government activity. Additionally, president–government relation was regulated outside of Constitution in President's decree from 1996, which brought the ministries of Defence, Internal Affairs, Foreign Affairs, and Information under the president's control.

Next step of the system reform started in 2000 when L. Kuczma, basing on people's legislative initiative, decided to call all–state referendum on the extension of rights of the head of state. The decree on referendum was referred to Constitutional Court by deputies and the adjudication found some points in conflict with the Constitution, which the next decree of the president took into account. The decision of the court was welcomed with great satisfaction since the deputies feared introduction of authoritarian rule in Ukraine.

However, the outcome of referendum brought full support for the president's proposal. What is interesting, it took place at the time when L. Kuczma himself was criticized equally with the parliament, which was even more telling that Ukrainians were ready to accept strong presidential rule. In the summer 2000, two amendments were filed to the parliament – the presidential, taking changes resulting from referendum into account, and the Left, introducing more balance of power. The Constitutional Court examined both projects and decided that the presidential one violates art. 157 of the Constitution, and that the parliamentary project postulated introduction of changes that did not directly result from questions of the referendum.

When it seemed that the conflict between the president and the parliament is bound to grow and grow, the question of referendum and amendment receded into the background because of the so called Gongadze affair. After it calmed down, the conflict shifted towards the government of Victor Juszczenko. Although the issue of amendment was quite effectively blocked, it would resurface before next presidential election f 2004, in which L. Kuczma could not take part anyway.

The election of 21 November 2004 made W. Janukowicz the winner but W. Juszczenko's campaign team protested, claiming that the opponent falsified the results. W. Juszczenko announced that he did not accept the election result and called his followers to come out on the streets of Kiev, proclaiming himself the president of Ukraine. On 3 December 2004 the Supreme Court of Ukraine partly confirmed W. Juszczenko team's complaint, stating that there were cases of electoral law infringements, overruling the results of the II elections and ordering the Central Electoral Commission to repeat the elections within three weeks of 5 December 2004. The Central Electoral Commission acted according to the decision of the Court and set the elections for the day of 26 December 2004.

A day after the Court's decision, on 4 December 2004, the first voting on bill package on the amendment of the Constitution of Ukraine and the presidential elections took place in the Verkhovna Rada of Ukraine. About a half a year earlier O. Moroz, chairman of the Socialistic Ukraine Party (SUP), put forward and application on passing the amendments which would transform the current president–parliamentary system of the republic into parliament–presidential system, with greater rights of the parliament and prime minister, and smaller rights of the president, whose status would resemble representative position of the president of Germany. Before the II round of election, W. Juszczenko, motivated by tactical motifs, made an agreement with O. Moroz, in which he agreed to amend the Constitution in accordance with Moroz's application. However, when on 4 December, as a result of mediatory measures, a voting on the proposed changes in Constitution took place, pro–Juszczenko deputies voted against them.

The turning point occurred on 8 December 2004 when the Verkhovna Rada managed to pass bill packages: changes of Central Electoral Commission composition, electoral statute, and amendment of Fundamental Statute. The acts entered into force after direct signature of L. Kuczma in the parliament building, though the act on amendment of the Constitution was to enter into force since 1 September 2005, and its other regulations since 1 January 2006. The rest of changes entered into force not until after parliamentary elections in 2006.

The most important changes brought limitation of president's competences, depriving him of the right to appoint the prime minister and ministers and passing this right to the Verkhovna Rada. However, apart from parliamentary majority, the president retained the right to propose the candidate for the prime minister (also the right to initiative to recall the Cabinet of Ministers) and to appoint ministers of so called power departments, that is the minister of state defence, minister of public security, and foreign affairs minister. The president lost the right to appoint and recall the Chairperson of Antitrust Committee of Ukraine, Chairperson of Ukraine National Wealth and the Chairperson of Committee on Television and Broadcasting. So the president lost a considerable amount of competences, but gained additional possibility of dissolving the parliament.

The last, as for now, phase of turbulent system transformation of Ukraine, was the adjudication of 1 October 2010 in which the Ukrainian Constitutional Court overrules the act from 8 December 2004 on introduction of constitutional amendment, changing the system of power from president–parliamentary to parliament–presidential. The Court decided that its enactment infringed the Constitution, so it adjudicated that its decision brings the Constitution from 1996 back into force. It is beyond any question that the decision was taken in favour (if not under influence) of W. Janukowycz, although the decision itself is fully legitimate[16]. It restores a definite advantage of the president in the state, weakening the government and the parliament. At the same time the Court ordered state bodies to bring already issued legal acts to conformity with the restored version of the Constitution, indirectly stating that legal acts and decisions taken before 1 October 2004 on the basis of the Constitution from 2004, retain their strength. This way the continuity of the state was sustained.

The Constitution of Ukraine from 28 June 1996 consists of 161 articles divided into 15 chapters which are preceded by the preamble. Among fundamental system principles it mentions the principle of sov-

16 During amendment of Constitution in December 2004, its regulations were violated in relation to the mode of introducing changes to the fundamental statute.

ereignty and independence, democratic, social, and legal state, the principle of power division and political plurality.

Sovereignty in Ukrainian Constitution is attributed to the nation and the state, and, as the Constitution mentions, it spreads all over Ukraine's territory. The only overlord and source of power is the nation which exercises its power in indirect way through its representatives and in direct way through all–Ukrainian referendum. Referendum is ordered by the Verkhovna Rada or by the president on the application of at least 3 million eligible voters (art. 72). In an indirect way the nation expresses its sovereign will through the deputies elected to the Verkhovna Rada. Basing on the multi–century history of Ukrainian statehood and realizing the nation's right to self–definition, the Parliament, in the name of the nation, enacted the fundamental statute. The Constitution divides the power into legislative, executive and judicial, and although there is no doubt how to categorize the Verkhovna Rada, Cabinet of Ministers and courts, the system providers do not place president within the executive branch, which leads one to think that there exists the fourth branch.

The Constitution stresses that Ukraine is a unitarian state and its territory creates one inviolable wholeness (art. 2). The Autonomous Republic of Crimea has got its own Constitution, parliament, and government, but must make decisions defined in the Constitution of Ukraine and implemented in accordance with the acts of the president and the Cabinet of Ministers of Ukraine. As it can be seen, it possesses certain attributes of statehood but is not sovereign.

The Constitution does not directly define the adopted system of government. In its initial version it adopted parliament–presidential system, or even president–parliamentary one, but the amendment form 8 December 2004 shifted the power towards the parliament, creating individual mixed system, which departs from the previous half–presidential system.

According to art. 154 of the Constitution, the project on the amendment of the fundamental statute may be put forward by at least one third of constitutional composition of Verkhovna Rada or the President of Ukraine. The Constitution provides two categories of acts on amend-

ments: common ones, which refer to amendment of the Constitution of Ukraine with the exception of chapters I, III, and XII, and specific ones, which refer to the three just mentioned chapters.

Projects of the first kind, enacted with majority of votes of constitutional composition of the Verkhovna Rada, are considered enacted, if during the next common session at least two third of the constitutional composition of the Verkhovna Rada of Ukraine supported them. Project of specific acts, i.e. the ones that propose amendment of chapter I "General Principles, chapter III "Elections, Referendum" or chapter XII "Amendments of the Constitution of Ukraine", are put forward to the Verkhovna Rada by at lest two third of constitutional composition of Verkhovna Rada of Ukraine or the President of Ukraine. If the project is enacted with at least two third of votes of constitutional composition of the Verkhovna Rada, they must be approved in all–Ukrainian referendum obligatorily ordered by the President of Ukraine (art. 156 of the Constitution). Repeat bill project concerning amendments of chapters I, III, and XIII is only possible in the Verkhovna Rada of the next term. This regulation aims to protect the constitutional legal order and to indirectly put forward the proposed changes to the assessment of the nation which can be expressed by votes for the parties supporting or rejecting amendments of the Constitution in the nearest parliamentary elections.

Examination of bill project by the Verkhovna Rada on amendments to the Constitution of Ukraine is preceded by adjudication of the Constitutional Court on project's compatibility with the below restrictions. The changes cannot repeal or limit human and civic rights and freedoms, aim to liquidate independence or territorial integrity of Ukraine. Constitution cannot be amended during marital law or emergency state (art. 157 of the Constitution). Ukrainian system creators provided such possibility during an emergency ecological situation, an equivalent of Polish natural disaster.

Examined bill project which lack majority and not yet passed by the Verkhovna Rada, may be put forward again but not sooner than a year since the day of last voting. The last restriction concern prohibition of

changing one and the same regulation of the Constitution two times during one term of the Verkhovna Rada (art. 158 of the Constitution).

Limitations introduced by art. 157 do not mean that Part II of the Constitution is to remain unchanged. According to art. 22 of the Constitution, the catalogue of rights and freedoms has not been exhausted. It is then permissible to extend constitutional rights and freedoms and to reinforce their guarantees by the amendments of the Constitution. The prohibition of changes aiming to liquidate independence or infringe territorial integrity of Ukraine practically means a ban on bill projects to art. 1 and 2 of the Constitution.

Project of amendment is examined by Constitutional Court on its compliance with art. 157 and 158 of the Constitution. This procedure does not require an application of a body putting forward a project nor any other application on verification of such compliance with Constitution. The Constitutional Court is obliged by art. 147 to settle compliance of articles and acts with the Constitution and examines them ex officio right after filing of such act to the Verkhovna Rada. Obviously, the adjudication is not decisive about the future of the project. It may not get the required majority in the Verkhovna Rada, and once it is enacted, may not be approved in all–Ukrainian referendum.

It is worth mentioning that only one of the above limitations on Constitutional amendments, i.e. ban on repeat filing of amendment project concerning chapters I, III, XIII during one term of the Verkhovna Rada, cannot be found in articles 157 and 158 of the Constitution, which are monitored by the Constitutional Court *ex officio*. Who then is to decide if the filed Constitution amendment project is "about the same matter" or not? Seems that it will belong to the competences of the Constitutional Court, thought the adjudication will be given on the application of other authorized body, and by the power of art. 150 of the Constitution, they would be: the President of Ukraine, a group of at least 45 deputies of the Verkhovna Rada, the Supreme Court, Plenipotentiary of the Verkhovna Rada on Human Rights, and the Supreme Council of Autonomic Republic of Crimea.

4. Human and civil rights and liberties

Most attention is paid by the Constitution to rights, freedoms and obligations of a human being and a citizen; to appoint and secure them belongs to the main obligations of the state (art. 3). Part II – Rights, freedoms and obligations of a human being and a citizen is composed of 48 articles and is the biggest chapter in the Constitution. The scope of presented regulations is similar to the catalogue of rights and freedoms of Constitutions of other democratic states. Rights and freedoms can be divided into: 1) personal, 2) political, 3) economical, 4) social, 5) cultural, and 6) ecological.

System creators state that the catalogue of rights and freedoms "shall not be exhaustive" and can be extended (art. 22). Basing on the tragic experiences of Czarnobyl, the Constitution, among traditional rights and freedoms, guarantees the right to living in a an environment that is safe and secure for one's life and guarantees that everyone shall have a free access to information about the environmental situation (art. 50). The rights and freedoms cannot be changed, and limited only during emergency state or martial law.

Ukrainian language is the official state language, however, the Constitution guarantees the right to use and develop Russian and other languages of national minorities (art. 10).

5. Parliament

Parliament – the Verkhovna Rada of Ukraine – is, according to art. 75 of the Constitution, the only body of legislative power in Ukraine. It comprises 450 people's deputies of Ukraine, elected on the basis of universal, equal and direct electoral law in secret voting for the period of four years[17]. It is considered constituted, provided that at least two–thirds of its constitutional membership has been elected (art. 82).

The working mode of the parliament is regulated by the Constitution and Regulations of the Verkhovna Rada of Ukraine. The sittings are

17 In the overruled amendment the term equalled five years.

open, but by the decision of the majority of the constitutional membership of the Council, can also be closed.

The parliament works in session mode; for the first session the deputies gather not later than on the thirtieth day after official announcement of election results. It is opened by the eldest member. Ordinary sessions take place twice a year, called on the first Tuesday of February and first Tuesday of September. The work of the chamber is chaired by the Chairperson of the Verkhovna Rada who elected by the deputies and who is aided by The First Deputy of the Chairperson and The Deputy of the Chairperson. Emergency sessions can be called on the president's request or at least one third of constitutional members by the Chairperson of Verkhovna Rada, which proposes a specific session agenda. The Regulations of the Verkhovna Rada adds that together with the request the president or the deputies must provide motifs for calling an emergency session and also put forward issues and document projects that need to be examined. If the requirements are met, the emergency session is called within ten days. This means that the Chairperson of the Verkhovna Rada cannot refuse to call the emergency session. The parliament assembles for the emergency session without calling in case of introduction of martial law or emergency state. In such cases, the Constitution prolongs the parliament's session to the first day sitting of the first session of the Verkhovna Rada elected after the end of marital law or emergency state.

In comparison with earlier solutions, the ability to dissolve the parliament by the president has been limited. This right can be applied exclusively in case when there is impossible to start the plenary session during thirty days of the ordinary session, additionally introducing next restrictions[18]. The Constitution does not mention the ability of self–dissolution of the parliament.

18 During the time when the presently overruled amendment of the Constitution was in force, the president could earlier dissolve the Verkhovna Rada when: coalition (deputies' fraction) was not formed within a month of elections; if the Verkhovna Rada was unable to appoint the Cabinet of Ministers within sixty days; if the Verkhovna Rada was unable to assemble for a sitting within thirty days of the first plenary session. The amendment obliged the parliament to develop deputies' fraction on the basis of the election result and political agreement, which would include the majority of constitutional members of the Verkhovna Rada. The deputies had a month time limit for appointment of proper parliamentary majority, counted from the moment when the last majority coalition ended during the term.

Verkhovna Rada's main tasks include legislative, creative, and control functions. Obviously, legislative activity is the most important one.

Legislative initiative is held by the president, people's deputies, Cabinet of Ministers, and the National Bank of Ukraine (art 93, act 1 of the Constitution). Projects deemed as urgent by the president are examined as first. This means that they enter the agenda as soon as they are filed. The president must remark that a given project must be considered urgent, which means that not all his propositions or bill projects are automatically considered as such. The president may find a bill project filed by other authorized body as urgent, too. The Verkhovna Rada cannot refuse to consider a project as urgent, it may, however, consider any project as urgent by the power of its own act.

The Verkhovna Rada examines bill projects in three readings. If bills or bill proposals are not included in the agenda, they may be withdrawn by the applicant, otherwise they can only be withdrawn by the consent of the parliament. If the authorization of the applicant (president, Cabinet of Ministers) expires for some reason after filing of the project but before the first reading in the Verkhovna Rada, the project is considered as rejected.

The Chairperson of the Verkhovna Rada signs the act within 5 days and then forwards it without delay to the President of Ukraine. Within fifteen days of receiving the bill, the president signs it and then directs it to execution and official promulgation. Acts that do not require president's signature enter into force on the basis of directives of the Chairperson of the Verkhovna Rada.

The president has the right to veto laws adopted by the Verkhovna Rada of Ukraine with their subsequent return for reconsideration. (art. 94 act 2, art. 106 p. 30 of the Constitution). If it does not return the act for reconsideration within fifteen days, the act is deemed approved and it is to be signed. The Verkhovna Rada may take president's remarks into consideration (even some of them) or reject them. In the first case, after considering corrections, bill project is forwarded to the President who may sign it or, if the Verkhovna Rada entered its corrections next to the President's corrections, put forward next re-

marks. If during second examination the bill, in its unchanged form, is enacted by the Verkhovna Rada with qualified 2/3 majority of constitutional composition, (i.e. 301 people's deputies), the president is obliged to sign it and officially promulgate within ten days (art. 94, act 4 of the Constitution). The same applies in situation when the president's changes (all or some of them) are taken into consideration and the parliament does not add theirs (also with qualified 2/3 majority of constitutional composition). Thus it is a suspension veto. Repeat enacted bill cannot be subject to veto for the second time. Since in the past, despite clear regulations, there were cases when the president (L. Kuczma) refused to sign an act, amendments introduced the possibility of promulgation of an act signed by the Chairperson of the Verkhovna Rada. However, as a result of the Constitutional Court's judgement of 2001, the amendment is no longer valid. If an act does not provide otherwise, it enters into force within ten days of its official promulgation, however, not earlier than on the day of its publication. According to art. 92, only acts can regulate the questions of: rights, freedoms, and obligations of citizens, formation of social unions and political parties, citizenship, ownership, social and economical policy, including budget and finances, functioning of state and local authority bodies, security and armed forces, borders and territorial system, civic–legal and criminal responsibility, mandatory offences, or electoral system.

Creative function of the president is evident in his consent to appoint the prime minister.[19] Verkhovna Rada appoints the chairperson and other members of Financial Chamber, Proxy on Human Rights, and on the application of the president, also the Head of the National Bank of Ukraine and members of Central Electoral Commission. The parliament expresses consent on the appointment of the General Attorney by the president, chairpersons of Antitrust Committee, State Wealth Fund, and Committee on Television and Radio Broadcasting. Additionally, the parliament appoints and recalls half of the composition of the Board of the National Bank of Ukraine and Board of Supervisors on Television and Radio Broadcasting, appoints 1/3 composition of Constitutional

19 In the overruled amendment, the parliament had more to say on the appointment of the Cabinet of Ministers, proposals for prime minister, ministers of foreign affairs, and defence candidatures.

Court and permanently appoints judges. Finally, as far as impeachment is concerned, the Verkhovna Rada may dismiss president from the office with the votes of at least ¾ of its constitutional composition.

Control competences of the parliament include approval of the budget and supervision of its realization, supervision on the activity of the Cabinet of Ministers, approval of decisions on loans and financial help other states and international organizations, control of the Supreme Council of AR of Crimea. Also, the parliament can shorten the term on the application of the Constitutional Court and order earlier elections (art. 85 p. 28), appoints the Proxy of the SC on Human Rights, who supervises observance of human and citizen rights and freedoms. Finally, it can form special commissions and inquiry commission in order to solve issues that are of state significance.

In addition, the Verkhovna Rada defines general principles of internal and international policy, of security measures, ratifies and cancels international agreements, approves introduction of martial law and emergency state, grants consent on Ukraine's military aid and allows for stationing of alien forces on its territory.

Deputies start exercising their mandates the moment they swear the oath before the opening of the first session of newly elected Verkhovna Rada. The deputy's mandate is of professional nature[20]. He cannot hold any other representative mandate, except science, didactic and artistic activities. Deputies enjoy parliamentary immunity and only acts of the chamber may allow for their bringing to criminal justice, custody, or arrest. Deputy's mandate expires at the end of the term of the Verkhovna Rada or earlier in the event of: resignation, adjudication of the court about incapacitation or missing, loss of citizenship, permanent residence abroad, or death. In case of failure to meet the requirement of non–connectivity of posts within 21 days of election, the mandate expires on the appropriate decision of the court.

20 E. Zieliński, *Rada Najwyższa Parlament Ukrainy*, Warszawa 2003, p. 12.

6. The President

According to art. 102 of the Constitution "The President of Ukraine shall be the guarantor of the state sovereignty and territorial integrity of Ukraine, the observance of the Constitution of Ukraine, human and citizen rights and freedoms". Constitution does not define president as an executive branch body. Actually, the fact that he exists outside of the traditional three–division of authority is not a violation. Although the Constitution expressis verbis divides state authority into legislative, executive, and judicial (art. 6), and regulations on the president specify rights of the three branches of authority convince us about the existence of traditional concept of three–division of power, this division is based on three main functions which the state bodies share among themselves. As a matter of fact, the president's function is to internally secure normal functioning of the state and to secure the unity of state authority, which works on the basis of and in order to realize the Constitution. Thus, the president belongs to the executive branch only functionally, by the scope of his rights, but he is not structurally a part of the executive branch, as separate part in the system of executive branch bodies.

The President of Ukraine is elected for a five–year term on the basis of universal, equal, and direct electoral right in secret voting. The candidate must have 35 years of life finished, possess active electoral right, reside on the territory of Ukraine for ten years before the day of the elections and know the state language. The same person may not be elected for the president for more than two terms in a row. The president, during his office, enjoys immunity, later and holds the title for life, unless he is removed from the office in compliance with a procedure of impeachment (art. 105).

The rights contained in art. 106 of the Constitution serve realization of system functions. From the point of view of state body defined as the head of the state, the most important rights include: in foreign relations – representation of the state in international relations, including signing international agreements, the right of active and passive legation, that is appointment and recalling chiefs of diplomatic representative posts of Ukraine in other states, reception of credentials and letters

of recall of other states' representatives in Ukraine; in internal relations – prerogative of mercy, the right to appoint judges, to appoint the prime minister by the parliament's consent, to appoint members of Cabinet of Ministers on the application of the prime minister, the right to suspend execution of acts of the Cabinet of Ministers and to overrule the acts of AR of Crimea, the right of legislative initiative, to sign acts, to dissolve the parliament, to grant state awards and presidential distinctions, to appoint highest military ranks, highest diplomatic ranks, special titles, to grant citizenship and consent on resignation from citizenship, to appoint and recall the highest command of Armed Forces of Ukraine, to chair National Security and Defence Council of Ukraine, the right to decide about the use of Armed Forces, to introduce marital law or emergency state.

What is more, the president participates in the appointment of the president of National Bank of Ukraine and members of Central Electoral Commission, appoints half of composition of the Board of NBU and National Council on Television and Radio Broadcasting and 1/3 of the composition of Constitutional Court.

During his office, the president enjoys inviolability based on immunity, which secures realization of President's competences. Inviolability means that the President cannot be kept in custody, arrested, searched or subjected to any other means of compulsion. It also means lack of criminal, administrative, civic–legal responsibility, except cases the fundamental statute provides for. Exclusion from responsibility has a temporary character and expires at the end of the term or when the presidential authorities expire in other ways. Also, the President can be deprived of immunity via the impeachment procedure.

Constitution from 1996 does not provide for political responsibility of the head of state, however, in the event of state treason or commitment of serious offence provides for resignation in the impeachment mode (art. 111). Impeachment proceeding starts by the initiative of majority of constitutional composition of the Verkhovna Rada of Ukraine, i.e. at least 226 votes. Next step is the formation of temporary inquiry court comprising a professional prosecutor and investigators appointed by the Verkhovna Rada of Ukraine in order to investigate on suspi-

cions put forward against the president. Resolutions and recommendations of temporary inquiry commission are examined during the sitting of the Verkhovna Rada of Ukraine. If there exist appropriate reasons for it, the Verkhovna Rada conducts another voting. With 2/3 majority of constitutional composition the deputies decide on bringing charges against the President.

The case then is forwarded to the Constitutional Court of Ukraine which assesses only the formal proceedings, leaving the substantial assessment to the Supreme Curt. After examining the case, the Constitutional Court issues adjudication on meeting requirements of constitutional procedure during the recognition and examination of the case. Then, the Supreme Court issues adjudication in which it confirms treason or any other offence, which the President of Ukraine is accused of.

The last act is repeat voting, this time by name, at the sitting of the Verkhovna Rada. Decision to dismiss the President via impeachment is made by at least ¾ of constitutional members, i.e. not fewer than 338 members.

Acting on the basis of and in order to realize the Constitution and the acts, the president has the right to issue decrees and directives. President's acts have the character of prerogatives, though the Constitution mentions total of 12 rights that require signatures of prime minister and minister, who are responsible for the act and its realization[21].

In cases when the president ceases its obligations earlier, art. 112 of the Constitution passes his authorities to the prime minister[22].

System of advisory bodies of the President of Ukraine is quite extended. It includes constitutional bodies and bodies appointed by the

21 Amendment decreased the number of presidential acts which require countersignature to four: – appointment and recalling of heads of diplomatic posts of Ukraine in other states and at international organizations, reception of credentials and letters of recall of diplomatic representatives of other states; – connected with the activity of the National Security and Defence of Ukraine Council; – introduction of emergency state, announcement of natural disaster in specified areas of the state, or formation of courts.

22 During the time when the amendment was binding, it was the chairperson of the Verkhovna Rada.

acts of lesser importance, which encompass activities of not only the president but the whole state. The status of these bodies is defined by the Constitution of Ukraine or decrees of the President of Ukraine. The first group consists of two bodies: National Security and Defence of Ukraine Council and Representation of the President of Ukraine in Autonomic Republic of Crimea.

7. The Government

Constitution of 1978 defined the Cabinet of Ministers of Ukraine as a state body of executive branch of Ukraine (art. 115), the Constitutional Agreement as a central, collegial state body of executive branch, subordinate to and responsible before the President of Ukraine (art. 29). Currently binding fundamental statute used the term "highest body in the executive branch" (art. 113). The changes, against the nomenclature neither meant stronger position of the government, nor greater independence of the President[23].

The composition of the Cabinet of Ministers of Ukraine include: the Prime Minster of Ukraine, First Vice–Prime Minister, Vice–Prime Ministers and ministers (art. 114 of the Constitution). In practice, the structure of this body is very complex and the present 30-persons Cabinet of Ministers of Ukraine makes it the biggest government in Europe[24].

Prime Minister's candidature is proposed by the president. He does it as the head of the state and not as superior of executive branch[25].

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23 It was not until the amendment of 8 December 2004 that the way of appointing and of bearing responsibility by the president in favour of the Verkhovna Rada was dramatically changed. Before, the Council had no influence on the composition and activity of the government. However, the President still took part in government formation, its work and the ministers were responsible before Him and the Verkhovna Rada.

24 Since 1999, time when the Cabinet of Ministers was reformed and the number of departments decreased to 15, its number of members was constantly increasing. It is influenced by the creation of new (old) ministries and the appointment of many vice–prime ministers. For example, the government of prime minister M. Azarow, which was appointed in March 2010, consisted, apart from the prime minister, of The First Vice–Prime Minister and as many as 6 vice–prime ministers and 21 ministers.

25 R. Mojak, *Republika Ukrainy* [in:] E. Gdulewicz (ed.) *Ustroje państw współczesnych 2*, Lublin 2002, p. 278.

After presentation of Prime Minister's candidature to the Verkhovna Rada, the President takes part in the sitting of the parliament, during which the candidature of the Prime Minister is examined. In any moment, though before the voting, the President may withdraw the candidature of the Prime Minister[26].

The Verkhovna Rada grants consent on the appointment of the Prime Minister with majority of its constitutional members (art. 114, p. 2) in secret voting and the form of resolution. If the required majority is not met, the same person cannot be proposed again and the President is to present another candidature within ten days. The President then appoints members of the Cabinet of Ministers on the application of the Prime Minister.

The President may recall the Prime Minister and other members of the Cabinet of Ministers on his own, i.e. without the consent of the Verkhovna Rada. The Prime Minister and other members of the government have the right to hand in their resignation to the President of Ukraine. Resignation of the Prime Minister means resignation of the whole Cabinet of Ministers. Resignation of the government (specific ministers) takes also place when the Verkhovna Rada enacts vote of no confidence towards the Cabinet of Ministers[27]. The Cabinet of Ministers hands in their powers to the newly elected president (in the amendment it was the newly elected Verkhovna Rada).

Prime Minister manages the work of the government which realizes program of internal and external policy presented by the Verkhovna Rada. Also, within constitutional competences of the Cabinet of Ministers, contained mainly in art. 116, it: ensures the state sovereignty and economic independence of Ukraine, the implementation of domestic and foreign policy of the State, and the execution of the Constitution, laws of Ukraine, and acts of the President of Ukraine, ensures the imple-

26 Art. 5.1.1. p. 3 of the Regulation of the Verkhovna Rada of Ukraine, „WWR", 1994 – No. 35, p. 338 with later modifications.

27 On the application of at least 1/3 of constitutional people's deputies, the Verkhovna Rada may examine the application on vote of confidence for the Cabinet of Ministers or enact a vote of no confidence with majority of constitutional members. The application on the vote of confidence cannot be examined more than one time during common session, and also within one year of approval of Program of Activity of the Cabinet of Ministers. (Art. 87 of the Constitution).

mentation of financial, pricing, investment, and taxation policy; elaborates a draft law on the State Budget of Ukraine, ensures the implementation of the State Budget of Ukraine approved by the Verkhovna Rada of Ukraine, and submit a report on its implementation to the Verkhovna Rada of Ukraine; directs and co–ordinates the work of ministries and other executive authorities. On behalf of the Verkhovna Rada, realization of the budget is controlled by the Financial Chamber, which is appointed by the Council.

Sittings of the government are called at least once a week by the prime minister, who presents the order of the day and chairs them. Government is authorized to make decisions (with ordinary majority) in case of 2/3 turnout of total composition of Cabinet of Ministers. The sittings of the government can also be called by the initiative of the president, who then chairs them and presents the order of the day himself.

Within its competences, the government passes acts and directives, which are to be executed without delay. Those acts are signed by the prime minister and presently may be repealed by the president. When the amendments of 2004 were in force, president could only askthe Consitutional Court to examine their consitutionality.

8. Constitutional Court

According to art. 124 act 3, judicial branch in Ukraine is administered by the Constitutional Court and common courts. The courts administers it exclusively, which means that no other bodies or officials may be delegated to exercise these functions (art. 124 paragraph 1 of the Constitution). Statement that the Constitutional Court administers the judicial branch (sudoczynstwo) seems a bit awkward, so it is not included in either Constitution or common acts. Constitutional Court is responsible for constitutional judiciary and common courts for general judiciary.

The Constitutional Court of Ukraine is the exclusive body of constitutional judiciary and it consists of eighteen judges, of who six are appointed by the President of Ukraine, the Verkhovna Rada, and con-

vention of Ukraine judges (art. 147 and 148 of the Constitution)[28]. To become a judge of the Constitutional Court, one must be a citizen of Ukraine, be not younger than 40 years old, have higher law education, and at least ten–year work experience in the profession, be resident of Ukraine for the last twenty years and be fluent speaker of state language. The term of the judge of Constitutional Court lasts nine years without the possibility of appointment for the next term.

Tasks of the Constitutional Court include: adjudications on compliance with the Constitution of Ukraine of: – acts and other legal acts of the Verkhovna Rada of Ukraine; – acts of the President of Ukraine; – acts of Cabinet of Ministers of Ukraine; – legal acts of the Supreme Council of Autonomous Republic of Crimea. Each case refers to already enacted acts. The Constitution does not provide for applications to the Constitutional Court on prevention control.

Examination whether normative acts comply with the Constitution occurs on the application of the President of Ukraine, at least forty five deputies of people's deputies of Ukraine, Supreme Court of Ukraine, Proxy of the Verkhovna Rada of Ukraine on Human Rights, and the Supreme Council of the Autonomous Republic of Crimea (art. 150 of the Constitution). What is more, the Constitutional Court, on the application of the President or Cabinet of Ministers of Ukraine, issues adjudications on the Constitutional compliance of the binding international agreements or agreements submitted to the Verkhovna Rada for ratification, and issues adjudication on observance of the constitutional procedure of investigation and consideration of the case of removing the President of Ukraine from office by the procedure of impeachment upon request of the Verkhovna Rada of Ukraine (art. 151 of the Constitution).

Laws and other legal acts, according to a decision of the Constitutional Court of Ukraine, shall be deemed unconstitutional, whether in whole or in part, should such laws and legal acts fail to comply with the Constitution of Ukraine, or in case of a violation of a pro-

28 W. Baluk, *Ukraina, [in:] W. Baluk i A. Czajowski (ed.) Ustroje polityczne krajów Wspólnoty Niepodległych Państw*, Wrocław 2007, p. 128.

cedure established by the Constitution of Ukraine for the review, adoption, or entry

Laws and other legal acts or their particular provisions being deemed unconstitutional shall lose their legal force from the day of adoption of the decision on their unconstitutionality by the Constitutional Court of Ukraine.

Part 11

CROATIA

1. Introduction

Croatia (The Republic of Croatia) lies in Southern Europe by the Adriatic Sea. Croatia borders with Slovenia to the northwest, Hungary to the northeast, Serbia to the east, partly surrounds Bosnia and Herzegovina to the southeast, and has a comparatively small border with Montenegro to the southeast on the Adriatic coast, south of Bosnia and Herzegovina.

The state became independent after separation from Yugoslavia as a result of the collapse of Socialistic Federation of the Republic of Yugoslavia. Its independence was proclaimed after referendum held on 25 June 1991, was internationally recognized on 22 May 1992 and on 22 May 1992 Croatia became a member of the UN.

In February 2003, the Prime Minister I. Racan officially announced the state's candidacy to the European Union. Accession talks lasted since 2005 and were successfully ended on 30 June 2011. Signature of accession treaty and all–state referendum on it were scheduled for the second half of 2011. Due to lengthy ratification procedure, accession of Croatia to the European Union is planned for 1 July 2013.

When discussing the newly created state, one must remember multi–century tradition of Croatians, which is referred to by the whole chapter I of the Constitution from 22 December 1992 titled "Historical Foundation".

2. History of Croatian constitutional law

Slavic tribe of Croatians reached the Balkan Peninsula in VI and VII century. Once the migration ended and the threat of Awar's attacks were repulsed, the Christianization process of Croatians took place. Till the end of VIII century there already existed independent tribal centres in Dalmatia (Dalmatian Croatia) and Slavonia (Possavian and Pannonian Croatia). When Charles The Great defeated Awars, Croatians became dependant on the Franks state. Later, Charles vassal, Croatian prince Borna, was officially christened[1] and soon after Borna and Viselav in Dalmatian Croatia and Possavian Ljudievit in Possavian Croatia made unsuccessful attempts to gain independence from Franks' rule.

Independent Croatian state was formed in 879 when prince Branimir broke relationships with Byzantium that had lasted for a several tens of years. In 925 Croatian ruler Tomislav received the title of king from the pope John X. Tomislav united Croatian lands and successfully defended them from Hungarians and Bulgarians. Croatian period of greatness took place during the reign of Peter Kresimir and Dymitri Zvonimir. The rule of Trpimirovic dynasty ended with the assassination of Zvonimir in 1089.

In 1102 Croatia signed personal Union with Hungary which lasted until 1918. At the beginning its independence from Hungarian Kingdom was retained. Hungarian king Koloman singed pacta conventa which guaranteed Croatian gentry privileges of personal inviolability and protection of property[2]. There were also coronations of kings who ruled the state in accordance with Croatian law. Although at that time the country still possessed its own army, this privilege was gradually limited. The king of Hungary was also the king of Croatia and exercised his power via his governor – Bana. Soon the Hungarian law was

1 *Konstytucja Republiki Chorwacji*, introduction A. and L. Garliccy, translation T.M. Wójcik, Warszawa 1995, s. 3, Warszawa 2001, p. 10.

2 J. Karp, M. Grzybowski, *System konstytucyjny Chorwacji*, Warszawa 2007, p. 9.

introduced and the army was liquidated[3]. First Croatian parliament was called in 1273 in Zagreb, which elected a new bana.

In 1515, by the power of the Vienna Treaty, the Hungarian and Croatian thrones were taken by the Habsburgs who soon controlled only the surroundings of Zagreb. The rest of the territory on the Eastern side of Adriatic was occupied by the Turks who defeated the Hungarians in 1526 in Mohacz and the Dalmatian part had already been under control of Venice until the XVIII c. First truce with the Turks was not signed until 1606 in Zivatorog but most lands were freed only after the victory of Jan III Sobieski near Vienna in 1683.

When under the Habsburg rule, Croatia was completely dependant on the Vienna government and during the reign of Mary Theresa subordinated to the Hungarian administration. Sabor was no longer called and in return the empress enacted Croatian Crown Council which was a body of executive character[4].

When her successor, Joseph II, wanted to Germanize Hungary and Croatia, he faced both states' strong opposition and that was when the struggle for independence, language and national identity started. National rebirth movement, called ilirism, was initiated and together with the springtide of nations, at the National Assembly in Zagreb in 1848, the creation of one Kingdom of Dalmatia, Croatia, and Slavonia was announced, with Josip Jelacić as its leader. The creation was followed by an unsuccessful uprising against Hungarians. When Austria–Hungary was created in 1867, Hungary and Croatia signed an agreement which gave Croatia extensive internal autonomy with the right to separate nationality and own parliament.

At the beginning of the XX century Croatian–Serbian coalition was formed in order to connect the Croatian lands and to regain financial independence and democratic freedoms. After World War One and the collapse of Austria–Hungary, the state of the Kingdom of Slovenians, Croatians, and Serbians was created and on 1 December 1918 the creation of the Kingdom of Serbians, Croatians and Slovenians was an-

3 T. Jankowski, System polityczny Chorwacji [in:] W. Sokół, M. Żmigrodzki (ed.) Systemy polityczne państwa Europy Środkowej i Wschodniej, Lublin 2005, p. 186.

4 J. Karp, M. Grzybowski, *System*…, p. 11.

nounced in Zagreb. It was a constitutional monarchy under the rule of Serbian dynasty of Karadziordziewicie[5]. On 28 June 1921 a new Constitution was enacted which gave the main power to the king, legislative power to the king and the National Assembly (Skupsztina), and executive power to the cabinet of ministers and prime minister appointed by the king[6], who were responsible before the parliament.

When three Croatian deputies were murdered on 20 June 1928, the rest refused to take part in parliament sittings and demanded political autonomy. In answer to this, on 6 January 1929 the king suspended the Constitution, dissolved the parliament, and the state was renamed as the Kingdom of Yugoslavia. On 3 September king Alexander imposed a new Constitution with two–chamber parliament: Senate and Representative Chamber.

During World War II on the territory of Croatia there was created Independent Croatian State under German protectorate and after attack on Yugoslavia in April 1941 Germany acknowledged its independence. Sabor was its legislative body, which in fact was only a façade for the commander of Ustasa fighters and the leader of Ante Pavelic government[7].

In 1943 the government of the new state was created, so called National Liberation Committee of Yugoslavia. His leader became communistic commander of liberation guerrilla Josip–Broz Tito, who after the end of World War II was made the head of the new Yugoslavian state. Right after successive Constitutions of Yugoslavia, the fundamental statutes were enacted in Croatia in 1945, 1963, and 1974. Sabor was the highest body of power in all of them. In years 1963–1974, it consisted of five chambers: 120-person Republic Council, Economic Council, Culture Council, Health Council, Social Affairs Council and Social–Political Council (each one with 80 deputies)[8].

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5 T. Jankowski, *System*…, p. 186.

6 L. Podhorecki, *Jugosławia. Dzieje narodów, państw i rozpad federacji*, Warszawa 2000, p. 153 and next.

7 After the events of 1928, the Main Management of Croatian Party of Law authorized A. Pavelic to undertake all necessary actions to create an independent state. This gave rise to terrorist organization called Ustasze, which soon proclaimed independence. In 1935 it commissioned the murder of king Alexander in Merceilles.

8 J. Karp, M. Grzybowski, *System*…, p. 14.

At the beginning of the nineties of the XX century, Tito's Yugoslavia started to crumble and in April 1990, in Socialistic Republic of Croatia, the first democratic parliamentary elections were won by Croatian Democratic Community led by F. Tudjman. The new Constitution, which treated Serbs as national minority, was enacted still in Yugoslavia on 22 December 1990. On 12 May 1991 in referendum organized among Serbs living in North–West Croatia, as much as 90% of voters opted for incorporation of their territory to Serbia and for integration with Yugoslavia. The situation was tense – first fights of Serbs with Croatians broke out in May at Vukovar. On 19 May 1991 in referendum 94% of voters were for the creation of independent state of Croatia[9]. On 25 June 1991 Croatia and Slovenia proclaimed independence.

3. Croatian political system

Croatian Constitution from 22 December 1990 introduced semi–presidential system which during amendments from 2000–2001 diminished the power of the president and transformed it into parliamentary system. In its original version Constitution assumed existence of two–chamber Sabor comprising of the Chamber of Representatives and the Chamber of Żupania. The latter comprised three deputies elected by the citizen of each district and optionally five citizens appointed by the president and the president himself, who enjoyed a lifetime mandate. Second chamber enjoyed the right of legislative initiative and the right of veto, which made it weaker than the Chamber of Representatives[10]. The first chamber also exercised legislative and control function towards the government.

After resignation of president F. Tudjman, one of the creators of Constitution and supporter of strong presidency, there started works on the amendment of the fundamental statute[11]. First changes were

9 *Ibidem*, p. 15.
10 J. Karp, M. Grzybowski, *Sabor, Parlament Chorwacji*, Warszawa 2003, p. 10–11.
11 President's responsibilities were taken over by the chairperson of the parliament Vlatko Pavletić. Within a month president F. Tudjman died. Elections of 7 February 2000 were won by Tepjan Mesić, a supporter of parliamentary system.

passed on 9 November 2000 and successive and last ones as of today on 28 March 2001[12]. As it was already mentioned, the earlier amendments weakened the position of the president introducing parliamentary–cabinet system of government. One crucial amendment was the abolition of the second chamber of parliament.

According to art. 142–145 of the Constitution, legislative initiative is held by a group of at least one fifth of deputies in Croatian Sabor, the President of the Republic and the Government of the Republic of Croatia. The parliament decides on initiation of amendment procedure by the majority of votes of all deputies. Then the bill project needs to be supported by the majority of votes of all deputies in the first reading. During the second reading deputies, clubs, and parliamentary commissions may put forward their corrections. The last phase is the voting on specific amendment, which requires the majority of two third of votes of all deputies[13].

On the basis of art. 86 Croatian Sabor may optionally order a referendum on the amendment (and also project bill on issues within its competences) and obligatorily do so if the application is put forward by ten percent of all eligible voters in the Republic of Croatia. On the application of the Government and countersignature of the prime minister, the President of the Republic may order a referendum on amendment project or on other issues he deems crucial for independence, unity and existence of the state. The result of referendum depends on the majority of given votes, provided that majority of eligible voters took part in it.

At present the Croatian Constitution comprises 147 articles contained in eight parts (II–IX) and mentioned unarticulated part which can be found in part I. This preamble refers to one thousand years of national identity and history of Croatian nation.

Croatian Constitution referred to the West European models, on which it based its catalogue of system principles and its government

12 R. Grabowski, S. Grabowska, *Zasady zmiany konstytucji w państwach europejskich*, Warszawa 2008, p. 79.

13 Amendments of the Constitution did not introduce any significant changes in the procedure itself, because the only right of the Chamber of Żupania was the right to opinionate amendment project of the fundamental statute. Second chamber neither possessed the right of legislative initiative nor the right of veto.

system. Among the foundations of the state system, contained mainly in part II, the following principles can be distinguished: republican form of government, democratic social state, uniformity and integrity of the state, human and citizen rights and freedoms, sovereignty, political representation, division of power, political plurality and free market economy.

4. Human and civil rights and liberties

Third chapter of the Constitution, titled Protection of Fundamental Human Rights and Freedoms, is the biggest one. It is a detailed expansion of Art. 3 of the fundamental statute, which says that "freedom, equal rights, national equality, peace, social justice, respect for human rights, inviolability of ownership (…) are the highest values of the constitutional order of the Republic of Croatia".

Chapter III consists of three parts devoted to general resolutions, personal, political, economical, social and cultural freedoms and rights. They contain catalogue of rights and freedoms characteristic for the requirements of a democratic state. According to Art. 14 which defines the principle of equality, every single person enjoys all freedom and rights without distinction to race, skin colour, sex, language, denomination, political or other views, national background, birth, education, social position or any other qualities.

Special place is devoted to national minorities who are guaranteed equal rights and possibility of electing their own deputies to Croatian Sabor on the basis of a acts of specific law, the right to use their native language and alphabet, as well as cultural autonomy (art. 15). Document that guarantees such rights is constitutional act on national minorities from 2002, which granted national minorities the right to participate in representative bodies on the central and local level – in parliament, district councils and Żupania assemblies[14].

14 J. Karp, M. Grzybowski, *System*…., p. 22.

The act also extends the principle of equality of sexes with special focus on the equality of the statuses of a woman and a man in public and private life[15].

Person–based institutions that serve freedom are: Defendant of Nation's Rights, Child's Rights Ombudsman, and Ombudsman for Equal Status of Women and Men. Defendant of Nation's Rights is a constitutional body and plenipotentiary of Croatian Sabor, who protects constitutional and statutory citizens' rights in proceedings before the bodies of public administration and other bodies of public authority (Art. 92). He is appointed by the parliament for an eight–year term with the possibility of re–appointment. The Parliament also appoints his three deputies[16].

Since 2003 Croatia also has an Ombudsman of a Child's Rights and Ombudsman for Equal Status of Women and Men, who are bodies appointed on the basis of common acts by the parliament and on the application of the government.

5. Parliament

Since the amendment of 21 March 2001 and de facto since 28 March 2002, the parliament, Croatian Sabor (Croatian Assembly) has a unicameral structure[17]. According to art. 70 of the Constitution, the Croatian Sabor is a representative body of citizens, which exercises legislative power in the Republic of Croatia, which is in accordance with the principle of division of power adopted in art. 4.

The Parliament consists of at least 100 and the most of 160 deputies elected directly on the basis of universal and equal electoral law in secret voting[18]. The number of deputies is precisely determined by

15 Act on equality of sexes from 2003. *Ibidem*, p. 22.

16 J. Karp, M. Grzybowski, *System*…., p. 27.

17 The name of the parliament of Croatian state had been changed twice: the act of 12 XII 1997 introduced the name "Croatian State Sabor" (*Hrvatski državni sabor*), and finally by the Act of 9 XI 2000 the present name of *Hrvatski Sabor* was adopted.

18 See also: K. Składkowski, *Prawo wyborcze do parlamentu Chorwacji*, [in:] S. Garabowska, K. Składowski, (ed.) *Prawo wyborcze do parlamentu w wybranych państwach europejskich*, Kraków 2006, p. 127 and next.

the parliament in the Act on the Election of Deputies to Sabor from 29 October 1999[19]. At present there are 153 deputies in the parliament.

The term of the Croatian Sabor lasts four years. The election is ordered by the president on a free from work day, and not later than on the sixtieth day since the date the term ends or since the date when the parliament is dissolved. Every citizen who turned 18 years of age enjoys active and passive electoral right, provided this right has not been taken away by a binding sentence of a court. The right of vote is also enjoyed by citizens residing outside the state. The right to put forward candidate is also held by political parities and their electoral coalitions, as well as electoral committees of citizens (in the last case there exists the requirement of collection of 500 support signatures and in case of national minorities only 100 signatures)[20].

The state is divided into 10 electoral regions, with 14 deputies elected via proportional system in each of them. The constituencies are not the same as the administrative division in żupan. For national minorities constituency is the whole territory of the state. The electoral threshold is 5% and the votes are counted according to D'Hondt method. In case of national minorities the binding system is the majority one. Thus, in total, there are 140 "domestic" places, 8 of national minority, and 5 for representative of Croatian "diaspora". The last figure changes since it is estimated after all votes are counted and its value depends on the number of Croatians who, living abroad, voted on their representatives. Distribution of 8 national minorities mandates is organized as follows: 3 for Serbs, 1 for Hungarians, 1 for Italians, 1 for Czechs and Slovakians, 1 for Austrians, Bulgarians, Germans, Polish, Roms, Romanians, Rusins, Russians, Turks, Ukrainians, Volosians, Jews, and 1 for Albanians, Bosnians, Mountenegrins, Macedonians, Slovenians.

Croatian Sabor may dissolve itself with the act passed with majority of votes of all deputies. On the application of the government, by countersignature of the prime minister, and after consultation with representatives of parliamentary clubs, the President of the Republic may dissolve Croatian Sabor, if after government's application on vote of

19 J. Karp, M. Grzybowski, *Sabor…*, p. 10–11.
20 *Ibidem*, p. 14.

confidence the Croatian Sabor gives its vote of no confidence to the government or if within 120 days after presentation of the project, the government fails to enact the budget of the state. The President cannot dissolve the parliament if he is subject of proceedings concerning constitutional responsibility.

Deputy's mandate has got a free character and is obtained by the deputy on the day of oath, at the first sitting of Sabor and lasts until new term of the parliament gets constituted. Earlier expiry of commission takes place in case of death, resignation, sentence of the court that deprives the deputy of legal eligibility, and in case the deputy is sentenced for imprisonment for the time of at least six months.

The deputy may suspend his mandate for the term of six months once in a term and during this time his place is taken by the next candidate from the same electoral list[21].

Deputy holds a formal and material immunity and inviolability. A deputy cannot be brought to criminal justice, kept in custody, punished for views expressed in parliament, or for his way of voting. A deputy cannot be kept in custody, nor be subject of criminal proceedings without consent of the Croatian Sabor. Deputy may be held in custody without the consent of the chamber only when caught red–handed in the act of committing an act that is punishable with imprisonment longer than five years. The Chairperson of the Croatian Sabor must be informed about such cases[22].

Deputies hold an extensive scope of incompatibilitas that covers prohibition of professional activity in judicial bodies, justice administration, and executive bodies. Thus, the mandate cannot be connected with membership in government. However, one is free to run their own businesses, except the ones with state capital involved.

The first sitting of Croatian Sabor takes place on the twentieth day after elections the latest. The parliament gets constituted at the first sit-

21 J. Karp, M. Grzybowski, *System*..., p. 41.

22 During the time in–between the sessions of the parliament, consent on imprisonment of a deputy or on instituting criminal proceedings towards him is given by the Commission on Mandates and Immunity of Croatian Sabor. This commission also decides about revocation of immunity and its decisions are further approved by the Croatian Sabor.

ting via election of the Chairperson with the majority of votes of present deputies. Common sessions take place twice a year: the first one between 15 January and 30 July; the second between 15 September and 15 December. Emergency sessions take place on the application of the president, the government or the majority of deputies (regulations mention number 129) and the chairperson of the chamber, after opinions of the parliamentary clubs. The sittings of the parliament are open.

Deputies form parliamentary unions following party or ethnic preferences that include at least 3 deputies[23]. One can be a member of one fraction but it is permissible to be a member of one party and one ethnic fraction.

Internal bodies of Sabor include the Chairperson, his deputies (from two to five), Presidium, secretary, committees and commissions (to be precise one Commission on Mandates and Immunity) and optional investigation commissions.

According to art. 80 of the fundamental statute, Croatian Sabor: enacts Constitution and amendments, passes acts and state budget, decides about war and peace, enacts strategy for national security and strategy of defence of the Republic of Croatia, exercises civil control over the Armed Forces and security services of the Republic of Croatia, decides about changes in borderline of the Republic of Croatia, and orders referendum.

The right of legislative initiative is enjoyed by every deputy, parliamentary clubs, commissions, and the government. Croatian Sabor passes acts with majority of votes in presence of majority of deputies with the exception of acts that specify constitutionally guaranteed fundamental human rights and freedoms, electoral system, structure, scope and mode of functioning of state bodies and system and scope of functioning of local and regional authority, as well as acts that regulate changes of borders and the rights of national minorities and which are enacted with the majority of two thirds of votes of all deputies. The Acts are signed by the president within eight days of their enactment by the Croatian Sabor. If the president finds an act incompatible

23 J. Karp, M. Grzybowski, *System*…., p. 43.

with the Constitution, he may initiate appropriate proceedings before the Constitutional Court.

Within government control, apart from either common or individual political responsibility, deputies use the institution of parliamentary questions, either oral or written, and grant vote of approval from realization of the budget.

Creative function manifests in granting vote of confidence to prime minister and the rest of the members of government, appointment of the Defendant of the Nation's Rights, Ombudsman for Children's Rights, Ombudsman for the Equal Status of Women and Men, full composition of the Judicial Council of the Republic, and the judges of the Constitutional Court.

6. The President

Institution of the President of the Republic was crated as early as during formal existence of Yugoslavia. After first democratic elections in May 1990, on 31 day of that month, the parliament appointed F. Tudjman for this office[24]. The first president played a crucial role in shaping this institution, which was formulated in Constitution of the Republic of Croatia, enacted in December 1990. Semi–Presidential model, which was then adopted, assumed that the president: appointed and recalled the prime minister, called government sessions (government was politically responsible before the president and the parliament), could change the order of government meeting and chaired government sessions, issued decrees with the power of an act, could order special measures when state bodies were no longer able to carry out their constitutional duties.[25]

Considering the fact that president's party, HDZ, had majority in parliament, real power of F. Tudjman was even greater. His sickness that led to his death and the loss of HDZ in elections of 2000 resulted

24 J. Karp, M. Grzybowski, *System*…, p. 50.
25 *Ibidem*, p. 50 and next.

in weakening of the president's position in enacted amendment of the Constitution.

The president lost the official status of the head of the state, which was removed from Constitution in November 2000. According to the present version of the fundamental statute, the President of the Republic of Croatia is a representative of the Republic of Croatia at home and abroad, takes care of correct and harmonious activity and stability of state authorities, as well as holds responsibility for defence of independence and territorial integrity of the Republic of Croatia.

The way of electing president did not change. He is elected in direct elections, on the basis of universal and equal electoral law, in secret ballot for the term of five years with the possibility of one re–election.

Candidates for the president's office may be appointed by citizens and political parties. To get registered a candidate needs 10 thousand signatures of citizens who hold active electoral right to the parliament. President is elected with majority of votes of all who took part in the ballot. If none of candidates collects the required majority, elections are held again after 14 days period. In repeated elections there can take part candidates who collected most votes in the first election. If any of the candidates gives up his candidacy, then the right to participate in new elections gains the next candidate who had most votes in the first round.

Election for the President of the Republic are held not earlier than 30 days and not later than 60 days before the end of the term of the residing president. In case of vacancy, elections must be organized within 60 days since the day the responsibilities of temporary President of the Republic were taken over.

President of the Republic cannot hold any other public or professional position. After election the President of the Republic resigns from his membership in political party and informs Croatian Sabor about this fact.

President enjoys immunity, which means that he cannot be arrested or be subjected to criminal proceedings without prior consent

of the Constitutional Court. President can be held in custody without the consent of the Constitutional Court only when caught red–handed while committing an act punishable by imprisonment for more than five years. State body that arrests President of the Republic is obliged to inform the Chairperson of the Constitutional Court about this fact without delay.

According to art. 97–99, within his constitutional rights, the President of the Republic: orders parliamentary elections and calls its first sitting; orders all–state referendum; entrusts formation of the government to a person who, considering the division of mandates in Croatian Sabor and the number of consultations, enjoys confidence of majority of all deputies; grants presidential pardon; awards orders and distinctions specified by the act; cooperates with the government in development and realization of foreign policy; on the application of the government and by countersignature of prime minister decides about creation of diplomatic missions and consular offices, appoints and recalls heads of diplomatic missions; receives letters of credence and letters of recall from foreign diplomatic representatives. President may also dissolve the parliament in the procedure provided by Art. 104.

The President of the Republic is commander–in–chief of the Armed Forces of the Republic of Croatia. He appoints and recalls military commanders; declares war and concludes peace on the basis of parliament's act. In the event of direct threat of the state existence or integrity, the president may, with countersignature of the prime minister, order the use of Armed Forces, even though marital law was not introduced.

During war the President of the Republic may pass decrees with the force of law on the basis and within the competences received from the Croatian Sabor. If the parliament is not debating, the president is authorized to regulate decrees with the force of law. The President of the Republic shall pass decrees with the force of law and take emergency measures in the event of a state of war or an immediate danger to the independence and unity of the Republic, or when government bodies are prevented from regularly performing constitutional duties. Such

decrees are approved by the parliament whenever it becomes possible, otherwise they become invalid.

Issues relating to substitution of the president are regulated by art. 96 of the Constitution. In case of temporary inability to perform his duties because of absence, sickness, or yearly leave, the President of the Republic may assign the Chairperson of Croatian Sabor to substitute him. Decision about come back to his regular duties is made by the president himself.

In the event of prolonged inability to exercise his office and when he is not able to pass his duties to a temporary substitute, duties of temporary president are taken over by the chairperson of the parliament on the basis of the act of Constitutional Court, passed on the application of the government. In the event of the death of the President of the Republic, his resignation, or his being permanently prevented from performing his duties, the occurrence of which shall be established by the Constitutional Court of Croatia at the proposal of the Government of the Republic of Croatia, the duty of the President of the Republic shall be temporarily assumed by the Chairperson of the Croatian Parliament. Signature of acts by the temporary President of the Republic require countersignature of the prime minister. Election of a new President of the Republic must commence within 60 days of taking on the duties of temporary president.

Inability to exercise his office by president F. Tudman because of his poor health led to his substitution by the chairperson of the Croatian parliament, V. Pavletic in November 1999. The president died within a month and during this time the position of the chairperson of the parliament was changed. The duties of the chairperson and president were since the beginning of February performed for two weeks by Z. Tomcic, until he passed the competences over to newly elected president S. Mesiciow.

President is not politically responsible. On the basis of art. 104 of the fundamental statute he is responsible for infringements of the Constitution committed during his office. Proceedings in this case can be initiated by the Croatian Sabor with an act passed with majority of two thirds of all votes of deputies. President's responsibility is adjudi-

cated by the Constitutional Court of the Republic of Croatia with two third majority of votes of all judges. Constitutional Court must issue its adjudication within 30 days of filing the application. The consequence of finding president guilty is his removal from the office.

7. The Government

According to art. 107 of the Constitution, the Government of the Republic of Croatia exercises executive power in accordance with the Constitution and appropriate acts. The government consists of a prime minister, one or a few vice–prime ministers and ministers. The prime minister and the rest of the government members must obey the principle of incompatibilitas and cannot occupy any pubic or professional position without the consent of the government.

After consultations with the biggest political groups in parliament, the president appoints a candidate for the post of prime minister. Within 30 days of taking the mission, the designated person is obliged to present the programme and composition of the government to the Croatian Sabor and apply for vote of confidence. If the designated person fails to form the government within 30 days, this term can be prolonged by the president for another 30 days. However, even if within this time the candidate fails to form the government or if the parliament does not give its vote of confidence, the president entrusts another person with the mission to form the government.

The government takes over responsibilities after a vote of confidence from majority of all deputies. The decision to appoint a prime minister is made by the President of the Republic with countersignature of the Chairperson of the Croatian Sabor, and decision about appointing other members of the government is made by the prime minister with countersignature of the Chairperson of the Croatian Sabor.

If the government is not appointed in standard mode (art. 109 and 110), the president appoints a temporary non–party government and orders earlier elections to the parliament.

The prime minister calls and chairs sessions of the government and can be substituted in this by vice–prime ministers. Decisions are made with majority of votes and, on some crucial issues, with 2/3 majority (e.g. the ones relating to amendments, state borders, alliances, referendums)[26]. Ministers represent departments and manage their activity. Each minister may optionally apply to the government to appoint a vice–minister, who may substitute him in case of absence and realize tasks appointed by the minister.

Members of the government hold political responsibility before the parliament, as a whole for decisions of the cabinet, and individually for their scope of activity. Application on a vote of no confidence for the prime minister, each minister, or the whole government, may be put forward by 1/5 of deputies, whereas the prime minister may apply for a vote of confidence at any time. Discussion and ballot on the vote of confidence (with majority of votes principle) must be organized 7 days the earliest and 30 days the latest since the date the application was filed.

If the parliament rejects the application on the vote of no–confidence, the deputies that put it forward cannot do it again within next six months.

If during ballot the prime minister or the whole government got a vote of no confidence, the prime minister and the government resign. If a new person designated for the prime minister and members of government presented by this person do not get a vote of confidence within 30 days, the chairperson of the parliament informs president about the situation and the president dissolves the Croatian Sabor and orders new elections to the parliament.

According to art. 117 of the Constitution, the Government of the Republic of Croatia: passes decrees in conformity with the Constitution and law, introduces bills, proposes the state budget, and enforces laws and other regulations enacted by the Croatian Parliament; issues executive orders; manages internal and foreign affairs, manages the work of state administration.

26 J. Karp, M. Grzybowski, *System*..., p. 58.

The parliament may pass the right to regulate issues, which fall into competences of Croatian Sabor, to the government in the form of directives but for not longer than one year. Delegation may not relate to issues connected with guarantees rights and freedoms of citizens, national rights, electoral statute, structure and the scope of activities of local and regional authorities.

8. Constitutional Court

Institution of the court which examines lower acts' compliance with the Constitution has a long tradition in Croatia dating back to 1963[27]. Constitution of the Socialistic Republic of Croatia from that year, as well as the next one from 1974, provided for such a body, at the same time making its existence in independent Croatia quite natural and predictable. Constitution amendments from 2000 and 2001 extended the composition of the Court, which initially comprised 11 judges, and extended its competences.

At present, the Constitutional Court of the Republic of Croatia comprises 13 judges elected by the Croatian Sabor for eight–year term from among persons of great legal knowledge. Candidates are selected and presented to the parliament by the Commission of the Croatian Sabor on Constitutional matters.

Constitutional Court elects its president for a four–year term. Judges are to remain apolitical and not to perform an office or work defined by law as being incompatible with his judicial office (art. 126 of the Constitution). They also enjoy immunity similar to that of a deputy of Sabor. A judge can be relieved of duty before the end of his term on his request, if he is sentences for imprisonment, or permanently loses ability to exercise his function, which is pronounced by the Court itself.

Within its extensive constitutional rights provided by art. 128, the Constitutional Court: decides on the conformity of law with the Constitution; decides on the conformity of other regulations with the

27 J. Karp, M. Grzybowski, *System*…, p. 62.

Constitution and the law, even if they are no longer in force, unless a year passed between the moment they ceased to be in force and the moment an application on their examination was filed; adjudicates in cases of constitutional complaints against individual solutions of state bodies, bodies of local and regional authorities and legal persons who exercise public power, if the solutions infringe fundamental rights and freedoms of a human being and the right to local and regional authority guaranteed by the Constitution of the Republic of Croatia; supervises observance of compliance with the Constitution and other acts, and informs the Croatian Sabor about such cases; adjudicates in cases of competence conflicts between legislative, executive, and judicial bodies, adjudicates in accordance with the Constitution about responsibility of the President of the Republic; supervises compliance of programmes of political parities and their activities with the Constitution, and can ban their activity; supervises elections and state referendums in terms of their compliance with the Constitution and electoral law; adjudicates on electoral disagreements, which are not examined by common courts. What is more, if the Constitutional Court states that proper bodies did not issue executive order, although it was obliged to do so, it notifies the Government about it, and in case of executive orders of the Government, notifies the Croatian Sabor.

Applications on constitutional compliance can be put forward by 1/5 of deputies, Sabor committees, president, government, Supreme Court, and other courts (within the framework of legal questions). What is more, on issues relating to the scope of own organization structures, competences, or finances, the proceedings can be initiated by the Defendant of the Nation's Rights and bodies of regional and local authority.

BIBLIOGRAPHY

Books and Articles:

Antoszewski A., Herbut R., Systemy polityczne współczesnego świata, Gdańsk 2001

Banaszak B., Porównawcze prawo konstytucyjne współczesnych państw, Warszawa 2007

Baluk W. i Czajowski A. (ed.) Ustroje polityczne krajów Wspólnoty Niepodległych Państw, Wrocław 2007

Brodziński W., Parlament Rumunii, Warszawa 2002

Brodziński W., System konstytucyjny Rumunii, Warszawa 2006

Ciapała J., Prezydent w systemie ustrojowym Polski (1989–1997), Warszawa 1999

Ciapała J., System wyborów prezydenckich w Stanach Zjednoczonych – prawo i praktyka, „Roczniki Prawnicze" nr 4, Szczecin 1993

Ciągwa J., Rada Narodowa Republiki Słowackiej, Warszawa 1998

Chojnowski A., Ukraina, Warszawa 1997

Domagała M. (ed.), Konstytucyjne Systemy Rządów, Warszawa 1997

Dziemidok–Olszewska B., Instytucja prezydenta w państwach Europy Środkowo–Wschodniej, Lublin 2003

Glajcar R., Instytucja prezydenta w Polsce, Czechach i Słowacji w latach 1989–2000. Analiza porównawcza, Toruń 2004

Gortat R., Ukraińskie wybory. Elekcja parlamentarna '98 a partie polityczne, Warszawa 1998

Grabowska S., Składowski K., (ed.) Prawo wyborcze do parlamentu w wybranych państwach europejskich, Zakamycze 2006

Grabowski R., Grabowska S. (ed.), Prawo wyborcze na urząd prezydenta w państwach europejskich, Warszawa 2007

Grabowski R., Grabowska S., Zasady zmiany konstytucji w państwach europejskich, Warszawa 2008

Grzybowski M. (ed.),Prawo Konstytucyjne, Białystok 2009

Gdulewicz E. (ed.), Ustroje państw współczesnych. Tom 2, Lublin 2005

Jiraskova V., Skotnicki K., Parlament Republiki Czeskiej, Warszawa 2009

Karp J., Grzybowski M., Sabor, Parlament Chorwacji, Warszawa 2003

Karp J., Grzybowski M., System konstytucyjny Bułgarii, Warszawa 2002

Karp J., Grzybowski M., System konstytucyjny Chorwacji, Warszawa 2007

Konstytucja Łotwy, introduction P. Kierończyk, Warszawa 2001

Konstytucja Litwy, transl. H. Wisner, wstęp A.B. Zakrzewski, Warszawa 2006

Konstytucja Republiki Chorwacji, introduction A. i L. Garliccy, transl. T.M. Wójcik, Warszawa 1995

Konstytucja Republiki Chorwacji, introduction A. i L. Garliccy, transl. T.M. Wójcik, Warszawa 2000

Konstytucja Rosji, introduction A. Bosiacki, transl. A. Kubik, Warszawa 2000

Konstytucja Słowacji, transl. and introduction K. Skotnicki, Warszawa 2003

Konstytucja Ukrainy, transl. and introduction E. Toczek, Warszawa 1999

Kowalski J., Konstytucja Federacji Rosyjskiej a rosyjska i europejska tradycja konstytucyjna, Warszawa–Poznań 2009

Ludwikowski R.R., Prawo konstytucyjne porównawcze, Toruń 2000

Mołdawa T., Zaleśny J. (ed.), Parlamentaryzm w świecie współczesnym. Między ideą a rzeczywistością, Warszawa 2011

Mołdowa T., Zagadnienia konstytucjonalizmu krajów Europy Środkowo–Wschodniej, Warszawa 2003

Motyka K. (ed.), Konstytucjonalizm we współczesnym świecie, Lublin 1998

Mróz M., Parlament Republiki Estońskiej, „Przegląd Sejmowy" nr 1, 1997

Olechno A., Instytucja Prezydenta w systemie konstytucyjnych organów Ukrainy (1996–2005), Toruń 2009

Olszański T.A., Historia Ukrainy XX wieku, Warszawa 1991

Olszański T.A., Ukraiński System Partyjny, Ośrodek Studiów Wschodnich, „Analizy" nr. 9, Warszawa, listopad 1999

Osiński J., Prezydent w Państwach Współczesnych. Modernizacja Instytucji, Warszawa 2009

Podhorecki L., Jugosławia. Dzieje narodów, państw i rozpad federacji, Warszawa 2000

Rose R., Ex–Communists In post–communist societies, Glasgow, 1995

Rybczyńska J.A. (ed.) Europa Środkowo–Wschodnia: Region, państwa i społeczeństwa w czasie transformacji, Lublin 2000

Skotnicki K., System konstytucyjny Czech, Warszawa 2000

Sokolewicz W., Konstytucjonalizm europejski i przyszłą polska konstytucja, „Państwo i Prawo", nr 8, 1992

Sokolewicz W., Pomiędzy systemem parlamentarno–gabinetowym a systemem prezydencko–parlamentarnym, prezydentura ograniczona, lecz aktywna w Polsce i Rumunii, „Przegląd Sejmowy" 1996, nr 3

Sokół W., Żmigrodzki M. (ed.), Systemy polityczne państw Europy Środkowej i Wschodniej, Lublin 2005

Sokół W., Żmigrodzki M. (ed.), Współczesne partie i systemy partyjne. Zagadnienia teorii i praktyki politycznej, Lublin 2003

Subtelny O., Ukrajina, Istorija, Kyjiw 1991

Tkaczuk A., Nowijderżawjinowukonstituciju, Polityka i Czas, Nr 10, 1994

Trzciński J. (ed.), Sądy Konstytucyjne w Europie. Bułgaria, Czechy, Rumunia, Słowacja, Węgry. v. 2, Warszawa 1997

Wiatr J.J., Europa pokomunistyczna. Przemiany państw i społeczeństw po 1989 roku, Warszawa 2006

Wiszka E., Systemy polityczne Ukrainy, Toruń 2007

Wolczuk K., The Moulding of Ukraine, Londyn 2002

Zajec A.P., Nowa Konstytucja Ukrainy, „Przegląd Sejmowy" nr 6, 1997

Zieliński E., Parlament federacji Rosyjskiej, Warszawa 2002

Zieliński E., Rada Najwyższa Parlament Ukrainy, Warszawa 2003

Zieliński E., System konstytucyjny Federacji Rosyjskiej, Warszawa 2005

Zieliński E., System konstytucyjny Ukrainy, Warszawa 2007

Zieliński J., Seimas. Parlament Litwy, Warszawa 2003

Zieliński J., Parlament Łotwy, Warszawa 1997

Zieliński J., Systemy konstytucyjne Łotwy, Estonii i Litwy, Warszawa 2000

Zwierzchowski E., Sądownictwo Konstytucyjne, Białystok 1994

Żmigrodzki M., Dziemidok Olszewska B. (ed.), Współczesne systemy polityczne, Warszawa 2009

Internet sources:

Latvia:

The Constitution of the Republic of Latvia

http://www.saeima.lv/en/legislation/constitution

Official site of The Latvian Parliament – Saeima

http://www.saeima.lv/en

Official site of The President of Latvia http://www.president.lv/pk/search/?searchStr=Meklēt&lng=en

Official site of The Cabinet of Ministers of the Republic of Latvia – http://www.mk.gov.lv/en/?lang=1

Official site of Constitutional Court of the Republic of Latvia

http://www.satv.tiesa.gov.lv/?lang=2

Bulgaria:

The Constitution of The Republic of Bulgaria

http://www.parliament.bg/en/const

Official site of The President of The Republic of Bulgaria http://www.president.bg/en/index.php

Official site of The Bulgarian Government – Republic of Bulgaria Council of Ministers http://www.government.bg/fce/index.shtml?s=001&p=0023

Official site of The Constitutional Court of The Republic of Bulgaria http://www.constcourt.bg/Default.aspx

Romania:

The Constitution of Romania

http://www.cdep.ro/pls/dic/site.page?id=371

Official site of The Romanian Parliament – Senate

http://www.senat.ro/PaginaPrincipala.aspx

Official site of The President of Romania

http://www.presidency.ro/?lang=en

Official site of The Romanian Government

http://www.gov.ro/main/index/l/2/

Estonia:

The Constitution of Estonia

http://www.president.ee/en/republic–of–estonia/the–constitution/

Official site of The Estonian Parliament– Riigikogu

http://www.riigikogu.ee/?lang=en

Official site of The Estonian Government

http://www.valitsus.ee/en/government

Official site of The Chancellor of Justice

http://www.oiguskantsler.ee/?lang=eng

Lithuania:

The Constitution of Lithuania

http://www.lrkt.lt/Documents2_e.html

Official site of The Lithuanian Parliament – Seimas

http://www3.lrs.lt/pls/inter/w5_home.home?p_kalb_id=2

Official site of The President of The Republic of Lithuania – http://www.president.lt/en/pirmas_174.html

Official site of The Government of The Republic of Lithuania

http://www.lrv.lt/en

Czech Republic:

The Constitution of Czech Republic

http://www.hrad.cz/en/czech–republic/constitution–of–the–cr.shtml

Charter of fundamental rights and basic freedoms http://www.concourt.cz/clanek/czech_charter

Official site of The Parliament of the Czech Republic – Chamber of the Deputies

http://www.psp.cz/cgi–bin/eng/sqw/hp.sqw

Official site of The Parliament of the Czech Republic – Senate–

http://www.senat.cz/index–eng.php

Slovakia:

The Constitution of Republic of Slovakia

http://www.nrsr.sk/default.aspx?SectionId=124

Official site of The Slovakian Parliament – National Council of the Slovak Republic http://www.nrsr.sk/Default.aspx?lang=en

Official site of The President of the Slovak Republic

http://www.prezident.sk/?introduction

Official site of The Slovakian Government http://www.government.gov.sk/10887/government–office–of–the–slovak–republic.php

Russian:

The Constitution of Russian Federation

http://www.constitution.ru/en/10003000–01.htm

Official site of the President of Russian Federation

http://www.kremlin.ru

Offcial site of the Government of Russian Federation

http://www.government.gov.ru

Official site of the Parliament of Russian Federation

http://www.duma.gov.ru/

Offcial site of the Council of the Federation

http://www.council.gov.ru/

Ukraine:

The Constitution of Ukraine

http://www.president.gov.ua/en/content/constitution.html

Official site of The Verkhovna Rada of Ukraine http://portal.rada.gov.ua/rada/control/en/index

Official site of The Cabinet of Ministers

http://www.kmu.gov.ua/control/en

Croatia:

The Constitution of The Republic of Croatia

http://www.sabor.hr/Default.aspx?sec=729

Official site of The Croatian Parliament

http://www.sabor.hr/Default.aspx?sec=361

Official site of The President of The Republic of Croatia http://www.predsjednik.hr/IvoJosipovic–ENGLISH

Official site of The Croatian Government – http://www.vlada.hr/